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Rights and Obligations of a Country Due to Unilateral Resignation from ASEAN Membership

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Abstract

Convention of unilateral resignation from ASEAN membership which has not been listed yet in ASEAN Charter can cause problems later on for ASEAN members. Therefore, the convention about the unilateral resignation should be listed on the ASEAN Charter to understand about state's accountability and procedure for state that proposes unilateral resignation from ASEAN membership. By using statue approach method and conceptual approach, it was obtained that resignation from ASEAN membership can be committed according to congress of Vienna 1986, which can be agreed with ASEAN state members to be listed on the ASEAN Charter or on the other legal provision. Therefore, the obligation of state which takes unilateral resignation from ASEAN membership based on the convention of ASEAN Summit with the procedure of notice, a year before ASEAN Summit held. The responsibility of a country that resigns from ASEAN membership is principally based on the end of the cooperation of a member country that wants to resign with other member countries.

Keywords: *ASEAN Charter; Resignation; ASEAN*

Introduction

As an attempt to meet the needs and interests of its development, a country is compelled to form a community between one country and another. The principle of meeting those needs results in the emergence of relations between nations to maintain and regulate relations with other countries, so that a community is formed. Because the needs between nations are reciprocal relations and in the interests of maintaining and regulating beneficial relations for the countries involved as common interests, law is needed to regulate each interest as a certainty and norm in relations between nations. Thus, the role of international law as a regulator of international law is emerged and developed.

An international organization must have the characteristics of an international organization, one of which is that international organizations must be formed by an international agreement or treaty (Cheng-Chwee, 2005). Therefore, the international organizations are usually known as treaty-based organizations. These agreements become instruments, and the rules are binding and apply to the

international organizations. International agreements form international organizations that provide legal personalities that produce rights and obligations for these international organizations (Simmons & Martin, 2002).

European Union (EU) is an example of a regional international organization.[1] The EU is an international organization of European countries formed to enhance economic integration and strengthen relations between member states. It is a unique form of cooperation because it is not just blending boundaries in the narrow sense, but this collaboration is more about the formation of a governance structure in Europe (Siahaan *et al*., 2013). In terms of its membership provisions, the EU has the principle that everything that a member country does must be known by other members in a written forum, including regarding the unilateral resignation of a member state. The EU does not specify the provisions regarding unilateral resignation from member countries. However, this is stipulated in other provisions as an alternative that if a member wants to resign, then it must be submitted in writing and be valid after getting an agreement from the forum after reading the letter and after the rights and obligations of the member are resolved.

Another fact that occurs in the League of Nations as a form of the Universal International Organization is that a member state is allowed to withdraw from the membership of the League of Nations. This is possible with the condition that notification of resignation is done two years before the resignation, because the resigning member state must fulfill its international obligations as well as the obligations based on the convenant in the League of Nations.[2]

Because this implicit thing is not regulated, it is possible for countries joining an international organization at the regional or international level to experience a legal vacuum. The legal vacuum that occurs can be fatal for the sustainability of activities in the international organizations.

Issues that result in the occurrence of a consequence of the provisions that should be done can have an impact on the country that is possible to resign unilaterally from an international organization both regionally and on an international scale. The South East Asian Nation Association (ASEAN), which is one of the regional international organizations, has not yet regulated the provisions regarding the unilateral resignation from its membership. Therefore, it is possible for a country that feels disadvantaged to be forced to withdraw or resign from ASEAN. Based on the aforementioned matters, the issue of resignation from ASEAN is very important to be discussed. Then, how does the international law regulate the unilateral resignation of ASEAN membership based on the ASEAN Charter?

Methodology
Problem Approaches

This research is a legal research that uses a law approach which is a form of writing law for academic purposes based on the characteristics of legal science as *suigeneris.* It uses two problem approaches: the statue approach and the conceptual approach or with a concept approach that is examining all legal concepts concerned with the science of law which are dealt with the legal issues discussed (Marzuki, 2007).

