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STRENGTHENING GLOBAL GOVERNANCE: INDONESIA'S COURT AND THE CENTRAL KALIMANTAN FOREST FIRE CASE

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Abstract

The success of global governance significantly relies on the unified efforts of states as the actors. Each state has specific roles in the global community, which can be achieved through domestic policies. Indonesia has been involved in numerous treaties and programs that address global challenges. However, the invocation of international law by Indonesian domestic courts has been primarily motivated by the desire to enhance the quality of judicial decisions and to uphold Indonesia's reputation as a compliant member of the international legal framework. Moreover, the focus among Indonesian legal scholars has predominantly been on the role of international law within the national legal hierarchy and the effects of monism and dualism on the domestic application of international statutes. This paper explores the external ramifications of judgments made by Indonesian domestic courts. This normative research used the Central Kalimantan Forest Fire case to start the discussion. The discussion showed that the implementation of international law by Indonesia's domestic Court aims to deliver a high-quality judgment and strengthen global governance.

A. Introduction

International law scholars have long discussed the relationship between domestic courts, international law, and international legal order. In the '60s, Richard Falk argued that the domestic Court played dual roles in adjudicating an international law case: as a national institution and an agent of international legal order. There is a probability that the Court will face a conflict between defending national interests and upholding international law.[1] Other scholars later suggested a more balanced relationship between domestic Court and international law. David Sloss argues that domestic courts may employ international law to strengthen

This article is the author's personal opinion.

[1] Richard A Falk, "The Role Of Domestic Courts in the International Legal Order," *Indiana Law Journal* 39, no. 3 (1964): 429-445, 436.

democracy by advocating policies that conform to democratic values in various international human rights treaties.[2]

The United Nations (UN) 1995 explained the term "global governance" by referring to the work of multiple actors to manage their common affairs and different interests towards achieving common goals.[3] In recent years, the unprecedented complexity of global challenges (transnational organized crime, human migration, climate change, or infectious diseases, to name a few) has 'forced' the international community to collaborate with relevant actors at every level of governance (global, regional, national, and local). In other words, international law has become more intrusive to states' domestic affairs. Surendra Bandhari believes that global constitutionalism is developing and is characterized by several critical elements, such as international law supremacy and domestic rules harmonization.[4]

A question arises regarding the attitude of Indonesia's domestic Court towards international law. Do Indonesian judges feel the need to refer to international law? What do Indonesian judges consider when international law is cited or referred to in their working cases? When the judges refer to international law, do they think of the international implications of their judgment?

In some cases, Indonesia's domestic courts often refer to international law, including the Constitutional Court established in 2003. Several scholars have written about the contribution of international law to the deliberations of the Court, including Kama Sukarno,[5] Umbu Rauta, and Ninon Melatyugra,[6] or Gede Marhaendra Wija Atmaja et all[7]. They described that the Constitutional Court routinely utilizes international law to help interpret national law, enhance the quality of judgment, enrich national law, and develop the capacity of Indonesia's legal scholars. They advocate for further utilization of international law henceforth.

This paper examines two cases that best describe the international impact of a domestic court judgment. First, in 2006, the Constitutional Court found Law No. 27/2004, concerning the Truth and Reconciliation Commission, unconstitutional. This law was deemed to violate principles enshrined in the Constitution, such as equality before the law, the state's responsibility to promote and protect human rights, the Right to life, and the Right to be free from torture. In their ruling, the Constitutional judges emphasized that international law requires gross human rights violations to be addressed legally and that any amnesty granted must be restricted to avoid resulting in impunity. The Court relied on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which is a 2005 UN General Assembly resolution. The judges also declared that it is the

[2] David Sloss, "Using International Law to Enhance Democracy," *Virginia Journal of International Law* 47, no. 1 (2006): 1–61.

[3] https://www.gdrc.org/u-gov/global-neighbourhood/ Accessed on May 6, 2020. See also, Klaus Dingwerth and Philipp Pattberg, "Global Governance As A Perspective On World Politics," *Global Governance* 12, no. 2 (2006): 187–89; Frank Biermann and Philipp Pattberg, "Global Environmental Governance: Taking Stock, Moving Forward," *Annual Review of Environment and Resources* 33, no. 1 (2008): 278–79, DOI: 10.1146/annurev.environ.33.050707.085733.

[4] Surendra Bhandari, "Global Constitutionalism And the Constitutionalization of International Relations: A Reflection of Asian Approaches to International Law," *Ritsumeikan Annual Review of International Studies* 12 (2013): 16–17, DOI: 10.2139/ssrn.2402084.

[5] Kama Sukarno, "Penerapan Perjanjian Internasional di Pengadilan Nasional Indonesia: Studi Terhadap Putusan-Putusan Mahkamah Konstitusi," *Padjadjaran Journal of Law* 3, no. 3 (2016): 587–608, DOI: 10.22304/pjih.v3.n3.a8.

[6] Umbu Rauta and Ninon Melatyugra, "Hukum Internasional Sebagai Alat Interpretasi Dalam Pengujian Undang-Undang," *Jurnal Konstitusi* 15, no. 1 (2018): 73–94, DOI: 10.31078/jk1514.

