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INDONESIA'S COMPLIANCE WITH PACTA SUNT SERVANDA: CONSTITUTIONAL COURT DECISIONS AND THE PRINCIPLE REFLECTED IN ARTICLE 27 OF THE 1969 VCLT

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Abstract: The principle of pacta sunt servanda raises questions concerning Indonesia's international treaty obligations and the constitutional authority to review treaty-ratification legislation. This study examines the relationship between constitutional judicial review, treaty compliance, and state responsibility under international law. Employing normative legal research with statutory, conceptual, and case approaches, the study analyzes the 1969 Vienna Convention on the Law of Treaties (VCLT), Indonesian legislation, Constitutional Court decisions, and international rules on state responsibility. The findings demonstrate that Indonesia remains bound by its international treaty obligations despite its nonparticipation in the VCLT, while the principle reflected in Article 27 prohibits reliance on domestic law to justify treaty non-performance. Constitutional Court Decisions No. 33/PUU-IX/2011 and No. 13/PUU-XVI/2018 establish the Court's authority to examine treaty-ratification legislation and procedures without automatically terminating international obligations. International responsibility arises only when attributable state conduct breaches an applicable international obligation. Ensuring treaty compliance therefore requires constitutional scrutiny before ratification, legislative adjustments, institutional coordination, and lawful international mechanisms for resolving conflicts between domestic requirements and treaty obligations.

Keywords: Pacta Sunt Servanda; Constitutional Court; International Treaties.

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INTRODUCTION

The termination of a state's participation in an international treaty raises legal questions concerning sovereignty and previously agreed obligations. Article 54 of the 1969 Vienna Convention on the Law of Treaties (VCLT) permits withdrawal in accordance with the treaty's provisions or by consent of all parties after consultation. Meanwhile, Article 70 provides that termination generally does not affect rights, obligations, or legal situations established through the execution of the

treaty, unless otherwise agreed.[1] Accordingly, the right to terminate treaty obligations must be distinguished from the legal consequences of termination. This issue becomes more complex when a state withdraws from a supranational organization with integrated institutions, competences, and legal systems.

International treaties are legal instruments that establish rights and obligations among states in the conduct of international relations. Their binding force rests on the principle of *pacta sunt servanda*, which requires every treaty in force to be performed in good faith. This principle is codified in Article 26 of the 1969 Vienna Convention on the Law of Treaties (VCLT). Article 27 further provides that a party may not invoke its internal law as justification for its failure to perform a treaty, without prejudice to Article 46.[2] These provisions illustrate the relationship between the obligation to honour international treaties and the authority of states to regulate their domestic legal systems. This relationship becomes problematic when the performance of international obligations encounters constitutional constraints under domestic law.

This issue has particular significance within Indonesia's legal system because the process of becoming bound by international treaties involves both the government and the House of Representatives (DPR). Article 11 of the 1945 Constitution regulates parliamentary approval for certain treaties, while Article 24C(1) empowers the Constitutional Court (MK) to review statutes against the Constitution. Law No. 24 of 2000 on International Treaties further regulates treaty-making and ratification procedures, including the use of legislation as an instrument of ratification.[3] Constitutional questions therefore arise when a treaty-ratification statute becomes the subject of judicial review. Although such review falls within the Court's constitutional authority, its consequences for Indonesia's international legal obligations require a separate legal assessment.

This issue is reflected in two Constitutional Court decisions. In Decision No. 33/PUU-IX/2011, the Court reviewed Law No. 38 of 2008 concerning the Ratification of the ASEAN Charter and dismissed the

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[1] United Nations, *Vienna Convention on the Law of Treaties*, May 23, 1969, 1155 UNTS 331, arts. 54 and 70, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

[2] *Vienna Convention on the Law of Treaties*, May 23, 1969, 1155 U.N.T.S. 331, arts. 26–27, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

[3] Republic of Indonesia, *Constitution of the Republic of Indonesia of 1945*, arts. 11 and 24C(1), https://pajak.go.id/id/peraturan/undang-undang-dasar-negara-republik-indonesia; Republic of Indonesia, *Law No. 24 of 2000 on International Treaties*, arts. 9–11, https://peraturan.bpk.go.id/Details/44991/uu-no-24-tahun-2000.

petition in its entirety.[4] Meanwhile, Decision No. 13/PUU-XVI/2018 declared Article 10 of Law No. 24 of 2000 conditionally unconstitutional insofar as the categories of treaties requiring parliamentary approval were interpreted as being limited to those expressly listed in the provision.[5] Both decisions demonstrate that constitutional review may concern either ratification instruments or the procedures through which international legal commitments are established. However, neither constitutes an instance of the Constitutional Court invalidating an international treaty. Distinguishing the domestic legal effects of judicial decisions from the continued existence of international obligations is therefore central to this inquiry.

