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ALSA LEGAL ENGLISH GLOSSARIUM #4

Public International Law

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Introduction to ALSA Legal English Glossarium

I. Introduction to Legal English

According to the Cambridge Dictionary, language is a system of communication that consists of sounds, words, and grammar which is used by people from a certain country to express themselves.[1] Language enables communication, as it allows people to convey information to one another, and serves as a means of expression for personal, national, even religious identities.[2] Among the different languages spoken globally, English stands out because it is widely adopted as a tool for communicating across diverse cultures and backgrounds. With over 1.5 billion speakers across the globe, English is the most spoken language in the world.[3] Therefore, fluency in English is especially crucial today as it allows people to communicate worldwide, providing access to countless educational and professional opportunities. In professional fields, English serves as a critical medium to communicate with a diverse audience and gain knowledge from a vast selection of sources.[4] English, particularly Legal English, is also important in the legal profession, where precise communication and persuasion depend heavily on language comprehension. The English language in the legal world is distinctive within

[1]Cambridge Dictionary, s.v. "language," accessed July 16, 2025, https://dictionary.cambridge.org/dictionary/english/language.
[2]David Crystal and Robert Henry Robins, "Language," accessed July 16, 2025, https://www.britannica.com/topic/language.
[3]Ethnologue, "What Is the Most Spoken Language?," accessed July 16, 2025, https://www.ethnologue.com/insights/most-spoken-language/.
[4]Athukur Rahman and Fahamida Akter, "Enhancing English Language Skills for Professional Domains: Strategies for Clear and Concise Professional Communication," *Academy of Strategic Management Journal*, accessed July 16, 2025, https://www.abacademies.org/articles/enhancing-english-language-skills-for-professional-domains-strategies-for-clear-and-concise-professional-communication-16742.html.

its own disciplines.[5] It is marked by unique features in its terminology, structure, grammar, punctuation, and other conventions.[6] Some words in legal contexts carry meanings or functions that differ from their use in everyday conversation. For example, in standard English, the word "do" in a declarative sentence typically serves to emphasize a point, whereas in Legal English, it fulfills a different purpose, such as indicating something is performed.[7]

In today's rapidly evolving international landscape where legal systems frequently intersect, mastery of legal English has become essential for the precise drafting of legal documents and clear understanding of intricate legal concepts. In the context of legal drafting, mastery of Legal English is crucial as legal documents such as contracts and regulations require consistency and clarity, qualities that depend heavily on the accurate use of specialized legal terminology. For law students, developing Legal English skills from an early point is helpful in building the ability to read, understand, and eventually draft legal documents in a clear and structured manner. Therefore, gaining exposure to Legal English during legal education helps students become more familiar and competent in working with the types of documents commonly encountered later on in legal practice.

Beyond drafting, Legal English becomes foundational for law students to utilize and interpret principles encountered in legal practice that serve as the basis of legal systems. A clear understanding of fundamental legal concepts in Legal English is crucial for students to effectively engage with complex legal issues. Furthermore, fluency in Legal English is needed by law students in order to construct precise arguments, fully grasp legal materials, conduct thorough research, and fulfill many other academic or professional

[5]Tira Nur Fitria, *Legal English for Law Students: English for Specific Purposes (ESP) = Bahasa Inggris Hukum Untuk Mahasiswa Hukum (Jilid 1)* (CV Eureka Media Aksara, 2024).

[6]Shiflett, Marcela. 2017 "Development in Legal English." *International Journal of Novel Research in Education and Learning* 4 (2):108-110. www.noveltyjournals.com.

[7]Akinbode, Oluwole. 2014. "LEGAL ENGLISH: A SPECIAL VARIETY OF ENGLISH". *Journal Of Social Sciences* 6 (2):24-35. //jss.gcuf.edu.pk/index.php/jss/article/view/5.

requirements. Misunderstanding legal terminology in practice can easily lead to significant problems such as flawed case analysis, incorrect legal arguments, and a misinterpretation of legal context and concepts. Such errors could hinder students' legal reasoning capabilities. To conclude, proficiency in Legal English is essential to equip law students and practitioners with the skills needed to navigate the increasingly complex legal settings.

II. What is ALSA Legal English Glossarium #4?

Asian Law Students' Association (**ALSA**) is an international, non-political, and non-profit organization for law students throughout Asia. ALSA has 18 (eighteen) National Chapters, including Indonesia, Malaysia, Singapore, Brunei Darussalam, Thailand, Laos, Myanmar, Vietnam, the Philippines, Sri Lanka, Hong Kong, Macau, Taiwan, China, South Korea, India, Cambodia, and Nepal, as well as 3 (three) observers: Bangladesh, Azerbaijan, and the United Kingdom. To date, the ALSA National Chapter Indonesia (**ALSA Indonesia**) has 15 (fifteen) Local Chapters and 1 (one) observer spread across 16 (sixteen) universities in Indonesia. One of the Local Chapters of ALSA Indonesia is the ALSA Local Chapter of the Universitas Indonesia **(ALSA LC UI)**, which also serves as one of the autonomous bodies within the Faculty of Law at the Universitas Indonesia (**FH UI**).

ALSA Legal English Glossarium is a compilation of commonly used terminology within a particular area of law. To deepen the reader's understanding, relevant explanations and examples in legal instruments are provided for each term. ALSA Legal English Glossarium is rooted in 3 (three) of the 4 (four) pillars of ALSA, which are legally skilled, academically committed, and internationally minded. By increasing the reader's vocabulary, the pillars of academically committed and legally skilled offer the hope of assisting

readers in better grasping legal information. Furthermore, by improving readers' comprehension of English legal terminology, the internationally focused pillar helps them become more adaptable to global competitiveness.

The theme for this year's ALSA Legal English Glossarium is Public International Law. Global issues such as war, migration, international crime, and diplomacy have a growing impact on people's lives and the relationships between countries. Many of these problems are closely linked to key principles like human rights, national sovereignty, and international cooperation. These principles are the foundation of Public International Law, which governs how countries and international organizations behave. Public International Law plays an important role in creating a shared legal framework that world leaders, governments, and legal professionals use to deal with challenges that require international solutions. For this reason, law students must understand the basic terms and concepts of Public International Law to become a skilled and informed legal professional in today's interconnected world. ALSA Legal English Glossarium #4 aims to be a resource for law students, legal professionals, and the general public to comprehend transnational legal issues. It is anticipated that the knowledge acquired from this glossarium would provide legal professionals and students with a solid grasp of Public International Law by bridging the gap between legal terminology and practical application, inspiring future legal professionals to support global peace, collaboration, and law enforcement.

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INTRODUCTION TO PUBLIC INTERNATIONAL LAW

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Introduction to Public International Law

Black's Law Dictionary defines Public International Law as a set of rules that governs the rights and duties of each state, inter-governmental agency, and departments.[8] This body of law regulates a broad spectrum of interactions between states, including treaty-making, diplomatic relations, the use of force, and international responsibility.[9] These rules shape how countries operate and maintain order within the international community. Moreover, it is essential to understand certain basic materials in Public International Law. These materials include the Relation between International Law and National Law as well as The Subjects of International Law.

To further comprehend Public International Law, it is crucial to first distinguish the fundamental characteristics of domestic law. A solid foundation in core concepts within the scope of domestic law, such as knowing the subjects, encourages a clearer understanding of the broader framework of international legal systems.[10] It is important to see how Public International Law connects with domestic law, as the two are interdependent. International law often considers domestic law for its implementation while domestic law is also shaped by international obligations.[11] Ultimately, it is important to understand to whom and to what extent international law is applicable. Thus, the identification of its subjects is a key characteristic in grasping the general framework as well as the actions regulated by international law.[12] In the context of Public International Law, subjects discuss persons or entities who possess international rights and duties. Therefore, since terms regarding the relationship between national and international law and subjects are commonly used, it is essential to develop a proper understanding of them.[13]

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[8]"Public International Law," *Black's Law Dictionary*, accessed July 3, 2025, https://thelawdictionary.org/public-international-law/.
[9]Malcolm N. Shaw, *International Law*, 6th ed. (New York: Cambridge University Press, 2008), 1–2.
[10]*Ibid.,* 2.
[11]*Ibid.,* 2.
[12]Abdul Hamid Kwarteng, "Is International Law Really Law?" *Asian Research Journal of Arts and Social Sciences*, no. 5 No. 4 (2018): 4, https://doi.org/10.9734/ARJASS/2018/39608.
[13]Martin Dixon, *International Law*, 7th ed. (Oxford: Oxford University Press, 2013), 116.

Introduction to Public International Law Terminologies				
No.	**Terminology**	**Translation**	**Explanation**	**Example in Legal Instrument**
The Subjects of International Law				
1.	Legal Personality	*Kepribadian Hukum*	A concept used to distinguish the capacity of entities to have rights and duties in a legally relevant way (enter into contracts or commit torts).[14]	"ASEAN, as an inter-governmental organization, is hereby conferred **legal personality.**" (Article 3, The ASEAN Charter)[15]
2.	State	*Negara*	An entity/international person that possesses permanent population, defined territory, government, and a capacity to enter into relations with other states.[16]	"Article 1 The **state** as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states." (Article 1, Montevideo Convention on the Rights and

[14]Roland Portmann, *Legal Personality in International Law* (Cambridge: Cambridge University Press, 2010), 1-10.
[15]Charter of the Association of Southeast Asian Nations, adopted November 20, 2007, entered into force December 15, 2008, Article 3.
[16]Shaw, *International Law*, 6th ed., 197-198.

				Duties of States)[17]
3.	International Organizations	*Organisasi Internasional*	Entities established through agreements between states, that are delegated supervisory, rule-making, and judicial powers.[18]	"1. The present Convention applies to the representation of States in their relations with any **international organization** of a universal character, and to their representation at conferences convened by or under the auspices of such an organization, when the Convention has been accepted by the host State and the Organization has completed the procedure envisaged by article 90." (Article 2, Paragraph 1 Vienna Convention of the Representation of States in Their Relations With International Organizations of A Universal Character)[19]
4.	International Committee of the Red Cross	*Komite Palang Merah Internasional*	An organization established in 1863 as a private Swiss association for fulfilling humanitarian tasks in times of war that led to the endowment of specific rights under the 1949 Geneva Convention.[20]	"2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the **International Committee of the Red Cross**, may offer its services to the Parties to the conflict."

[17]Montevideo Convention on the Rights and Duties of States, adopted December 26, 1933, 165, L.N.T.S 19, Article 1.
[18]Ian Brownlie and James Crawford, *Brownlie's Principles of Public International Law* (New York: Oxford University Press, 2012), 108.
[19]Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, Mar. 14, 1975, Article 2.
[20]Christian Walter, "Oxford Public International Law: Subjects of International Law," Oxford Public International Law, 2007, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1476.

				(Geneva Convention For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 Article 3 Number 2)[21]
5.	Belligerent	*Pemberontak* (This term is the closest translation as there is no equivalent word for 'belligerent' in Indonesian.)	Insurgent body within a state who are recognized as the de facto authorities that are in control of a specific territory in which they have the power to enter legal relations and conclude agreements on the international plane with states and other belligerents/insurgents.[22]	"**A belligerent** party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." (Article 3 The Hague Convention 1907, Convention (IV) respecting the Laws and Customs of War on Land)[23]
6.	The Holy See	*Takhta Suci*	The government of the Catholic Church led by the Pope who exercises a unique sovereignty than other subjects of international law.[24]	"Article 2 Italy recognizes the sovereignty of **the Holy See** in international matters as an inherent attribute in conformity with its traditions and the requirements of its mission to the world."

[21]Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, Article 3.
[22]Ian Brownlie and James Crawford, *Brownlie's Principles of Public International Law* (New York: Oxford University Press, 2012), 170.
[23]Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, adopted October 18, 1907, entered into force January 26, 1910, Article 3.
[24]Gerd Wesdickenberg, "Oxford Public International Law: Holy See," Oxford Public International Law, 2006, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1052.

				(Article 2, Lateran Treaty of 1929)[25]
The Relation between International Law and National Law				
7.	Sovereignty	*Kedaulatan*	The right of a State to act independently of other States, subject only to such restrictions as international law imposes.[26]	"1. The regime of passage through straits used for international navigation established in this Part shall not in other respects affect the legal status of the waters forming such straits or the exercise by the States bordering the straits of their **sovereignty** or jurisdiction over such waters and their air space, bed and subsoil. 2. The **sovereignty** or jurisdiction of the States bordering the straits is exercised subject to this Part and to other rules of international law." (Article 34, United Nations Convention on The Law of The Sea)[27]
8.	Dualist System	*Sistem Dualisme*	A system that views international law and national law as two separate legal systems that require international law to be ratified into national legislation in order to be legally	"However, under the UK's constitutional arrangements, the agreement will not automatically be part of the UK's domestic legal order. This is because the UK has a **dualist** rather than a monist legal system, which means

[25]Lateran Treaty, signed February 11, 1929, Italy–Holy See, Article 2.
[26]Anthony Aust, *Handbook of International Law* (Cambridge: Cambridge University Press, 2010), lvii.
[27]Article 79, United Nations Convention on the Law of the Sea.

			binding in that country. [28]	its treaty obligations do not automatically form part of its internal legal order. In this respect, the UK is no different from any other **dualist** State, including some Member States of the EU. It will therefore be necessary for the UK to enact domestic legislation in order to give effect to the Withdrawal Agreement." (Technical Note on Implementing the Withdrawal Agreement)[29]
9.	Monist System	*Sistem Monisme*	A treaty may, without legislation, become part of domestic law once it has been concluded in accordance with the constitution and has entered into force for the state.[30]	"29. Even if treaties are part of the law of the land, as is the case for international legal norms in **monist systems**, or after having been transformed into domestic law, as is the case in dualist systems, they cannot always be directly applied. The "direct effect" of international law (notably of the provisions of international treaties) is another legal factor which shapes the relevance of a human rights treaty in the domestic legal order, and of great importance for the domestic judiciary in particular. The term "direct effect" is understood in this Report as

[28]"Dualist System in International Law," Peace and Justice Initiative, accessed June 23, 2025, https://www.peaceandjusticeinitiative.org/implementation-resources/dualist-and-monist.

[29]Technical Note: Additional Information on the UK's Proposal for Implementing the Withdrawal Agreement (Government of the United Kingdom, February 2018), 1.

[30]Anthony Aust, *Modern Treaty Law and Practice* (Cambridge: Cambridge University Press, 2007), 183.

				the legal mechanism through which enables a domestic body (especially a court) to apply an international rule directly; this application can render a rule of domestic law which is not in conformity with international law illegal." (Report on The Implementation of International Human Rights Treaties in Domestic Law and The Role of Courts, No. 29, Venice Commission of The Council of Europe)[31]
10.	Jurisdiction	*Yurisdiksi*	The right in international law for a State to exercise authority over its nationals and persons and things in its territory, and sometimes abroad (extraterritorial jurisdiction).[32]	"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic **jurisdiction** of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII." (Article 1, No. 7, Charter of The United Nations and Statute of The International Court of Justice)[33]

[31]"Report on The Implementation of International Human Rights Treaties in Domestic Law and The Role of Courts," Venice Commission of The Council of Europe, last modified December 8, 2014, https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)036-e. 13. No. 29.

[32]Anthony Aust, *Handbook of International Law*, lv.

[33]*Statute of The International Court of Justice*, opened for signature 26 June, 1945, entered into force 24 October, 1945. U.N.T.S. 3, art. 3.

