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Juridical Review of International and National Law Relationships

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A B S T R A C T

The Civil Law system tends (although not always) to be less receptive to the extradition of its citizens. As a result, their systems allow the exercise of jurisdiction over their citizens over offenses committed abroad. Common Law countries. Formulation of the problem how the relationship between international law and national law. This research is a normative legal research. This research studies law which is conceptualized as a norm or rule that applies in a society and becomes a reference for everyone's behavior. The approach used is a conceptual approach that departs from the views of experts and doctrines that have developed in international law and national law as a unified legal system in the pyramid of universal law so that international law has priority.

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INTRODUCTION

Countries adhering to the Civil Law system tend (although not always) to be less receptive to the extradition of their citizens. As a result, their systems allow the exercise of jurisdiction over their citizens over offenses committed abroad. Common law countries, according to tradition, are more willing to extradite some because they usually have not yet confirmed jurisdiction over their citizens over offenses committed abroad, so they have a direct interest in ensuring that the perpetrators can be brought to justice (Adams, 1924). The existence of an extradition institution is so that runaway criminals, including corruption crimes, can be handed over to the requesting state by the requested state (Maringka, 2017). Basically, extradition can be carried out by the requested country if there is an extradition agreement between the requesting country and the requested country and the crimes committed are included in the list of crimes (crime list) of the requested country (Yustitianingtyas et al., 2020). Sometimes countries are asked to hand over fugitive criminals to the requesting country even though there is no extradition treaty between the two countries, that is if there are good (friendly) diplomatic relations between the two countries. Another important meaning of the need to study the application of the double criminality principle is related to international cooperation in the form of Mutual Legal Assistance (MLA) (Darma, I Made Wirya; Wisudawati, Ni Nyoman Sri; Kurniawan, 2020).

MLA is a collaboration in the form of efforts to obtain evidence or withdraw assets resulting from crime through the MLA mechanism (Green & Johnson, 2015). Included in MLA are the interests of investigation, prosecution and court examination. MLA cooperation must be stated in the form of an agreement known as a Treaty in Mutual Legal Assistance. (Article 2 MLA). In the Criminal Code there is a legal principle called the active national principle. The active national principle is contained in Article 5 paragraph 1 sub-2 of the Criminal Code. The National Principle is the second principle of the application of an important national criminal law after the territorial principle. Every citizen is subject to the laws of the country concerned, including foreigners who live in the country concerned. The law of the country concerned always follows its application to every citizen wherever the person concerned travels, including other countries. The principle of the application of national law to its citizens wherever they are located is called the active national principle or active personal jurisdiction.

The relationship between national law and international law in the legal system is very interesting both from a legal theory or legal science perspective as well as from a practical standpoint (Morgenthau, 1940). The position of international law in the legal system in general is based on the assumption that international law is a type which is part of law in general. This assumption is based on the fact that international law is an effective set of provisions and principles that actually live in reality so that they have an effective relationship with provisions and principles in other fields of law (Taekema, 2021). The other most important field of law is the field of national law. This can be seen from the interaction of the international community where the role of the state is very

important and dominates international relations. Due to the role of the national laws of states in influencing the arena of international relations, it raises the importance of the issue of how the relationship between international law and national law is from a practical point of view.

On the other hand, it is also necessary to understand where international law has binding power. In this case there are two theories, namely the voluntarism theory, which bases the entry into force of international law on the will of the state, and the objectivist theory which considers the entry into force of international law apart from the will of the state. The different views on these two theories have different results in understanding the relationship between international law and national law (Burley, 1993). The view of voluntarism theory views national law and international law as two different legal instruments, side by side and separate. In contrast to the view of objectivist theory which considers national law and international law as two legal instruments in one legal instrument.

THEORETICAL REVIEW

International law, when viewed from several existing legal perspectives, especially when linked to its development, it can be understood that from that perspective it contains most of the principles and rules of conduct towards states. Where these countries feel themselves directly bound to comply, and even actually obeyed. In general, in international law-national law relations or relations with one another, it is implemented in reality in the relations of the international community (Agusman, 2015). This is in accordance with the views and or opinions of Chariles Hydi (in Silber & Miller, 1993) from "in The American Law Institute" that international law as law relating to state actions and the actions of international organizations, and their relations internationally, as well as the relations with them of persons and legal entities. On the other hand international law is concerned with the functioning of international institutions or organizations, their relations with one another, and their relations with states and individuals. Certain legal rules relating to individuals and non-state entities insofar as the rights and obligations of these individuals and non-state entities are not neglected by the views and thoughts of the international community.

