

**THE CONSTITUTIONALITY OF INTERNATIONAL INVESTMENT
AGREEMENTS IN INDONESIA POST ISSUANCE OF THE CONSTITUTIONAL
COURT DECISION NUMBER 13/PUU-XVI/2018**

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Abstrak

Sebagai negara berkembang yang berpartisipasi dalam ekonomi internasional, Indonesia telah menyatakan secara tegas komitmennya dalam menjamin keadaan yang stabil dan kondusif bagi penanaman modal. Akan tetapi, terdapat banyak hambatan dalam merealisasikan komitmen tersebut, khususnya yang berasal dari dalam negeri. Tantangan terhadap konstitusionalitas Perjanjian Internasional Penanaman Modal, seperti Perjanjian Perdagangan Bebas dan Perjanjian Penanaman Modal Bilateral antara Indonesia dan berbagai negara mulai bermunculan dan sampai kepada diajukannya klaim konstitusional kepada, yang berujung dengan dikeluarkannya Putusan Mahkamah Konstitusi No. 13/PUU-XVI/2018 (Putusan No. 13/2018). Dugaan perlakuan diskriminatif dan tidak adil terhadap pengusaha local akibat investasi asing dianggap melanggar konstitusi, sehingga mengakibatkan adanya kemungkinan bahwa perjanjian penanaman modal yang selama ini ditandatangani dapat ditelaah kembali, dan lebih parahnya, menjadi tidak konstitusional dan harus dibatalkan. Penulis akan membahas perihal konstitusionalitas Perjanjian Internasional Penanaman Modal, khususnya melalui pembahasan Putusan No. 13/2018 dan pengaruhnya terhadap komitmen Indonesia dalam perjanjian internasional.

Kata Kunci: Konstitusi, Perjanjian Internasional, Penanaman Modal

Abstract

As a developing country participating in international economy, Indonesia has declared a clear commitment to create a stable and conducive environment for investment. Such endeavor has been met fraught with challenges, especially from within the country itself. Challenges to the constitutionality of Investment International Agreements (IIAs), including both Free Trade Agreements (FTAs) and Bilateral Investment Treaties (BITs) forged between Indonesia and various countries have arisen and recently led to a constitutional claim, resulting in the Decision No. 13/PUU-XVI/2018 (Decision No. 13/2018). Allegations that the discriminatory and unfair treatment against local businessmen caused by such IIAs clearly constitutes a violation of the Constitution, rendering IIAs that have been signed to-date reviewable, and more extremely, unconstitutional, and must be terminated. This Article aims

to discuss on assess the issue of constitutionality of IIAs, especially through the discussions in Decision No. 13/2018, and its impact on Indonesia's commitment to IIAs.

Keywords: *Constitution, International Agreement, Investment*

A. Introduction

A.1. General Overview on International Investment Agreements in Indonesia

Indonesia's Law Number 27 of 2000 on Investment recognizes "*that to deal with global economic changes and Indonesia's participation in diverse international cooperation, it is necessary to create investment climate to be conducive, promoting, giving legal certainty, justice and efficiency with due regard to the interest of national economy*".¹ Indonesia's commitment to create a conducive environment for investment activities has evolved through decades of economic development, from a rather protectionist approach that perceive investment as an extension of colonialist influence to a view that opening up the economy is an imperative strategy to maximize economic development.

In fact, the incumbent government under the leadership of President Joko Widodo ("Jokowi") has communicated a great commitment to ensuring a stable and welcoming climate for investment activities in Indonesia. Recently, Jokowi decided to streamline the issuance of various permits and licenses initially managed by various ministries to become solely within the purview of the Investment Coordinating Board (*Badan Pengelola Penanaman Modal*/"BKPM"), while also instructing the revocations of at least 40 ministerial decree deemed to be hindering both domestic and foreign investment.²

In Indonesia, "investment" is defined as "any form of investing activity by both domestic investors and foreign investors to do business in the territory of the state of the Republic of Indonesia".³ Investment Law regulates an equitable treatment for all investors in Indonesia, while also granting possibilities of "privilege" arising from investment treaties.⁴