11.	Treaty	*Traktat*	An international agreement in writing between two states (a bilateral treaty) or a number of states (a multilateral treaty), which is binding in international law and constitutes the equivalent of the municipal-law contract, conveyance, or legislation.[34]	"1. The adoption of the text of **a treaty** takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2. 2. The adoption of the text of a **treaty** at an international conference takes place by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule." (Article 9, Vienna Convention on the Law of Treaties)[35]
12.	Convention	*Konvensi*	As a source of law, apart from international customary rules and general principles of international law and - as a secondary source - judicial decisions and the teachings of the most highly qualified publicists.[36]	"Except where otherwise provided in this **Convention**, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State." (Article 5, United Nations Convention on The Law of The Sea)[37]

[34]"Treaty," Oxford Reference, accessed July 22, 2025, https://www.oxfordreference.com/display/10.1093/oi/authority.2011080310.
[35]*Vienna Convention on the Law of Treaties*, adopted May 23, 1969, entered into force January 27, 1980, No. 1155. U.N.T.S. 331, art. 9.
[36]"Definitions of Key Terms Used in the UN Treaty Collection," United Nations Treaty Collection, accessed August 10, 2025, https://treaties.un.org/pages/Overview.aspx?path=overview/definition/page1_en.xml.
[37]Article 5, United Nations Convention on The Law of The Sea, 1982.

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SOURCES OF INTERNATIONAL LAW

ALSA LEGAL ENGLISH
GLOSSARIUM #4

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Introduction to Sources of International Law

Sources of Public International Law have been explained by some experts as the origin or reason behind international law.[38] They determine how legal norms are created, identified, and applied in the international legal system. Since there is no single central body governing international law, it is derived from several sources, with four globally recognized sources as stated in Article 38 (1) of the Statute of the International Court of Justice.[39] These sources include Treaties, Customary International Law, General Principles of International Law, and Judicial Decisions along with Teachings of Highly Qualified Publicists.[40]

The first mentioned source of international law is treaties, which are formal written agreements between states either bilateral or multilateral and sometimes international organizations, that are legally binding.[41] While the term is often used broadly to include all such agreements, a "treaty" specifically refers to more solemn agreements on serious subjects.[42] Customary international law, the second source, consists of unwritten practices accepted as law that must meet two elements, which are state practice and *opinio juris*.[43] The third source mentioned is general principles of law, which are basic legal concepts common to legal systems worldwide.[44] Lastly, judicial decisions and the teachings of highly qualified publicists serve as subsidiary means for interpreting existing laws.[45] Studying these sources helps students and

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[38]Craig Eggett, et al. "Sources of International Law," in *Public International Law: A Multi-Perspective Approach*, (London: Routledge, 2024), 156-160, https://doi.org/10.4324/9781003451327.

[39]Article 38, Statute of the International Court of Justice

[40]Ibid.

[41] "Treaties" LibGuides, University of Melbourne, accessed July 22, 2025, https://unimelb.libguides.com/internationallaw/treaties.

[42]"Definition of Key Terms Used in the UN Treaty Collection", United Nations Treaty Collection, accessed July 26, 2025, https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml.

[43]"International Custom," LibGuides, University of Melbourne, accessed July 22, 2025, https://unimelb.libguides.com/internationallaw/treaties.

[44]Shaw, I*nternational Law*, 5th ed., 92–99.

[45]Israr Khan, "Article 38 of the Statute of the International Court of Justice: A Complete Reference Point for the Sources of International Law?" The New Jurist, April 5, 2019.

practitioners understand how international treaties are formed, how states legally interact, and how global issues are addressed through law, encouraging critical thinking about legal matters that transcend national borders.

Sources of International Law Terminologies				
No.	**Terminology**	**Translation**	**Explanation**	**Example in Legal Instrument**
			Treaties	
1.	Acceptance	*Penerimaan*	The act whereby a State indicates its consent to become a party to a treaty.[46]	"Acceptance of and objection to reservations 1. A reservation expressly authorized by a treaty does not require any subsequent **acceptance** by the other contracting States unless the treaty so provides. 2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires **acceptance** by all the parties. 3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the **acceptance** of the competent organ of that organization."

[46]"Terminology," Department International Relations and Cooperation, accessed 1 August, 2025, https://dirco.gov.za/terminology/.

				(Article 20, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations)[47]
2.	Accession	*Aksesi*	The act of a state accepting the offer to become part of a treaty already negotiated and/or signed by other states.[48]	"Consent to be bound by a treaty expressed by **accession** The consent of a State or of an international organization to be bound by a treaty is expressed by accession when: (a) the treaty provides that such consent may be expressed by that State or that organization by means of **accession**; (b) it is otherwise established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations were agreed that such consent may be expressed by that State or that organization by means of **accession**; or (c) all the parties have subsequently agreed that such consent may be expressed by that State or that organization by means of **accession**."

[47] *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, adopted March 21, 1986, https://legal.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf, Article 20.

[48] "Glossary," United Nations, U.N.T.C, accessed July 23, 2025, https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml#deposit.

				(Article 15, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986)[49]
3.	Amendment	*Amandemen*	The formal alteration of treaty provisions that affect all parties of the particular agreement.[50]	"**Amendments** to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council." (Article 108, Charter of the United Nations)[51]
4.	Approval	*Persetujuan*	A form of consent given by a state to be bound by a treaty, which is often used by states whose constitutional law does not require the head of state to ratify a treaty, thereby creating the same	"The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, **approval** or accession, or by any other means if so

[49]Article 15, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.
[50]Shaw, *International Law*, 6th ed., 2008, 930.
[51]*Charter of the United Nations*, entered into force October 24, 1945, https://treaties.un.org/doc/publication/ctc/uncharter.pdf, Article 108.

			legal effect as ratification.[52]	agreed." (Article 11, Vienna Convention on the Law of Treaties)[53]
5.	Consent to be Bound	*Persetujuan Untuk Mengikatkan Diri*	The idea of acceptance by a State that it is bound by a treaty.[54]	"Article 2, (b) "ratification" means the international act so named whereby a State establishes on the international plane its **consent to be bound** by a treaty; (b bis) "act of formal confirmation" means an international act corresponding to that of ratification by a State, whereby an international organization establishes on the international plane its **consent to be bound** by a treaty; (b ter) "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State or an international organization establishes on the international plane its **consent to be bound** by a treaty." (Article 2, Vienna Convention on the Law of

[52]"Glossary," United Nations, U.N.T.C, accessed July 23, 2025,,https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml#deposit.
[53]*Vienna Convention on the Law of Treaties*, opened for signature May 23, 1969, entered intoforce January 27, 1980, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf, art. 11.
[54]"Consent to Be Bound," Oxford Reference, accessed July 23, 2025, https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095633107.

				Treaties between States and International Organizations or between International Organizations, 1986)[55]
6.	Modification	*Modifikasi*	The variation of certain treaty provisions only between particular parties of a treaty, while in their relation to the other parties the original treaty provisions remain applicable.[56]	"Revocation or **modification** of obligations or rights of third States or third organizations 1. When an obligation has arisen for a third State or a third organization in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State or the third organization, unless it is established that they had otherwise agreed. 2. When a right has arisen for a third State or a third organization in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State or the third organization." (Article 37, Vienna Convention on the Law of Treaties between States and International

[55]Article 2, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.
[56]"Definition of Key Terms Used in the UN Treaty Collection," United Nations Treaty Collection, accessed July 23, 2025, https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml.

				Organizations or between International Organizations)[57]
7.	Ratification	*Ratifikasi*	The international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.[58]	"2. The **ratifications** shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed." (Chapter 19, Article 110, Paragraph 2, Charter of the United Nations)[59]
Customary International Law				
8.	International Custom	*Kebiasaan Internasional*	Rules of international law that derive from a general practice that is accepted as law.[60]	"1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. **international custom**, as evidence of a general

[57]Article 37, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.
[58]Article 2, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.
[59]Article 110, Charter of the United Nations.
[60]Michael Wood and Omri Sender, "Customary International Law," Oxford Public International Law, accessed July 25, 2025, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1393.

				practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. ” (Article 38, Statute of The International Court of Justice)[61]
9.	International Obligations	*Kewajiban Internasional*	The essence of an international obligation is that it is something owed by one or more subjects of international law to one or more subjects of international law.[62]	“2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: a. the interpretation of a treaty; b. any question of international law; c. the existence of any fact which, if established,

[61]Article 38, Statute of The International Court of Justice.
[62]Rutsel S. Martha, "International Legal Obligation," *The Financial Obligation in International Law*, 2015, accessed July 21, 2025, doi:10.1093/law/9780198736387.003.0003. 19-21.

				would constitute a breach of an international obligation; d. the nature or extent of the reparation to be made for the breach of an **international obligation**." (Article 36, Statute of The International Court of Justice)[63]
10.	*Jus Cogens*	*Jus Cogens*	Peremptory rule of law.[64]	"Treaties conflicting with a peremptory norm of general international law ("***jus cogens***") A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." (Article 53, Vienna Convention on The Law of

[63]Article 36, Statute of The International Court of Justice.
[64]Aust, *Handbook of International Law*, lv.

				Treaties)[65]
11.	Model Law	*Hukum Model*	Non-binding legal texts that are developed by international organizations to serve as a guide for countries when developing their own national laws.[66]	"The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, should be interpreted together with the Convention (Protocol, article 1). Article 4 of the Protocol limits its applicability to the prevention, investigation and prosecution of offences that are transnational in nature and involve an organized criminal group, except as otherwise stated. These requirements are not part of the definition of the offence (see the Protocol, article 3 and article 5, paragraph 1) and national laws should establishtrafficking in persons as a criminal offence, independently of the transnational nature or the involvement of an organized criminal group (see the Convention, article 34). The **Model Law** does not distinguish between provisions that require these elements and provisions that do not, in order to

[65]Article 53, Vienna Convention on the Law of Treaties.
[66]Basheer Ahmed Mohammed Khan and Kaushal Kishore, *Policies, Practices, and Protocols for International Commercial Arbitration* (Hershey: IGI Global, 2023), https://www.igi-global.com/dictionary/model-laws/121322.

				ensure equal treatment by national authorities of all cases of trafficking in persons within their territory." (Commentary on Article 4 of the Model Law Against Trafficking in Persons)[67]
12.	National Laws	*Hukum Nasional*	A binding rule or body of rules prescribed by the government of a sovereign state that holds force throughout the regions and territories within the government's dominion.[68]	".... The official representatives attending such proceedings shall have such rights and duties as may be provided under **national laws** and regulations or international law." (Article 223, United Nations Conventions on the Law of the Sea)[69]
13.	*Opinio Juris*	*Opinio Juris*	A shortened form of the Latin phrase "*opinio juris sive necessitatis*" meaning "an opinion of law or necessity", which is one of the requirements of customary international law referring to a state's belief that a certain practice is done out of legal obligation.[70]	"For greater certainty, this Article prescribes the international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Contracting Party. The concepts of "fair and equitable treatment" and "full protection and

[67]United Nations Office on Drugs and Crime, *Model Law Against Trafficking in Persons* (New York: United Nations Publications, 2009), Commentary on Article 4, https://www.unodc.org.

[68]UNESCO World Heritage Centre, "National Law," UNESCO World Heritage Centre, accessed August 4, 2025, https://whc.unesco.org/en/glossary/313.

[69]*United Nations Conventions on the Law of the Sea*, opened for signature December 10, 1982, entered intoforce November 16, 1994, No. 31363. U.N.T.S. 1833, Article 223.

[70]"Customary International Law," Legal Information Institute, accessed August 12 2025, https://www.law.cornell.edu/wex/customary_international_law.

				security" do not require treatment in addition to or beyond that which is required by the international law minimum standard of treatment of aliens as evidence of State practice and ***opinio juris***. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article." (Article 5, No. 2, Agreement between the Government of the United Mexican States and the Government of the People's Republic of China on the Promotion and Reciprocal Protection of Investments)[71]
14.	State Practice	*Praktik Negara*	The existence of practices from various countries that are repeated continuously and accepted by states as law.[72]	" 1. Practice may take a wide range of forms. It includes both physical and verbal acts. It may, under certain circumstances, include inaction. 2. Forms of **State practice** include, but are not limited to: diplomatic acts and correspondence;

[71]Agreement between the Government of the United Mexican States and the Government of the People's Republic of China on the Promotion and Reciprocal Protection of Investments, adopted July 11, 2008, entered into force June 6, 2009, Article 5 (2).

[72]Andin Aditya Rahman, "Tentang Headquarters Agreement dan Hukum Kebiasaan Internasional," Hukumonline, accessed August 14, 2025, https://www.hukumonline.com/klinik/a/hukum-internasional-lt5055e47a63ce3/.

				conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference; conduct in connection with treaties; executive conduct, including operational conduct "on the ground"; legislative and administrative acts; and decisions of national courts. 3. There is no predetermined hierarchy among the various forms of practice." (Conclusion 6, Forms of practice, Drafts Conclusions on Identification of Customary International Law)[73]
General Principles of International Law				
15.	Binding Force	*Kekuatan Mengikat*	Legal obligation to comply with an award in which any non-compliance by states that have ratified the treaties or conventions would	"Finality and **binding force** of decisions 1. Any decision rendered by a court or tribunal having jurisdiction under this section shall be final

[73]Drafts Conclusions on Identification of Customary International Law, adopted by the International Law Commission in Yearbook of the International Law Commission, 2018, vol. II, Part Two. 2.

			constitute a breach of legal obligation.[74]	and shall be complied with by all the parties to the dispute. 2. Any such decision shall have no **binding force** except between the parties and in respect of that particular dispute." (Article 296, United Nations Convention on The Law of The Sea)[75]
16.	Good Faith	*Itikad Baik*	Principle that obligates states to act honestly, fairly, and loyally in fulfilling their international obligations, respecting commitments, and cooperating peacefully. It is the bedrock of the legal order governing treaties, state conduct, and dispute resolution.[76]	"All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in **good faith** the obligations assumed by them in accordance with the present Charter." (Article 2, No. 2, Charter of The United Nations)[77]
17.	Independent	*Independen*	Not being controlled or influenced by someone or something else; not being associated with another entity or not being dependent on	"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing

[74]Wang Dong, *Dispute Settlement: 2.9 Binding Force and Enforcement*, United Nations Conference on Trade and Development (UNCTAD), 2003, https://unctad.org/system/files/official-document/edmmisc232add8_en.pdf.

[75]Article 296, United Nations Convention on The Law of The Sea.

[76]Talya Uçaryılmaz, "The Principle of Good Faith in Public International Law / El principio de buena fe en el Derecho internacional público," *Estudios De Deusto* 68, No. 1 (2020): 43–59, https://doi.org/10.18543/ed-68(1)-2020pp43-59.

[77]Article 2 Paragraph 2, Charter of the United Nations.

			something else.[78]	within a reasonable time by an **independent** and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." (Article 6, European Convention on Human Rights)[79]
18.	Non-Discrimination	*Non-diskriminasi*	Different treatment or preference based on race, color, sex, language, religion, opinion, origin, property, birth, or status that prevents or limits equal recognition, enjoyment, or exercise of rights and freedoms by everyone.[80]	"The Authority shall carry out its obligations under the arrangements or agreements referred to in this paragraph in a manner which assures a uniform and **non-discriminatory** implementation in respect of all production in the Area of the minerals

[78]"What is Independent? Simple Definition & Meaning," LSD.Law, accessed July 22, 2025, https://lsd.law/define/independent.

[79]Council of Europe, European Convention on Human Rights, opened for signature 4 November 1950, entered into force 3 September 1953, Article 6, https://www.echr.coe.int/documents/d/echr/convention_ENG.

