

LEGAL CONSEQUENCES OF DELAYING THE IMPLEMENTATION OF AN INTERNATIONAL TREATY

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ABSTRACT

Two aspects of delays in the implementation of international treaties are delays based on legal subjects or states that are parties to the treaty and delays based on the existence and absence of arrangements in the treaty itself. Whether the delay occurs based on the agreement of all parties or because of the interests of one particular country only. This research method is normative juridical. The results of the study explain the procedures that must be followed if a party proposes a delay in the implementation of an international agreement, regulated in the 1969 Vienna Convention and the UN Charter. Furthermore, the opportunity for the state that proposes a postponement to withdraw its proposal at any time, as long as the proposal has not yet caused any effects or consequences. international agreements that are postponed will certainly have legal consequences both for the agreement itself, the parties, and even in certain cases also for third parties. Parties who agree to postpone are released from the obligations stemming from the treaty in relations between themselves during the postponement period. However, the rights and obligations stemming from the provisions of the treaty continue.

Dua aspek keterlambatan pelaksanaan perjanjian internasional adalah penundaan berdasarkan subjek hukum atau negara yang menjadi pihak dalam perjanjian dan penundaan berdasarkan ada dan tidak adanya pengaturan dalam perjanjian itu sendiri. Apakah penundaan itu terjadi atas dasar kesepakatan semua pihak atau karena kepentingan satu negara tertentu saja. Metode penelitian ini adalah yuridis normatif. Hasil kajian menjelaskan prosedur yang harus ditempuh jika salah satu pihak mengajukan penundaan pelaksanaan suatu perjanjian internasional yang diatur dalam Konvensi Wina 1969 dan Piagam PBB. Selanjutnya, kesempatan bagi negara yang mengajukan penundaan untuk menarik kembali usulannya sewaktu-waktu, selama usulan tersebut belum menimbulkan efek atau akibat. perjanjian internasional yang ditunda tentu akan menimbulkan akibat hukum baik bagi perjanjian itu sendiri, para pihak, bahkan dalam hal tertentu juga bagi pihak ketiga. Pihak-pihak yang setuju untuk menunda dibebaskan dari kewajiban-kewajiban yang timbul dari perjanjian dalam hubungan di antara mereka sendiri selama jangka waktu penundaan. Namun, hak dan kewajiban yang berasal dari ketentuan perjanjian terus berlanjut.

Kata Kunci: *Legal Consequences, Postponement, International Treaties.*

A. INTRODUCTION

Delays in the implementation of an international treaty are regulated in articles 57, 58, 59, 60 and 61 of the 1969 Vienna Convention. Article 57 contains two aspects, namely, delays based on legal subjects or states that are parties to the agreement and delays based on the presence and absence of arrangements in the agreement itself (Tobing, 2023). Judging from the legal subjects or parties bound to an international treaty, according to article 57, a treaty can be postponed based on the agreement of all parties, or, based on the interests of one country or one particular party only (Damongilala, 2022);(Handayani, 2019).

Whether the postponement occurs based on the agreement of all parties or because of the interests of one particular state, everything must be based on the second aspect, namely the presence or absence of arrangements for postponement in the treaty itself. If the international treaty provides separately for the possibility of postponing its implementation, then the postponement must be carried out in accordance with the provisions on postponement (Hetharie, 2022). Conversely, if such an arrangement does not exist, the treaty can also be postponed, with prior consultation between the parties until an agreement is reached to postpone it (Zhang et al., 2014).

It should be understood that a multilateral international treaty is postponed only for one or two participating states, while for the other participating states the treaty is still in force. For example, there are one or two states parties to a treaty that for one reason or another are unable to carry out the obligations specified in the provisions of the treaty, even though the other states parties do not face the same problem so they can still implement all of its provisions. This issue is regulated in Article 58 under the title, suspension of the operation of a multilateral international treaty by agreement between certain of the parties only (Hasim et al., 2018).