[1] There is considerable debate about the state of the EU as an international or regional organisation, which centres on the legal personality of the EU as opposed to the EC under the current treaty arrangements. Deirdre Curtin and Ike Dekker make an interesting case for the EU as a 'layered' international organisation in; p. Craig and G. de Biirca, The Evolution of EU Law (1999, OUP), pp.83-136. Political scientists have also confronted the same question, which hinges on the notion of sovereignty. For an overview of the different arguments, see T.J. Bierstaker, 'Locating the Emerging European Polity: Beyond States or State?' in J.J. Anderson (ed.). Regional Integrationand Democracy: Expanding on the European Experience (1999, Rowman), pp. 21-42.

[2] Singh, Termination of Membership, (Praeger, 958) page 93. Singh claims that there is an inherent right which belongs to the state as a result of their sovereignty.

Source of Legal Material

Primary Legal Materials Consist of**:**

1. The 1945 Constitution of the Republic of Indonesia
2. Law No. 37 of 1999 concerning Foreign Relations (State Gazette of the Republic of Indonesia of 1999 Number 156)
3. Law No. 24 of 2000 concerning international treaties (State Gazette of the Republic of Indonesia of 2000 Number 185)
4. Law No. 38 of 2008 concerning ratification of the Charter of the Association of South East Asian Nation (ASEAN Charter) (State Gazette of the Republic of Indonesia of 2008 Number 165)
5. Constitutional Court Decision No. 33/PUU-IX/2001

Secondary Legal Material

Secondary legal material is legal material that is closely related to and can help analyze and understand primary legal material. Additionally, secondary legal material includes non-statutory material that can be in the form of books, journals, articles, sources from magazines and the internet, legal scientific work or research results, and so on.

Legal Material Analysis

The legal material obtained is then analyzed descriptively with deductive logic. Descriptive refers to a presentation that aims to obtain a complete picture about the state of the law in force in a particular place and at a certain time or about existing legal symptoms or certain legal events that occur in the community. Deductive logic can be interpreted as drawing conclusions from general matters to individual matters.

Unilateral Resignation Procedures from Asean Membership International Covenants according to the 1986 Vienna Convention

Kusumaatmadja & Agoes (2003) pointed out that international law is the overall rules and principles governing relations or issues which cross national borders, that state:

1. Between countries;
2. Countries and legal subjects other than the country or legal subjects other than each other's countries."

The definition above shows that international law can not only be formed by the state but can also be made by subjects other than the state.

The parameter of "*Governed by International Law*" is an element that often creates confusion in understanding international treaties not only among practitioners but also academics. In the discussion of the 1986 Vienna Convention, a document is referred to as "*Governed by International Law*" if it meets two elements: "*intended to create obligations and legal relations under international law*:[3]

[3] Damos Dumoli Agusman, "Pedoman Teknis dan Referensi tentang Pembuatan Perjanjian Internasional", Directorate of Economic and Socio-Cultural Treaties, Directorate General of Law and International Treaties, the Department of Foreign Affairs, 2006.

It has an impact on countries that join in international organizations by which the country must comply with the provisions or rules regulated in the international law and create rights and obligations in the field of public law Treaty-Based System.

Resignation Mechanisms from Other Regional International Organizations

In the 1986 Vienna Convention, the issue of terminating an international treaty is regulated in article 54. It states that the termination of an agreement or the withdrawal of one of the parties may occur:

1) In accordance with the provisions in the agreement;
2) At any time with the agreement of all parties after first consulting with other participating countries.

Furthermore, in article 55, the Convention has provided a provision that a multilateral agreement does not end if there is a reduction in the participating countries to below the amount required for the entry into force of the treaty, unless the treaty determines otherwise. If one party wishes to cancel or withdraw from the agreement, the country must notify its wishes 12 months in advance.

Reaffirming the aforementioned facts, the multilateral agreement expressly regulates the cancellation or resignation of the agreement. One of the examples is the 1949 Geneva Convention which discusses the protection of victims of war. The article 63 stipulates that the cancellation or resignation will take effect only 1 (one) year after the notification is given to the Federation Council in Switzerland.[4]

Based on the explanation in the article 56 of the 1986 Vienna Convention, the clause on the cancellation or resignation of a party can be included in the agreement. However, if the clause is not included in the agreement, the cancellation of unilateral resignation from the agreement can still be done after prior approval or agreement by the parties or other participants. Besides the rules related to the issue of cancellation, the 1986 Vienna Convention regulates *"rebus sic stantibus"*[5] which can terminate an agreement (Purwanto, 2011).