[80]Lord Lester of Herne Hill QC, *Non-Discrimination in International Human Rights Law*,Commonwealth iLibrary, accessed July 22, 2025, https://www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/download/439/439/3813?inline=.

				concerned. In doing so, the Authority shall act in a manner consistent with the terms of existing contracts and approved plans of work of the Enterprise." (Article 151, No. 1(c), United Nations Convention on the Law of the Sea)[81]
19.	Non-Intervention	*Non-Intervensi*	Principle that prohibits any states from interfering in the affairs of other states. This principle protects the sovereignty and right of each state to manage its own internal policies.[82]	"Principles such as those of the non-use of force, **non-intervention**, respect for the independence and territorial integrity of States, and the freedom of navigation, continue to be binding as part of customary international law, despite the operation of provisions of conventional law in which they have been incorporated." (International Court of Justice Judgment of 26 November 1984)[83]
20.	*Pacta Sunt Servanda*	*Perjanjian Harus*	Principle that obligates each state to honor and	"The States Parties to the present Convention,

[81]Article 151, No. 1 (c), United Nations Convention on the Law of the Sea.
[82]"Prinsip Non-Intervention dalam Hukum Internasional," Mundus Iuris, accessed July 19, 2025, https://mundusiuris.com/2024/12/05/prinsip-non-intervention-dalam-hukum-internasional/.
[83]Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), (Jurisdiction and Admissibility, Judgment) [1984] ICJ Rep 392.

		Ditepati	fulfill the treaties and agreements they have entered in good faith.[84]	considering the fundamental role of treaties in the history of international relations, Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful cooperation among nations, whatever their constitutional and social systems, noting that the principles of free consent and of good faith and the **pacta sunt servanda** rule are universally recognized," (Opening, Vienna Convention on the Law of Treaties 1969)[85]
21.	Reciprocity	*Resiprositas*	Principle where states mutually grant rights and fulfill obligations towards one another based on the expectation of mutual or equivalent treatment, thereby promoting compliance toward the international legal system without the need for centralized enforcement.[86]	"When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of **reciprocity** declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships,

[84]Shaw, *International Law*, 9th ed., 283.
[85]Opening, Vienna Convention on the Law of Treaties.
[86]Bruno Simma, "Reciprocity," in Max Planck Encyclopedia of Public International Law, last updated April 2008, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1461.

				whether contractual or not, which are considered as commercial under the national law of the State making such declaration." (Article 1, No. 3, United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards)[87]
22.	*Res Judicata*	*Perkara yang Telah Diputuskan*	A matter that has been juridically decided on its merits and can not be litigated again between the same parties.[88]	"(1) whether, under the law of the country where the judgment was rendered, the copy of the judgment fulfils the conditions required for its authenticity; (2) whether, under the same law, the decision has the force of **res judicata**;" (Article 19, No.2, Convention on Civil Procedure)[89]
23.	Sovereign Equality	*Kesetaraan/ Persamaan Kedaulatan*	Principle that holds all sovereign states to be juridically equal, meaning they receive equal rights, duties, and are treated with equal respect under public international law.[90]	"The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of **sovereign equality**."

[87]Article 1, Charter of the United Nations.
[88]Britannica, "Res Judicata:Definition, Types, & Examples," Encyclopedia Britannica, https://www.britannica.com/topic/res-judicata.
[89]Convention on Civil Procedure, translation of the Permanent Bureau (replacing the Convention of 17 July 1905 in relations between the Contracting States), concluded 1 March 1954, entered into force 12 April 1957, Article 19(2).
[90]Alex Ansong, "The Concept of Sovereign Equality of States in International Law," *GIMPA Law Review 2,* no. 1 (2016): 14–34, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3171769.

				(Article 78, Charter of The United Nations)[91]
Judicial Decisions and Teachings of Highly Qualified Publicists				
24.	Doctrine	*Doktrin*	Rules or legal ideas that are widely adopted in a specific area of law which develops over time through repeated use in court decisions.[92]	"In the following articles the expression "progressive development of international law" is used for convenience as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. Similarly, the expression "codification of international law" is used for convenience as meaning the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and **doctrine**." (Article 15, Statute of International Law Commission)[93]

[91]Article 78, Charter of the United Nations.
[92]"Doctrine," Legal Encyclopedia, Cornell Law School, accessed July 22, 2025, https://www.law.cornell.edu/wex/doctrine.
[93]Statute of the International Law Commission, adopted by the General Assembly in Resolution 174 (II) of 21 November 1947, Article 15.

25.	Judicial Decisions	*Putusan Pengadilan*	Formal ruling on a case made by a national court, international court, or tribunal which can be used as evidence of international legal practice in law making.[94]	"The Commission shall, through the Secretary-General, address to Governments a detailed request to furnish the texts of laws, decrees, **judicial decisions**, treaties, diplomatic correspondence and other documents relevant to the topic being studied and which the Commission deems necessary." (Article 19, No. 2, Statute of The International Law Commission)[95]
26.	Precedent	*Preseden*	A decision made by an international court that becomes an important point of reference in a future legal case by suggesting a new law or clarifying an already existing rule.[96]	"Adequate presentation of **precedents** and other relevant data, including treaties, judicial decisions and doctrine." (Article 20 (a), Statute of The International Law Commission)[97]
27.	Subsidiary Means	*Sarana Tambahan*	Additional tool used to clarify, interpret, and expand upon international law, which is not	"Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly

[94] *International Law Sources*, LibGuides, UBC Library, accessed July 22, 2025, https://guides.library.ubc.ca/legalcitation/intlaw; Mutiah Wenda Juniar, "Subsidiary Sources of International Law: Is It Only as Law Determining?" *International Journal of Global Community* 4, No. 3 (November 2021): 192–193, https://doi.org/10.33473/ijgc-ri.v4i3-Nov.98. scholar.google.com+2

[95] Statute of the International Law Commission, adopted by the General Assembly in resolution 174 (II) of November 21, 1947, Article 19.

[96] Inna Boyko, "International Judicial Precedent: Features, Types, Significance," Reality of Politics 21 (2022): 26.

[97] Article 20 (a), Statute of the International Law Commission.

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			regarded as a primary source of law.[98]	qualified publicists of the various nations, as **subsidiary means** for the determination of rules of law." (Article 38, Item d, Statute of The International Law Commission)[99]
28.	Writing of Publicists	*Ajaran Para Ahli*	Commentary written by respected scholars and legal practitioners used to explain or influence international law as a subsidiary source of international law.[100]	"The same tendency prevails in the **writings of publicists** and in practice. This notion is inherent in the provisions of Article 3, paragraph 2, of the Statute of the Court. National laws reflect this tendency when, inter alia, they make naturalization dependent on conditions indicating the existence of a link, which may vary in their purpose or in their nature but which are essentially concerned with this idea. The Liechtenstein Law of January 4th, 1934, is a good example." (Page 22, Judgment of April 6 1955, Nottebohm,

[98]Mutiah Wenda Juniar, "Subsidiary Sources of International Law: Is It Only as Law Determining?" *International Journal of Global Community* 4, no. 3 (November 2021): 192–193, https://doi.org/10.33473/ijgc-ri.v4i3-Nov.98. scholar.google.com+2

[99]Article 38 (d), Statute of the International Court of Justice.

[100]Mutiah Wenda Juniar, "Subsidiary Sources of International Law: Is It Only as Law Determining?" *International Journal of Global Community* 4, no. 3 (November 2021): 195-196, https://doi.org/10.33473/ijgc-ri.v4i3-Nov.98. scholar.google.com+2

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ALSA
LOCAL CHAPTER
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ED

LAW OF TREATIES

ALSA LEGAL ENGLISH
GLOSSARIUM #4

International law has fewer ways of creating new rules compared to domestic legal systems. There are several sources of International Law which include Customary International Law, Judicial Decisions, and the most prominently, treaties. A treaty is a formal agreement between parties in the international arena. Treaties provide a more structured and formal way of making international law. States conduct much of their international affairs through treaties, which highlights the limited methods available in international law compared to the various ways individuals within a state can create legally binding rights and duties. No other method more clearly reflects the shared goals of states, and treaties are used both for simple agreements between two states and complex multilateral arrangements. For example, treaties are used to end wars, resolve disputes, define territorial claims, determine special rights, form alliances, and establish international organizations. Therefore, understanding the concept and function of treaties is important for the development of international law. While treaties can also involve international organizations, they mainly deal with relations between states.[102]

Being one of the main sources in international law, Treaties play a crucial role in shaping relations between states. Understanding the forms of treaties is important for law students because it helps them recognize how different types of agreements create varying legal effects and obligations. By learning the forms of treaties, such as bilateral and multilateral, law students can better analyze the scope of treaties as well as interpreting differences in its framework. Moreover, comprehending the establishment and termination of treaties helps law students grasp the concept of why states decide to make agreements, the processes involved in making them legally binding, and why such agreements are necessary to regulate international relations. Likewise, knowing how treaties can be terminated or withdrawn is essential for understanding the legal consequences and implications of ending commitments. For law students, this knowledge is vital as it equips them to analyze the legality of withdrawal and understand how the end of a treaty can reshape legal frameworks, skills that are highly relevant for careers in international law, diplomacy, and policymaking.

[102]Malcolm N. Shaw, *International Law*, 6th ed. (New York: Cambridge University Press, 2008), 2002-2003.

Law of Treaties				
No.	**Terminology**	**Translation**	**Explanation**	**Example in Legal Instrument**
Principles of International Treaties				
1.	Equal Rights	*Kesetaraan Hak*	Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.[103]	"The participating States will respect the **equal rights** of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States. By virtue of the principle of **equal rights** and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development. The participating States reaffirm the universal significance of respect for and effective exercise of **equal rights** and self-determination of peoples for the development of

[103]Government Canada, "Section 15 – Equality Rights," Department of Justice, last modified June 29, 2023, https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art15.html. provision 15 (1).

				friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle. (Article 8, Helsinki Final Act)[104]
2.	Fundamental Freedoms	*Kebebasan Dasar*	A guarantee that an individual can act, think, be, or do without government interference unless a law says otherwise.[105]	"Respect for human rights and **fundamental freedoms**, including the freedom of thought, conscience, religion or belief The participating States will respect human rights and **fundamental freedoms**, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development. Within this framework the participating States will recognize and respect the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience. The participating States on whose territory

[104]Helsinki Final Act, opened for signature 1 August, 1975. https://www.osce.org, Article 7.
[105]"Fundamental Freedoms," Centre for Constitutional Studies, accessed July 25, 2025, https://www.constitutionalstudies.ca/2019/07/fundamental-freedoms/.

				national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and **fundamental freedoms** and will, in this manner, protect their legitimate interests in this sphere." (Article 7, Helsinki Final Act)[106]
3.	Non-Retroactivity	*Non-Retroaktif*	Retroactive means a law or court decision that takes away or impairs a previously vested right, imposes new duties or obligations, or changes or affects past transactions or legal actions.[107] Therefore, the principle of non-retroactivity means that laws only apply to the future and do not apply retroactively. Therefore, a person's actions must be judged according to the rules that were in force at the time the actions were committed.[108]	"**Non-retroactivity** *ratione personae* 1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute. 2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply." (Article 24, Rome Statute of the International Criminal Court)[109]

[106]Article VII, Helsinki Final Act
[107]"Retroactive Definition," Nolo Press, accessed July 29, 2025, https://dictionary.nolo.com/retroactive-term.html.
[108]Advent Kristanto Nababan, "Pengertian Asas Non Retroaktif dan Pengecualian Penerapannya," Hukumonline.com, accessed July 24, 2025, https://www.hukumonline.com/klinik/a/pengertian-asas-non-retroaktif-dan-pengecualian-penerapannya-lt4c80ae57a77f0/.
[109]Rome Statute of the International Criminal Court, opened for signature 17 July, 1998, entered into force 1 July, 2002, Article 24.

4.	Party	*Pihak*	"party" means a State which has consented to be bound by the treaty and for which the treaty is in force.[110]	"A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a **party** to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed." (Article 18, Vienna Convention on the Law of Treaties)[111]
5.	Reservation	*Reservasi*	A unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.[112]	"A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a **reservation** unless: (a) the **reservation** is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

[110]Article 2 (g),Vienna Convention on the Law of Treaties.
[111]*Ibid*, Article 18,.
[112]*Ibid,* Article 2 (b).

				(c) in cases not failing under subparagraphs (a) and (b), the **reservation** is incompatible with the object and purpose of the treaty." (Article 19, Vienna Convention on the Law of Treaties)[113]
Forms and Classification of International Treaties				
6.	Agreement	*Perjanjian*	The term used to refer to various international legal instruments including treaties, often used to refer to a less formal bilateral treaty that does not require further ratification.[114]	"The objective of this **Agreement** is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention." (Article 2, Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks)[115]

[113] *Ibid*, Article 19.
[114] "Definition of Key Terms Used in the UN Treaty Collection, United Nations Treaty Collection", accessed July 23, 2025, https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml.
[115] *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, adopted August 4, 1995, entered into force December 11, 2001, No. 2167. U.N.T.S. 3, art. 2.

7.	Bilateral Treaties	*Traktat Bilateral*	A formal written agreement between two sovereign countries that is legally binding.[116]	"A material breach of a **bilateral treaty** by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part." (Article 60, No. 1 Vienna Convention on the Law of Treaties)[117]
8.	Charter	*Piagam*	Formal legal instrument commonly used in the establishment of an international organization.[118]	"The provisions of this **Charter** are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers." (Article 51, No.1, Charter of Fundamental Rights of the European Union)[119]
9.	Covenant	*Kovenan*	Phrase used interchangeably with treaty and	"Each State Party to the present **Covenant** undertakes

[116]"Treaty," Oxford Reference, accessed July 24, 2025, https://www.oxfordreference.com/display/10.1093/oi/authority.2011080310.
[117]Article 60, Vienna Convention on the Law of Treaties.
[118]Definition of Key Terms Used in the UN Treaty Collection, United Nations Treaty Collection, accessed July 23, 2025, https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml.
[119]Charter of Fundamental Rights of the European Union, proclaimed December 7, 2000, entered into force December 1, 2009, 2012 O.J. C 326/391, Article 51.

			convention to refer to binding international legal instruments.[120]	to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present **Covenant**, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (Article 2, No. 1, International Covenant on Human Rights)[121]
10.	Multilateral Treaties	*Traktat Multilateral*	A formal written agreement between more than two sovereign countries that is legally binding.[122]	"Reduction of the parties to a **multilateral treaty** below the number necessary for its entry into force Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force." (Article 55, Vienna Convention on the Law of Treaties)[123]

[120]Glossary of technical terms related to the treaty bodies, Office of the United Nations High Commissioner for Human Rights (OHCHR), accessed July 26, 2025, https://www.ohchr.org/en/treaty-bodies/glossary-technical-terms-related-treaty-bodies.

[121]International Covenant on Human Rights, entered into force March 23, 1976, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rightsart, Article 2, No.1.

[122]"Treaty," Oxford Reference, accessed July 24, 2025, https://www.oxfordreference.com/display/10.1093/oi/authority.2011080310.

[123]Article 55, Vienna Convention on the Law of Treaties.

11.	Protocol	*Protokol*	Legally binding international agreement with a less formal standing than a treaty, which is typically used as a subsidiary instrument alongside treaties to supplement obligations, rights, provisions, and elaboration on framework convention.[124]	"The objective of the present **Protocol** is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment." (Article 1, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment)[125]
Establishment and Termination of International Treaties				
12.	Deposit	*Deposit*	The act of placing the written instruments that provide formal evidence of a state's consent to be bound into the custody of a depositary after a treaty has been concluded.[126]	"Article 76 Depositaries of treaties 1. The designation of the **depositary** of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The **depositary** may be one or more States, an international organization or the chief administrative officer of the organization. 2. The functions of the **depositary** of a treaty are

[124]Definition of Key Terms Used in the UN Treaty Collection, United Nations Treaty Collection, accessed July 23, 2025, https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml.