Article 58 paragraph 1, two or more parties to a multilateral international treaty may conclude an agreement to postpone the implementation of the provisions of the treaty for the time being and to apply only between themselves, if: the possibility of such a postponement is specified in the treaty itself and is not prohibited and does not affect the other parties in enjoying their rights or performing their obligations under the treaty, and is not contrary to the purpose and objectives of the treaty.

If it has been regulated expressly and in detail in one of the provisions of the agreement, then the problem becomes easier, that is, the parties who agree to make delays only need to follow the provisions. Another problem, if the agreement itself does not regulate it at all. Then, as in article 58 paragraph 1 point b provides an opportunity for the parties to reach an agreement to make the delay. However, the conditions must be met, namely, the agreement itself does not prohibit it at all. What is meant by this prohibition is a prohibition that is expressly stated. So it cannot be said to be a prohibition, if the prohibition is only a conclusion from one or several parties which is very subjective (Safitri, 2022);(Ridwan & Trilaksono, 2011).

If there is no express prohibition, and the parties intend to delay, then the agreement to delay must still be evaluated first. For example, whether the postponement does not hinder or affect other states parties in enjoying their rights or in carrying out their obligations stemming from the treaty. It should be evaluated in more depth, whether the postponement is appropriate or not in accordance with the purpose and objectives of the treaty itself. If the agreement to postpone it turns out to hamper or affect other parties in enjoying their rights or carrying out their obligations stemming from the treaty, or the postponement turns out to be contrary to the aims and objectives of the treaty, or hampers efforts to achieve the aims and objectives of the treaty, then the postponement cannot be justified (Akmaliya, 2023).

As to who conducts the assessment or evaluation of the two aspects mentioned above, it is of course the parties who intend to postpone. In practice, there may be differences of opinion between those who agree to postpone on the one hand and those who do not postpone on the other, or differences of opinion may arise after the postponement where both parties stick to their respective opinions. If there is a difference of opinion like this, so, the best effort to resolve it is to take amicable settlement methods, for example through direct negotiations between the parties. Alternatively, if this is unsuccessful, other amicable means of settlement can still be pursued (Damayanti, 2020).

Another issue can be raised, do some parties who agree to postpone the implementation of the provisions of the treaty have to seek the consent of other parties or states that do not participate in the postponement of the implementation of the provisions of the treaty? If indeed the issue of this kind of postponement has been clearly and limitatively regulated in the provisions of the treaty, strictly speaking, the postponement and the procedures or mechanisms and all its consequences have been regulated in it, then the consent of the other parties is not needed, unless the arrangement itself expressly states the necessity to obtain such consent.

The absence of the need for consent is expressly confirmed by article 58 paragraph 2 (unless in a case falling under paragraph 1a). Conversely, in the absence of such an arrangement, Article 58 paragraph 2 further confirms that the parties agreeing to postpone the entry into force of the agreement shall notify the other parties of their intention to enter into an agreement to postpone the implementation of the provisions of the agreement. Here it is expressly determined that the parties concerned should notify, not necessarily ask for approval from parties who do not participate in the agreement to postpone. Strictly speaking, what should be notified is the intention to postpone, not the result of the agreement to postpone.

International treaty law contains the term shall notify in the provisions of article 58, firstly, it is facultative and appears more as a courtesy. The states concerned may not notify their intention to postpone the provisions of the treaty, therefore, it is the states themselves who determine whether or not to notify the other states parties of their

intention. So at the extreme, states may decide to agree to postpone the entry into force of specific treaty provisions among themselves, without first notifying the other states parties of their intention.

As for seeking consent, it is a requirement, and the existence of consent is a condition for the states to be able to act on the postponement. So without the consent of the other states, the postponement of the implementation of the provisions of the treaty cannot be done. If the postponement is still carried out, then the validity of the postponement can be questioned by other participating countries.