[7] Gede Marhaendra Wija Atmaja et al., "Sikap Mahkamah Konstitusi Mengenai Keberlakuan Perjanjian Internasional Dalam Hubungannya Dengan Hukum Nasional," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 7, no. 3 (2018): 329–42, DOI: 10.24843/JMHU.2018.v07.i03.p05.

responsibility of the state to prevent human rights violations, bring the perpetrator to justice, and offer remedies to victims.[8]

In 2020, judges at the Jakarta Administrative Court ruled that the government's policy of limiting internet access in the Papua and West Papua Provinces violated Law No. 19/2016 on the Amendment to Law No. 11/2008 on Information and Electronic Transactions. The laws stress that the government can only stop access to materials that are against the law. The judges also found that the government contradicted the Regulation in place of Law No. 23/1959 on Emergency Situations. The judges refer to the International Covenant on Civil and Political Rights / ICCPR, including the Human Rights Committee's General Comment No. 34 on article 19 of ICCPR (on freedom of opinion and expression), to assist them in formulating the judgment.[9]

The two judgments were made based on different perspectives. In domestic interest, the courts exercised their authority in ensuring the supremacy of the Constitution and national law. However, the Courts also ruled that the government's (executive body) policy must also adhere to international law. Consequently, the Courts assisted in strengthening global human rights governance by ensuring that Indonesia acted following it.

Indonesia's domestic court judgments' impact on global governance has rarely been explored. Instead, it is generally accepted that Indonesia must honor its treaty obligations under the principle of *pacta sunt servanda*. On the other side, consequences arising from it should be properly identified.

Most Indonesian scholars are more focused on the position of international law (treaty) within the hierarchy of national law, raising the debate between monism and dualism.[10] This situation occurs because the Indonesian Constitution is not aggressively addressing this issue.

This attempts to answer questions about the international impact of Indonesia's domestic court judgments and the role of the Court in strengthening global governance. This normative research discussed the case of the Central Kalimantan Forest Fire.[11] Judges' considerations were examined to identify their external relevance internationally. Research materials were collected through library research, court decisions, books, and academic articles.[12]

The Central Kalimantan Forest Fire case relates to direct and indirect human rights violations, considering its frequent occurrence. This case concerns environmental protection, which is a priority in global governance due to nature's crucial role in supporting our climate and overall well-being. The forest fire that frequently occur then substantially impacts

[8] The Law on Truth and Reconciliation Commission, No. 006/PUU-IV/2006 (Constitutional Court December 4, 2006).

[9] Papua Internet Restriction, No. 230/G/TF/2019/PTUN-JKT (Jakarta Administrative Court June 3, 2020).

[10] See for example Damos Dumoli Agusman, *Hukum Perjanjian Internasional: Kajian Teori Dan Praktik Indonesia* (Bandung: Refika Aditama, 2010); Mr Aminoto and Agustina Merdekawati, "Prospek Penempatan Perjanjian Internasional Yang Mengikat Indonesia Dalam Hierarki Peraturan Perundang-Undangan Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 27, no. 1 (2015): 82–97, DOI: 10.22146/jmh.15912; Damos Dumoli Agusman, "The Courts And Treaties: Indonesia's Perspective," *Padjadjaran Journal of International Law* 1, no. 1 (2017): 1-18; Damos Dumoli Agusman, "The Dynamic Development on Indonesia's Attitude Toward International Law," *Indonesian Journal of International Law* 13, no. 1 (2015): 1–31, DOI: 10.17304/ijil.vol13.1.624; Ninon Melatyugra, "Mendorong Sikap Lebih Bersahabat Terhadap Hukum Internasional: Penerapan Hukum Internasional Oleh Pengadilan Indonesia," *Refleksi Hukum* 1, no. 2 (2016): 45–60, DOI: 10.24246/jrh.2016.v1.i1.p45-60; Wisnu Aryo Dewanto, "Penerapan Perjanjian Internasional Di Pengadilan Nasional: Sebuah Kritik Terhadap Laporan Delegasi Republik Indonesia Kepada Komite Hak Asasi Manusia Perserikatan Bangsa-Bangsa Tentang Implementasi Kovenan Internasional Tentang Hak-Hak Sipil Dan Politik," *Padjadjaran Jurnal Ilmu Hukum* 1, no. 1 (2014): 57–77, DOI: 10.22304/pjih.v1n1.a4.

[11] Central Kalimantan Forest Fire Case, No. 3555 K/Pdt/2018 (Supreme Court of Indonesia, Cassation level July 16, 2019); Central Kalimantan Forest Fire Case, No. 118/Pdt.G/LH/2016/PN Plk (Palangkaraya District Court March 22, 2017).

[12] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Press, 2009), 13.

Indonesia and the neighboring countries' social, economic, and political costs. Furthermore, Indonesia has extensive tropical rainforests, and commitment to environmental conservation should be prioritized.

The success of global governance depends on the willingness and ability of relevant actors to collaborate. International law is the foundation for global governance through international organizations that foster global collaboration or facilitate the international community to attain common goals. The UN Charter is the legal foundation for the UN organization, which contains the norms to support peaceful settlement of disputes and limit the use of force.

This article explores the role of the domestic Court in strengthening global governance, the international impacts of the forest fire case, and why the judgment is relevant to Indonesia's international responsibility. This article is expected to raise awareness of international law among legal practitioners in Indonesia since international law also addresses global challenges.

This article focuses solely on the treaty and does not delve into its status within Indonesia's national law framework, specifically avoiding the monism and dualism debate. Scholars have noted a lack of consistency in how Indonesia's domestic courts approach this discourse.[13] For instance, the Constitutional Court has referenced international treaties that Indonesia has not ratified. In evaluating the retroactivity of Indonesia's counter-terrorism legislation, the Court cited the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights, and the Rome Statute of the International Criminal Court. Indonesia was not a party to ICCPR when the judgment was announced in 2003. Until this article is drafted, Indonesia will not be a party to the other two agreements.