The analysis also requires clarification of Indonesia's status under the 1969 VCLT. According to the treaty status records maintained by the United Nations Secretary-General, Indonesia is not a party to the Convention.[6] Consequently, Article 27 cannot be regarded as directly binding upon Indonesia as a conventional obligation under the VCLT. Nevertheless, the prohibition against invoking internal law to justify non-compliance with international obligations is also recognized under general international law. The International Court of Justice affirmed this principle in its 1988 advisory opinion concerning the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement*.[7] This distinction is necessary to establish the legal basis of Indonesia's obligations without treating every provision of the VCLT as customary international law.

Previous studies have examined different dimensions of the relationship between domestic and international law. Purwanto discusses the legal significance of *pacta sunt servanda*;[8] Agusman analyzes the nature and function of treaty-ratification legislation;[9] while

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[4] Constitutional Court of the Republic of Indonesia, *Decision No. 33/PUU-IX/2011*, February 26, 2013, https://mkri.id/public/content/persidangan/putusan/putusan_sidang_33%20PUU%202011_ASEANcharter_telah_baca_26Feb2013%20final.pdf.

[5] Constitutional Court of the Republic of Indonesia, *Decision No. 13/PUU-XVI/2018*, November 22, 2018, https://www.mkri.id/public/content/persidangan/putusan/13_PUU-XVI_2018.pdf.

[6] United Nations Treaty Collection, "Vienna Convention on the Law of Treaties," Chapter XXIII, No. 1, status of participants, accessed November 21, 2026, https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en.

[7] International Court of Justice, *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, Advisory Opinion, April 26, 1988, https://icj-web.leman.un-icc.cloud/case/77.

[8] Harry Purwanto, "Keberadaan Asas Pacta Sunt Servanda dalam Perjanjian Internasional," *Mimbar Hukum* 21, no. 1 (2009): 155–70, https://doi.org/10.22146/jmh.16252.

[9] Damos Dumoli Agusman, "The Law Approving Treaties ('UU Pengesahan'): What Does It Signify?," *Jurnal Bina Mulia Hukum* 1, no. 1 (2016): 73–85, https://doi.org/10.23920/jbmh.v1n1.8.

Sinaga and Claudia examine reforms to ratification procedures in relation to constitutional rights protection.[10] Palguna and Wardana investigate the Constitutional Court's practice through the concept of *pragmatic monism*,[11] whereas Aprianto questions the limitations of monist and dualist approaches in explaining the domestic application of treaties in Indonesia.[12] These studies provide important foundations for examining treaty obligations, domestic ratification, and constitutional review. This research connects these issues with the legal requirements for establishing an internationally wrongful act and state responsibility, without presuming that every judicial decision affecting domestic legislation constitutes a breach of international law.

Against this background, this study examines Constitutional Court decisions as a basis for analyzing the relationship between constitutional supremacy and Indonesia's performance of international obligations. The analysis focuses on *pacta sunt servanda*, the principle reflected in Article 27 of the VCLT, the distinction between domestic approval and international consent to be bound, and the consequences of reviewing treaty-ratification legislation. The rules of state responsibility are employed to assess the legal consequences of judicial decisions that may affect treaty compliance. Accordingly, this study addresses two research questions: First, how do the principle of *pacta sunt servanda*, the principle reflected in Article 27 of the 1969 VCLT, and the Constitutional Court's power of judicial review interact within Indonesia's legal system? Second, what are the implications of Constitutional Court decisions for the continuation of Indonesia's international obligations, and what legal mechanisms can ensure compliance?

METHODS

This study employs a normative legal research method using statutory, conceptual, and case approaches. Primary legal materials include the 1945 Constitution, Law No. 24 of 2000 on International Treaties, Constitutional Court Decisions No. 33/PUU-IX/2011 and No. 13/PUU-XVI/2018, the 1969 VCLT, and the 2001 Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). Secondary legal materials

[10] Erlina Maria Christin Sinaga and Grenata Petra Claudia, "Pembaharuan Sistem Hukum Nasional Terkait Pengesahan Perjanjian Internasional dalam Perlindungan Hak Konstitusional," *Jurnal Konstitusi* 18, no. 3 (2021): 677–701, https://doi.org/10.31078/jk1839.