Other developments that are considered important include: The existence of a large number of permanent international institutions or organizations, for example the United Nations (UN) and the World Health Organization (WHO) which are seen as having international legal personality, and are capable of guarantee relations with each other and remain within the area of the United Nations (UN) and or within the Council of Europe, in order to protect and uphold human rights and other absolute freedoms. Returning from the continuation of the development mentioned above, although the main elements of the system are represented by binding rules, which justify obligations, and give rights to the state (Abbott & Snidal, 2000).

Developments like the above according to international law experts today interpret international developments, for example technological advances and economic globalization as contained in the ratification of the GATT-WTO.

Understanding it as a necessity and/or as economists are happy to think about how this activity to promote the economy and trade can satisfy the international community because it is a unit item of need that must be realized in the midst of the international community, which is binding in nature (Martuzzi & Tickner, 2004). Of course this is an idea issued by the General Assembly of the United Nations, which is in the nature of recommendations, and or is in the nature of resolutions from the international labor conference, as well as the recommendations of the consultation session (1959).

Returning to the main goal of international law, it is more directed towards efforts to create order, creating a system of international relations between countries on a large scale that is just and civilized. And include it on various scales that can bring togetherness in an integral, comprehensive, integrated manner between countries/citizens and equally follow subsequent developments in general and universally. For example, in the principles of state responsibility regarding "distortion of justice". National law provides an understanding to readers/observers that national law is how to understand various theories that form the basis for thinking about the relationship between national law and international law (Tarigan & Syahrin, 2021), including understanding the problem of the hierarchy of regulations, and the problem of dependence between the two. In addition, it is also hoped that this relationship will be able to create, hold, adopt and apply in various cases that arise between countries and be resolved in an orderly and peaceful manner full of friendship between countries.

Talking about the existence of international law means guiding us to understand the existence of international events that are studied with national law (Aqimuddin, 2020), besides that studying international law means providing an understanding of the general description or an analytical approach through existing theoretical approaches. Where the existing approaches and analyzes are understood as a foundation that is fundamental in nature which leads to how one thinks about the two legal relations of the country. Apart from the above, of course, it is also expected to be able to apply the core of the theory of monism and/or the theory of dualism in the study of international law. In the background, the two theories above are applied in practice with the interests of a country, besides that there are also widely interpreted in various interpretations that the theory of monoism and dualism as mentioned above is practiced in developed countries regardless of the existing legal system (Lumbantobing, 2019), as well as in practice. In the United States and in Indonesia or in other countries. In practice in Indonesia, national law before international courts influences and requires one another. If further investigated international law with national law in terms of international relations is considered very important, considering that international law is a part that influences each other in the development of the legal system in a country according to the needs and goals to be achieved.

METHODOLOGY

This research is a normative legal research. This research studies law which is conceptualized as a norm or rule that applies in a society and becomes a reference for everyone's behavior. The approach used is a conceptual approach that departs from the views of experts and the doctrines that have developed in the science of law. Normative legal research is legal research conducted by examining literature or secondary data (Novenanty, 2018). Normative legal research is also called doctrinal legal research. According to Peter Mahmud Marzuki (in Hardianto, 2014), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues at hand. In this type of legal research, law is often conceptualized as what is written in laws and regulations or law is conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate (Bachtiar, 2018).

Normative law research does not always connote juridical norm research. In general, research on juridical norms is understood to only be legal research that limits the norms contained in statutory regulations. Meanwhile, normative legal research is broader. According to Johnny Ibrahim, normative legal research is a scientific research procedure to find truth based on scientific logic from a normative perspective. The normative side here is not limited to statutory regulations. This is as stated by Peter Mahmud (in Nalle, 2015), legal research is normative research but not only researching positivist law. Norms are not only interpreted as positive law, namely rules made by politicians who have a higher position as stated by John Austin or rules made by the authorities as stated by Hans Kelsen (Munyao, 2016). Based on this opinion, legal research seeks to find the truth of coherence, namely whether the rule of law is in accordance with legal norms and whether the legal norms containing obligations and sanctions are in accordance with legal principles, whether a person's actions are in accordance with legal norms or legal principles. Therefore norms are also interpreted as guidelines for behavior. Likewise, Shidarta's opinion in a lecture as a guest lecturer on September 17 2018, normative legal research tends to talk about norms in a broad sense, while research on juridical norms talks about norms in a narrow sense, namely norms in laws and regulations.