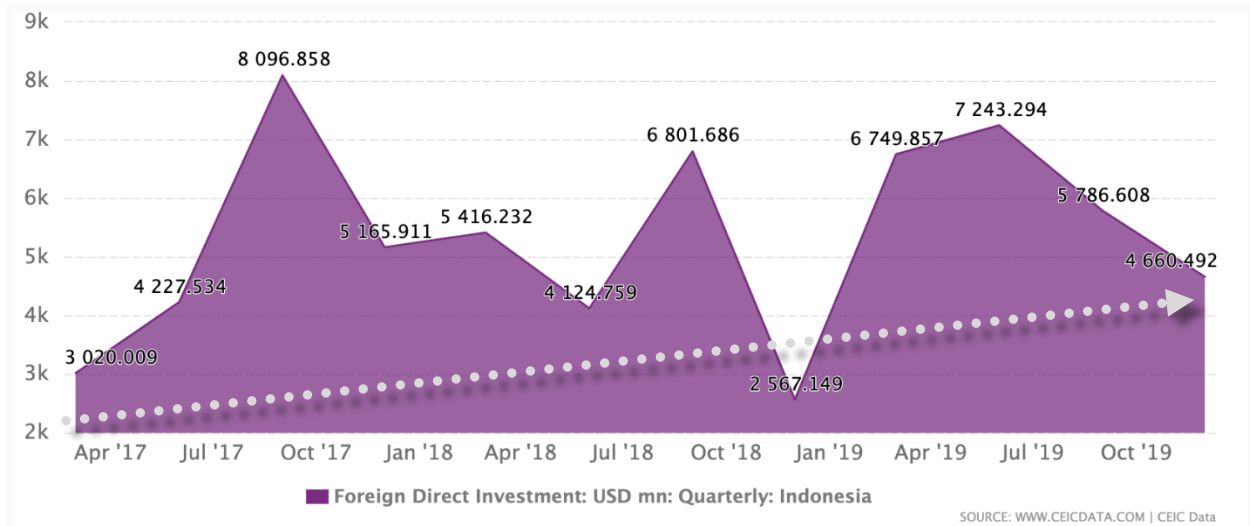
¹ *Law No. 25 of 2007 on Investments ("Investment Law")*, Consideration ¶d

² Chandra Gian Asmara, "Titah Jokowi: Investor Cukup Urus Semua Izin Usaha di BKPM", <https://www.cnbcindonesia.com/news/20191121152915-4-116941/titah-jokowi-investor-cukup-urus-semua-izin-usaha-di-bkpm>, 1 February 2020

³ *Investment Law*, Article 1(1)

⁴ *Investment Law*, Article 6

As economic development progresses alongside globalization, foreign investment especially has significantly shown an increasing trend, as shown:⁵



According to the 2018 data issued by BKPM, the five biggest sectors of investment comprise the housing, industrial area and office area sector (14.9%); metal, machinery and electronics sector (12.3%); electricity, gas, and water sector (10.4%); food plantation and farming sector (9.6%); and transportation, inventory and telecommunication sector (7.9%). Accordingly, the biggest foreign investment came from Singapore, amounting to US\$ 2.6 billion, followed by Japan (US\$ 1.4 billion), South Korea (US\$0.9 billion), and China (US\$0.7 billion).⁶ Foreign investment is made possible due to states' commitment for international cooperation. As a result, such commitment is manifested into international agreements that stipulate the rights and obligations as well as privileges of states, as equal and mutually benefiting partners, in the conduct of international trade and economy. The implementation of such rights and obligations is understood to be based upon the principle of *Pacta Sunt Servanda* enshrined in Article 26 of the Vienna Convention on the Law of

⁵ "Indonesia Penanaman Modal Asing", CEIC, <https://www.ceicdata.com/id/indicator/indonesia/foreign-direct-investment>, 5 February 2020

⁶ "Realisasi Penanaman Modal Asing (PMA) di Indonesia 2018", BKPM, <https://www.investindonesia.go.id/id/artikel-investasi/detail/realisasi-investasi-kuartal-i-tahun-2018-meningkat>, 5 February 2020

Treaties (“VCLT”), prescribing (1) the execution of agreement binding on parties and (2) good faith underlying such performance.