There have also been suggestions on the limitations of monism and dualism in analyzing the practical relations between national and international law[14] , which will be discussed further. Nonetheless, the article also finds that understanding international law's status in the domestic sphere is essential.

B. Discussion

1. The Case of Forest in Central Kalimantan

The Central Kalimantan Forest Fire case from 2016-2019 was filed by the community of Central Kalimantan province against Indonesia's Central Government, Central Kalimantan provincial government, and Central Kalimantan provincial House of Representatives. This case is a citizen lawsuit. Under Indonesia's law, a citizen lawsuit facilitates citizen(s) to bring a case against the government for an act of commission or omission that resulted in the infringement of the citizens' rights. In a citizen lawsuit, compensation requested by the plaintiff is in the form of government policies to prevent similar acts.[15]

The case was related to a large-scale forest fire and environmental destruction, which caused detrimental effects in economic, health, and social domains.[16] The plaintiffs recorded that forest fires in Central Kalimantan occurred intermittently from 1997 to 2015, which the plaintiffs argued resulted from the government's negligence. The data from the National Agency for Disaster Management showed that fires affected over 196,000 hectares of peatland and 133,000 hectares of non-peat land in 2015. The plaintiffs recorded that the fire caused widespread haze

[13] Agusman, *Op.Cit.,* 13–15; Sukarno, *Op.Cit., 5*91.
[14] Ninon Melatyugra, *Op.Cit.,* 48–49; Pierre-Hugues Verdier and Mila Versteeg, "International Law in National Legal Systems: An Empirical Investigation," *The American Journal of International Law* 109, no. 3 (2015): 514-533, 516, DOI: 10.5305/amerjintelaw.109.3.0514.
[15] Supreme Court of Indonesia Research, Education, Training and Education Agency, "Class Action and Citizen Lawsuit: Research Report" (Supreme Court of Indonesia, 2009), 11, 49.
[16] Central Kalimantan Forest Fire Case, Palangkaraya District Court March 22, 2017.

in several districts of the province, the spread of diseases, school closure, and interruption to public activities, which infringed on their human rights to live in a healthy Environment.

In their arguments, the plaintiffs cited the Constitution, the Law No. 39/1999 on Human Rights, and the Law No. 32/2009 on Protection and Management of Environment. The plaintiffs also referred to the UN Guiding Principles on Business and Human Rights (a UN Human Rights Council resolution) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), to which Indonesia is a party.

The District Court concurred with the plaintiffs' arguments and declared that the government's failure to exercise its responsibilities to prevent fire and mitigate its impacts is against the law. The Court also discussed the Rio Declaration on Environment and Development in formulating its judgment.

The Court ordered the central and provincial governments (following their respective authority) to set policies to address this matter, ranging from creating implementing regulations to the law on the Environment, creating a road map on the prevention and mitigation of forest fire, environmental law enforcement, reassessing land and forest permits, to providing public health facilities and creating a comprehensive system at a local level to monitor and prevent forest fire.

The government brought the judgment for review to the Provincial Court and Supreme Court (cassation level). Both courts concurred with the District Court's judgment.[17] The government accepted the judgment and made a final and binding decision.

2. Domestic Courts as an Actor in Global Governance

Globalization has grown at an unprecedented rate, as Thomas Friedman refers to it as a single global network.[18] Goods, capital, services, and ideas are easily distributed, allowing every country to accumulate resources for national development. People have also gained greater opportunities for self-empowerment. On the other side, globalization also brings tremendous challenges. These challenges have put global governance at the forefront of world diplomacy.

The international community has regarded global governance as a tool to address common global problems. In this sense, global governance is not merely an observable global phenomenon characterized by the proliferation of actors; a multilevel governance system that is inseparably linked (global, regional, national, local); relations among actors that are not always based on power, norms, or bargaining; and the emergence of a new source of authority beyond states, as was described by Klaus Dingwerth and Philipp Pattberg. Global governance is also a political program that aims to assist the international society in responding to global problems.[19] A compelling example of global governance is the efforts to address climate change, national and business competition, issues on clean technology, and the different perspectives on the risks generated by climate change among the international community.

Global governance represents the impossibility of international actors (states, inter-government organizations, or civil society organizations) working separately to solve global problems. The UN stated in 2014 that global governance must encompass "…the totality of institutions, policies, norms, procedures, and initiatives through which States and their citizens try to bring more predictability, stability, and order to their responses to transnational challenges". These transnational challenges are to increase the supply of global public goods

[17] Central Kalimantan Forest Fire Case, Supreme Court of Indonesia, Cassation level July 16, 2019.
[18] Thomas Friedman, *The World is Flat* (New York: Picador, 2007).
[19] Dingwerth and Pattberg, *Op.Cit.*, 189–194.

(for example peace and security) and reduce the flow of global public "bad" (greenhouse gas emission, human trafficking, biodiversity losses, etc.).[20]

The interaction among the elements of global governance (policies, treaties, or actors) creates networks of collaboration, dependence, mutual support, and even competition (fragmented).[21] Those elements must move together to solve global problems by utilizing international law in treaties.

International law has become practically more critical in facilitating the international community to attain common goals. In terms of substantive aspect, international law is a product of global governance. The multilateral trade system, administered particularly by the World Trade Organization (WTO), is an instance. Established by nations in 1995 as the successor to the 1948 General Agreement on Tariffs and Trade (GATT), the World Trade Organization (WTO) oversees numerous binding and enforceable agreements designed to advance international trade.