Articles 59 and 60 regulate the termination and suspension of the implementation of an international treaty, by combining the two, due to the same reasons that can be put forward both to terminate and delay the implementation of an international treaty. Article 59 paragraph 1 regulates termination, while article 59 paragraph 2 regulates the delay in the entry into force of an international agreement, which is caused by the making of a later agreement (new agreement). if a new agreement is made, there are two possibilities, namely, the old agreement can be terminated or its implementation can be delayed. Based on the above background, the focus of this research is the legal consequences of delaying the implementation of an international treaty.

B. METHOD

This research method is normative juridical. This research is conducted by examining library materials, starting from primary legal materials, including all laws and regulations governing the position of international trade agreements in the National legal system, secondary legal materials (legal materials that provide explanations to primary legal materials) and tertiary legal materials (legal materials that provide guidance and explanations to primary and secondary legal materials) (Benuf & Azhar, 2020);(Suganda, 2022).

C. RESULTS AND DISCUSSION

In the practice of making international agreements, it is possible for countries to make or become parties to international agreements both bilaterally and multilaterally with the same or almost the same material (Juwana, 2019). This apparently raises the issue, how is the relationship between one agreement and the other considering the material is the same or almost the same? In this case there is indeed no one answer that applies generally to all, considering the relationship between one agreement and another, not always the same. In some cases, each agreement remains in force because one agreement does not interfere with or affect the implementation of the other agreement, while in other cases, one agreement has to be postponed or terminated due to conflicts in its implementation (Situngkir, 2019).

A few examples will show the problem more clearly. For example, country A concludes a treaty on extradition with country B. Then country A also concludes bilateral extradition treaties with countries C, D, E, F, etc., respectively. Likewise, country B concludes bilateral extradition treaties with countries C, D, E, F, and others. Another example, for example, in 1950, countries A and B made a treaty on the boundary line of the two countries and then in 2000 the two countries made a new treaty governing the same issue, because the old treaty was no longer suitable. The above two examples, which are relatively easy to analyze, are just models to show how the relationship between old and new treaties.

In practice, the relationship between old and new treaties will be even more varied, given the various kinds and forms of international treaties that exist in the world, so it is not easy to ascertain whether the old treaty will be terminated or postponed after the entry into force of the new treaty. Article 59 paragraph 2, which is a general provision regarding the postponement of the entry into force of an international treaty, only states that an old treaty is only considered to be postponed if it is specified as such in the new treaty or if there is no such provision, a treaty is postponed if there is an intention of the parties to postpone its implementation.

So the matter will be easier, if the new agreement expressly states that the old agreement is suspended. Conversely, if the affirmation is completely absent, then the question becomes whether the old agreement is postponed with the entry into force of the new agreement? To be sure, Article 59 paragraph 2 states that it should be seen from the intention of the parties. Thus, if the intention of the parties appears to be to postpone the entry into force of the new contract, then the old contract must be postponed.

The question arises, how to find out the intentions of the parties? A relatively easy way to find out is on their practice or behavior in the application of both agreements. If it appears that the parties are more and more often practicing the provisions of the new treaty and on the other hand the old treaty seems to be ignored, then in this case it can be concluded that the parties intend to delay the application of the old treaty. Meanwhile, Article 60 regulates the termination or postponement of the implementation of international agreements due to a violation of the provisions of the agreement.

Article 60 paragraph 1 stipulates that if there is a violation of the material of a bilateral treaty by one of the parties, this gives the other party the right to use it as a reason to postpone the implementation of the treaty in whole or in part. When the state concerned will make a decision to postpone it, this is very casuistic, for example depending on the size of the violation committed by the partner, whether or not the treaty is important to the parties, the amount of loss suffered by the party that intends to terminate or postpone it.

Article 60 paragraph 2 regulates the postponement of the implementation of a multilateral agreement due to a breach by one of the parties to the material of the agreement. It is stipulated in paragraph 2 item a, that a breach by one of the parties shall

entitle the other parties by unanimous consent to suspend the implementation of the agreement between the parties either in whole or in part, either in relation between themselves on the one hand and the breaching state on the other hand, or between all parties.