Additionally, the concept of *rebus sic stantibus* intends to terminate an agreement in the event of a fundamental change at the time the agreement is made. Meanwhile, article 62 paragraph (2) of the Vienna Convention stipulates that fundamental changes must not be submitted as a basis for terminating an agreement, such as a territorial agreement and if such fundamental change occurs because of a breach of the agreement by the parties who called for the cancellation.

In the 1986 Vienna Convention on international agreements with regional organizations, the method for the use of the *rebus sic stantibus* principle to be carried out by parties was not regulated. However, some opinions state that the parties concerned must notify the other party to cancel the agreement and ask them to approve the termination.

Provisions for Withdrawal from ASEAN Membership

Resignation from ASEAN can actually be done. This is based on several reasons. The first reason is that the article 54 of the 1986 Vienna Convention clearly states that the resignation from an international treaty can be carried out if there are provisions regarding that matter in the international

[4] Anita Afriani S, Analysis of the Form of Legalization of the 1949 Geneva Convention on the Protection of Victims in International Armed Conflict, p. 14.

[5] The meaning of the principle is that the agreement made by the parties is binding only when there is no vital change in the circumstances at the time of the treaty.

treaty concerned or if it has received prior approval from all parties. The ASEAN Charter does not provide provisions regarding this matter which then gives the first reason why resignation from ASEAN is possible to be done.

In addition, looking at the practices in other international organizations can also prove that resignation from ASEAN can be done, such as the United Nations which is an organization that does not have provisions on resignation. The case of Indonesia's resignation from the United Nations was ultimately not recognized by the United Nations even though Indonesia was only considered an inactive member. This is evidenced by the payment of contributions made by Indonesia to the United Nations for its period of inactivity when Indonesia returns to the United Nations. The same thing also happened in the EU which previously did not regulate the unilateral resignation which was finally regulated in the additional provisions of TEEU after encouragement from its members.

a. The ASEAN Charter

Before the formation of ASEAN in 1967, several countries in Southeast Asia had made various efforts to establish regional cooperation in the region, such as ASA (Association of Southeast Asia), Maphilindo (Malaysia, the Philippines, and Indonesia), and SEAMEO (South East Asian Ministers of Education Organization), as well as with countries outside the region, such as SEATO (South East Asia Treaty Organization) dan ASPAC (Asia and Pacific Council).

The communication between Southeast Asian countries and countries outside the region has been developed in ECAFE (Economic Commission for Asia and the Far East), Colombo Plan, and Asian-African Conference. ECAFE was formed on May 28, 1947 which was later changed to ESCAP (Economic and Social Commission for Asia and the Pacific), which was a UN special body that provides much inspiration for the growth of regional cooperation in Southeast Asia.

ASEAN is a regional organization formed starting from the awareness of Southeast Asian nations about the need for solidarity and cooperation between them. Through the united attitudes and actions, it is hoped that peace, progress, and prosperity in the Southeast Asian region will be created (Kristiningrum, 2011). ASEAN (Association of South East Asian Nations) was established with the following background:

1. Geographical similarity, meaning that ASEAN member countries are located in the Southeast Asian region
2. Fate and history similarity, meaning that ASEAN member countries are both colonies of Western imperialism except Thailand
3. Interest similarity, meaning that as a developing country, it is necessary to establish cooperation in the economic, social and cultural fields between countries in a region.
4. Cultural similarity, meaning that ASEAN member countries come from the same group, the Austronesian family

Within the ASEAN Charter, there is a section titled "membership" in Chapter III. This section explains membership of ASEAN, which consists of three articles. Article 4 of the ASEAN Charter specifies the names of the ten ASEAN member countries. Article 5 states the rights and obligations of ASEAN member countries consisting of three items.[6] Article 6 mentions the admission of new members.

[6] Article 5 states "1. Member states shall have equal rights and obligation under this charter; 2. Member states shall take all necessary measures, including the enactment of oppropriate domestic legislation, to effectively implementthe provisions of this charter and to comply with all obligations of membership; 3. In the case of a serious breach of thie charter or non-compliance, the matter shall be referred to article 20."