[125]*Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted December 18, 2002, by GA Res 57/199, UN Doc A/RES/57/199, art.1.

[126]"Glossary," United Nations, U.N.T.C,https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml#deposit.

				international in character and the **depositary** is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a **depositary** with regard to the performance of the latter's functions shall not affect that obligation." (Article 76, Vienna Convention on the Law of Treaties)[127]
13.	Denunciation	*Denunsiasi*	A unilateral act by which a party seeks to terminate its participation in a treaty.[128]	"Article 42, Paragraph 2 2. The termination of a treaty, its **denunciation** or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty." (Article 42, Paragraph 2 Vienna Convention on the Law of Treaties)[129]

[127]Article 76, Vienna Convention on the Law of Treaties.
[128]Anthony Aust, "Oxford Public International Law: Treaties, Termination" Oxford Public International Law, 2006, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1491.
[129]Article 42 (2), Vienna Convention on the Law of Treaties.

14.	Entry into Force	*Mulai Berlaku*	The moment a treaty becomes operative when consent to be bound is established by all negotiating States.[130]	"Article 24 **Entry into force** 1. A treaty **enters into force** in such manner and upon such date as it may provide or as the negotiating States may agree. 2. Failing any such provision or agreement, a treaty **enters into force** as soon as consent to be bound by the treaty has been established for all the negotiating States. (Article 24, Vienna Convention on the Law of Treaties)[131]
15.	Full Powers	*Surat Kuasa Penuh*	A document produced by the competent authorities of a state designating a person (or body of persons) to represent the state for negotiating, adopting, or authenticating the text of a treaty, for expressing the consent of the state to be bound by a treaty, or for accomplishing any other act with respect to a treaty.[132]	"Article 7 **Full powers** 1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if: (a) he produces appropriate **full powers**; or (b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with **full powers**."

[130]Shaw, *International Law*, 6th ed., 925.
[131]Article 24, Vienna Convention on the Law of Treaties.
[132]Oxford Reference. "Full Powers." https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095838103, accessed July 26, 2025.

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STATE IN INTERNATIONAL LAW

ALSA LEGAL ENGLISH GLOSSARIUM #4

States serve as the primary actors of Public International Law, possessing full legal personality and the capacity to enter into relations with other entities. Understanding the concept of a state in international law first requires an understanding of states which can be examined from many aspects. One of these aspects is the defining criteria of a state, which consists of a permanent population, defined territory, government, and the capacity to engage in foreign relations. Another aspect that will be explored further in this chapter is the Territory of a State, an area over which a state has complete control, exclusive legal authority, and is protected under international law, whose clear definition and effective control are fundamental to a country's existence.[136] Once foundational elements of states are established, we can shift to an understanding of how states come into being and how changes in sovereignty occur. The process of state formation explores how new states emerge, whether through decolonization, cession, or other means. Following the process of state formation, the doctrine of state succession addresses the legal consequences when one state replaces another in responsibility over a territory, ensuring continuity and clarity in international obligations and rights.

As full legal personalities under international law, states have the capacity to shoulder rights, obligations, and be held accountable if they violate international rules. A state is responsible not only for its direct actions, such as violating agreements or the territory of another state, but also for the actions of its government agencies, individuals acting on its behalf, or even private citizens if the state subsequently supports their actions.[137] However, state responsibility can be limited in certain situations. These include when an action is required by international law, done in self-defense under the UN Charter, or aimed at compelling another state to meet its obligations. Other exceptions are events caused by events beyond the state's control, necessary to save lives, or the only way to protect essential national interests without causing harm to others.[138] In

[136]"International Law - Responsibility, Sovereignty, Obligations," Encyclopedia Britannica, accessed July 30, 2025, https://www.britannica.com/topic/international-law/The-responsibility-of-states.

[137]Craig Eggett, *et al*. *Public International Law: A Multi-Perspective Approach*, (London: Routledge, 2024), chap. 9, 333–334, https://doi.org/10.4324/9781003451327.

[138]Article 20-25, Responsibility of States for Internationally Wrongful Acts.

exercising their right, states must act within their jurisdiction, which grants authority over persons, property, and events in their territory or outside of it through extradition and immunity. Additionally, states have a right to certain practices such as plebiscites and referendums, which allow the people to take part in deciding a matter relevant to the state.[139] These processes can shape a state's future and legitimacy in the eyes of international law. Understanding the terms surrounding States in International Law will give readers a better grasp of the legal mechanics of statehood and how international law interacts with sovereignty, legitimacy, and the voice of the people in the international arena.

State in International Law				
No.	**Terminology**	**Translation**	**Explanation**	**Example in Legal Instrument**
Criteria of a State				
1.	Defined Territory	*Wilayah Tertentu*	Inhabitable land but with consequent entitlements to any internal waters, territorial sea, and to the airspace above this 'horizontal' territory.[140]	"The state as a person of international law should possess the following qualifications: (a) permanent population; (b) a **defined territory**; (c) government; and (d) capacity to enter into relations with the other states"

[139] "Plebiscites and Referendums", Electoral Justice – International Affairs (Tribunal Superior Eleitoral, Brazil), accessed July 29, 2025, https://international.tse.jus.br/en/elections/plebiscites-and-referendums.

[140] Craig Eggett, et al. *Public International Law: A Multi-Perspective Approach*, (London: Routledge, 2024), chap. 7, 231, https://doi.org/10.4324/9781003451327.

				(Article 1, The Montevideo Convention on the Rights and Duties of States)[141]
2.	Government	*Pemerintahan*	The political system by which a country or community is administered and regulated.[142]	"The present Convention shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures. The Minister of Foreign Affairs of the Republic of Uruguay shall transmit authentic certified copies to the **governments** for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington, which shall notify the signatory governments of said deposit. Such notification shall be considered as an exchange of ratification. " (Article 13, Montevideo Convention on the Rights and Duties of States)[143]
3.	Legal Capacity	*Kecakapan Hukum*	Legal capacity gives the right to access the civil and juridical system and the legal	"1. The Court shall have international legal personality. It shall also have such **legal capacity** as may be

[141]The Montevideo Convention on the Rights and Duties of States, opened for signature December 26, 1933, entered into force Decmber 26, 1934, https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf, Article 1.
[142]"Government | Definition, History, & Facts," Encyclopedia Britannica, accessed July 26, 2025, https://www.britannica.com/topic/government.
[143]Article 13, The Montevideo Convention on the Rights and Duties of States

			independence to speak on one's own behalf.[144]	necessary for the exercise of its functions and the fulfilment of its purposes. 2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State. " (Article 4, Statute of the International Criminal Court)[145]
4.	Membership	*Keanggotaan*	The state of belonging to a group or an organization.[146]	"1. No two members of the Tribunal may be nationals of the same State. A person who for the purposes of **membership** in the Tribunal could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights. 2. There shall be no fewer than three members from each geographical group as established by the General Assembly of the United Nations." (Article 3, United Nations Conventions on the Law of

[144]"EXPLANATORY NOTE ON LEGAL CAPACITY AND FORCED INTERVENTIONS," United Nations, accessed August 1, 2025, https://www.un.org/esa/socdev/enable/rights/ahc8docs/ahc8idc1218ex.doc.
[145]Article 4, Rome Statute of the International Criminal Court
[146]"Membership," Cambridge Dictionary, accessed July 26, 2025, https://dictionary.cambridge.org/dictionary/learner-english/membership.

				the Sea)[147]
5.	Permanent Population	*Populasi Permanen*	The requirement of there being a more or less identifiable body of people who are habitually resident upon the territory of the nascent State.[148]	"The state as a person of international law should possess the following qualifications: (e) **permanent population**; (f) a defined territory; (g) government; and (h) capacity to enter into relations with the other states" (Article 1, The Montevideo Convention on the Rights and Duties of States)[149]
Territory of a State				
6.	Airspace	*Wilayah Udara*	The space above a particular national territory, treated as belonging to the government controlling the territory.[150]	"Sovereignty The contracting States recognize that every State has complete and exclusive sovereignty over the **airspace** above its territory. (Article 1, Convention on International Aviation)[151]

[147]Article 3, United Nations Convention on the Law of the Sea.
[148]Craig Eggett, et al. *Public International Law: A Multi-perspective Approach*, (London: Routledge, 2024), chap. 7, 230.
[149]Article 1, The Montevideo Convention on the Rights and Duties of States.
[150]Convention on International Civil Aviation. Opened for signature 7 December 1944. 15 U.N.T.S. 295, Article 1.
[151]Article 1, Convention on International Aviation.

7.	Land Territory	*Wilayah Darat*	A geographical area subject to the sovereignty, control, or jurisdiction of a state or other entity.[152]	"The sovereignty of each Party shall extend beyond its **land territory** and internal waters to the adjacent sea belt called territorial waters, as well as to the seabed and subsoil thereof, and the airspace over it. " (Article 6, Convention on the Legal Status of the Caspian Sea)[153]
8.	Maritime Zones	*Zona Maritim*	Area over which a State exercises its national jurisdiction, such as: (1) internal waters; (2) the territorial sea; (3) the contiguous zone; (4) the exclusive economic zone; (5) the continental shelf.[154]	"safety zones shall be established around such installations with appropriate markings to ensure the safety of both navigation and the installations. The configuration and location of such safety zones shall not be such as to form a belt impeding the lawful access of shipping to particular **maritime zones** or navigation along international sea lanes." (Article 147 No. 2 (C), United Nations Convention on the Law of the Sea)[155]
9.	*Res Communis*	*Res Communis*	An area of territory that is not subject to the	In either case, the applicable standard is one of "due

[152]"Territory," National Geographic, accessed July 30, 2025, https://education.nationalgeographic.org/resource/territory/.
[153]Convention on the Legal Status of the Caspian Sea, signed August 12, 2018, Article 6.
[154]UNTERM, "Maritime Zones," Department for General Assembly and Conference Management, accessed August 1, 2025, https://unterm.un.org/unterm2/en/view/47451a66-8ff2-47ab-8f22-50b907bdbfb9.
[155]Article 147, United Nations Convention on the Law of the Sea.

			legal title of any state.[156]	diligence", which may be defined as "[t]he diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation". Indeed, it may be submitted that in view of the status and the importance of the Area as ***res communis*** humanitatis, "great", "high" or "special" diligence must be exercised by the State to be legally protected. (Advisory opinion of the International Tribunal for the Law of The Sea (**ITLOS**) regarding Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area)[157]
10.	*Terra Nullius*	*Terra Nullius*	The term used to refer to a space that does not fall under the sovereignty of any state. Terra nullius land may be uninhabited or inhabited by people that are not legally recognized as citizens to that land, in which case this term has been used in order to legitimize	"They have long been subject to administrative control by Malaysia and its predecessors in title. There can be no suggestion that any one of them is, or at any relevant time was, **terra nullius**." (International Court of Justice, Case Concerning

[156]"Res Communis." Oxford Reference, accessed July 28, 2025, https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100408305.
[157]Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area, ITLOS Advisory Proceedings, accessed 30 July, 2025, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/C17_PV_2010_3_Rev2_E.pdf.

			occupation. [158]	Sovereignty Over Pulau Ligitan and Pulau Sipadan, Memorial of Malaysia of 2 November 1999)[159]
State Responsibility				
11.	Admissibility	*Penerimaan*	Whether or not and to what extent evidence is acceptable to be entered into the record and be used by the court in deciding a matter.[160]	"**Admissibility** of claims The responsibility of a State may not be invoked if: (a) the claim is not brought in accordance with any applicable rule relating to the nationality of claims; (b) the claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted." (Article 44, Responsibility of States for Internationally Wrongful Acts)[161]
12.	Attribution	*Atribusi*	Actions of an organ, a person, or a group of persons which are considered the responsibility	"This article is without prejudice to the **attribution** to a State of any conduct, however related to that of the

[158] *Terra nullius*, Wex: Legal Encyclopedia, Legal Information Institute, Cornell Law School, last reviewed April 2022, https://www.law.cornell.edu/wex/terra_nullius.

[159] Memorial of Malaysia, *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)*, I.C.J. Pleadings, vol. 1, 1999, https://www.icj-cij.org/sites/default/files/case-related/102/8560.pdf.

[160] "Admissibility," LexisNexis UK Legal Glossary, accessed July 28, 2025, https://www.lexisnexis.co.uk/legal/glossary/admissibility#:~:text=What%20does%20Admissibility%20mean?,for%20the%20court%20to%20consider..

[161] Responsibility of States for Internationally Wrongful Acts, , adopted by the International Law Commission at its 53rd session in 2001, annexed to UNGA Res 56/83 (12 December 2001), UN Doc A/RES/56/83, Article 44.

			of the state in accordance with the criterias of international law, even in the instance when the actor is not an official organ of that state's government.[162]	movement concerned, which is to be considered an act of that State by virtue of articles 4 to 9." (Article 10 (3), Responsibility of States for Internationally Wrongful Acts)[163]
13.	Breach	*Pelanggaran*	Failure of a state to act in conformity to the international obligations that it is involved in.[164]	"Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a **breach** by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty" (Article 61 (2), Vienna Convention on the Law of Treaties).[165]
14.	Compensate	*Memberi Kompensasi/ Mengganti Kerugian*	To provide compensation (payment for damages caused by state including loss of profit) as a form of reparation for a state	"The administrative expenses of the Authority shall be a first call upon the funds of the Authority. Except for the assessed contributions referred to in article 171,

[162]Craig Eggett, et al. *Public International Law: A Multi-Perspective Approach*, (London: Routledge, 2024), chap. 6, 335–336, https://doi.org/10.4324/9781003451327.

[163]Article 10 (3), Responsibility of States for Internationally Wrongful Acts.

[164]*Draft Articles on Responsibility of States for Internationally Wrongful Acts*, ILC, Art. 12, "Existence of a breach of an international obligation," *International Law Commission, Book 25, Part One: Chapter III*, UN Legislative Series, accessed July 27, 2025, https://legal.un.org/legislativeseries/pdfs/chapters/book25/english/book25_part1_ch3.pdf.

[165]Article 61(2), Vienna Convention on the Law of Treaties.

			committing a wrongful act or causing injury to another party.[166]	subparagraph (a), the funds which remain after payment of administrative expenses may, inter alia: (a) be shared in accordance with article 140 and article 160, paragraph 2(g); (b) be used to provide the Enterprise with funds in accordance with article 170, paragraph 4; (c) be used to **compensate** developing States in accordance with article 151, paragraph 10, and article 160, paragraph 2(l).” (Article 173, No. 2, United Nations Convention on the Law of the Sea)[167]
15.	Reparations	*Reparasi*	Measures to fully repair any material, moral, and interest damages caused by wrongful acts of a state.[168]	“Full **reparation** for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.” (Articles 34, Responsibility of States for Internationally Wrongful Acts)[169]

[166]Craig Eggett, et al. "Sources of International Law," in *Public International Law: A Multi-Perspective Approach*, (London: Routledge, 2024), chap. 9, 344.
[167]Article 173, No. 2, United Nations Convention on the Law of the Sea.
[168]Article 31, Responsibility of States for Internationally Wrongful Acts.
[169]Article 34, Responsibility of States for Internationally Wrongful Acts.