If a party violates a provision of the treaty, it may affect the implementation of the treaty in whole, in part, or in certain provisions of the treaty, depending on the nature and extent of the violation, which may cause harm to all, some, or only some of the states parties. It is these parties that can call for the implementation of the treaty to be postponed. However, the postponement must be done by unanimous agreement, whether the postponement is intended for the whole or only part of it, whether the postponement is between the parties in relation to the party that committed the violation or between all parties. If the breach results in the loss of only one party, the party concerned may assert it as a reason for postponing the implementation of the treaty in whole or in part, only in relation between itself and the breaching state. This is stipulated in article 60, paragraph 2, item b.

Indeed, there are several types of multilateral international agreements, if one of the participating countries violates its provisions, it will change the position of the other parties in the implementation of their rights and obligations after the violation. As a fictitious example, country A as a superpower that is obliged to pay the largest annual contribution (almost 40% of the entire budget specified in the multilateral agreement) has refused to pay the annual contribution it is obliged to pay. Such an action is a violation of the terms of the treaty, which in turn affects the implementation of the treaty itself (Purwanto, 2011).

If diplomatic or consular relations are severed between two countries, this does not affect the existence of the treaty itself. So, the treaty remains valid and binding as positive law on the parties, unless the existence of diplomatic or consular relations is inseparable from the application of the treaty. Of course, this delay only lasts for a short period of time, although it can last for an indefinite period of time, namely during the interruption of diplomatic or consular relations. If diplomatic or consular relations are subsequently normalized, then the treaty can be implemented as usual, so in other words, the period of delay in its implementation is ended.

The procedure that must be followed if there is a party that proposes a postponement or an agreement to postpone the implementation of an international treaty, is regulated in article 65 of the 1969 Vienna Convention which also regulates the procedure for declaring invalidity and termination of entry into force and withdrawal from an international treaty. If there is one or more states. If one or more states parties wishes to postpone the implementation of an international treaty, the party concerned must notify the other parties in writing (article 67 paragraphs 1 and 2) of its intention to postpone. The notification must be accompanied by a proposal regarding what steps

should be taken regarding the postponement accompanied by the reasons why it is necessary to postpone (article 65 paragraph 1 second sentence) (Purwanto, 2009).

Within a maximum period of three months from the date of receipt of the notice of intention to postpone, there being no objection or refusal from the other states parties, the proposing state may take the measures it proposes. As stipulated in article 67, all instruments of notification and instruments of measures to be taken (as proposed) must be signed by the head of state, or head of government, or minister competent in foreign affairs. If the instrument is not signed by one of these high-ranking officials, the official signing the instrument must have obtained a power of attorney or full powers.

On the other hand, if any state party objects or rejects it, according to article 65 paragraph 3, the parties (the proposing state party and the rejecting state or states party) should resort to peaceful means of dispute settlement as indicated in article 33 of the UN Charter, such as negotiation, mediation, intermediation, or through a dispute settlement body. If the parties have successfully resolved it, the parties are still bound by the provisions of the agreement that are still in force. So whatever the outcome of the settlement may not affect the rights and obligations of the parties stemming from the provisions of the agreement that still binds them (article 65 paragraph 4).

Furthermore, Article 68 provides an opportunity for the state or states proposing a postponement to withdraw its proposal at any time, as long as the proposal has not yet caused any effects or consequences. When the proposal is said to have not yet caused any effect or consequence cannot be ascertained in general. If the proposal has been accepted and there is a rejection from one or more other States Parties, or some reject it and some approve it, but as long as it is limited to reactions only, without any consequences, then in this case, the proposal can still be withdrawn by the proponent. If, on the other hand, the rejection or approval has been followed up with the steps described above, so that it has had an effect on the parties, then in this case the proposal should not be withdrawn. However, if the parties agree and also agree to resolve the consequences that have occurred, then even this is still justified. In this case, the will of the parties must still be given a higher place than the provisions of articles 65, 66 and 67 of the Convention.