It mentions that the admission procedure will be determined by the ASEAN Coordinating Council. In addition, paragraph (2) of article 6 determines the requirements on which members are based, including: located in the Southeast Asian region, recognized by all ASEAN member countries, has accepted and is bound by the ASEAN Charter, has the will to fulfill membership obligations. Furthermore, in paragraph (3) of article 6, it is stated that the acceptance will be determined by consensus at the ASEAN Coordinating Council. In the last paragraph of article 6, it also states that a country will be accepted into ASEAN with the signing of the instrument for accession to the ASEAN Charter.

In the "Membership" section, or in any other part of the ASEAN Charter, there are no provisions regarding resignation from ASEAN membership. The ASEAN Charter does not mention whether resignation is prohibited or permitted, nor does it mention the procedure along with its rights and obligations if it is allowed. In the process of forming the ASEAN Charter, there were no discussions or proposals regarding the unilateral resignation of member countries. However, the right to resign was briefly discussed at the end of the making of the ASEAN Charter when the leaders of member countries held a meeting (Syah, 1984).

b. ASEAN Policy

Article 13 of the Treaty of Amity and Cooperation in the Southeast Asia (TAC) requires member states to have the good faith to prevent disputes between themselves. However, if a dispute persists and cannot be prevented, the parties must refrain from using (threat of violence). This article further obliges the parties to settle them through friendly negotiations and directly between them (Adolf, 2004).

Based on these provisions, ASEAN members in the event of a dispute: first, the use of force is greatly avoided; and second, the dispute between them will be resolved by negotiation (Ningsih, 2006). This happened before the ratification of the ASEAN Charter. The decision-making process of an international organization is an important issue for an international organization. By knowing the decision-making process of an international organization, we will know what is desired by the member countries.

Decisions are used in the general sense of decisions formulated in the legal sense as conclusions from a discussion/debate. The authority to take decisions from an international organization is determined in the articles of association of the international organization (Ningsih, 2006). The ASEAN decision-making process is generally regulated in Article 20 of the ASEAN Charter, which is based on deliberation and consensus, especially for decisions concerning sensitive issues, such as security issues and foreign policy.

Important decision-making in ASEAN is signed by representatives of member countries, while issues which are not sensitive and not binding can be addressed by the Secretary-General of ASEAN. In cases that occur in ASEAN, the decision-making by representatives of countries is based on deliberation and consensus. With this decision-making method, member states cannot be legally bound without their consent in important matters. If deliberations and consensus do not satisfy the results, the ASEAN Summit can decide how a particular decision can be taken. The highest policy making body in ASEAN is the ASEAN Summit which consists of Heads of State or Governments of member countries (Puspita, 2015).

Forced Resignation

Regarding the termination of membership in an international organization, there are several ways in which membership can end. The first way is the expenditure of members as contained in the United Nations, which also emulated from the League of Nations (Klabbers, 2015). In article 6 of the UN charter, it is stated that the General Assembly, based on recommendations from the Security Council, may expel a member if the member concerned has continually violated the principles in the charter.

The dissolution of the League of Nations was also motivated by the insistence from the Aggressors countries such as Germany and Japan which threatened the League of Nations at the time to be disbanded because they were considered unable to make decisions during the declaration of the first world war.

Expenditures of members may be the most dramatic way in terminating membership of an international organization, but this is basically not the only way. Of course, the termination of the membership can also occur when an organization is dissolved. One of the best-known examples is the dissolution of League of Nations. Although it has practically not functioned, and has been replaced by the United Nations, the League Assembly formally dissolved the League at a meeting in April 1946 after resolving some problems that attract attention.[7]

Unilateral Resignation

A more technical way to end a membership is to amend the main instruments of an international organization. Some international organizations give their members the right to cease being members if an amendment has occurred to the main instrument and the member concerned cannot accept the amendment.[8]

Different from the provisions in the EU which include procedures for the resignation of its members directly on the main EU instruments, the establishment of the Lisbon Treaty as an international treaty which contains an amendment to the Treaty on European Union (Mastricht Treaty) eventually formed the provisions regarding resignation in article 50.[9] The EU regulates the provisions of the unilateral resignation of its member countries in which the country has the right to openly submit matters regarding its resignation decision, as well as to provide a period of time for member countries that have cooperated with states that wish to resign unilaterally. It is done by the EU in order to respect the commitments of every country that wishes to withdraw from EU membership.