Other than treaties, states have been engaged in 'soft law,' such as UN General Assembly (UNGA) resolutions or declarations. Such law responds to the emergence of new issues not previously recognized as critical by the international community, serving as a compromise when states are unable to reach a binding agreement, facilitating the participation of non-state actors, reducing political and legal costs, or simply because states do not see the urgency in creating binding instruments for certain matters.[22] Even though they lack binding force, soft law carries legal and political significance in influencing states' behavior. It may also lay the foundation for gradually forming customary rules or treaty provisions.

Around 560 multilateral treaties are recorded by the UN Secretary-General on many issues, such as human rights, disarmament, penal matters, and the Environment.[23] As a comparison, the UNGA alone adopted more than 300 resolutions in its 2018-2019 session. The 2030 Agenda for Sustainable Development, which includes goals and standards of conduct for states in their domestic development, is embodied in a United Nations General Assembly (UNGA) resolution. Even some scholars do not consider the Paris Agreement on climate change a treaty due to the absence of binding commitment and enforcement mechanisms.[24]

Ensuring the compliance of every nation with its international responsibilities remains an issue between international law and international relations. It is widely recognized that a state typically becomes a party to a treaty and adheres to its provisions if doing so aligns with its national interests. No supranational entity is capable of compelling a state to join a treaty or of monitoring and enforcing compliance without the state's express consent. In situations where state consent is lacking, various enforcement mechanisms, such as countermeasures and sanctions, come into play. Additionally, legal action can be taken against a state within its judicial system to address non-compliance or violations of treaty obligations.

Sloss believes that the domestic Court may help promote democracy by employing international law, for it incorporates norms and values that the community of nations, such as

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[20] Vereinte Nationen, ed., *Global Governance and Global Rules for Development in the Post-2015 Era: Policy Note*, (New York, NY: United Nations, 2014), vi.

[21] Rakhyun E Kim, "Is Global Governance Fragmented, Polycentric, or Complex? The State of the Art of the Network Approach," *International Studies Review* 22, no. 4 (2019): 903-931, 934–936, DOI: 10.1093/isr/viz052.

[22] Antonio Cassese, International Law, First Edition. (Oxford: Oxford University Press, 2001), 161; Kenneth W. Abbott and Duncan Snidal, "Hard And Soft Law In International Governance," *International Organization* 54, no. 3 (2000): 421-456, 434, DOI: 10.1162/002081800551280.

[23] https://treaties.un.org/, Accessed on May 20, 2020.

[24] Lavanya Rajamani, "The 2015 Paris Agreement: Interplay Between Hard, Soft And Non-Obligations," *Journal of Environmental Law* 28, no. 2 (2016): 337-358, 337, DOI: 10.1093/jel/eqw015; Anne-Marie Slaughter, "The Paris Approach To Global Governance," *Project Syndicate,* December 28, 2015, https://www.project-syndicate.org/commentary/paris-agreement-model-for-global-governance-by-anne-marie-slaughter-2015-12.

human rights and humanitarian law, has accepted. Accordingly, the domestic Court may act as an agent to uphold international law and global governance.

Eyal Benvenisti and George Brown offered a slightly different view. They highlighted the presence of certain interest groups that put strong pressure on the domestic legal system by taking advantage of the greater movement of capital, as facilitated by globalization. In this situation, they argued that the domestic Court can block government policies incompatible with national and international law.[25]

The state's role in global governance remains critical despite the presence of non-state actors. This situation arises, among other reasons, due to a state's sovereign authority over its people, territory, and natural resources. Joana Setzer and Michal Nachmany argued that the state is central to the mitigation and adaptation process in polycentric global governance, promoting societal changes and creating better national regulations and policies on climate change issues.[26] Judicial institutions can enforce the law and challenge the state and large emitters. Judicial institutions, therefore, play a strategic role in promoting wider policy change to be consistent with global goals.[27]

Based on this logic, Indonesian judges must refer to international law and cite international treaties when making decisions. I, Dewa Gede Palguna, in his dissenting opinion in the Truth and Reconciliation Commission Case before the Constitutional Court, stated that international human rights instruments that have become part of national law are coherent with the national Constitution. Thus, applying those instruments at the domestic level is inherently applying Indonesia's national law in the case of forest fire.

Sloss and van Alstine argue that domestic Court may apply international law either through a silent application (applying domestic rules that are derived from international law without mentioning international sources), through an indirect application (where courts apply international law to help interpret domestic rules), or direct application (the courts apply international law directly as a rule for decision).[28] André Nollkaemper then explains that an indirect application of international law is taken if a treaty provision cannot be invoked directly, for it does not grant individual rights, or it would conflict with national law. In a traditionally monist nation such as the Netherlands, the indirect application allows the Court to make a conciliatory interpretation and prevent it from deviating from the state's international obligations.[29] In a dualist state such as Canada, an unimplemented treaty may indirectly influence the Court's interpretation of national law in conformity with international law and the state's treaty obligation.[30]

Furthermore, certain treaties have stressed the role of the domestic Court in ensuring state-party compliance. The Human Rights Committee, a treaty body under ICCPR within the General Comment No. 31 paragraph 4, asserts that obligations on ICCPR bind the state party. Therefore, all branches of the state government (executive, judicial and legislative) at all levels (national and local) have to carry the responsibility of the state party. In paragraph 15, the