[11] I Dewa Gede Palguna and Agung Wardana, "Pragmatic Monism: The Practice of the Indonesian Constitutional Court in Engaging with International Law," *Asian Journal of International Law* 14, no. 2 (2024): 404–24, https://doi.org/10.1017/S2044251323000723.

[12] Ary Aprianto, "Relevansi Monisme dan Dualisme Bagi Pemberlakuan Perjanjian Internasional di Indonesia," *Jurnal Konstitusi* 19, no. 3 (2022): 580–605, https://doi.org/10.31078/jk1934.

comprise scholarly articles on international treaty law, the relationship between domestic and international law, and constitutional judicial review. Materials were collected through literature review and examination of official legal documents. The materials were analyzed qualitatively through legal interpretation, examination of judicial reasoning and operative rulings, and assessment of the requirements for international responsibility. The analysis distinguishes domestic approval, international legal obligations, treaty implementation, and breaches of international law without presuming non-compliance before the applicable legal elements have been established.

RESULT AND DISCUSSION

The Principle of *Pacta Sunt Servanda* in International Law

The principle of *pacta sunt servanda* provides the foundation for the binding force of international treaties. Article 26 of the 1969 VCLT establishes that every treaty in force is binding upon its parties and must be performed in good faith.[13] This provision encompasses two elements that must be distinguished: the existence of a treaty in force and the obligation to perform its provisions. The mere signature of a treaty does not necessarily establish that all obligations contained therein are binding upon a state. Consent to be bound, conditions governing entry into force, and any applicable reservations must be examined in accordance with the relevant treaty and international law. Accordingly, *pacta sunt servanda* applies to legally binding obligations rather than every political commitment or international instrument that a state has signed.

This distinction concerns the means through which states express consent to be bound. Articles 11–15 of the 1969 VCLT identify various forms of consent, including signature, exchange of instruments, ratification, acceptance, approval, and accession. The applicable method depends on the treaty's provisions and the circumstances of its conclusion. Article 18 also establishes certain obligations not to defeat the object and purpose of a treaty under specified circumstances before the treaty becomes fully binding.[14] Consequently, the legal effects of signature do not necessarily correspond to those of ratification or entry into force. This distinction is significant in Indonesia because parliamentary approval, the enactment of ratification legislation, and the deposit or exchange of ratification instruments may occur at different stages of the legal process.

[13] *Vienna Convention on the Law of Treaties*, art. 26.
[14] *Vienna Convention on the Law of Treaties*, arts. 11–15 and 18.

Within Indonesia's legal system, Law No. 24 of 2000 regulates treaty-making and ratification procedures. Article 9 provides for ratification through legislation or a presidential decree, while Article 15 recognizes that treaties may become effective through signature, exchange of documents, or other agreed methods.[15] Ratification through legislation serves an important constitutional function in domestic procedures but must be distinguished from the expression of a state's consent to be bound under international law. Agusman explains that a ratification instrument cannot simply be equated with the international treaty to which it relates.[16] This distinction determines when international obligations become binding upon Indonesia and how those obligations are implemented by domestic institutions.

Indonesia's non-participation in the 1969 VCLT does not relieve it of the obligation to perform treaties by which it is bound. The principle of *pacta sunt servanda* is widely recognized as a fundamental rule of international treaty law and is reflected in Article 26 of the Convention. Its relevance to Indonesia must be understood through general international law and the provisions of applicable treaties rather than through Indonesia's status as a VCLT party.[17] Nevertheless, not every provision of the VCLT can automatically be characterized as customary international law. The legal basis of each relevant provision must be assessed, particularly where it governs specific procedures concerning treaty formation, validity, or termination. This distinction is necessary to ensure that the analysis of Indonesia's treaty obligations rests on an accurate legal foundation.