RESULTS AND DISCUSSIONS

The issue of the relationship between international law and national law is an interesting issue to discuss. International law is the rules governing transnational issues. International law was originally defined as behavior and relations between states (Simmons, 2000), but in the development of increasingly complex patterns of international relations this understanding then expanded so that international law also deals with the structure and behavior of international organizations and, to a certain extent, multinational companies and individuals. It is inevitable that international law influences national law. This is because a country is an inseparable part of the international community. Existing countries will definitely have a relationship with each other, be it a relationship between just two countries or several countries. This relationship

will give birth to regulations that are complied with by each country and then develop into regulations that will be obeyed together. Joint regulations will become laws that are not only obeyed together in groups but will apply universally to every country without exception. International law can also be created by the existence of agreements or agreements from the national customs of a country that are adhered to by many countries (Omiti, 2012), these habits are agreed upon as international law. National law and international law are closely related. For example, in the formation of an international law, it must be influenced by national law, and the level of power of the State will also affect how the direction of international law policy will be formed. This shows the importance of the national law of each country in determining the direction of national legal policy. In this way international law is affected by national law. And the issue that is important to discuss is about how the relationship between international law and national law.

In the international community, international agreements play a very important role in regulating life and interactions between people in the international world. International agreements which are essentially the main source of international law are juridical instruments that accommodate the will and agreement of the state or other international law subjects in achieving common goals. The definition of international agreements is contained in the 1969 Vienna Convention. In accordance with the understanding of international agreements formulated in the 1969 Vienna Convention, the elements that must be fulfilled by a document to be determined as an international agreement are: an international agreement, by subject of international law, in written form, government by international law, and in whatever form.

Relations between international law and national law raise problems in the practice of international relations and association (Owada, 2015). The problem stems from whether international law and national law are a single legal entity or are each independent and separate from one another. International legal doctrine recognizes two teachings to answer this problem:

1. The Teachings of Monism According to the understanding of monism, international law and national law are a unified legal system in the pyramid of universal law so that international law has priority. Likewise, if there is a conflict between these two legal systems, international law will always win. In monism, there are two views in looking at the primacy of law, namely state law primacy and international law primacy. The state law primacy view sees that international legal principles have been visualized into national legal regulations so that these national legal regulations are the main source of law that does not conflict with international legal norms. Furthermore, the view of international law primacy observes that international law is a general rule of law for countries and national law is part of it in the pyramid of international universal law which has been visualized into national legal regulations so that these national legal regulations are the main source of law which does not conflict with international legal norms. Furthermore, the view of international law

primacy observes that international law is a general rule of law for countries and national law is part of the pyramid of universal law.

2. The Doctrine of Dualism
   For dualism, international law and national law are two different and separate legal systems. International law comes from the common will of all states, while national law comes from the will of the state itself. In the event of a conflict between the two legal systems, national law will take precedence, such as the adage the law of the land cancels international law. In other words, the state is allowed to. Today the conflict between monism and dualism is just an illusion and is not an important matter for debate because the state practices prevailing in countries are no longer pure in applying the teachings of these two schools of thought. The general assumption that monism accepts international law rather than national law is incorrect because the substance of international law must be tested beforehand so that it can be applied directly in court. On the other hand, the idea of dualism which is considered to always apply national legal regulations without regard to international law norms is not true because judges in dualism countries also use international law as a tool to interpret national law in court.

If one traces the existence of the theories of Monism and Dualism, that the two schools of law are a legal unit of the larger legal system, namely law in general (Dyzenhaus, 2021). Because it is located within the legal system, it is very unlikely that there will be a conflict between the two. In its development, the primacy of international law monism and the theory of national law primacy dualism. According to the researcher's understanding, the two streams try to try to answer the problems raised and in these two streams it can be understood that the subjects of international law are countries while the subjects of national law are individuals. Sources of international law originate from the will of the state, while national law has more perfect integrity compared to other theories and approaches. If one looks at Anzilotti's opinion on the matter above, it can be drawn from 2 (two) fundamental principles, national law is based on the fundamental principles that must be fulfilled from these 2 (two) principles.