Practice of Resignation for ASEAN Member Countries

To see how the practice of resignation can be carried out from ASEAN membership, the first thing to look at is how the ASEAN Charter as the main ASEAN instrument regulates it. It has been mentioned in the previous section that the main instrument of an international organization is basically an

[7]Media indonesia, Liga bangsa-bangsa dibubarkan. 2015. http://mediaindonesia.com/news/read/ 2679/1946-liga-bangsa-bangsa-dibubarkan/2015-04-18. Accessed on January 24, 2018 at 10.49.

[8] Article 26 Paragraph (2) of The Convenant of the League of Nations: "No such amendments shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League."

[9] Athanassiou, Phoebus. "Withdrawal and Expulsion from the EU and EMU, Some Reflections". Legal Working Paper Series No. 10 (December, 2009).

international agreement. For that reason, the countries that are bound in an international organization, which in this case is ASEAN, must comply with the provisions in the ASEAN Charter.

a. Practice in Myanmar

The practice in Myanmar occurred when the Myanmar government was considered to have participated in provoking conflicts with the Rohingya.[10] The existence of Rohingya was considered to reduce land and economic rights, especially in the Arakan, Rakhine which was the center of Muslim ethnic life.[11] The Myanmar government did not recognize Rohingya ethnic citizenship because they considered that this Muslim group was not part of ethnic groups existed in Myanmar before Myanmar's independence in 1948. It was reaffirmed by the President of Myanmar, Thein Sein, in Al Jazeera, July 29, 2012 that it was impossible for Myanmar to give citizenship to the Rohingya group which was considered illegal immigrants and border crossers from Bangladesh.[12]

ASEAN as a regional organization in Southeast Asia has played an important role in realizing the democratization process for its member countries. It can be seen at least in handling cases in Myanmar. The military regime that has developed in Myanmar since 1988 has led to protests and claimed thousands of innocent lives.[13] The international community strongly condemned the Myanmar government by imposing a series of sanctions to pressure the Myanmar government.

The concept of constructive intervention questions if there is a domestic problem in one country that can threaten regional stability, whether other member countries must be silent and stand tall behind the principle of non-intervention. This approach was considered too hard so that it did not get a positive response. Surin Pitsuwan then softened his approach by proposing a flexible engagement approach[14] for solving the Myanmar problem. Myanmar said that the approach was contrary to one of the basic principles of ASEAN, namely the principle of non-intervention in domestic relations as stated in article 2 of the ASEAN Charter.[15]

ASEAN which upholds the principle of non-interference places more emphasis on diplomatic and familial approaches. At the 42nd ASEAN meeting in Thailand, the Thai PM stressed that the soft way approach (ASEAN way) was more productive than imposing sanctions on Myanmar. This approach emphasizes the process of convincing Myanmar's ruling government that ASEAN will continue to support the strategic steps needed to reduce the number of violence occurring in Myanmar. ASEAN itself is more positioned as an arena/forum to discuss problems that occur and not as the main actor who has the right to take action against the member countries.

One of ASEAN's efforts is to hold the ASEAN Inter-Parliamentary Myanmar Caucus (AIPMC), a special commission formed to deal with Myanmar issues. At a meeting in Bali, AIPMC called on Myanmar's President, Thein Sein, to continue his task of advancing the process of democratization and enforcement of human rights in Myanmar. The press release of the meeting on November 29, 2011 was that "Myanmar must take concrete steps and move towards peace talks with armed ethnic groups as a

[10] It is an Indo-Aryan ethnic group from Rakhine (alson known as Arakan, or Rohang in Rohingya) in Myanmar.

[11] Anonim, Rohingya yang dianggap imigran gelap dan pelintas batas dari Bangladesh. 2016. can be accessed online http://republika.co.id/ accessed on January 20, 2018 at 03.24 a.m.

[12] Anonim, Myanmar tolak beri satus warga negara untuk etnis rohingya. 2013. can be accessed online, http://internasional .kompas.com/read/2013/11/21/1933040/Myanmar.Tolak.Beri.Status.Warga. Negara.untuk.Etnis.Rohingya accessed on January 21, 2018 at 02:10 a.m.