[25] E. Benvenisti and G. W. Downs, "National Courts, Domestic Democracy, And The Evolution Of International Law," *European Journal of International Law* 20, no. 1 (2009): 59-72, 62 and 64, DOI: 10.1093/ejil/chp004.
[26] Joana Setzer and Michal Nachmany, "National Governance: The State's Role in Steering Polycentric Action," *Governing Climate Change: Polycentricity in Action?*, 1st ed. (Cambridge: Cambridge University Press, n.d.), 48–49, 51–52, DOI: 10.1017/9781108284646.004.
[27] *Ibid.*, 56–57.
[28] David Sloss and Michael Van Alstine, "International Law in Domestic Courts," *Book Chapter Santa Clara Law Digital Commons*, September 2015, 43; David Sloss, *Treaty Enforcement in Domestic Courts: A Comparative Analysis, in The Role of Domestic Courts in Treaty Enforcement: A Comparative Study*, 1st ed. (New York: Cambridge University Press, n.d.), 7, 13.
[29] André Nollkaemper, *"The Netherlands,"* in *The Role of Domestic Courts in Treaty Enforcement: A Comparative Study*, 1st ed. (New York: Cambridge University Press, 2009), 348–50.
[30] Gib van Ert, *"Canada," in The Role of Domestic Courts in Treaty Enforcement: A Comparative Study*, 1st ed. (New York: Cambridge University Press, 2009), 172, 188.

Committee rules that, in addition to directly applying it, the Court may also apply national law within the interpretation of the Covenant.[31] Those views of the scholars and "expectations" from certain treaties offer a more practical application of the treaty in the domestic sector, away from the monism–dualism discourse.

Despite this 'green light' for its application, whether a domestic court will reference a treaty ultimately remains a discretionary policy choice. Sharon Weill stated that the Court might find international law inapplicable as it conflicts with domestic norms or because domestic norms have incorporated international law.[32] Some domestic courts also find domestic law sufficient to handle the case. At the same time, some Courts do not have sufficient knowledge of international law or consider international law not applicable.

Gede Marhaendra Wija Atmaja et al. l and Kama Soekarno revealed that Indonesian judges utilized international law to help deepen their insight into national law, support their legal thoughts, or take benefit of the moral authority carried by international law.[33] Ninon Melatyugra also spoke of a similar intention. These perspectives imply that judges will not find it necessary to refer to international law if they believe that national law and their understanding of it is already solid.

Similarly, domestic actors who bring a case to the Court may not feel compelled to invoke Indonesia's international obligations if they are confident that national law is sufficient to advance the case. For example, in deliberating the Law on Truth and Reconciliation Commission case, the Court stressed that the review of the law must be based first on *Pancasila* (Indonesia's Philosophy) and the Constitution, which has incorporated various international human rights principles. The Court will then examine various international human rights materials.[34] This pronouncement signaled the Court's confidence in the conformity of Indonesia's Constitution with international law. It paved the way for a silent application, as Sloss and van Alstine pointed out.

Despite the diversity of opinions and beliefs, it is imperative to recognize that the judiciary maintains the authority to supervise the activities of the government (executive branch) to ensure compliance with both national and international law, provided it acts independently. This was exemplified in the Law on the Truth and Reconciliation Commission case, where the Court's decision aligned with the Constitution and international human rights standards. The Court found the law unconstitutional and in violation of international law because it stipulated that remedies could only be provided after the perpetrators' testimony, expression of regret, and receipt of amnesty from the President.

Technically, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law apply to domestic courts. This document contains several relevant principles, such as promptly, effectively, and partially. An investigation was conducted on the alleged human rights violation and to ensure victims' rights to remedy and access justice. The Court argued that this document incorporates universal customs and practices to promote justice.[35] From a larger perspective, this Court pronouncement aligns with the global spirit to

[31]https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11, Accessed on March 29, 2004.

[32] Sharon Weill, "The Role of National Courts in Applying International Humanitarian Law: From Apology to Judicial Activism", *Ph.D. diss.*, The University of Geneva, (2012), 59.

[33] Atmaja et al., "Sikap Mahkamah Konstitusi Mengenai Keberlakuan Perjanjian Internasional Dalam Hubungannya Dengan Hukum Nasional," *Jurnal Magister Hukum Udayana* 7, no. 3 (2018): 329-342, 340, DOI: 10.24843/JMHU.2018.v07.i03.p05; Sukarno, "Penerapan Perjanjian Internasional di Pengadilan Nasional Indonesia," *Padjajaran Jurnal Ilmu Hukum* 3, no. 3 (2016): 587-608, 595, DOI: 10.22304/pjih.v3.n3.a8.

[34] Truth and Reconciliation Commission Case, No. 006/PUU-IV/2006 (Constitutional Court of Indonesia December 4, 2006), 120.

[35] *Ibid*. p. 112.

enhance human rights promotion and protection and to assert the state's role in protecting its citizens' rights.

A similar sentiment applies to the Papua Internet Case. The Court highlighted that the Internet is a medium for freedom of expression and exercising other rights, such as seeking information, education, gaining benefits from science, and employment. As those rights are protected by both international and national law, internet restrictions must be made proportionally to harmful materials.