Meanwhile, international law is based on the principle that agreements between nations must be respected based on the principles of agreements between countries and must respect the differences in principles that exist. By Sefriani (in Dinata, 2021) explained that the relationship between international law and national law must be fulfilled and intertwined, while international law is based on the principle that agreements with the principle of pacta sunt seranda, because international law and separate national law are completely 2 (two) different legal systems, then The problem that arises is not a hierarchical problem. As understood from several presentations and references that existed before and after the ratification of the Law on International Trade (GATT-WTO). Even though at first there was no influence, in its subsequent

development after it was ratified according to Michael Akehurst placing international law (national law) did not completely ignore national law. In actual practice, international law and national law need each other and influence each other in terms of certain activities whether through cooperation and or through conventions involving national law as one of the concrete arrangements and or other forms (Carlsnaes et al., 2002).

The above proves that international law will be more effective if it has been (transformed) into a national legal system. International law can bridge existing activities on the scale of national law which cannot be applied in a certain country's territory in another country's territory (Raimondo, 2008). Indonesia's position, for example, is that it cannot arrest a fugitive who has fled abroad, so Indonesia needs an extradition agreement, even though this agreement has undergone many changes. Likewise, the Indonesian government can take state assets that were rushed abroad by the perpetrators of the crime, of course with the existence of an extradition agreement, for example, it makes it easier. Likewise, Indonesian court decisions require efforts to agree on an agreement to recognize the implementation of foreign decisions with the country where the debtor's assets are located. The examples above prove that there are limitations to state jurisdiction in implementing its national law. So the two laws mentioned above are intended and expected to be able to overcome, bridge the application of national-international law in the territory of national law.

CONCLUSIONS AND RECOMMENDATIONS

The Civil Law system tends (although not always) to be less receptive to the extradition of its citizens. As a result, their systems allow the exercise of jurisdiction over their citizens over offenses committed abroad. Common Law countries. Formulation of the problem how the relationship between international law and national law. This research is a normative legal research. This research studies law which is conceptualized as a norm or rule that applies in a society and becomes a reference for everyone's behavior. The approach used is a conceptual approach that departs from the views of experts and doctrines that have developed in international law and national law as a unified legal system in the pyramid of universal law so that international law has priority. On the other hand, it is also necessary to understand where international law has binding power. In this case there are two theories, namely the voluntarism theory, which bases the entry into force of international law on the will of the state, and the objectivist theory which considers the entry into force of international law apart from the will of the state. The different views on these two theories have different results in understanding the relationship between international law and national law (Burley, 1993). The view of voluntarism theory views national law and international law as two different legal instruments, side by side and separate. In contrast to the view of objectivist theory which considers national law and international law as two legal instruments in one legal instrument.

The Teachings of Monism According to the understanding of monism, international law and national law are a unified legal system in the pyramid of

universal law so that international law has priority. In dualism, international law and national law are two different and separate legal systems. International law comes from the common will of all states, while national law comes from the will of the state itself. In the event of a conflict between the two legal systems, national law will take precedence, such as the adage the law of the land cancels international law. International law is heavily influenced by national law. For example, international law can be created by the presence of national customs of a country that are adhered to by many countries, these customs are agreed upon as international law. Public international law is the overall legal rules and principles governing relations or issues of state boundaries (international relations) that are not civil in nature, while national law is a set of laws which consist mostly of principles and regulations that must be obeyed by the public in an countries, and therefore must also be obeyed in their relations with one another. Regarding the relationship between international law and national law, there are two understandings. First, dualism which states that international law and national law are two entirely different legal systems. Second, the understanding of monism argues that international law and national law are related to each other.

FURTHER STUDY

Other developments that are considered important include: The existence of a large number of permanent international institutions or organizations, for example the United Nations (UN) and the World Health Organization (WHO) which are seen as having international legal personality, and are capable of guarantee relations with each other and remain within the area of the United Nations (UN) and or within the Council of Europe, in order to protect and uphold human rights and other absolute freedoms. Returning from the continuation of the development mentioned above, although the main elements of the system are represented by binding rules, which justify obligations, and give rights to the state.

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