The performance of treaties in good faith also requires an adequate domestic legal framework. Ratification does not necessarily render every treaty provision directly applicable to individuals without implementing legislation. The nature of the obligation and its mode of implementation must be examined to determine whether a state needs to enact legislation, adjust administrative regulations, or undertake other institutional measures. Agusman observes that Indonesian judicial practice has not consistently established the status and direct applicability of international treaties within domestic law.[18] Accordingly, compliance with *pacta sunt servanda* cannot be assessed solely through the act of ratification; it must also be evaluated by examining

[15] Republic of Indonesia, *Law No. 24 of 2000*, arts. 9 and 15.
[16] Agusman, "The Law Approving Treaties," 73–85.
[17] United Nations Treaty Collection, "Vienna Convention on the Law of Treaties"; Purwanto, "Keberadaan Asas Pacta Sunt Servanda," 155–70.
[18] Damos Dumoli Agusman, "The Courts and Treaties: Indonesia's Perspective," *Padjadjaran Journal of International Law* 1, no. 1 (2017): 1–18, https://doi.org/10.23920/pjil.v1i1.273.

whether the state performs its substantive obligations. The distinction between international legal obligations and domestic implementation provides the basis for understanding the relationship between treaties and the Constitutional Court's authority.

The Legal Significance of Article 27 of the 1969 VCLT in the Relationship between Domestic and International Law

Article 27 of the 1969 VCLT provides that a treaty party may not invoke its internal law as justification for failing to perform a treaty. For Indonesia, the relevance of this provision does not arise from direct participation in the Convention because Indonesia is not a contracting party. Nevertheless, the principle prohibiting reliance on domestic law to disregard international obligations is recognized under general international law. In its 1988 advisory opinion concerning the obligation to arbitrate under the *United Nations Headquarters Agreement*, the International Court of Justice affirmed that domestic law cannot displace international obligations when determining compliance under international law.[19] Therefore, the principle reflected in Article 27 remains relevant to assessing Indonesia's performance of binding treaties without treating the provision as a conventional obligation arising directly from the VCLT.

Article 27 is related to Article 46 of the VCLT, but the two provisions address different legal questions. Article 27 concerns the prohibition against invoking internal law to justify treaty non-performance. Article 46, by contrast, addresses the possibility of challenging the validity of consent to be bound where that consent was expressed in manifest violation of a rule of internal law of fundamental importance concerning competence to conclude treaties.[20] This provision does not establish a general justification for disregarding a treaty because of a conflict with domestic legislation or the constitution. Article 46 concerns the validity of consent at the stage when international obligations are established, rather than the justification of subsequent non-compliance. Its application to Indonesia likewise requires an appropriate legal basis independent of conventional obligations under the VCLT.

The principle reflected in Article 27 cannot be interpreted as automatically placing all international law above the constitution within the domestic hierarchy of legal norms. Rather, it primarily limits the justifications available to states for non-compliance at the international

[19] *Vienna Convention on the Law of Treaties*, art. 27; International Court of Justice, *Applicability of the Obligation to Arbitrate*, Advisory Opinion.
[20] *Vienna Convention on the Law of Treaties*, arts. 27 and 46.

level. Domestically, state institutions continue to exercise their powers in accordance with the constitution and national legislation. This distinction is particularly important in Indonesia because the Constitutional Court reviews the constitutionality of statutes, whereas the binding force of treaties is determined under international law. Palguna and Wardana demonstrate that the Constitutional Court's engagement with international law exhibits a pragmatic character and does not consistently reflect an unconditional preference for international legal norms.[21] Accordingly, the position of a norm within the domestic legal system must be distinguished from the international legal assessment of state conduct.

The relationship between these two legal levels is further reflected in the 2001 ARSIWA. Article 3 establishes that the characterization of an act as internationally wrongful is governed by international law rather than its classification under domestic law. Article 4 addresses the attribution of conduct by state organs, including judicial institutions, while Article 12 establishes that a breach occurs when state conduct is inconsistent with an international obligation.[22] These provisions demonstrate that a judgment valid under domestic law may still be assessed in light of the state's international obligations. However, attributing judicial conduct to the state does not automatically establish a breach. It remains necessary to identify the applicable obligation and demonstrate the inconsistency between that obligation and the state's conduct.

The same distinction applies when a state seeks to terminate its treaty obligations. Article 18(h) of Law No. 24 of 2000 identifies circumstances detrimental to national interests as one ground for treaty termination. However, the inclusion of this ground in domestic legislation does not, by itself, establish a valid basis for termination under international law.[23] States must continue to consider the relevant treaty provisions and international mechanisms governing termination, withdrawal, or suspension. Articles 54 and 56 of the VCLT provide an analytical framework for termination based on treaty provisions, consent of the parties, or specified circumstances where a treaty contains no withdrawal clause. This framework must be applied with due regard to its legal basis and applicability to Indonesia.