16.	State Responsibility	*Tanggung Jawab Negara*	The legal relationships and obligations created between states and subjects of public international law once that state commits a wrongful act; this includes making reparations if a state is unable to meet an obligation.[170]	”The present draft principles, like the draft articles on prevention, are concerned with primary rules. Accordingly, the non-fulfilment of the duty of prevention prescribed by the draft articles on prevention could engage **state responsibility** without necessarily giving rise to the implication that the activity itself is prohibited. In such case, **state responsibility** could be invoked to implement not only the obligations of the state itself but also the civil responsibility or duty of the operator. Indeed, this is well understood throughout the work on draft articles on prevention.” (Principle 1 Commentary, No. 6, Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, with commentaries)[171]
State Succession and Land Acquisition				
17.	Accretion	*Akresi*	When a state acquires land territory through the process of accretion, which is a slow accumulation of soil material such as clay, silt,	“The boundary line shall follow natural changes (**accretion** or erosion) in the course of the rivers unless otherwise agreed. Artificial changes in or of the course

[170]Craig Eggett, et al. *Public International Law: A Multi-Perspective Approach*, (London: Routledge, 2024), chap. 9, 334, https://doi.org/10.4324/9781003451327.
[171]International Law Commission. 2006 Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising Out of Hazardous Activities, with Commentaries. A/61/10. 2006. https://legal.un.org/ilc/texts/instruments/english/commentaries/9_10_2006.pdf.

			sand, and gravel through natural deposition.[172]	of the rivers shall not affect the location of the boundary unless otherwise agreed. No artificial changes maybe made except by agreement between both Parties." (Annex 1, Treaty of Peace Between the State of Israel and the Hashemite Kingdom of Jordan)[173]
18.	Annexation	*Aneksasi/Pencaplokan*	The act of a state formally and unilaterally claiming sovereignty over a territory outside of its own through actual possession and then legitimized by general recognition.[174]	"His Majesty of the Emperor of Japan accepts the cession mentioned in the preceding Article, and consents to the complete **annexation** of Korea to the Empire of Japan." (Article 2, Treaty Regarding the Annexation of Korea to the Empire of Japan)[175]
19.	Boundary Agreement	*Perjanjian Demarkasi Batas*	An agreement between sovereign states that establishes the location of their state lines or boundaries. As unilateral declarations are not recognized under international law, this	"With reference to the request submitted by the fraternal Kingdom of Saudi Arabia to the Secretariat of the United Nations for registration of the **Boundary Agreement** concluded between the Kingdom of Saudi

[172]"Accretion," *Max Planck Encyclopedia of Public International Law*, accessed August 14, 2025, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1372.

[173]Annex I, Treaty of Peace Between the State of Israel and the Hashemite Kingdom of Jordan, signed October 26, 1994, entered into force October 26, 1994, and published by the UN Peacemaker website, accessed August 14, 2025, https://peacemaker.un.org/sites/default/files/document/files/2024/05/il20jo941026peacetreatyisraeljordan.pdf.

[174]*Annexation*, *Encyclopaedia Britannica*, accessed July 28, 2025, https://www.britannica.com/topic/annexation.

[175] Treaty Regarding the Annexation of Korea to the Empire of Japan, signed August 22, 1910, entered into force August 29, 1910, Article 2.

			agreement or other means of delmination must be made to establish state boundaries.[176]	Arabia and the State of the United Arab Emirates on 21 August 1974 with the Secretariat of the United Nations, in accordance with Article 102 of the Charter, has the honour, on instructions from his Government, to state that since 1975, the State of the United Arab Emirates has repeatedly notified the fraternal Kingdom of Saudi Arabia that the Agreement of 21 August 1974 conflicts with two agreements concluded between the Emirate of Abu Dhabi and the Sultanate of the Sultanate of Oman in 1959 and 1960 delimiting the bound ary between them from east of Uqaydat to Umm al-Zamul." (Declaration to the Agreement Between the Kingdom of Saudi Arabia and the United Arab Emirates on the Delimitation of Boundaries)[177]
20.	Cession	*Penyerahan*	The act of transferring territory from one State to another with the consent of both States as a mode of lawfully gaining territory.[178]	"The title alleged by the United States of America as constituting the immediate foundation of its claim is that of **cession**, brought about by the Treaty of Paris,

[176]Eirik Bjorge and Mamadou Hébié, "Boundaries," *Max Planck Encyclopedia of Public International Law*, last updated July 2024, accessed August 14, 2025, https://opil.ouplaw.com/display/10.1093/law-epil/9780199231690/law-9780199231690-e1011.

[177]United Arab Emirates, "Declaration to the Agreement Between the Kingdom of Saudi Arabia and the United Arab Emirates on the Delimitation of Boundaries," U.N.T.S, vol. 1774, no. 30250, 1994, 331.

[178]Oliver Dörr, *Cession*, Oxford Public International Law, accessed August 20, 2025, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1377.

				which **cession** transferred all rights of sovereignty which Spain may have possessed in the region indicated in Article III of the said Treaty and therefore also those concerning the Island of Palmas (or Miangas).” (Page 842, Reports of International Arbitral Awards, Island of Palmas case)[179]
21.	Decolonization	*Dekolonisasi*	Process of colonies becoming sovereign states by gaining independence.[180]	“A number of General Assembly resolutions have dealt with the matter of Mauritius and the international legal status of the Chagos archipelago. Based on its Resolution 1514 (XV), the General Assembly in its Resolutions 2066 (XX), 2232 (XXI) and 2357 (XXII) specifically considered the **decolonization** process with respect to the Chagos archipelago.” (Origin of the Request, Written Statement of Germany, Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965)[181]

[179]Island of Palmas case (Netherlands v. U.S.A.), *Reports of International Arbitral Awards*, vol. II, April 4, 1928, award of the tribunal, 842, https://legal.un.org/riaa/cases/vol_ii/829-871.pdf

[180]*Decolonization*, *Encyclopaedia Britannica*, accessed July 22, 2025, https://www.britannica.com/topic/decolonization.

[181]Germany, *Written Statement in Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Request for Advisory Opinion)*, ICJ, Origin of the Request, 2018.

22.	Occupation	*Okupasi*	When a state exercises an unconsented-to effective control over a territory to which it has no sovereign title.[182]	"71. In 2016, the Security Council adopted resolution 2334 (2016) in which it urged "the intensification and acceleration of international and regional diplomatic efforts and support aimed at achieving without delay a comprehensive, just and lasting peace in the Middle East on the basis of the relevant United Nations resolutions, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap and an end to the Israeli **occupation** that began in 1967"." (ICJ Advisory Opinion, Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem)[183]
23.	Predecessor State	*Negara Pendahulu*	The original State which has been replaced by the successor State on the occurrence of a succession of States.[184]	"The obligations or rights of a **predecessor State** under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State towards other States Parties to those treaties by reason only of the fact that the **predecessor State** and the successor State have

[182]"Occupation," International Committee of the Red Cross, accessed August 11, 2025, https://www.icrc.org/en/law-and-policy/occupation.
[183]LEGAL CONSEQUENCES ARISING FROM THE POLICIES AND PRACTICES OF ISRAEL IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM, Advisory Opinion, I.C.J, Reports 2024, p. 24.
[184]Article 2, Vienna Convention on Succession of States in respect of Treaties.

				concluded an agreement providing that such obligations or rights shall devolve upon the successor State." (Article 8, No. 1, Vienna Convention on Succession of States in respect of Treaties)[185]
24.	Prescription	*Preskripsi*	Acquisition of territory through continuous and undisputed sovereignty.[186]	"Although municipal law, thanks to its complete judicial system, is able to recognize abstract rights of property as existing apart from any material display of them, it has nonetheless limited their effect by the principles of **prescription** and the protection of possession. International law, the structure of which is not based on any super-State organisation, cannot be presumed to reduce a right such as territorial sovereignty, with which almost all international relations are bound up, to the category of an abstract right, without concrete manifestations." (Island of Palmas case (Netherlands, USA) 4 April 1928 VOLUME II pp. 829-871, United Nations)[187]

[185]Article 8, Vienna Convention on Succession of States in respect of Treaties.
[186]"Prescription in International Law: Understanding Territorial Claims," US Legal Forms, accessed August 11, 2025, https://legal-resources.uslegalforms.com/p/prescription-international-law.
[187]United Nations, "Island of Palmas case," *Reports of International Arbitral Awards*, April 1928, 839, doi:10.18356/9789213627846c007.

25.	Succession of States	*Suksesi Negara*	The event of one state replacing another in taking over responsibility for conducting international relations in that region.[188]	"The present Convention applies only to the effects of a **succession of States** occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations." (Article 6, Vienna Convention on Succession of States in respect of Treaties)[189]
26.	Successor State	*Negara Penerus*	"successor State" means the State which has replaced another State on the occurrence of a succession of States.[190]	"Obligations or rights under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the **successor State** or of other States Parties to those treaties by reason only of the fact that the **successor State** has made a unilateral declaration providing for the continuance in force of the treaties in respect of its territory." (Article 9, No. 1, Vienna Convention on Succession of States in respect of Treaties)[191]

[188] *Vienna Convention on Succession of States in respect of Treaties*, opened for signature August 23, 1978, entered into force November 2, 1996, No.1946. U.N.T.S. 3, Article 2.
[189] Article 6, Vienna Convention on Succession of States in respect of Treaties.
[190] Article 2, Vienna Convention on Succession of States in respect of Treaties.
[191] Article 9, No. 1, Vienna Convention on Succession of States in respect of Treaties.

27.	War	*Perang*	Armed fighting between two or more countries or groups, or a particular example of such fighting.[192]	"The Contracting Parties confirm that genocide, whether committed in time of peace or in time of **war**, is a crime under international law which they undertake to prevent and to punish." (Article 1, Convention on the Prevention and Punishment of the Crime of Genocide)[193]
State Jurisdiction				
28.	Extradition	*Ekstradisi*	The practice of extradition enables one state to hand over to another state suspected or convicted criminals who have fled to the territory of the former.[194]	"1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for **extradition** is located in the territory of the requested State Party, provided that the offence for which **extradition** is sought is punishable under the domestic law of both the requesting State Party and the requested State Party." (Article 16, Paragraph 1, UN Convention Against

[192]"War," Cambridge Dictionary, accessed July 30, 2025, https://dictionary.cambridge.org/dictionary/english/war.

[193]*Convention on the Prevention and Punishment of the Crime of Genocide*, adopted 9 December 1948, entered into force 12 January 1951, No. 1021. U.N.T.S. 78. Article 1.

[194]Shaw, *International Law*, 6th ed. , 686.

				Transnational Organized Crime (Palermo Convention, 2000)[195]
29.	Immunity	*Imunitas*	Protection of a State and its property from the jurisdiction of the courts of another state.[196]	"A State cannot invoke **immunity** from jurisdiction in a proceeding before a court of another State with regard to a matter or case if it has expressly consented to the exercise of jurisdiction by the court with regard to the matter or case: (a) by international agreement; (b) in a written contract; or (c) by a declaration before the court or by a written communication in a specific proceeding." (Article 7, Paragraph 1, United Nations Convention on Jurisdictional Immunities of States and Their Property)[197]
30.	Plebiscite	*Plebisit*	A vote by the people of an entire country or district to decide on some issue, such as choice of a ruler or government, option for	"When a period of five years shall have elapsed after the coming into force of the present Treaty the local parliament referred to in Article 72 may, by a majority

[195] *United Nations, United Nations Convention against Transnational Organized Crime*, adopted November 15, 2000, entered into force September 29, 2003, No. 2003. U.N.T.S. 209, Article 16,(1).

[196] Peter Tobias-Stoll, "Oxford Public International Law: State Immunity," Oxford Public International Law, 2011, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1106.

[197] United Nations, United Nations Convention on Jurisdictional Immunities of States and Their Property, adopted December 2, 2004, A/RES/59/38, Article 7 (1).

			independence or annexation by another power, or a question of national policy.[198]	of votes, ask the Council of the League of Nations for the definitive incorporation in the Kingdom of Greece of the city of Smyrna and the territory defined in Article 66. The Council may require, as a preliminary, a **plebiscite** under conditions which it will lay down." (Article 83, Treaty of Sevres)[199]
31.	Referendum	*Referendum*	A direct vote by the electorate of a country to advise or decide on a specific issue.[200]	"**2. Principles of referendum** (1) A referendum is free, general, uniform and direct. Voting is secret. Each voter has one vote. The decision of the people shall be reached by a majority of those who participate in the voting. (Chapter 1 Article 2, Referendum Act of the Republic of Estonia)[201]
32.	Territorial Jurisdiction	*Yurisdiksi teritorial*	The right of a country to legislate with regard to activities within its territory and to prosecute	"The **territorial jurisdiction** of the International Tribunal for Rwanda shall extend to the territory of

[198]"Plebiscite," Encyclopedia Britannica, accessed August 1, 2025, https://www.britannica.com/topic/plebiscite.
[199]Treaty of Peace between the Allied Powers and Turkey: Signed at Sevres 10th August 1920. Melbourne: Govt. Pr, 1921, Article 10.
[200]Yves Beigbedert, "Oxford Public International Law: Referendum," Oxford Public International Law, 2011, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1088?d=%2F10.1093%2Flaw%3Aepil%2F9780199231690%2Flaw-9780199231690-e1088&p=emailASfnUMNP2ptYY.
[201]Referendum Act of the Republic of Estonia, Chapter 1, § 2, Article 1.

			for offences committed upon its soil.[202]	Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994." (Article 7, Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda)[203]

[202]Shaw, *International Law*, 6th ed. , 652-654.

[203]*Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda*, adopted by Security Council Resolution 955, U.N. Doc. S/RES/955 (Nov. 8, 1994)

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LAW OF THE SEA

ALSA LEGAL ENGLISH
GLOSSARIUM #4

Introduction to the Law of The Sea

The Law of the Sea is a set of international rules that countries follow when using the world's oceans and seas. These rules explain the rights and obligations of coastal and island countries within their maritime zones, as well as how these rights change with increasing distance from the coast.[204] The main principle of the Law of the Sea is that a state's control weakens as the distance from its coast increases, while the rights of other states increase. Furthermore, the principles of Law of The Sea help establish a framework that creates stability in how States share the ocean, including the protection of resources, prevention of maritime disputes, and freedom of navigation.

The world's oceans are divided into specific zones, each with its own set of legal rules based on the United Nations Convention on the Law of the Sea (**UNCLOS**). These zones include internal waters, archipelagic waters, contiguous zones, exclusive economic zones (**EEZ**), and continental shelves. Each zone gives the state a different level of control over activities such as navigation, fishing, use of natural resources, environmental protection, and scientific research. Beyond the national maritime zones lie the high seas, which are not under the sovereignty of any state. UNCLOS grants freedom in the high seas, such as navigation and resource use, but also establishes responsibilities, primarily on the flag state, to ensure compliance with international law. The Convention also addresses crimes committed on the high seas, including piracy and unauthorised broadcasting. Therefore, the Law of the Sea helps ensure the peaceful, fair, and sustainable use of the seas.[205]

Given its crucial role in governing the use and protection of the oceans, it is important for students to grasp the breadth and impact of the Law of the Sea. Understanding its scope equips them with essential knowledge of a branch of law that continuously evolves alongside the

[204]U.S Indo Pacific Command, "General Principles of the Law of The Sea," *International Law Studies* Vol. 97 (2021), accessed August 4, 2025, https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=2942&context=ils.

[205]Preamble, United Nations Convention on the Law of the Sea.

changing global landscape.[206] Moreover, familiarizing themselves with specialized vocabulary prepares law students to adapt to emerging legal frameworks and practical challenges. In doing so, they not only strengthen their legal expertise but also position themselves to contribute meaningfully to international discourse on maritime governance.