[13] Anonim, Kasus rezim militer di Myanmar. (2016). can be accessed online: http://republika.co.id/ accessed on January 22, 2018 at 09:45 a.m.

[14] Strait Times. 1998. "*flexible engagement involves publicly commetting on and collectively discussing fellow members' domestic policies when this either have regional implications or adversely affect the disposition of other ASEAN Members.*"

[15] Article 2: "*In their relation with one another, the Hight Cotracting Parties shall be guided by the following fundamental principles: c. Non-Interference in the internal affairs of one another*."

prerequisite for democratic progress".[16] The principle of non-interference applied by ASEAN so far has made the Southeast Asia one of the regions that has the best level of stability and peace than other developing countries. ASEAN not only acts as the main driver of political growth in the region but is also able to create active participation and a sense of mutual belonging to all members.[17]

Such practices put Myamar in a position of "silence" for the responsibilities in ASEAN membership. Myanmar also seems to show its inclusive attitude towards ASEAN, so that ASEAN has difficulties in the process of controlling and communicating. In this case, Myanmar does not make an effort to resign over the case. However, Myanmar's silence in ASEAN membership clearly affects the stability and balance that occurs. Moreover, ASEAN as an umbrella body for countries in Southeast Asia does not have these provisions in the ASEAN Charter, so it is necessary to include provisions regarding this unilateral resignation as well as its rights and obligations.

b. Practice in Indonesia

The ASEAN Charter is a multilateral international agreement made by member countries of international organizations and has been ratified by member countries. It is the constitution of ASEAN. In practice, especially in Indonesia as the party that participated in making the ASEAN Charter and it was ratified through Law No. 38 of 2008 concerning Ratification of the ASEAN Charter, several of its people have submitted the law to the Constitutional Court for material testing. From this case, there are several legal issues regarding the position of international treaties in Indonesian national legislation and how international law relations with national law in Indonesia.

In fact, some Indonesian people assume that Indonesia's foreign policy is a transformation of national interests, while national interests are volatile and dynamic in response to important world events. One of the most momentum events was the presence of the cold war. However, at that time, Indonesia's political direction was neutral and did not try to form a third block whose ideology was opposed to the two giant blocks of the US-Soviet Union. This is in accordance with the explanation of Moh. Hatta in the Central Indonesian National Committee (Indonesian: *Komite Nasional Indonesia Pusat*/KNIP) session. He stated that Indonesian politics cannot be directed by any block that carries their respective national interests. On the contrary, the direction of Indonesia's foreign policy is a synergy of national interests, national goals and geopolitical configurations, and its national history that is vulnerable by internal and external factors. In addition, Rosenau and Roeslan Abdulgani agreed that such politics is a derivation of domestic politics by which foreign policy is an extension of domestic national interests and domestic needs. Therefore, when domestic interests experience a shift, it is possible that the direction of foreign policy will always be static and only a few values will be adapted.[18]

Foreign policy is an extension of internal factors (domestic politics) brought out. Foreign policy is intended to guarantee (represent) domestic interests and national needs. The history of Indonesia's foreign policy, from time to time, has developed according to the history of the ruling government. It is more operational, meaning that the implementation is in line with the current international geopolitical conditions. However, the principles and foundation are solid.

Therefore, some community alliances show various facts that Indonesia would be better if it resigns from ASEAN membership and submits it to the Constitutional Court of the Republic of Indonesia

[16]Anonim, The ASEAN intereparlementary Myanmar. 2014. can be accessed online: https://www.google.com/search ?q=The+ASEAN+InterParliamentary+Myanmar+Caucus+%28AIPMC%29&ie=utf-8&oe=utf-8&client=firefox-b-ab accessed on January 22, 2018 at 1:14 pm.

[17] Anonim, Prinsip non-interference ASEAN. 2009. can be accessed online: http://republika.co.id/ accessed on January 23, 2018 at 00:23 a.m.