Indonesia has bound itself to various types of bilateral or multilateral investment agreements, among others, the Free Trade Agreement (“FTA”) and Bilateral Investment Treaties (“BIT”),⁷ all of which are commonly and collectively known as International Investment Agreement (“IIA”). To date, Indonesia has entered into numerous investment treaties, in various stages (proposed/under consultation or study/signed and ratified, in effect) including:

- Various FTAs (reaching 40 FTA according to Asia Regional Integration Center, comparable to India and China),⁸ such as:
 1. Indonesia Japan Economic Partnership Agreement;
 2. Indonesia- European Union Comprehensive Economic Partnership Agreement;
 3. Preferential Tariff Arrangement-Group of Eight Developing Countries;
 4. East Asia Free Trade Area (ASEAN +3); and
 5. ASEAN Comprehensive Investment Agreement.
- Bilateral Investment Treaties (BITs), conducted between Indonesia and 72 countries,⁹ including Singapore, the United Kingdom, and the Netherlands.

Law No. 24 of 2000 on International Treaties (“Treaty Law”) stipulates that the abovementioned international agreements (treaties) are ratified through 2 ways: (1) enactment of ratification law by the House of Representatives (*Dewan Perwakilan Rakyat* “Parliament”) or (2) issuance of decision/regulation by the President.¹⁰ The threshold differentiating both methods is derived from Article 11(2) of the 1945 Constitution of the Republic of Indonesia (“Constitution”), stating

⁷ Lutfiyah Hanim, “Perjanjian Peningkatan dan Perlindungan Penanaman Modal dan Implikasinya”, <http://igj.or.id/wp-content/uploads/2018/09/presentasi-lutfiyah-hanim-MK-23-mei-2018-Pertama.pdf>, 10 Februari 2020

⁸ Asia Regional Integration Center, “Free Trade Agreement”, <https://aric.adb.org/fta-country>, 5 February 2020

⁹ Investment Policy Hub, “International Investment Agreements Navigator”, <https://investmentpolicy.unctad.org/international-investment-agreements/countries/97/indonesia>, 10 June 2019

¹⁰ Law No. 24 of 2000 on International Treaties (“Treaty Law”), Article 9

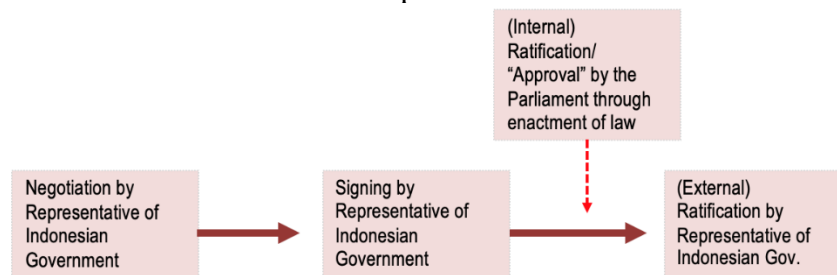
“The President in making other international agreements that will produce an extensive and fundamental impact on the lives of the people which is linked to the state financial burden, and/or that will require an amendment to or the enactment of a law, shall obtain the approval of the DPR.”

From both the Constitution and Treaty Law, it is generally understood that:

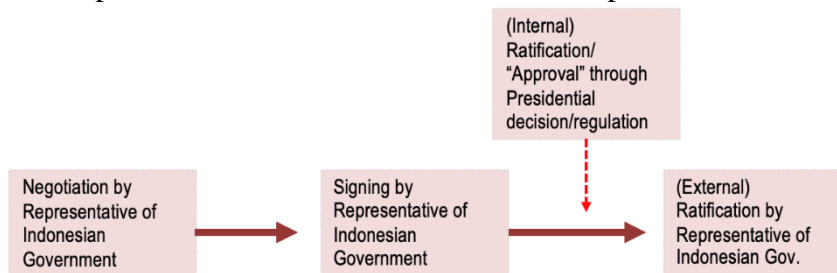
First, Article 10 of Treaty Law stipulates that ratification of treaties through the enactment of law by the Parliament is applicable *only* for international agreements that concern the following 6 determinative areas:

1. matters pertaining to politics, peace, defense, and state security;
2. alterations to or delimitation of the territory of the Republic of Indonesia;
3. sovereignty or sovereign rights of a state;
4. human rights and the environment;
5. the formation of a new legal norm (law-making treaty);
6. foreign loans and/or grants-aid.¹¹

The process in which such ratification takes place is as follows:



Second, other matters that are not related to the abovementioned six concerns will be ratified through a decision/regulation by the President. In practice, such agreements include various investment treaties, including various FTAs and BITs signed between Indonesia and other countries. The process in which such ratification takes place is as follows:



¹¹ Treaty Law, Article 10

However, both the Constitution and Treaty Law, despite the existence of the “*extensive and fundamental impact on the lives of the people which is linked to the state financial burden*”¹² requirement (for the purpose of this Article, defined by the Author as the “Impact Rule”), both legal instruments do not elaborate on the understanding of such threshold, resulting on differing interpretations on the followings:

1. what “extensive and fundamental impact” means;
2. what “lives of the people” refers to; and
3. what “state financial burden” signifies.

Ultimately, a crucial question on the role of the Parliament in the ratification of IIA will arise, the answer to which will have a great impact on how Indonesia ratifies and implement its international agreements.

Before investigating further into the Impact Rule, it is to be noted that in the circumstance whereby a dispute arises out of the implementation of IIA, the Investment Law clearly stipulates that disputes between the Government and foreign investors shall be resolved in an international arbitration as opted by the parties.¹³ The Investment Law also limits the role of domestic courts to disputes between the Government and domestic investor, should arbitration failed.¹⁴

In regard to dispute resolution through arbitration, the Arbitration and Alternative Dispute Resolution Law (“ADR Law”) refers to arbitral award as final and binding to all parties, of which the execution shall be done voluntarily, according to the arbitral decision.¹⁵ However, the ADR Law emphasizes that public court (Chief Justice of District Court of Central Jakarta) has the authority to enforce international arbitral award (through execution order) related to commerce, so long as such award is not in contrary to public order.¹⁶ The request for such execution shall be submitted by an arbiter or the representative of such

¹²1945 Constitution (“Constitution”), Article 11

¹³Investment Law, Article 32(4)

¹⁴Investment Law, Article 32(3)

¹⁵Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (“ADR Law”), Article 60

¹⁶ADR Law, Article 65

arbiter to the registrar at the District Court of Central Jakarta.¹⁷ After an execution order is issued to relevant district court judges, an arbitral award could be enforced. Considering such mechanism, most investment disputes shall be resolved without having to go through the national judicial mechanism.

However, as mentioned previously, IIAs are international agreements, ratified through either law or presidential decision/regulation to be “internalized” into Indonesia’s national legal system. Therefore, the basic principle of such internalization of international agreements, as also applicable to all laws and legislations in Indonesia, is that no legal norms shall violate the stipulations enshrined within the Constitution,¹⁸ a reflection of the *Stufenbau* Theory of legal system postulated by Hans Kelsen.

As matters concerning constitutionality falls under the authority of the Constitutional Court, the court is tasked to carry out duties, among all others are:

1. review a law against the 1945 Constitution of the Republic of Indonesia;
2. resolve jurisdictional dispute between state institutions whose competencies are defined by the 1945 Constitution of the Republic of Indonesia;
3. pass decisions on the dissolution of political parties; and
4. resolve disputes involving the results of the general elections.¹⁹

Therefore, the interpretation of the Impact Rule can be categorized as a constitutional issue, as it concerns the relationship between Treaty Law and the Constitution. On one side, the Treaty Law specifically regulates the six types of agreement that shall be ratified by the Parliament, while on the other hand, the Constitution stipulates on the Impact Rule that may have an effect to the economy, or the welfare of Indonesians as enshrined in the Constitution, and consequently determine the “constitutionality” of treaties.