Law of The Sea				
No.	**Terminology**	**Translation**	**Explanation**	**Example in Legal Instrument**
Principles of Law of The Sea				
1.	Exploitation	*Eksploitasi*	The utilization of the ocean for its food resources, mineral and energy resources, and water sources.[207]	"Land-locked States shall have the right to participate, on an equitable basis, in the **exploitation** of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62." (Article 69, Paragraph 1, United Nations Convention on the Law of the Sea, 1982)[208]

[206]Lauren Croft, "Why the Law of the Sea Is Becoming Such a Popular Subject," Lawyers Weekly, June 12, 2023, https://www.lawyersweekly.com.au/careers/37488-why-the-law-of-the-sea-is-becoming-such-a-popular-subject.
[207]Ocean exploitation, accessed August 7, 2025, https://www.eionet.europa.eu/gemet/en/concept/12171#:~:text=Definition,and%20energy%20and%20water%20sources.
[208]Article 69, United Nations Convention on the Law of the Sea.

2.	Exploration	*Eksplorasi*	The scientific investigation and study of oceanic environments, which aims to enhance understanding of marine ecosystems and resources, alongside their roles in the Earth system.[209]	"Subject to its right to take reasonable measures for the **exploration** of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines." (Article 79, Paragraph 2, United Nations Convention on the Law of the Sea, 1982)[210]
3.	Freedom of the High Seas	*Kebebasan di Laut Lepas*	The freedom of navigation, fishing, the laying of submarine cables and pipelines, construct artificial structures, scientific research, and overflight of aircraft over saltwater that are not part of the territorial sea, internal waters, or EEZ of a state.[211]	"These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the **freedom of the high seas,** and also with due regard for the rights under this Convention with respect to activities in the Area." (Article 87, Paragraph 2, United Nations Convention on the Law of the Sea, 1982).[212]

[209]"Ocean Exploration," Ocean Exploration - an overview" ScienceDirect Topics, accessed August 11, 2025, https://www.sciencedirect.com/topics/social-sciences/ocean-exploration.
[210]Article 79, United Nations Convention on the Law of the Sea.
[211]"High Seas," Encyclopedia Britannica, accessed August 7, 2025, https://www.britannica.com/topic/high-seas.
[212]Article 87, United Nations Convention on the Law of the Sea.

4.	Right of Innocent Passage	*Hak Lintas Damai*	The right of foreign vessels to navigate through the territorial waters of a coastal state, provided that such passage is not prejudicial to the peace, good order, or security of the state.[213]	"Foreign ships exercising the **right of innocent passage** shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation" (Article 17,Convention on the Territorial Sea and the Contiguous Zone).[214]
5.	Sovereign Rights	*Hak Berdaulat*	The entitlements or privileges of a state to a defined area of a sea called the exclusive economic zone.[215]	"The coastal State exercises over the continental shelf **sovereign rights** for the purpose of exploring it and exploiting its natural resources." (Article 77, Paragraph 1, United Nations Convention on the Law of the Sea, 1982)[216]
Maritime Zones				

[213]"The Right to Innocent Passage Under UN Convention," Drishti Judiciary, https://www.drishtijudiciary.com/public-international-law/the-right-to-innocent-passage-under-un-convention.

[214]*Convention on the Territorial Sea and the Contiguous Zone*, adopted April 29, 1958, entered into force September 10, 1964, No. 516. U.N.T.S. 205, art. 17.

[215]Pratnashree Basu, "Sovereignty Vs. Sovereign Rights: De-escalating Tensions in the South China Sea," orfonline.org, August 14, 2023, https://www.orfonline.org/research/sovereignty-vs-sovereign-rights-de-escalating-tensions-in-the-south-china-sea#:~:text=The%20first%20reference%20to%20'sovereign,laid%20out%20by%20the%20UNCLOS.

[216]Article 77, United Nations Convention on the Law of the Sea.

6.	Archipelagic Waters	*Perairan Kepulauan*	Archipelagic waters are waters under archipelagic states sovereignty, which has officially declared themselves an archipelagic state.[217]	"1. The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47, described as **archipelagic waters**, regardless of their depth or distance from the coast. 2. This sovereignty extends to the air space over the **archipelagic waters,** as well as to their bed and subsoil, and the resources contained therein. 3. This sovereignty is exercised subject to this Part. 4. The regime of archipelagic sea lanes passage established in this Part shall not, in other respects, affect the status of the **archipelagic waters**, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein." (Article 49, United Nations Convention on the Law of the Sea)[218]
7.	Contiguous Zone	*Zona Bersebelahan*	A belt of sea contiguous to but beyond the territorial sea where the Coastal State may	"1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise

[217]Maria M. Lestari, "WHAT IS THE RIGHT, ARCHIPELAGIC SEA LANES AND PASSAGE? (ACCORDING TO UNCLOS 1982 AND PRACTICE)," *Indonesian Journal of International Law* 18, no. 2 (2021): accessed July 31, 2025, https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1236&context=ijil.

[218]Article 49, United Nations Convention on the Law of the Sea.

			exercise enforcement jurisdiction to prevent and punish infringement of its customs, fiscal, immigration and sanitary laws and regulations within its territory or territorial sea.[219]	the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; (b) punish infringement of the above laws and regulations committed within its territory or territorial sea. 2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured." (Article 33, United Nations Convention on the Law of the Sea)[220]
8.	Continental Shelf	*Landas Kontinen*	The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from	"1. The coastal State exercises over the **continental shelf** sovereign rights for the purpose of exploring it and exploiting its natural resources. 2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the **continental shelf** or exploit its natural resources, no one may undertake these activities without the express

[219]Savita Nalisha Kum, "MARITIME ZONES (CONTIGUOUS ZONE) REGULATIONS," International Maritime Law Institute, accessed July 31, 2025, https://imli.org/wp-content/uploads/2021/03/Kum_Savita_Drafting.pdf.

[220]Article 48, United Nations Convention on the Law of the Sea.

			which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.[221]	consent of the coastal State. 3. The rights of the coastal State over the **continental shelf** do not depend on occupation, effective or notional, or on any express proclamation. 4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil." (Article 77, United Nations Conventions on the Law of the Sea)[222]
9.	Exclusive Economic Zone	*Zona Ekonomi Eksklusif*	An area of the ocean, generally extending 200 nautical miles (230 miles) beyond a nation's territorial sea, within which a coastal nation has jurisdiction over both living and nonliving	"This Part does not apply to a strait used for international navigation if there exists through the strait a route through the high seas or through an **exclusive economic zone** of similar convenience with respect to

[221] Article 76, United Nations Convention on the Law of the Sea.
[222] Article 77, United Nations Convention on the Law of the Sea.

			resources.[223]	navigational and hydrographical characteristics; in such routes, the other relevant Parts of this Convention, including the provisions regarding the freedoms of navigation and overflight, apply." (Article 36, United Nations Conventions on the Law of the Sea)[224]
10.	Internal Waters	*Perairan Pedalaman*	All areas of sea which lie within (or on the coastal side of) the baseline from which the territorial sea is measured.[225]	"The sovereignty of a coastal State extends, beyond its land territory and **internal waters** and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea. 2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil. 3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law." (Article 2, United Nations Convention on the Law of

[223]NOAA Ocean Exploration, "What is the "EEZ"?" https://www.noaa.gov/, accessed July 31, 2025, https://oceanexplorer.noaa.gov/facts/useez.html#:~:text=An%20%E2%80%9Cexclusive%20economic%20zone%2C%E2%80%9D,both%20living%20and%20nonliving%20resources.

[224]Article 36, United Nations Convention on the Law of the Sea.

[225]D. P. O'Connell, "Internal Waters: Bays, Ports, Straits," *The International Law of the Sea: Volume I*, 1982, accessed July 31, 2025, https://academic.oup.com/oxford-law-pro/book/57167/chapter-abstract/473558416?redirectedFrom=fulltext.

				the Sea)[226]
11.	Territorial Sea	*Laut Teritorial*	The territorial sea extends to a limit of 12 nautical miles from the baseline of a coastal State. Within this zone, the coastal State exercises full sovereignty over the airspace above the sea and over the seabed and subsoil.[227]	"1. The regime of innocent passage, in accordance with Part II, section 3, shall apply in straits used for international navigation: (a) excluded from the application of the regime of transit passage under article 38, paragraph 1; or (b) between a part of the high seas or an exclusive economic zone and the **territorial sea** of a foreign State. 2. There shall be no suspension of innocent passage through such straits." (Article 45, United Nations Conventions on the Law of the Sea)[228]
The High Seas				
12.	Flag State	*Negara Bendera*	The country to which a commercial or merchant vessel is registered to, and under whose jurisdiction the vessel operates while in international waters. This country is represented by the national flag which the	"The **flag State** shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State

[226]Article 2, United Nations Convention on the Law of the Sea.
[227]"Territorial Sea," ScienceDirect, accessed September 2, 2025, https://www.sciencedirect.com/topics/earth-and-planetary-sciences/territorial-sea.
[228]Article 45, United Nations Convention on the Law of the Sea.

			vessel is required to fly.[229]	concerning passage through the territorial sea or with the provisions of this Convention or other rules of international law" (Article 31, United Nations Convention on the Law of the Sea)[230]
13.	Freedom of Fishing	*Kebebasan Menangkap Ikan*	The legal entitlement that allows individuals or groups to catch fish in specific waters.[231]	"The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and noncoastal States: (1) Freedom of navigation; (2) **Freedom of fishing**; (3) Freedom to lay submarine cables and pipelines; (4) Freedom to fly over the high seas." (Article 2, Convention on the High Seas)[232]

[229]"Flag vs Port State," *MITAGS*, last updated February 26, 2021, https://www.mitags.org/flag-vs-port-state/#:~:text=Last%20updated%20on%20Feb%2026.
[230]Article 31, United Nations Convention on the Law of the Sea.
[231]"Fishing Rights - (US History – before 1865) - Vocab, Definition, Explanations: Fiveable," All 38 AP Subjects, accessed August 19, 2025, https://library.fiveable.me/key-terms/united-states-history-1865/fishing-rights.
[232]Conventions on the High Seas, opened for signature April 29, 1958, entered into force September 30, 1962, https://legal.un.org/ilc/texts/instruments/word_files/english/conventions/8_1_1958_high_seas.doc, Article 2.

14.	Freedom of Navigation	*Kebebasan Navigasi*	Every state, land-locked or coastal, possess the right to sail vessels flying their state flags over the high seas.[233]	"This Part does not apply to a strait used for international navigation if there exists through the strait a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics; in such routes, the other relevant Parts of this Convention, including the provisions regarding the **freedoms of navigation** and overflight, apply." (Article 36, United Nations Conventions on the Law of the Sea)[234]
15.	Freedom to Fly Over the High Seas	*Kebebasan Terbang di Atas Laut Bebas*	The right of an aircraft to exercise an international flight in which it leaves the airspace of its State of nationality and enters international airspace.[235]	"The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and noncoastal States: (1) Freedom of navigation; (2) Freedom of fishing; (3) Freedom to lay submarine cables and pipelines;

[233]Article 90, United Nations Convention on the Law of the Sea.
[234]Article 36, United Nations Convention on the Law of the Sea.
[235]"Overflight" Oxford Reference, accessed August 5 2025, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1204.

				(4) **Freedom to fly over the high seas**." (Article 2, Convention on the High Seas)[236]
16.	Freedom to Lay Submarine Cables and Pipelines	*Kebebasan Memasang Kabel dan Pipa Bawah Laut*	The right of all States to lay submarine cables on the bed of the high seas, thus including not only telegraph cables but telephonic and high-voltage power cables.[237]	"1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States: (a) freedom of navigation; (b) freedom of overflight; (c) **freedom to lay submarine cables and pipelines**, subject to Part VI; (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI; (e) freedom of fishing, subject to the conditions laid down in section 2; (f) freedom of scientific research, subject to Parts VI and XIII. 2. These freedoms shall be exercised by all States with

[236]Article 2, Convention on the High Seas.
[237]"Submarine Cables - International Framework," National Oceanic and Atmospheric Administration, accessed August 20, 2025, https://www.noaa.gov/general-counsel/gc-international-section/submarine-cables-international-framework.

				due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area." (Article 87, United Nations Conventions on the Law of the Sea)[238]
17.	High Seas	*Laut Lepas*	Areas of the ocean that do not fall under the territory sea, internal waters, or exclusive economic zone, of any state, where certain freedoms such as freedom of fishing, freedom to lay submarine cable, and pipelines, as well as freedom of navigation and overflight may be enjoyed by vessels from all states.[239]	"A State whose nationals are engaged in fishing any stock or stocks of fish or other living marine resources in any area of the **high seas** where the nationals of other States are not thus engaged shall adopt, for its own nationals, measures in that area when necessary for the purpose of the conservation of the living resources affected" (Article 3, Convention on Fishing and Conservation of the Living Resources of the High Seas)[240]
18.	Piracy	*Pembajakan*	Illegal acts of violence done by people on a private ship or aircraft for personal gain by	"On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate

[238]Article 87, United Nations Convention on the Law of the Sea.
[239]Craig Eggett, et al, "Sources of International Law," in *Public International Law: A Multi-Perspective Approach*,(London: Routledge, 2024), 447; Article 86, United Nations Convention on the Law of the Sea.
[240]Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted April 29, 1958, entered into force March 20, 1966, Article 3.

			means of targeting another vessel, person, or property on the high seas. This definition extends to facilitation and voluntary participation in such acts.[241]	ship or aircraft, or a ship or aircraft taken by **piracy** and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith." (Article 105, United Nations Convention on the Law of the Sea)[242]
19.	The Area	*Dasar Laut Samudra*	"The Area" refers to areas of subsoil and seabed located in parts of the ocean beyond national jurisdiction where exploitation of resources in the area must be used towards the betterment of all people.[243]	"The general conduct of States in relation to **the Area** shall be in accordance with the provisions of this Part, the principles embodied in the Charter of the United Nations and other rules of international law in the interests of maintaining peace and security and promoting international cooperation and mutual understanding." (Article 138, United Nations Convention on the Law of

[241]Article 101, United Nations Convention on the Law of the Sea.
[242]Article 105, United Nations Convention on the Law of the Sea.
[243]Craig Eggett, et al, "Sources of International Law," in Public International Law: A Multi-Perspective Approach, (London: Routledge, 2024), 448.

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AIR AND SPACE LAW

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GLOSSARIUM #4

Introduction to Air and Space Law

Air and Space Law is built on international agreements that set rules for the safe, fair, and responsible use of the skies and outer space. One of the central distinctions in this legal framework is the division of airspace into different categories of jurisdiction. Airspace is generally divided into sovereign or national airspace and international airspace. Sovereign airspace is the air above a state's land and water territory; the state below it governs this area. On the other hand, international airspace refers to the air above the high seas, which is governed by international law. Beyond international airspace, a distinct legal framework is established to regulate and oversee operations conducted in outer space. While there is no universally agreed term that distinguishes airspace and outer space, the conventionally recognized border between the two is the Karman Line that is set 100 km above sea level.[245] Space law ensures that space activities are conducted responsibly and for the benefit of all, with principles such as the responsibility of the launching state, liability for damage caused by space objects, and the recognition of outer space and celestial bodies as the common heritage of humankind. Treaties like the Outer Space Treaty and the Moon Agreement forbid the ownership of celestial bodies, limit their use to peaceful purposes, and make

[245]"Kármán Line," *Encyclopædia Britannica*, accessed September 8, 2025, https://www.britannica.com/science/Karman-line.

states internationally accountable for all space activities, whether carried out by governments or private companies.[246] The development and implementation of these legal instruments are done by specialized international institutions, such as the International Civil Aviation Organization (ICAO), which standardizes rules for civil aviation and air navigation, and the United Nations Office for Outer Space Affairs (UNOOSA), which administers space treaties and promotes the peaceful use of outer space.