[18] Nuralami, Athiqah. Landasan dan Prinsip Politik luar Negeri Indonesia. (2010), https://frenndw.indonesians.com/category/politik-luar-negeri-indonesia/ accessed on January 19, 2018 at 12:11 p.m.

because it is considered that Indonesia's ratification with ASEAN has violated the 1945 Constitution of the Republic of Indonesia.

c. Constitutional Court Decision No. 33/PUU/2011

Article 11 of the 1945 Constitution of the Republic of Indonesia in conjunction with article 9 paragraph (1) of Law Number 24 of 2000, a formal form of approval of the People's Representative Council (Indonesian: Dewan Perwakilan Rakyat/DPR) to the president in relation to treaty-making power, and not article 20 of the 1945 Constitution in terms of legislative power, Utrecht. It is as quoted by Damos Dumoli Agusman who interprets differently that an international agreement approved by the DPR and set forth in an approval law *(goedkeuringswet)* is only a formal law.[19] It means that Law Number 38 Year 2008 in Indonesia is not related directly to the application of the ASEAN Charter norms into the Indonesian national law section because this ratification Act is only an approval of the DPR to the president in relation to treaty-making rather than in terms of legislative power.

The authority to make and ratify international treaties belongs to the President. However, the President must obtain approval from the DPR. This is in line with article 11 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Furthermore, the Law referred to in article 11 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is Law of the Republic of Indonesia Number 24 of 2000 concerning International Conventions. Based on the article 9 paragraph (2) of Law number 24 of 2000 concerning international treaties, the ratification of international treaties can be done by Law or a Presidential decree.

In article 2 of Law number 38 of 2008 concerning the ratification of the ASEAN Charter, the word "applicable" is actually addressed to the Government and the Parliament, in which the two high state institutions collaborate in drafting the Law (Dewanto, 2012). Law number 38 of 2008 is the approval of the Parliament to make international agreements in the ASEAN region. In the procedure for making the ASEAN Charter ratification bill into Law number 38 of 208, in response to the text submitted by the President for approval, the DPR is not as free as responding to the general draft bill. The manuscripts discussed in Law number 28 of 2008 are already agreed texts by representatives of ASEAN countries. Thus, the DPR is limited only to approving this legalization bill to proceed to the President.

The text of the ASEAN Charter in the bill that is promulgated through the Law No. 38 of 2008 is not the norm for implementation of the ASEAN Charter. Damos Dumoli Agusman explained that although an international agreement has been ratified by the Law, other laws are still needed to implement it in the domain of national law (Agusman, 2010). One of the examples is the provisions of *berne convention for the protection of literary and artistic works* which was ratified by presidential decree No. 19 of 1997 which was later elaborated in Law number 19 of 2002 concerning copyright, and material in the UN Convention on Climate Change. It was then ratified in 1994 and effective since it was promulgated in Law number 32 of 2009 about the protection and management of the environment.[20]

The judicial review to the Constitutional Court is conducted in accordance with article 24C of the 1945 Constitution of the Republic of Indonesia. It mentions several authorities possessed by the Constitutional Court set forth in paragraphs (1) and (2), and specifically regulated in Article 10 of Law Number 8 of 2011 Amendment of Law Number 24 of 2003 concerning the Constitutional Court. Theories about testing the law (*toetsing*) are distinguished between *materiile toetsing* and *formeele toetsing*. This

[19] Damos Dumoli Agusman. Opini juris. May – August 2013. Keputusan Mahkamah Konstitusi tentang Piagam ASEAN: Arti penting bagi nasib perjanjian lainnya. Volume 13. Page 20.
[20] Simon Tumanggor. December 2011. Judicial Review of the Ratification Act of the Association of Southeast Asian Nations. Ministry of Trade. Third Edition. Page 5.

distinction is usually associated with differences in understanding between *wet in materiile zin* (Law in the material sense) and *wet in formele zin* (Law in the formal sense) (Asshiddiqie, 2006). Testing of material content of the Law is material testing based on Article 51 paragraph (3) of the Law of the Republic of Indonesia Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court.[21]