3. The Implications of the Central Kalimantan Forest Fire Case to Global Governance

The forest fire case in Indonesia affected Indonesia and the neighboring countries, which then called into question Indonesia's compliance with the ASEAN Agreement on Transboundary Haze Pollution. The case also has global implications. Deforestation from forest fires or illegal logging tremendously impacts the living beings on the earth. Deforestation has been the cause of reduced rainfall. Trees absorb water from land and rainfall, releasing water vapor into the atmosphere, which occurs as rainfall. Research has also suggested that air that passes over extensive vegetation produces twice as much rain as air that passes over land with less vegetation. Forests also affect the local and global temperatures. Deforestation releases carbon dioxide that makes the earth dryer and warmer.[36] During the court hearing, a government witness confirmed that fire in peatland contributes to global warming.[37]

In 2013, The Intergovernmental Panel on Climate Change (IPCC) issued a report on Climate Change 2013, asserting that human activity is the dominant cause of climate change. Climate change impacts are devastating and irreversible, such as rising sea levels, the disappearance of low-lying coastal areas and small islands, habitat loss for several organisms, and the spread of certain diseases.[38] Climate change also causes frequent and violent natural disasters. Hence, many scientists believe climate change poses an existential threat to human civilization.[39]

Ecological destruction and its impact on global warming and climate change have long been considered deserving of the international community's efforts. The forest fire case and its ensuing judgments are pivotal for evaluating Indonesia's role in fortifying or undermining global governance efforts.

Indonesia is a party to various international instruments on the Environment and climate change, most notably the UN Framework Convention on Climate Change / UNFCCC (ratification as of August 23, 1994), Convention on Biological Diversity / CBD (ratification as of August 23, 1994), Kyoto Protocol (ratification as on December 3, 2004) and Paris Agreement (ratification as on October 31, 2016). Every nation is obligated to protect the Environment's biological diversity and make substantial efforts to reduce greenhouse gases harmful to the climate system. In other words, the forest fire occurring for quite a long time (from 1997 until the time the case was brought to the Court) was against Indonesia's international responsibilities.

Despite the judgment being grounded solely in national legislation, specifically the shortcomings in preventing and addressing forest destruction as required by Law No. 18/2013 on Preventing and Combating Forest Destruction, the Court effectively addressed Indonesia's

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[36] Fred Pearce, "Rivers in the Sky: How Deforestation Is Affecting Global Water Cycles," Yale E360, accessed August 15, 2020, https://e360.yale.edu/features/how-deforestation-affecting-global-water-cycles-climate-change; David Ellison and Cindy E. Morris, "Trees, Forests And Water: Cool Insights For A Hot World | Elsevier Enhanced Reader," *Global Environmental Change* 43 (2017): 51–61, DOI: 10.1016/j.gloenvcha.2017.01.002.

[37] Central Kalimantan Forest Fire Case, Palangkaraya District Court March 22, 2017, at 147.

[38] Myles R. Allen, "Special Report: Global Warming of 1.5 Degree C - Summary for Policy Makers," The Intergovernmental Panel on Climate Change, accessed July 7, 2020, https://www.ipcc.ch/sr15/chapter/spm/.

[39] http://www.unenvironment.org/explore-topics/climate-change/facts-about-climate-emergency. Accessed on August 29, 2019; David Spratt and Ian Dunlop, "Existential Climate-Related Security Risk: A Scenario Approach" (Melbourne, 2019).

international obligations. Through its ruling, the Court underscored the necessity of aligning domestic actions with global environmental standards, thus contributing to the fulfillment of Indonesia's international responsibilities. In this context, the judge's reference to the Rio Declaration on Environment and Development is logical. The judges believed that several principles in the Declaration were relevant to the case, such as the sovereignty and responsibility of the state, the equitable needs of current and future generations, and the integrality of environmental protection in the development process. The judges specifically highlighted the principle of intergenerational sustainability. They argued that nature conservation is important to ensure that the future generation can use the natural resources in adequate quality and quantity. The judges also suggested that this principle become the foundation for developing national and international environmental law.[40] The judgment did not only question Indonesia's compliance with international law but also question our responsibility in the attainment of global public goods (in this case, a well-protected environment and ecosystem) and reduce the flow of global public "bad" (in this case, environmental destruction and greenhouse gas emission)

The effort to align actions with Indonesia's international responsibilities is critical in enhancing global environmental governance. The Court, individual plaintiffs, and other actors such as the National Human Rights Commission (whose view on the impacts of forest fire on people's human rights was included on the plaintiffs' list of evidence) have all acted within their responsibility, either separately or in collaboration with others. As Martin Janicke argued, to achieve common goals, each actor must understand its responsibilities and be willing to act within its opportunities and challenges, referred to as multilevel climate governance. Multilevel governance draws its strength from the presence of multiple actors (government, business, NGOs, individuals) at various levels of governance – global, regional, national, provincial, city, local community, and individuals.[41]

Elinor Ostrom's conviction on a polycentric approach to global governance stressed that governance should not only come from the international level. Instead, several initiatives may well emerge from the bottom level, such as from non-state actors.[42] Polycentric and multilevel climate governance approaches reaffirm the importance of harmonizing action, interconnectedness, and mutual engagement among different actors at different governance levels.

The plaintiffs also pointed out Indonesia's international responsibilities under the ICESCR and the UN Guiding Principles on Business and Human Rights. They also mentioned that business entities used fire to clear the land, resulting in widespread forest and land fires.