As technology rapidly develops, strong legal frameworks are essential to oversee activities in both airspace and space, with significant impacts on international relations, environmental protection, and commercial interests. This urgency is reflected in treaties that help create systems for governing Air and Space Law. Some treaties, such as the Chicago Convention and the Open Skies Treaty, create special arrangements like Flight Information Regions, where countries must provide flight information and alert services in designated airspace.[247] One of the key conventions in Air and Space Law is the Chicago Convention, which sets out the rights of member states, regulations for state-owned aircraft, and domestic flight control through the principle of cabotage, allowing only a country's own airlines to operate domestic routes. As this field continues to grow in importance, it is essential for law students to study it closely so they can adapt to new developments and contribute to fair and innovative solutions.

Air and Space Law				
No.	**Terminology**	**Translation**	**Explanation**	**Example in Legal Instrument**
Principles of Air and Space Law				

[246]"Laws of the Final Frontier: What Is Space Law?," Cleveland State University, August 14, 2024, https://onlinelearning.csuohio.edu/blog/jd/laws-final-frontier-what-space-law.

[247]International Federation of Air Traffic Controllers' Associations (IFATCA), *"Airspace Closures"*, IFATCA, accessed August 8, 2025, https://ifatca.org/article/airspace-closures/.

1.	Cabotage	*Asas Cabotage*	Restriction of the operation of sea, air, or other transport services within or into a particular country to that country's own transport services.[248]	"**Cabotage** Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State." (Article 7, Convention on International Civil Aviation)[249]
2.	Common Heritage of Mankind	*Warisan Bersama Umat Manusia*	A principle that states that certain areas (such as the seabed and ocean floor) and the resources within them that are outside national jurisdiction belong to all of humanity and are managed for the common good.[250]	"The Moon and its natural resources are the **common heritage of mankind**, which finds its expression in the provisions of this Agreement, in particular in paragraph 5 of this article."

[248]TLD Staff, "CABOTAGE Definition & Meaning - Black's Law Dictionary," The Law Dictionary, accessed August 22, 2025, https://thelawdictionary.org/cabotage/.

[249]*Convention on International Civil Aviation*, opened for signature December 7, 1944, entered into force April 4, 1947, No.15. U.N.T.S. 295, Article 7.

[250]Nafiatul Munawaroh, "Apa itu Prinsip Common Heritage of Mankind?" Hukumonline, accessed August 4, 2025, https://www.hukumonline.com/klinik/a/apa-itu-prinsip-common-heritage-of-mankind-lt68594d6444200/.

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				(Article 11 No. 1, Agreement Governing the Activities of States on the Moon and Other Celestial Bodies)[251]
3.	Launching States	*Negara Peluncur*	The term "launching State" means: (i) A State which launches or procures the launching of a space object; and (ii) A State from whose territory or facility a space object is launched.[252]	1. When a space object is launched into Earth orbit or beyond, the **launching State** shall register the space object by means of an entry in an appropriate registry which it shall maintain. Each **launching State** shall inform the Secretary-General of the United Nations of the establishment of such a registry. 2. Where there are two or more **launching States** in respect of any such space object, they shall jointly determine which one of them shall register the object in accordance with paragraph 1 of this article, bearing in mind the provisions of article VIII of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, and without prejudice to appropriate agreements concluded or to be concluded among the **launching States** on jurisdiction and control over the space object and over any personnel thereof. 3. The contents of each registry and the conditions

[251]Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, opened for signature December 18, 1979, Article 11, No. 1.
[252]*Convention on International Liability for Damage Caused by Space Objects*, opened for signature March 29, 1972, entered into force on September 1, 1972, No.13810. U.N.T.S. 961, Article 1.

				under which it is maintained shall be determined by the State of registry concerned. (Article II, Convention on Registration of Objects Launched into Outer Space)[253]
4.	Liability for Damage	*Tanggung Jawab atas Kerugian*	A launching state shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the Earth or to aircraft in flight.[254] In the event of damage being caused elsewhere than on the surface of the earth to a space object of one launching by a space object of another launching state, the latter shall be liable only if the damage is due to its fault or the fault of persons for whom it is responsible.[255]	"States Parties recognize that detailed arrangements concerning liability for damage caused on the Moon, in addition to the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies and the Convention on International **Liability for Damage** Caused by Space Objects, may become necessary as a result of more extensive activities on the Moon. Any such arrangements shall be elaborated in accordance with the procedure provided for in article 18 of this Agreement." (Article 14, Agreement Governing the Activities of States on the Moon and Other Celestial Bodies)[256]

[253]Convention on Registration of Objects Launched into Outer Space, opened for signature January 14, 1975, entered into force on September 15, 1976, Article II.
[254]Article II, Convention on International Liability for Damage Caused by Space Objects.
[255]Article III, Convention on International Liability for Damages Caused by Space Objects.
[256]*Agreement Governing the Activities of States on the Moon and Other Celestial Bodies*, opened for signature December 18, 1979, entered into force on July 11, 1984, No. 23002. U.N.T.S. 1363, https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/moon-agreement.html, art. 14.

Airspace Zonation				
5.	Air Defence Identification Zone	*Zona Identifikasi Pertahanan Udara*	Designated area of airspace, established unilaterally by the country, within which aircrafts are required to identify themselves and comply with specific reporting and identification procedures for the purposes of national security.[257]	”Information concerning the following circumstances shall be distributed under the regulated system (AIRAC), i.e. basing establishment, withdrawal or significant changes upon a series of common effective dates at intervals of 28 days, including 8 November 2018: a) limits (horizontal and vertical), regulations and procedures applicable to: 1) flight information regions; 2) control areas; 3) control zones; 4) advisory areas; 5) air traffic services (ATS) routes; 6) permanent danger, prohibited and restricted areas (including type and periods of activity when known) and **air defence identification zones** (ADIZ);” (Chapter 6, Paragraph 2, Annex 15, Convention on International Civil Aviation)[258]

[257]Skybrary, “Air Defense Identification Zone (ADIZ)”, Skybrary Aviation Safety, accessed August 8, 2025, https://skybrary.aero/articles/air-defense-identification-zone-adiz.
[258]Chapter 6, Paragraph 2, Annex 15, Convention on International Civil Aviation.

6.	Flight Information Region (FIR)	*Wilayah Informasi Penerbangan*	Area of airspace consisting of national airspace and international airspace assigned by ICAO in which the designated country must provide flight information and alerting services.[259]	”Contracting States shall determine, in accordance with the provisions of this Annex and for the territories over which they have jurisdiction, those portions of the airspace and those aerodromes where air traffic services will be provided. They shall thereafter arrange for such services to be established and provided in accordance with the provisions of this Annex, except that, by mutual agreement, a State may delegate to another State the responsibility for establishing and providing air traffic services in **flight information regions,** control areas or control zones extending over the territories of the former.” (Chapter 2, Paragraph 1, Annex 11, Convention on International Civil Aviation)[260]
7.	International Airspace	*Ruang Udara Internasional*	Areas of airspace that are not under the sovereignty of any state which is located in airspaces over the high seas.[261]	“Each State Party shall have the right to designate entry fixes and exit fixes. If a State Party elects to designate entry fixes and exit fixes, such fixes shall facilitate flight from the territory of the observing Party to the

[259]International Federation of Air Traffic Controllers’ Associations (IFATCA), *“Airspace Closures”*, IFATCA, accessed August 8, 2025, https://ifatca.org/article/airspace-closures/.
[260]Chapter 2, Paragraph 1, Annex 11, Convention on International Civil Aviation.
[261]International Federation of Air Traffic Controllers’ Associations (IFATCA), *“Airspace Closures”*, IFATCA, accessed August 8, 2025, https://ifatca.org/article/airspace-closures/.

				point of entry of the observed Party. Planned flights between entry fixes and points of entry and between points of exit and exit fixes shall be conducted in accordance with published ICAO standards and recommended practices and national regulations. In the event that portions of the flights between entry fixes and points of entry or between points of exit and exit fixes lie in **international airspace**, the flight through international airspace shall be conducted in accordance with published international regulations." (Paragraph 1, Annex E, Treaty on Open Skies)[262]
8.	National Airspace	*Ruang Udara Nasional*	Area of airspace above the land and territorial waters of a state, of which that state has full and exclusive sovereignty.[263]	"Further provisions regarding the methods and procedures for determining the **National Airspace** Order and flight routes are regulated by Regulation" (Article 268, Undang-Undang No. 1 Tahun 2009)[264]
9.	Prohibited Area	*Kawasan Udara Terlarang*	Area of territorial airspace within which the governing country prohibits or restricts flight	"Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly

[262] *Treaty on Open Skies*, adopted March 24, 1992, entered into force January 1, 2002, 1982 U.N.T.S. 309, annex E, para. 1.
[263] Article 1–2, Convention on International Civil Aviation.
[264] *Undang-Undang No. 1 Tahun 2009 tentang Penerbangan* (*Law No. 1 of 2009 on Aviation*), effective January 12, 2009, https://peraturan.bpk.go.id/Details/54656/uu-no-1-tahun-2009, Article 268.

			for military necessity or safety reasons.[265]	the aircraft of other States from flying over certain areas of its territory, provided that no distinction in this respect is made between the aircraft of the State whose territory is involved, engaged in inter national scheduled airline services, and the aircraft of the other contracting States likewise engaged. Such **prohibited areas** shall be of reasonable extent and location so as not to interfere unnecessarily with air navigation. Descriptions of such prohibited areas in the territory of a contracting State, as well as any subsequent alterations therein, shall be communicated as soon as possible to the other contracting States and to the International Civil Aviation Organization." (Article 9 (a), Convention on International Civil Aviation)[266]
The Outer Space and Other Celestial Bodies				
10.	Celestial Bodies	*Benda Langit*	A collection of matter in the universe (such as a planet, star, or nebula) that can be considered as a single unit for astronomical study.[267]	"The exploration and use of outer space, including the Moon and other **celestial bodie**s, shall be carried out for the benefit and in the interests of all countries,

[265]Article 9, Convention on International Civil Aviation.
[266]Article 9 (a), Convention on International Civil Aviation.
[267]"Celestial Body Definition & Meaning," Merriam-Webster, accessed August 11, 2025, https://www.merriam-webster.com/dictionary/celestial%20body.

				irrespective of their degree of economic or scientific development, and shall be the province of all mankind" (Article I, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies)[268]
11.	Harmful Contamination	*Pencemaran yang Membahayakan*	The introduction of organisms, substances or matter in an environment in which they do not naturally occur, resulting in adverse and disruptive changes on it.[269]	"In the exploration and use of outer space, including the Moon and other celestial bodies, States Parties to the Treaty shall be guided by the principle of cooperation and mutual assistance and shall conduct all their activities in outer space, including the Moon and other celestial bodies, with due regard to the corresponding interests of all other States Parties to the Treaty. States Parties to the Treaty shall pursue studies of outer space, including the Moon and other celestial bodies, and conduct exploration of them so as to avoid their **harmful contamination** and also adverse changes in the environment of the Earth resulting from the introduction of extraterrestrial matter and, where necessary"

[268]Article I, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.
[269]Lucien Rapp, *The Spationary: A Dictionary of Essential Space Terminology for Lawyers*, (Leiden: Brill, 2025), 95.

				(Article IX, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies)[270]
12.	National Appropriation	*Penguasaan oleh Negara*	Actions taken by governmental entities, or States, that means to claim or take possession of something as one's own exclusive property.[271]	"Outer space, including the Moon and other celestial bodies, is not subject to **national appropriation** by claim of sovereignty, by means of use or occupation, or by any other means." (Article II, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies)[272]
13.	Outer Space	*Luar Angkasa*	The region beyond Earth's atmosphere including planets, stars, and galaxies and its immediate surroundings.[273]	"States Parties to the Treaty shall carry on activities in the exploration and use of **outer space**, including the Moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international

[270]Article IX, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies
[271] "2.3 What Is the Meaning of 'National Appropriation'?" Marius, https://www.sjorettsfondet.no/journal/2024/584/m-812, accessed August 11, 2025.
[272]Article II, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.
[273]Outer space, definition, range, composition, human exploration, & facts, Britannica, accessed August 11, 2025, https://www.britannica.com/science/outer-space.

				cooperation and understanding." (Article III, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies)[274]
14.	Peaceful Purposes	*Tujuan Damai*	Carrying out activities in a manner that is not aggressive, does not threaten the territorial integrity or political independence of any state and does not endanger international peace, security, and justice.[275]	"The Moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for **peaceful purposes**. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military maneuvers on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other **peaceful purposes** shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the moon and other celestial bodies shall also not be prohibited." (Article IV, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial

[274]Article III, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies
[275]Lucien Rapp, *The Spationary: A Dictionary of Essential Space Terminology for Lawyers*, (Leiden: Brill, 2025), 318.

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ED

MINI QUIZ

ALSA LEGAL ENGLISH GLOSSARIUM #4

ALSA Legal English Glossarium #4 Mini Quiz

I. Multiple Choice Quiz

1. When does an international legal instrument become legally binding according to state law in countries that practice the dualist system?
   a. After discussing it in an international convention
   b. After incorporating it into domestic law through ratification
   c. After the treaty is created

2. In the event a state commits a wrongful act, what kind of reparations must it make?
   a. Full reparations for moral, material, and interest damages
   b. Reparations of material and monetary damages
   c. Full reparations of material damages and opportunity cost

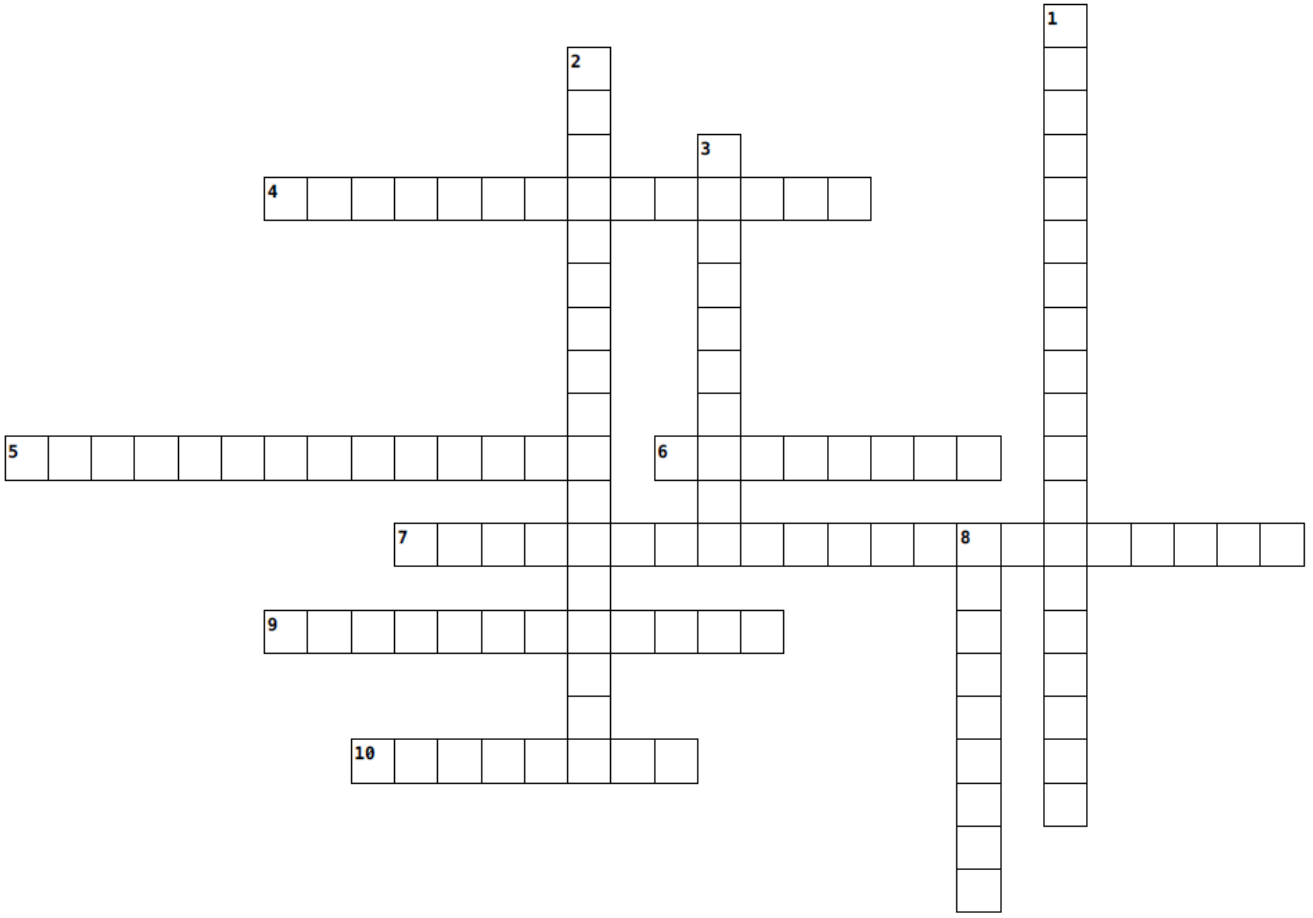
3. The High Seas consists of…?
   a. Oceans outside the sovereign territories of states
   b. Areas of deep ocean
   c. All oceans including territorial zones, gulfs, and straits

4. What is the essence of an International Obligation?

a. Something owed by one or more subjects of international law to others
b. A national law that applies only within one country
c. A voluntary agreement without consequences

5. Launching States are?
   a. States that have signed but not ratified a treaty
   b. The region beyond Earth's atmosphere including celestial bodies
   c. States that launch a space object or from whose territory a space object is launched

II. Crossword Puzzle Quiz



*Please note that answers with more than one word will not have spaces between them in the crossword.