In fact, a claim for substantive review was submitted to the Constitutional Court by a group of 14 Claimants (9 civil societies/non-profit organizations and 5 individuals) (“the Claimants”), a decision of which was issued in November 22, 2018 by the Constitutional

¹⁷ *ADR Law*, Article 67

¹⁸ *Law No. 12 of 2011 on Establishment of Laws and Legislations*, Article 7

¹⁹ *Law No. 24 of 2003 on Constitutional Court*, Article 10

Court through Decision No. 13/PUU-XVI/2018 (“Decision No. 13/2018”). These Claimants are representing stakeholders such as farmers, fishers, and traders, who believe that IIAs should be considered as, according to the Impact Rule, agreements ratified through the enactment of laws by the Parliament. Such sentiment has been consistently forwarded by various parties and becomes an important issue to investigate into.

In fact, such importance is reflected in the Decision No. 13/2018 that becomes a landmark decision which reflects the way Indonesian legal system perceive the issues of IIAs and constitutionality. In this Paper, the Author will discuss on relevant questions faced by the Court to eventually determine the position of IIAs as an international treaty and its position within the Indonesian legal system.

B. Analysis

The topic of constitutionality of investment treaties in Indonesia is recurring, but efforts to thoroughly dissect and understand this issue is a rather novel endeavor. Before discussing on the most recent and landmark case pertaining constitutionality of investment treaties (Decision No. 13/2018), it is helpful to understand further about Indonesia’s perception of investment in general.

In perceiving investment, Indonesia focuses on the mandate of the Constitution that the state has to establish economic independency and thus, prioritize its national interest and ensure that all the investment treaties are in accordance with the applicable laws and regulations. In other words, the Government is aiming to strike a balance between the protection of investors and national interest.

In particular, the focus of constitutionality of investment treaty revolves around Article 33 of the 1945 Constitution, which states:

- 1. The economy shall be organized as a common endeavor based upon the principles of the family system.*
- 2. Sectors of production which are important for the country and affect the life of the people shall be under the powers of the State.*
- 3. The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.*

4. *The organization of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy.*
5. *Further provisions relating to the implementation of this article shall be regulated by law.*

Prioritization to national interest is an underlying spirit commonly found in various laws and legislations in Indonesia, such as the Agrarian Law, which is based on customary law that sides with indigenous population;²⁰ Labor Law, which serves to revolutionize legal protection for workers;²¹ and ultimately Investment Law, which focuses on improving national economy for the welfare of Indonesian people.²²

Naturally, on February 14, 2018, 14 Claimants (9 civil societies/non-profit organizations and 5 individuals: Indonesia for Global Justice, focusing on global liberalization issues (“Claimant 1”); Indonesia Human Rights Committee for Social Justice, an association focusing on human rights and social justice (“Claimant 2”); Serikat Petani Indonesia, an organization representing Indonesian farmers (“Claimant 3”); Yayasan Bina Desa Sadajiwa, a foundation focusing on farmers’ welfare and agrarian reformation (“Claimant 4”); Aliansi Petani Indonesia, an alliance of Indonesia’s farmers (“Claimant 5”); Solidaritas Perempuan (SP), an association for gender equality (“Claimant 6”); Perkumpulan Koalisi Rakyat Untuk Keadilan Perikanan (KIARA), a non-governmental organization focusing on marine and fisheries issues (“Claimant 7”); Farmer Initiatives for Ecological Livelihood and Democracy (FIELD), a non-governmental organization focusing on farmers’ welfare and ecological balance (“Claimant 8”); Serikat Petani Kelapa Sawit (SPKS), focusing on employment and welfare of palm oil farmers (“Claimant 9”); Amin Abdullah, a traditional salt farmer (“Claimant 10”); Mukmin, a traditional salt farmer (“Claimant 11”); Fauziah, a traditional salt farmer (“Claimant 12”); Baiq Farihun, a traditional salt farmer (“Claimant 13”); and Budiman, a traditional salt farmer (“Claimant 14”), collectively referred to as the “Claimants”) submitted that several articles of the Treaty Law were against the Constitution.