Globalization presents an opportunity for various groups to pursue their interests, potentially at the expense of broader community welfare. Benvenisti argued that in this regard, judges look upon international law to strengthen and complement domestic environmental Regulation. Judges are national actors rather than international agents whose primary motivation is to uphold national interests rather than to support global governance.[43] His argument echoes Indonesia's challenges, where the government has been accused of prioritizing

[40] Central Kalimantan Forest Fire Case, Palangkaraya District Court March 22, 2017, at 187.
[41] Martin Janicke, "The Multi-Level System Of Global Climate Governance – The Model And Its Current State," *Environmental Policy and Governance* 27, no. 2 (2017): 108–21, DOI: 10.1002/eet.1747.
[42] Elinor Ostrom, "A Polycentric Approach for Coping with Climate Change," *World Bank Policy Research Working Paper* 5095, (2009); Andrew Jordan and Dave Huitema, *Governing Climate Change Polycentrically: Setting the Scene*, *Governing Climate Change: Polycentricity in Action?*, 1st ed. (Cambridge: Cambridge University Press, 2018), 3-4, DOI:10.1017/9781108284646.002.
[43] Eyal Benvenisti, "Reclaiming Democracy: The Strategic Uses Of Foreign And International Law By National Courts," *American Journal of International Law* 102, no. 2 (2008): 241-274, DOI: 10.2307/30034538.

business and investment at the expense of sustainable development.[44] Forest Watch Indonesia's report on the loss of over 20 million hectares of natural forests between 2000 and 2017 underscores the severity of this issue. The organization attributes this significant deforestation primarily to investment and forest concessions, highlighting a direct correlation between forest loss and rising temperatures in affected areas.[45]

The plaintiffs argued that providing a healthy environment and remedy for breach is under Indonesia's international responsibilities. Both ICCPR and the UN Guiding Principles were utilized to defend their argument that business entity violations triggered the government's responsibilities to protect people's rights and provide remedies. By accepting the plaintiffs' argument, the Court declared the government's failure to perform its Environmental and human rights responsibilities.

Drawing from the insights of Setzer and Nachmany on the judiciary's role in polycentric global governance, the forest fire judgment in Indonesia exemplifies the courts acting as enforcers of the law, challengers of inadequate state action, and promoters of policy reform[46]. This judgment is instrumental in motivating Indonesia to align its policies with its international climate commitments. Compliance with the Court's decision involves issuing necessary implementing regulations under the Law on Environmental Protection. These regulations could address criteria for environmental degradation, establish environmental risk assessments, and introduce economic instruments for environmental management. Moreover, the government is responsible for effectively enforcing laws against those responsible for forest fires and devising a strategic plan for their prevention and management.

In a parallel vein, Anne-Marie Slaughter and William Burke-White have underscored the role of international law in bolstering the capacity and effectiveness of domestic institutions. They highlight how international law supports domestic groups in pressing their governments to fulfill international obligations and drives domestic action to address global threats. This perspective aligns with the notion that international legal frameworks and obligations can be powerful tools for national institutions. They guide and compel domestic policymakers to take actions that resonate with global standards and commitments, including environmental protection and climate change mitigation. This synergy between international law and domestic judicial actions, as seen in Indonesia's forest fire case, demonstrates global governance's interconnectedness and national courts' indispensable role in advancing international objectives within their jurisdictions.[47]

When this article was written, there was no available information on the government's fulfillment of its obligations as mandated by the Court. However, the government is expected to act swiftly to carry out the Court's directives. Should these orders be effectively implemented, Indonesia could establish more robust regulations to curb forest fires and land degradation, thereby reducing the emission of greenhouse gases from its territories.

Moreover, the cases and the Court's response to them could symbolize Indonesia's efforts to integrate treaty norms and enhance its adherence to treaties. This notion aligns with Harold Koh's concept of the transnational legal process, which elucidates how states' compliance with treaties is fostered. Koh posited that a state's engagement with treaty systems and international entities promotes the internalization of treaty norms within its domestic framework. This process, in turn, bolsters a state's commitment to international law. Such internalization

[44] Wahana Lingkungan Hidup Indonesia, *Tinjauan Lingkungan Hidup 2020: Menabur Investasi, Menuai Krisis Multidimensi, Annual Report* (Jakarta: Wahana Lingkungan Hidup Indonesia, 2020).
[45] Forest Watch Indonesia, *Angka Deforestasi Sebagai 'Alarm' Memburuknya Hutan Indonesia* (Jakarta: Forest Watch Indonesia, 2019), http://fwi.or.id/wp-content/uploads/2019/10/FS_Deforestasi_FWI_small.pdf.
[46] Setzer and Nachmany, *Op.Cit.*, 56–57.
[47] Anne-Marie Slaughter and William Burke-White, "The Future of International Law is Domestic (Or, The European Way Of Law)," *Harvard International Law Journal* 47, no. 2 (2006): 327-352, 330&333; See also David Sloss, *Loc.Cit.*

involves reinforcing mechanisms, including judicial internalization, where courts address disputes by applying international law norms in their decisions.[48] As previously discussed, aligning national policies with international obligations reinforces global governance, thereby recognizing the Court as a key player in the internalization process.

4. The Need to Increase Awareness of International Law

Reflecting on the domestic Court's contribution to global governance and the broader international ramifications of the forest fire litigation, several points merit further exploration. Firstly, it is notable that neither the plaintiffs nor the judges directly invoked international law in their reasoning. Instead, relevant soft law treaties and instruments were employed to bolster their arguments. The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the United Nations Guiding Principles on Business and Human Rights underpin the plaintiffs' case regarding the government's obligations to safeguard citizens' human rights and remedy violations. The judges referenced the Rio Declaration to articulate the government's responsibility to adhere to sustainable development principles (an indirect application of international law). Consequently, while the judgment was formally grounded in national law, this law was interpreted in a manner that ensured the decision aligned with international law principles.[49]

This approach of indirect application might stem from the plaintiffs' and judges' assessment that national legislation was sufficiently comprehensive. The revised national Constitution has incorporated numerous human rights principles, including the Right to a decent and healthy environment as delineated in the Universal Declaration of Human Rights. Hence, referencing the Constitution may reflect an implicit application—or represent a dualist stance within the monism-dualism discourse in international law.