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[21] Palguna and Wardana, "Pragmatic Monism," 404–24.

[22] United Nations General Assembly, *Responsibility of States for Internationally Wrongful Acts*, Resolution 56/83, December 12, 2001, annex, arts. 3–4 and 12, https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

[23] Republic of Indonesia, *Law No. 24 of 2000*, art. 18(h); *Vienna Convention on the Law of Treaties*, arts. 54 and 56.

The Constitutional Court's Authority to Review Legislation Ratifying International Treaties

Article 24C(1) of the 1945 Constitution grants the Constitutional Court authority to review statutes against the Constitution, with final judgments. This jurisdiction may extend to statutes used as instruments for ratifying international treaties.[24] However, the object of constitutional review must be distinguished from an international treaty as an instrument establishing legal relations between its parties. A ratification statute occupies a position within the domestic legal system, whereas a treaty acquires binding force through consent to be bound under international law. Accordingly, the authority to review legislation cannot automatically be equated with the authority to terminate an international treaty that is already binding upon Indonesia.

Constitutional Court Decision No. 33/PUU-IX/2011 provides an important basis for this distinction. The case concerned the constitutional review of Law No. 38 of 2008 on the Ratification of the ASEAN Charter. The Court held that it had jurisdiction because the challenged instrument took the form of a statute, but dismissed the petition in its entirety in its judgment delivered on 26 February 2013.[25] The decision demonstrates that a treaty-ratification statute may be subject to constitutional examination without the ratification instrument or the underlying treaty being invalidated. The distinction between jurisdiction and the outcome of judicial review must be maintained to prevent this case from being misrepresented as evidence that the Constitutional Court annulled Indonesia's international treaty obligations.

In paragraph [3.23] of its legal reasoning, the Court distinguished the source of international treaty obligations from the form of domestic legislation. It explained that international obligations arise from the consent of the treaty parties rather than from the fact that one state has ratified a treaty through legislation. Parliamentary approval constitutes a domestic mechanism, whereas international legal obligations arise through the state's expression of consent under international law.[26] This reasoning demonstrates that a ratification statute is not the sole source of international obligations. It also explains why changes to the domestic

[24] Republic of Indonesia, *Constitution of the Republic of Indonesia of 1945*, art. 24C(1); Constitutional Court of the Republic of Indonesia, *Decision No. 33/PUU-IX/2011*, para. 3.23.

[25] Constitutional Court of the Republic of Indonesia, *Decision No. 33/PUU-IX/2011*, 193–98, particularly section 5, "Amar Putusan."

[26] Constitutional Court of the Republic of Indonesia, *Decision No. 33/PUU-IX/2011*, para. 3.23, 194–97.

status of ratification legislation do not necessarily extinguish Indonesia's obligations under the relevant treaty.

Decision No. 33/PUU-IX/2011 also included dissenting opinions by Constitutional Justices Hamdan Zoelva and Maria Farida Indrati. Both questioned the legal character of ratification statutes and the limits of judicial review concerning instruments related to international treaties.[27] These dissenting opinions demonstrate that the statutory form of ratification instruments and the nature of their substantive provisions raise distinct legal questions. Nevertheless, the dissenting opinions did not alter the operative ruling dismissing the petition. The majority's binding decision must therefore be distinguished from the reasoning of dissenting justices. This debate highlights the importance of clearly identifying the object of judicial review, particularly when ratification legislation relates to obligations already established under international law.

A subsequent development emerged in Constitutional Court Decision No. 13/PUU-XVI/2018. The Court partially granted the petition and declared Article 10 of Law No. 24 of 2000 conditionally unconstitutional insofar as it was interpreted to mean that only the six treaty categories listed in subparagraphs (a)–(f) required parliamentary approval and ratification through legislation.[28] The decision prevented those categories from being interpreted as an exhaustive limitation on treaties requiring DPR approval. However, the Court did not invalidate Law No. 24 of 2000 in its entirety or annul any particular international treaty. The constitutional correction concerned the mechanism for determining which treaties require parliamentary approval.