²⁰ *Law No. 5 of 1960 on Basic Agrarian Law, Article 5*

²¹ *Law No. 13 of 2003 on Employment*

²² *Investment Law, Consideration*

These articles consist of:

1. Article 2, which states “*The Minister shall give political considerations and take the necessary steps in the conclusion and ratification of treaties, upon the consultation with the House of Representatives in matters relating to public interest.*”
2. Article 9(2), which states “*Ratification of a treaty ... shall be conducted by way of a law or a presidential decree.*”
3. Article 10, which states “*Ratification of a treaty shall be conducted by way of a law if in respect of the following:*
 - a. matters pertaining to politics, peace, defense, and state security;*
 - b. alterations to or delimitation of the territory of the Republic of Indonesia;*
 - c. sovereignty or sovereign rights of a state;*
 - d. human rights and the environment;*
 - e. the formation of a new legal norm (Law making Treaty);*
 - f. foreign loans and/or grants-aid.*”
4. Article 11(1), which states “*Ratification of a treaty, the material of which is not stipulated in Article 10, done by a presidential decree.*”

Article 2, 9 (2), 10 and 11 (1) were claimed to be in violation of mainly Article 11 (2) of the Constitution (the Impact Rule, as has been defined in previous section), which states

“The President in making other international agreements that will produce an extensive and fundamental impact on the lives of the people which is linked to the state financial burden, and/or that will require an amendment to or the enactment of a law, shall obtain the approval of the Parliament”

and shall be deemed unconstitutional.

The crux of the claim was that investment treaties or IIAs shall be considered treaties that are discussed in parliamentary meeting before being ratified, while in reality, most FTAs and BITs were ratified through presidential decision/regulation, including but not limited to:

1. ASEAN China Free Trade Agreement (ratified through Presidential Decision No. 48 of 2004);
2. Indonesia-Singapore BIT (ratified through Presidential Decision 6 of 2006);
3. Indonesia-India BIT (ratified through Presidential Decision No. 93 of 2003); and
4. Other FTAs such as Indonesia-European Union Comprehensive Economic Partnership Agreement, Regional Comprehensive Economic Partnership, and agreements with World

Trade Organization, Association of South East Asian Nations, or Asia-Pacific Economic Cooperation.

The Claimants submitted that these international agreements, made by the President, shall obtain the approval of the Parliament as stipulated by Article 11(2) of the Constitution, especially due to the reason that the Parliament was the representative of Indonesian citizen and thus, shall be made known and given the authority to approve or disapprove such agreements.

The Constitutional Court decided eventually that only Article 10 of the Treaty Law was in violation of the 1945 Constitution as such article imposes a limitation for the types of international agreement that “produce an extensive and fundamental impact on the lives of the people which is linked to the state financial burden” stated in Article 11(2) of the 1945 Constitution. In consideration that,

“the development within international relations has become increasingly intensified, which causes the international community to become increasingly dependent on each other in meeting their demands, and this will in turn influence Indonesia’s national interest”,

the Court decided that there might be current and upcoming agreements that would have greatly impacted the lives of the people that were not included within Article 10 of the Treaty Law. The determination of such international agreements would be done case-to-case basis. The Court decided that Article 10 of Treaty Law was unconstitutional and revoked said article, while still finding that Article 2, 9 (2) and 11 (1) constitutional.

Decision No. 13/2018 considers various questions as forwarded by the Claimants. There are two crucial aspects of discussion that will be highlighted herein:

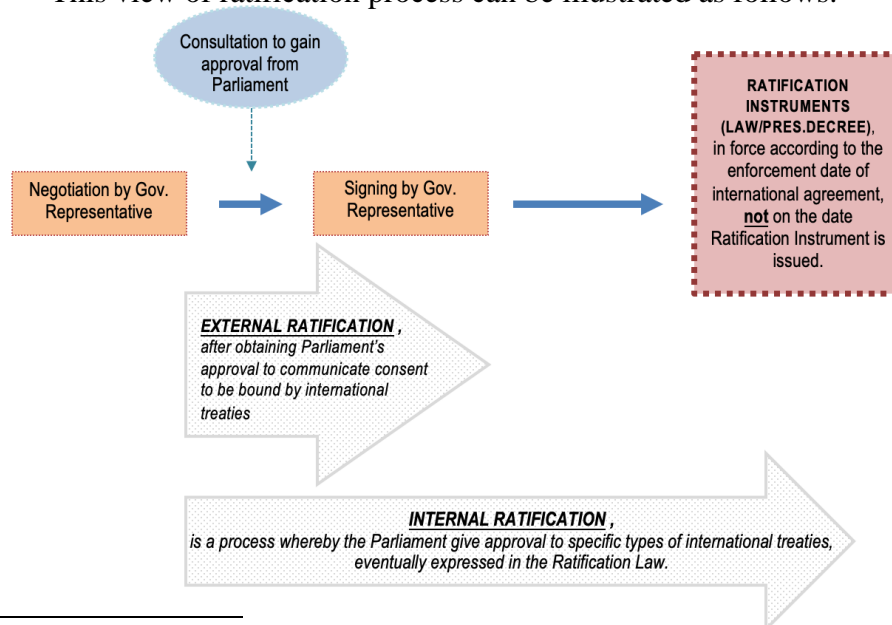
1. the roles of Parliament in giving “approval” (*persetujuan*) and issuing “ratification” (*pengesahan*) law; and
2. the criteria of treaties warranted ratification by the Parliament.

First, the Claimants forwarded a claim that the Treaty Law does not stipulate Parliament’s “approval” (*persetujuan*) towards treaty making process and merely mentions Parliament’s role to execute “ratification” (*pengesahan*) of certain types of international

treaty. There is a concern that such absence of parliamentary control will eliminate the very essence of people's power (*kedaulatan rakyat*) in the ratification process of an international treaty.²³

In relation to this, the question of whether approval and ratification through law constitute different processes or are parts of the same process has been forwarded by legal experts. In practice, the Government's view as reflected through Treaty Law refers to both approval and ratification as a unified process, through which Parliament's approval will eventually be expressed through ratification law. Referring to the Constitution, such view postulates that the role of the Parliament under Article 11(2) to approve an international treaty is identical with that under Article 20 to establish law. Hamid Attamimi²⁴ in his dissertation titled "Role of Presidential Decrees in Government Administration" specified that although Parliament's approval itself is not identical with law (*Undang-Undang*), the manifestation of such approval into a law is constitutional as Indonesia recognizes constitutional convention (*konvensi ketatanegaraan*) as a source of Constitutional Law.²⁵

This view of ratification process can be illustrated as follows:



²³ Decision of the Constitutional Court No. 13/PUU-XVI/2018 ("Decision No. 13/2018")

²⁴ A. Hamid S. Atamimi, "Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara", *Disertasi* (Jakarta: Universitas Indonesia, 1990), pg. 227

²⁵ Nomensen Sinamo, *Hukum Tata Negara, Suatu Kajian Kritis tentang Kelembagaan Negara* (Jakarta: Jala Permata Aksara, 2010), pg. 27

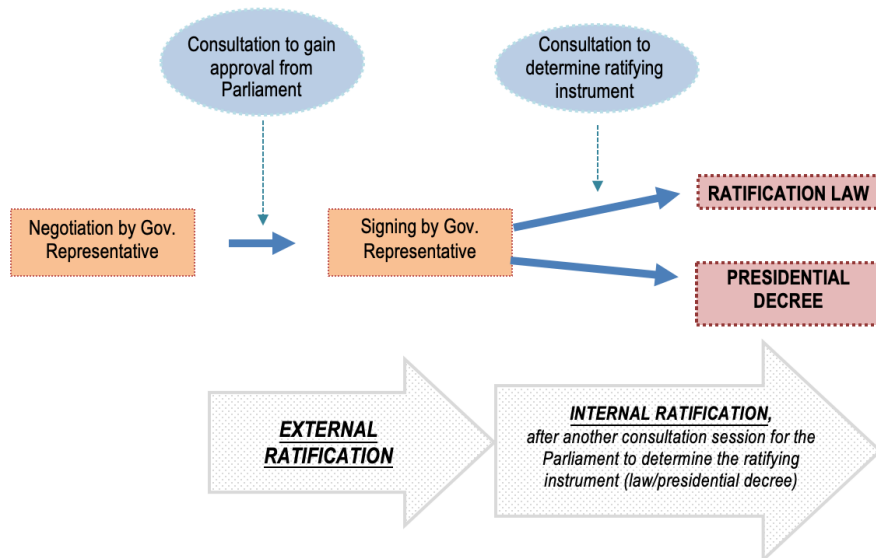
As can be seen in the diagram, the process of “internal ratification” within Indonesia’s domestic legal system begins from the moment consultation with the Parliament takes place until approval to communicate consent to be bound by treaties is issued. This process continues until the ratification law is promulgated.