Based on ICESCR, Indonesia must recognize everyone's Right to enjoy the highest attainable physical and mental health standards. A state party shall take necessary steps to realize that right, as detailed in Article 12, including improving environmental hygiene and preventing and controlling diseases. This article should be read together with Article 7, paragraph 2 of Law No. 39/1999 on Human Rights, which states that international human rights instruments that Indonesia has accepted become the government's responsibility.

ICESCR also provides other relevant bases to support the plaintiffs' argument. In General Comment No. 24, the Committee on Economic, Social, and Cultural Rights (a treaty body under ICESCR) reaffirms state party responsibilities in business activities by privately-owned or state-owned companies. Some of the responsibilities are ensuring respect, promotion, and fulfillment of human rights during business activity, including ensuring access to justice and remedy if violations occur.[50]

Secondly, even if there were a preference to apply international law indirectly, alternative mechanisms would have more accurately reflected the judges' viewpoints. At their deliberation, the Rio Declaration was established over two decades ago. Instead, the judges might have referenced the 2030 Agenda for Sustainable Development, established in 2015. This agenda includes, among other commitments, the pledge to safeguard our Environment against degradation to benefit current and future generations. Specifically, Goal 15, which focuses on land, forests, and biodiversity, could have been particularly relevant to the case.

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[48] Harold Hongju Koh, "The 1994 Roscoe Pound Lecture: Transnational Legal Process," *Nebraska Law Review* 75, no. 1 (1996): 199–205; Harold Koh, "The 1998 Frankel Lecture: Bringing International Law Home," *Houston Law Review* 35 (1998): 626–627, 643.

[49] Nollkaemper, *Op.Cit.*, 348.

[50] https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11, Accessed on August 10, 2017.

Another possibility is that the judges did not consider Indonesia's adherence to treaties or the potential global implications of Indonesia's actions. As previously discussed, the judges recognize that international legal materials, especially those binding on Indonesia, carry significant moral weight that cannot be easily overlooked. Non-compliance, they conclude, would undermine Indonesia's international reputation.[51] The judges prioritize delivering justice and maintaining Indonesia's credibility over strengthening global governance. This perspective is understandable; as they are oath-bound to uphold the Constitution, it is reasonable for the judges to act primarily as national entities rather than as agents of the international order, as observed by Benvenisti.

Thirdly, a broader engagement with international law, or even a direct application of treaties to which Indonesia is a party, would be beneficial for reinforcing global governance and reaffirming Indonesia's international commitments. In the case of internet restrictions in Papua, the Court nearly directly applied the International Covenant on Civil and Political Rights (ICCPR) and its General Comment No. 34, in addition to implementing Law No. 19/2016, which amends Law No. 11/2008 on Information and Electronic Transactions. The Court identified the restriction as a derogation of rights under Article 4, paragraph 1 of the ICCPR, permissible only in situations of public emergency. Consequently, the Court examined Government Regulation instead of Law No. 23/1959 on Emergency Situations and found that the restriction was not enacted following an officially declared emergency, as required by the Regulation.

A thorough understanding of the status of international law within Indonesia is essential. Although Indonesia's domestic courts have demonstrated that international law can be a reliable source of law (at least, in substance), this view is not universally held. Aminoto and Agustina Merdekawati have highlighted a prevailing tendency in Indonesia to recognize only those laws outlined in Law No. 12/2011 on the Drafting of Regulations as legitimate. According to this law, the hierarchy of regulations in Indonesia is, in descending order of authority: the Constitution, Decrees of the People's Consultative Assembly, Laws, Government Regulations, Presidential Regulations, Provincial Regulations, and Municipal Regulations. [52]

Moreover, even when Indonesia has ratified or acceded to a treaty, there remains ambiguity regarding its readiness for implementation. This uncertainty stems from the clarity on whether a treaty is self-executing.[53]

C. Conclusion

The conclusion contains a description that should answer the objectives of the research. Provide a clear and concise conclusion. Do not repeat the abstract or describe the research results. Give a clear explanation regarding the possible application or suggestions related to the research findings.

Although the judgment was grounded in national law, it revealed the Court's indirect application of international law. Consequently, the Court's decision underscores the support for realizing Indonesia's international responsibilities within global climate governance. It has been demonstrated that the responsibilities of domestic courts extend beyond merely upholding the importance of national law and delivering justice of the highest quality following the Constitution. Domestic courts also bear the crucial responsibility of ensuring respect for international law, or at the very least, for treaties to which the state is a party. This obligation

[51] Agusman, *Op.Cit.*, 22; Sukarno, *Op.Cit.*, 595, 597.
[52] Aminoto and Merdekawati, "Prospek Penempatan Perjanjian Internasional Yang Mengikat Indonesia Dalam Hierarki Peraturan Perundang-Undangan Indonesia," *Mimbar Hukum* 27, no. 1 (2015): 82-97, 84, DOI: 10.22146/jmh.15912.
[53] *Ibid.*, 89; Damos Dumoli Agusman, "Self Executing And Non Self Executing Treaties What Does It Mean?," *Indonesian Journal of International Law* 11, no. 3 (2014): 320-344, 344, DOI: 10.17304/ijil.vol11.3.501.

is about maintaining the state's reputation as law-abiding and contributing to the goals aspired to by the international community. Furthermore, it is important to recognize that domestic courts are positioned to compel other branches of government to enact policy changes. This role is vitally important to the success of global governance. It should serve as a motivation for Indonesian legal professionals and judges to acquire a comprehensive understanding of relevant international laws and the specific aspects of governance they address.

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