The reasoning in Decision No. 13/PUU-XVI/2018 further clarified the relationship between domestic and international legal procedures. The Court distinguished parliamentary approval, the state's consent to be bound under international law, and ratification under domestic law. It emphasized that the requirement for parliamentary approval under Article 11(2) of the Constitution cannot be determined solely through a closed list of treaty categories. Instead, consideration must be given to whether a treaty has broad and fundamental consequences, creates financial obligations for the state, or requires amendments to existing legislation or the enactment of new legislation.[29] This reasoning positions parliamentary approval as a constitutional oversight mechanism for

[27] Constitutional Court of the Republic of Indonesia, *Decision No. 33/PUU-IX/2011*, section 6, "Pendapat Berbeda."
[28] Constitutional Court of the Republic of Indonesia, *Decision No. 13/PUU-XVI/2018*, 266, section 5, "Amar Putusan."
[29] Constitutional Court of the Republic of Indonesia, *Decision No. 13/PUU-XVI/2018*, 255–59.

establishing international commitments while distinguishing it from the international legal act through which a state becomes bound.

Together, these decisions demonstrate that constitutional review may affect domestic legal procedures and instruments without automatically altering Indonesia's international obligations. Decision No. 33/PUU-IX/2011 concerned legislation ratifying a particular treaty, whereas Decision No. 13/PUU-XVI/2018 addressed the general rules governing parliamentary approval within treaty-ratification procedures. Sinaga and Claudia identify these developments as grounds for reforming the ratification framework to strengthen constitutional rights protection.[30] Consequently, the implications of each decision must be assessed in light of its object, operative ruling, and effects on the performance of continuing international obligations. This distinction enables constitutional oversight to operate without equating judicial review of legislation with the termination of international treaties.

Implications of Constitutional Court Decisions for Indonesia's Compliance with International Law

Assessing the implications of Constitutional Court decisions requires distinguishing changes in domestic law from breaches of international obligations. Article 2 of the ARSIWA identifies two elements of an internationally wrongful act: conduct attributable to the state and conduct constituting a breach of an international obligation. Articles 12–13 further emphasize that the relevant obligation must be binding upon the state at the time of the conduct.[31] Accordingly, a judicial decision amending or invalidating domestic provisions does not automatically satisfy the elements of an internationally wrongful act. The assessment must begin by identifying the relevant treaty, Indonesia's status as a party, the scope of the applicable obligation, and the effects of domestic measures on its performance.

This distinction applies to two different situations. Where constitutional review occurs before Indonesia expresses its consent to be bound internationally, a Constitutional Court decision primarily affects the continuation of domestic procedures. Conversely, where Indonesia has already become internationally bound, changes in domestic law do not automatically terminate that legal status.[32] Nevertheless, a breach

[30] Sinaga and Claudia, "Pembaharuan Sistem Hukum Nasional," 677–701.
[31] United Nations General Assembly, *Responsibility of States for Internationally Wrongful Acts*, arts. 2 and 12–13.
[32] *Vienna Convention on the Law of Treaties*, arts. 11–15 and 24; Agusman, "The Law Approving Treaties."

does not necessarily arise merely because the domestic legal basis has changed. It remains necessary to determine whether the state can perform its obligations through other legal instruments, whether performance is presently required, and whether any act or omission is inconsistent with the treaty. These different circumstances determine whether the issue concerns the formation of international obligations or their subsequent performance.

Where a Constitutional Court decision or subsequent state action results in non-compliance, questions of international responsibility may arise. Article 4 of the ARSIWA permits the attribution of judicial conduct to the state, while Article 12 requires that the conduct be inconsistent with an international obligation.[33] Accordingly, the finality of Constitutional Court decisions under Indonesian law does not, in itself, release Indonesia from its international obligations. However, neither attribution nor finality is sufficient to establish a breach without examining the applicable obligation. This distinction preserves the Constitutional Court's constitutional authority while allowing the international legal consequences of state conduct to be assessed independently.

The legal consequences of a breach must also be distinguished from the requirements for establishing that breach. Article 29 of the ARSIWA preserves the state's duty to perform the obligation that has been breached, while Article 30 addresses cessation and assurances or guarantees of non-repetition where required. Article 31 and Articles 34–37 regulate reparation for injury caused by an internationally wrongful act, including restitution, compensation, and satisfaction.[34] Injury is not necessarily an independent element required to establish a breach under Article 2, but it becomes relevant when determining reparation. Consequently, an internationally wrongful act does not invariably result in financial compensation or litigation before the International Court of Justice. Its legal consequences depend on the nature of the obligation, the form of the breach, the resulting injury, and the available dispute settlement mechanisms.