However, the Constitutional Court through Decision No. 13/2018 opines that approval and ratification are two different processes. Damos Dumoli Agusman specifies that the Constitutional Court imposes two differences between these processes:²⁶

1. that Parliament’s approval (internal process) is only given to the Government’s plan to “state to be bound” to an international treaty (external process), as reflected through the delivery of instrument of ratification to international depository. In other words, Parliament’s approval *not* intended towards the “consent to be bound” to the agreement. This ambiguity occurs as the Treaty Law defines “ratification” as “consent to be bound” in one part, and “ratification” as a process of promulgating law or presidential decree in another; and
2. that contrary to general practice, Parliament’s approval is not a unified part of the internal ratification mechanism. In other word, Parliament’s approval does not have to eventually be expressed within a ratification law.

After the issuance of Decision No. 13/2018, it can be derived that there are two mechanisms involved in the ratification of an international treaty: (1) external ratification; and (2) internal ratification. The two process are different, but involve two-steps consultation with the Parliament: (1) consultation to gain Parliament’s approval for the formality of expressing consent; and (2) consultation to determine the ratifying instrument (“ratification according to national/domestic law). These processes can be illustrated as follows:

²⁶ Damos Dumoli Agusman, “Putusan Judicial Review MK atas UU No. 24 Tahun 2000 tentang Perjanjian Internasional: Apa yang Berubah?”, *Opinio Juris Volume 24 Tahun 2019* (Jakarta, Direktorat Jenderal Hukum dan Perjanjian Internasional Kementerian Luar Negeri, 2019), pg. 6 – 8.



Second, the Constitutional Court emphasizes that the fundamental problem lies on the criteria or threshold imposed on an international treaty that requires Parliament’s approval as stipulated under Article 11 (2) of the Constitution. In other words, the Constitutional Court is forwarding the question on the Impact Rule. Through the revocation of Article 10 that specifies the six types of agreements ratified through the law, it becomes imperative for the Government to elaborate on the Impact Rule. It is indeed both impractical and highly efficient for the Government (in most occasions, the Ministry of Foreign Affairs and Parliament) to unwind and review all current and upcoming international treaties. In regard to IIAs, such method is could especially result in adverse impact to Indonesia’s commitment to investment and economic progress in general.

C. Conclusion

Civil societies welcomed Decision No. 13/2018 and claimed that the revocation of Article 10 would become a way to review Indonesia’s FTAs and BITs.²⁷ However, it is clear that the Constitutional Court Decision did not shed any light on what “produce an extensive and fundamental impact on the lives of the people which is linked to the state financial

²⁷ Erik Mangajaya, “Putusan MK atas Uji Materi UU No. 24 Tahun 2000 tentang Perjanjian Internasional”, <https://kumparan.com/erik-mangajaya-simatupang/putusan-mk-atas-uji-materi-uu-no-24-tahun-2000-tentang-perjanjian-internasional-1543336383221647583>, 5 January 2020

burden” really means. Such ambiguity could cause definite confusion as to which international agreements shall be ratified by means of law or presidential decision/regulation.

As a follow-up of Decision No. 13/2018 and in order to respond to the ambiguity of the Impact Rule, the Treaty Law has to be amended immediately. Such amendment should consider the following issues:

1. the standard applicable for the Impact rule, especially on the understanding of “extensive and fundamental impact” and “linked to the state financial burden”; and
2. the mechanism through which the consultation with the Parliament shall be conducted and the length of each consultation to ensure effective allocation of resources.

The Government of Indonesia shall move swiftly and effectively to disseminate or socialize these standards and mechanisms as they are essential in determining the direction of investment, continuity of all sectors especially the economic sector, and eventually the public welfare of the people.

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