An international treaty that is delayed in implementation will certainly have legal consequences both for the treaty itself, for the parties, and even in certain cases also for third parties. If the treaty itself has regulated it, then everything must be done in accordance with these provisions. Or if there is no regulation in the agreement itself, but the parties when agreeing to postpone its implementation and it turns out that it also regulates all the legal consequences that occur, will occur, or are expected to occur, then in cases like this, what is agreed is what must be followed. On the other hand, if there is no such thing at all, so the parties agree to postpone the implementation of the agreement only, then the issue arises about the legal consequences, especially about how to resolve them.

For the latter, Article 72 paragraph 1 point a states that the parties who agree to postpone are released from the obligations stemming from the agreement in the relationship between themselves during the postponement period. As for the relationship between the parties as stipulated in the agreement, for its provisions that are not postponed, during the postponement period, the rights and obligations stemming from the provisions of the agreement continue as usual (Article 72 paragraph 1 item b).

During the postponement period, which means that during the postponed implementation of the agreement provisions, of course, as stated above, the parties do not receive rights or do not perform obligations from the postponed implementation of the agreement provisions. However, the parties must not use the delay as an opportunity to do or not do an act that is contrary to the provisions of the agreement or contrary to the purpose and objectives of the agreement. In other words, as stipulated in Article 72 paragraph 2, during the postponement period the parties must control themselves from committing acts that tend to hinder the implementation of the agreement.

International treaties whose implementation is postponed only for part or some of the provisions of the entire provisions based on the agreement of all participating countries, the legal consequences are only for part or some of the provisions that apply to all participating countries. Meanwhile, the rest of the provisions of the agreement that are not postponed must still be implemented by all participating countries. As a simple example, a boundary line agreement (land and water area) between country A and country B whose provisions consist of two parts, namely the part concerning the land boundary and the part concerning the water area. Both parties agree to postpone the implementation of only the provisions of the agreement relating to the water area, while the provisions relating to the land area are not postponed, so they can still be implemented as usual. In this case, the legal consequences are with respect to the part or provision of the agreement that is postponed. And so on, according to the type of postponement itself.

D. CONCLUSION

The procedure that must be followed if a party proposes to postpone the implementation of an international agreement, is regulated in article 65 of the 1969 Vienna Convention. article 67 paragraphs 1 and 2, the party that delays must notify it in writing with a proposal regarding what steps should be taken with the reasons within a maximum period of three months from the date of receipt of the notification, for the state party that objects or refuses can take the means of peaceful dispute resolution as indicated in article 33 of the UN Charter, for example negotiation, mediation, intermediation, or through a dispute resolution body. As long as the treaty remains in force the parties remain bound by the terms of the treaty. So whatever the outcome of the settlement may not affect the rights and obligations of the parties

stemming from the provisions of the agreement that still binds them (article 65 paragraph 4).

Furthermore, Article 68 provides an opportunity for the state that proposes a postponement to withdraw its proposal at any time, as long as the proposal has not yet caused any effects or consequences. International agreements that are postponed will certainly have legal consequences both for the agreement itself, for the parties, and even in certain cases also for third parties. Parties who agree to postpone are released from the obligations stemming from the treaty in relations between themselves during the postponement period. However, the parties must not use the postponement period as an opportunity to do or not do an act that is contrary to the provisions of the agreement or contrary to the purpose and objectives of the agreement. during the postponement period the parties must control themselves from actors that tend to hinder the implementation of the agreement. the provisions on postponement of the implementation of agreements stipulated in the Convention are only as signs and are general in nature. International treaties that are postponed for implementation only for part or several provisions of the entire provisions based on the agreement of all participating countries, the legal consequences are only for part or several provisions that apply to all participating countries. While the rest of the provisions of the agreement that are not postponed must still be implemented by all participating countries.

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