Tensions between domestic and international law cannot be resolved by invoking Article 46 of the VCLT as a general justification for treaty non-performance. That provision concerns the validity of consent to be bound where a manifest violation of a fundamental internal rule regarding treaty-making competence has occurred. A constitutional

[33] United Nations General Assembly, *Responsibility of States for Internationally Wrongful Acts*, arts. 4 and 12.

[34] United Nations General Assembly, *Responsibility of States for Internationally Wrongful Acts*, arts. 29–31 and 34–37.

judgment delivered after a treaty has entered into force does not automatically satisfy these requirements.[35] Where Indonesia has validly assumed international obligations, the subsequent question concerns how those obligations can be performed or lawfully adjusted through the applicable international legal mechanisms. This distinction prevents defects in the formation of consent from being conflated with non-compliance during treaty implementation.

Efforts to ensure compliance should begin before the state expresses its consent to be bound. The government must examine a proposed treaty's compatibility with the 1945 Constitution, identify its implications for constitutional rights, and determine whether parliamentary approval is required under Article 11 of the Constitution and Law No. 24 of 2000 as interpreted by the Constitutional Court.[36] This examination should include an assessment of whether amendments to legislation, implementing regulations, or administrative mechanisms are necessary. Where fundamental constitutional concerns arise, they should be addressed before Indonesia expresses its international consent to be bound. Such preventive measures reduce the risk of assuming obligations that cannot readily be performed within the existing domestic legal framework.

Where tensions arise after Indonesia has become bound, the appropriate response depends on the treaty provisions and the nature of the obligations. The government and Parliament may adjust domestic legislation, provided the measures remain consistent with the Constitution. Interpretation consistent with international obligations may also be employed where legally permissible. In certain circumstances, treaty amendment, renegotiation, or lawful termination and withdrawal mechanisms may be considered under international law.[37] However, these measures do not automatically extinguish responsibility for breaches that have already occurred. Each measure must be distinguished according to its purpose: preventing non-compliance, ending an ongoing breach, or addressing the legal consequences of previous conduct.

Interinstitutional cooperation is necessary because constitutional review and the conduct of international relations fall within different institutional competences. The Constitutional Court assesses the

[35] *Vienna Convention on the Law of Treaties*, arts. 27 and 46.

[36] Republic of Indonesia, *Constitution of the Republic of Indonesia of 1945*, art. 11; Republic of Indonesia, *Law No. 24 of 2000*, arts. 9–11; Constitutional Court of the Republic of Indonesia, *Decision No. 13/PUU-XVI/2018*, 255–59.

[37] *Vienna Convention on the Law of Treaties*, arts. 39, 54, and 56; United Nations General Assembly, *Responsibility of States for Internationally Wrongful Acts*, arts. 29–31.

conformity of statutes with the Constitution, while the government conducts international relations and undertakes actions within its legal authority. Parliament approves treaties that meet constitutional requirements and exercises its legislative and oversight functions. This division of competences requires coordination throughout treaty negotiation, ratification, and implementation. Where a Constitutional Court decision necessitates adjustments, the competent institutions must identify appropriate domestic and international legal measures. Constitutional protection and treaty compliance should therefore not be treated as mutually exclusive objectives, but as distinct yet interconnected legal responsibilities that must be addressed through their respective legal mechanisms.

CONCLUSION

The principle of *pacta sunt servanda* requires Indonesia to perform its binding international treaties in good faith, even though it is not a party to the 1969 VCLT. The principle reflected in Article 27 remains relevant under general international law, while Article 46 cannot serve as a general justification for treaty non-performance arising from conflicts with domestic law. Constitutional Court Decisions No. 33/PUU-IX/2011 and No. 13/PUU-XVI/2018 demonstrate the Court's authority to review treaty-ratification instruments and procedures, but neither decision establishes that the Court has invalidated an international treaty. Changes to domestic legal provisions do not automatically give rise to international responsibility, which requires state conduct that breaches an existing international obligation. Indonesia's compliance should therefore be maintained through constitutional scrutiny before assuming treaty obligations, adjustments to domestic legislation, interinstitutional coordination, and the use of lawful treaty mechanisms where conflicts arise after the state has become internationally bound.

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