Judicial review of Law No. 38/2008 at the Constitutional Court by the judges was inappropriate since most of the Constitutional Court judges were trapped in the word "Law". One of the powers of the Constitutional Court is indeed to test the Law on the 1945 Constitution of the Republic of Indonesia, in accordance with article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, as well as article 10, and article 51 paragraph (3) of Law Number 8 of 2011, the Amendment to the Law Number 24 of 2003 concerning the Constitutional Court. However, as discussed in the previous point, the position of Law No. 38 of 2008 is a form of Ratification of the ASEAN Charter which is part of an internal legal act. From the perspective of internal procedures, Law of the Republic of Indonesia Number 38 of 2008 concerning Ratification of the ASEAN Charter is a legal product that forms the basis for Indonesia to carry out external procedures.[22]

Law No. 38/2008 is under the authority of the President and the DPR as a treaty making power and not as a legislative power. Laws that can be tested in the Constitutional Court are Laws in the sense of legislative power, in accordance with the mandate of article 20 of the 1945 Constitution of the Republic of Indonesia. The ASEAN Charter manuscript in the bill that has been promulgated through Law Number 38 Year 2008 is not a norm for the implementation of the ASEAN Charter, so there is still a need for another law that clearly regulates the ASEAN Charter in the provisions of Indonesian law.

The Judicial Review of Law Number 38 Year 2008 conducted by the Constitutional Court indicates the adoption of the principle of monism of national law[23] in which international treaty material in the ratification Act can be directly tested because it is expected directly applicable to the ratification Act without the need for a law that informs international treaties into national law.[24] In fact, as discussed earlier, Indonesia adheres to the principle of dualism in responding to international law and national law.

Based on the explanation above, the international treaty in the 1986 Vienna Convention which talks about international agreements with regional organizations which explain in every case the provisions in these regional organizations become absolute provisions that must be implemented in article 54. In addition, there must be regulations to be implemented by members in an organization.

Considering that the ASEAN Charter does not have provisions for resignation, it becomes difficult for ASEAN member countries who want to conduct unilateral resignation. Despite the fact that there have not been any countries that submitted to ASEAN for unilateral resignation. However, in practice such as Myanmar and Indonesia with their respective problems which assume that it would be better if both countries decide to conduct unilateral resignation from the members of ASEAN.

Based on the ASEAN provisions which have a good structure and the ASEAN Summit related to the procedure, the unilateral resignation of member countries must definitely follow the ASEAN procedures. This is the case with the inclusion of a letter of intent to resign and submit it to the ASEAN

[21] Anonim, Putusan mahkamah konstitusi mengenai pengujian undang-undang no 28 tahun 2008. 2012. https://www.neliti .com/publication/34514/studi-putusan-mahkamah-konstitusi-no-33puu-ix2011-mengenai-pengujian-undang-undang accessed on January 12, 2018 at 11:12 p.m.

[22] MK, Putusan mahkamah konstitusi. 2015. www.mahkamahkonstitusi.go.id accessed on January 10, 2018 at 2:43 pm.

[23] "National law is the main law of international law. International law is a continuation of national law for foreign affairs, and assumes that international law is sourced from national law." (Dr. Boer Mauna, hukum internasional (pengertian, peranan dan fungsi dalam era Dinamika Global), 2003 PT ALUMNI: bandung, p. 12.

[24] Anonim, Memehami putusan Mahkamah Agung, Academia education. 2013. https://www.a cademia.edu/26106174/MEMAHAMI _PUTUSAN_MK_NOMOR_33_PUU-IX_2011 accessed online on 22 January 2018 at 11.48 p.m.

community council to be discussed at the time of the ASEAN Summit or ASEAN holds an extraordinary summit to discuss the issue. Therefore, the consequence of the unilateral resignation will not give an impact on the country's politics when the country is no longer a member of ASEAN.

Conclusion

The responsibility of a country that resigns from ASEAN membership is principally based on the end of the cooperation of a member country that wants to resign with other member countries. Like the provisions in the EU, OAS, OAU, and the Arab League, ASEAN also has authority in making policies. It is stated in article 56 of the 1986 Vienna Convention. Thus, member countries wishing to resign have been freed from the responsibility of cooperation with ASEAN.

Therefore, the unilateral resignation procedure of ASEAN membership can be determined in the ASEAN Summit by submitting it to the ASEAN Coordinating Council at least one year before the ASEAN Summit is held. It will then be discussed with all ASEAN members for agreement. After that, rights and obligations will be conveyed to countries that have unilaterally resigned from the ASEAN membership.

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