Across

4. The moment a treaty becomes operative after consent to be bound is established (three words)

5. The area of the sea which lies within or on the coastal side of the baseline from which the territorial sea is measured (two words)

6. The subject of Public International Law has the task of fulfilling humanitarian tasks in times of war through specific rights established through a convention (two words)

7. The areas of airspace that are not under the sovereignty of any state and located over the high seas (two words)

9. A legal act that can only be exercised by subjects of Public International Law (two words)

10. The principles that allows the transportation of goods or passengers between two places in the same country by a transport operator from another country (one word)

Down

1. A guarantee that an individual can act, think, be, or do without government interference unless a law says otherwise (two words)

2. The general principle of international law obligates countries to carry out treaties they have entered (three words)

3. Political system that is a requirement of a state according to the International Court of Justice (one word)

8. The formal alteration of treaty provisions that affect all parties of the particular agreement (one word)

Answer Key

I. Multiple Choice Answers

1. b. After incorporating it into domestic law through ratification
2. a. Full reparations for moral, material, and interest damages
3. a. Oceans outside the sovereign territories of states
4. a. Something owed by one or more subjects of international law to others
5. c. States that launch a space object or from whose territory a space object is launched

II. Crossword Answers

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ALSA ENGLISH DICTIONARY

PURE CIVIL LAW

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INTRODUCTION

ALSA Legal English Dictionary is made as an introduction for anyone, whoever you are, wherever you are, to enter the world of legal english. This book consists of legal english dictionary, legal materials, and various beginner friendly law related english exercises.

ALSA Legal English Dictionary provides legal English terms with meaning and examples of application. To hone your legal English proficiency, ALSA Legal English Dictionary offers a number of exercises for you to practice. After finishing the exercise, it is important to keep a record of the new words and expressions you have learned. Remember to keep a record of your progress for you to review on a regular basis so the words and expressions may become an active part of your legal vocabulary.

Learning and developing our legal vocabulary is essential in order for us to better understand legal equations that we are bound to come across. Materials contained within this dictionary will help the reader develop their legal vocabulary, specifically in Pure Civil Monitoring and testing the knowledge we have just obtained through the contents of ALSA Legal English Dictionary is one of the ways we could learn and develop our legal vocabulary.

We recommend an open mind while going through the contents of this dictionary in order to fully comprehend the materials within it. In legal studies, it can be challenging to find literature to enrich your vocabulary. Our hope for this dictionary is to provide new materials and knowledge regarding legal vocabulary in order to become a more literate legal student.

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The term in English
The term in Bahasa Indonesia

English Definition
Indonesian Definition

Term usage example (with the word in bold)

A

Authentic Deed
Akta Otentik
A document executed before and certified by a public official with authority.

Dokumen yang dibuat dan disahkan oleh pejabat publik yang berwenang.

e.g. The sale of land must be documented in an **authentic deed** prepared by a notary public.

Agreement
Perjanjian
A legally binding arrangement between two or more parties.

Perjanjian yang mengikat secara hukum antara dua pihak atau lebih.

e.g. Both parties signed the **agreement** outlining their respective rights and obligations.

Alimentation
Alimentasi
A legal obligation to provide maintenance or support based on family relationships.

Kewajiban hukum untuk memberikan nafkah atau dukungan berdasarkan hubungan keluarga.

e.g. A child who is not receiving necessary support can file a legal claim to enforce their right to **alimentation** against the obligated parent or relative.

Acknowledgment
Pengakuan
A statement or admission by a party of the truth of certain facts.

Pernyataan atau pengakuan dari suatu pihak mengenai kebenaran fakta-fakta tertentu.

e.g. The debtor's **acknowledgment** of the debt in writing interrupted the running of the prescription period.

B

Bezit
Besit
Control over an object, either directly or indirectly, as if the object were one's own property.

Pengendalian atas suatu objek, baik secara langsung maupun tidak langsung, seolah-olah objek tersebut merupakan milik sendiri.

e.g. In civil law, **bezit** is defined as the holding or enjoying of a thing by a person himself or by another in his name, which constitutes a factual state protected by law.

Breach of contract
Wanprestasi
Failure to perform an obligation, whether not at all, late, or improperly.

Kegagalan dalam memenuhi kewajiban, baik sama sekali tidak dilakukan, terlambat, atau dilakukan dengan tidak benar.

e.g. The company's failure to deliver the equipment constitutes a **breach of contract**.

Bilateral Agreement
Perjanjian Timbal Balik
A contract where both parties have reciprocal obligations toward each other.

Perjanjian di mana kedua belah pihak memiliki kewajiban timbal balik satu sama lain.

e.g. A sale contract is a **bilateral agreement** because both sides must perform their respective duties.

Burden of Proof
Beban Pembuktian
The obligation to prove one's claim or defense.

Kewajiban untuk membuktikan klaim atau pembelaan seseorang.

e.g. Under the Civil Code, the **burden of proof** is on the party who claims a right or denies an obligation.

C

Cessie
Cessie
The transfer of a registered receivable and intangible goods from the original creditor to a third party through a notarial deed, privately drawn deed. The transfer becomes effective against the debtor once they have been notified, acknowledged, or accepted the transfer.

Peralihan piutang terdaftar dan barang tak berwujud dari kreditur asli kepada pihak ketiga melalui akta notaris atau akta yang dibuat secara pribadi. Peralihan tersebut menjadi efektif terhadap debitur setelah debitur telah diberitahu, mengakui, atau menerima peralihan tersebut.

e.g. A bank transferred its customer's debt to a collection agency through cessie, and the transfer became legally binding when the customer was notified, as required by Kitab Undang-Undang Hukum Perdata Article 613.

Coercion
Paksaan
Pressure or force that compels a person to act against their will.

Tekanan atau kekuatan yang memaksa seseorang untuk bertindak melawan kehendaknya.

e.g. The agreement was invalid because it was made under **coercion**.

Confession
Pengakuan
A statement acknowledging the truth of a fact or responsibility.

Pernyataan yang mengakui kebenaran suatu fakta atau tanggung jawab.

e.g. His **confession** was recorded during the trial.

Confusio
Percampuran Utang
The mixture of the position as a debtor with the position as a creditor into one.

Percampuran posisi sebagai debitur dengan posisi sebagai kreditur menjadi satu.

e.g. When the sole heir inherited both the estate of the deceased creditor and the debt owed to him by the deceased debtor, **confusio** occurred, extinguishing the debt because he became both the creditor and the debtor.

Community of Property
Harta Bersama
From the moment of execution of the marriage, there shall exist by law community of property between the spouses to the extent that no other stipulations have been made in the pre-nuptial agreement. Rules regarding community property cannot be revoked or amended by mutual agreement between the spouses for the duration of the marriage.

Sejak saat dilaksanakannya perkawinan, secara hukum akan berlaku harta bersama antara suami dan istri, sejauh tidak ada ketentuan lain yang diatur dalam perjanjian pranikah. Ketentuan mengenai harta bersama tidak dapat dibatalkan atau diubah melalui kesepakatan bersama antara suami dan istri selama perkawinan berlangsung.

*e.g. In the absence of a prenuptial agreement, the couple was automatically married in **community of property**, meaning that all earnings and assets acquired after the wedding were considered part of their joint estate.*

Compensation
Ganti rugi
Compensation, in the context of litigation, refers to the payment made by way of reparation for loss or injury to a person or property.

Ganti rugi, dalam konteks litigasi, merujuk pada pembayaran yang dilakukan sebagai bentuk ganti rugi atas kerugian atau kerusakan yang dialami oleh seseorang atau harta benda.

e.g. The victim of the car accident filed a civil suit claiming **compensation** for medical expenses, lost wages, and pain and suffering.

Conservatorship
Pengampuan
An adult, who is in a continuous state of simple-mindedness, insanity or rage, shall be placed under conservatorship, notwithstanding that he might have mental capacity from time to time. An adult individual may be placed under conservatorship as a result of improvidence.

Seorang dewasa yang berada dalam keadaan terus-menerus mengalami kebodohan, kegilaan, atau amarah, harus ditempatkan di bawah pengampuan, meskipun ia mungkin memiliki kemampuan mental dari waktu ke waktu. Seorang dewasa dapat ditempatkan di bawah pengampuan sebagai akibat dari kelalaian.

e.g. The court established a **conservatorship**, appointing a professional to manage the elderly woman's stock portfolio and real estate assets after she was diagnosed with dementia and began making erratic financial decisions.

Consignment
Konsinyasi
A contract whereby the consignor delivers goods to the consignee for safekeeping or sale. The ownership remains with the consignor until the goods are sold, after which the consignee must remit the agreed proceeds.

Perjanjian di mana pengirim menyerahkan barang kepada penerima untuk disimpan atau dijual. Hak milik atas barang tetap berada pada pengirim hingga barang tersebut terjual, setelah itu penerima wajib menyerahkan hasil penjualan yang telah disepakati.

e.g. Oliver owes Elio Rp75 million, but when Oliver offers full payment, Elio refuses without justification. To avoid default, Oliver makes a **consignment** by depositing the money with the District Court, thereby lawfully discharging the debt under Article 1381 of the Civil Code.

Consent
Persetujuan
The mutual agreement of the parties to the terms of a contract.

Kesepakatan bersama para pihak mengenai syarat-syarat suatu perjanjian.

e.g. **Consent** must be freely given without coercion.

Contract
Kontrak
A legal relationship between two persons or two parties, whereby one party demands something from the other party, who is obliged to fulfil that demand.

Hubungan hukum antara dua orang atau dua pihak, di mana salah satu pihak menuntut sesuatu dari pihak lain, yang wajib memenuhi tuntutan tersebut.

e.g. The principle of pacta sunt servanda means that a legally formed **contract** is binding on the parties and must be performed in good faith as if it were law between them.

Creditor
Kreditur
A party to whom a debt or obligation is owed to.

Pihak yang berhak menerima pembayaran utang atau kewajiban.

e.g. The **creditor** has the right to demand payment from the debtor upon maturity of the loan.

D

Damages
Kerugian
Monetary compensation awarded for loss or injury suffered.

Ganti rugi uang yang diberikan atas kerugian atau cedera yang dialami.

e.g. The plaintiff claimed **damages** for both actual losses and lost profits resulting from the breach.

Debtor
Debitur
A party who owes a debt or obligation to another party.

Pihak yang memiliki utang atau kewajiban kepada pihak lain.

e.g. The **debtor** failed to fulfill his obligation under the contract, resulting in a breach.

Deposit
Penitipan Dana
A contract where one party keeps another's property for safekeeping.

Perjanjian di mana salah satu pihak menyimpan barang milik pihak lain untuk disimpan dengan aman.

e.g. The **deposit** must be returned in the same condition.

Documentary Evidence
Bukti Surat
Written or printed documents used to prove a fact.

Dokumen tertulis atau tercetak yang digunakan untuk membuktikan suatu fakta.

e.g. The contract served as **documentary evidence** in court.

Divorce
Perceraian
Marriage that ends because the husband and wife cannot live in harmony.

Perkawinan yang berakhir karena suami dan istri tidak dapat hidup harmonis.

e.g. The couple filed for **divorce** on the grounds of irreconcilable differences, seeking to legally end their marriage.

E

Eigendom
Hak Milik
The right to fully enjoy the use of an object and to act freely with regard to that object, provided that it does not conflict with laws and regulations, does not interfere with the rights of others, and does not diminish the possibility of revoking that right for the public interest.

Hak untuk sepenuhnya menikmati penggunaan suatu benda dan bertindak secara bebas terhadap benda tersebut, dengan syarat tidak bertentangan dengan undang-undang dan peraturan, tidak mengganggu hak orang lain, dan tidak mengurangi kemungkinan pencabutan hak tersebut demi kepentingan umum.

e.g. The right of **eigendom** is the most comprehensive real right, granting the owner the exclusive power to use, enjoy, and dispose of their property, as long as it does not violate the law or the rights of others.

Evidence
Alat Bukti
Material or testimony presented to prove a fact in court.

Bukti atau keterangan yang diajukan untuk membuktikan suatu fakta di pengadilan.

e.g. The court admitted the document as valid **evidence**.

Expert Opinion
Keterangan Ahli
Testimony from an expert to clarify technical matters.

Kesaksian dari seorang ahli untuk menjelaskan masalah teknis.

e.g. The judge relied on **expert opinion** to reach a decision.

Extinguishment
Hapusnya Perikatan
The termination of an obligation by performance or other lawful means.

e.g. Payment results in the **extinguishment** of the obligation.

F

Fiduciary
Fidusia
The transfer of ownership rights of an object based on trust, with the provision that the object whose ownership rights have been transferred remains under the control of the owner of the object.

Peralihan hak kepemilikan suatu objek berdasarkan kepercayaan, dengan ketentuan bahwa objek yang hak kepemilikannya telah dialihkan tetap berada di bawah kendali pemilik objek tersebut.

e.g. As a real estate agent, she has a **fiduciary** obligation to her client, which includes a duty of loyalty, full disclosure, and confidentiality.

Force Majeure
Daya Paksa
There shall be no reimbursement of costs, losses or interest if, due to force majeure or accidental circumstances, the debtor is prevented from providing or doing something that is required of them, or from performing an act that is prohibited for them.

Tidak akan ada penggantian biaya, kerugian, atau bunga jika, karena force majeure atau keadaan darurat, debitur tidak dapat menyediakan atau melakukan sesuatu yang diwajibkan kepadanya, atau melakukan tindakan yang dilarang baginya.

e.g. The supplier invoked **force majeure** after a major fire destroyed its factory, arguing that it could not be held liable for its failure to deliver the goods.

Fraud
Penipuan
Deceptive conduct intended to mislead another party.

Perilaku menipu yang bertujuan untuk menyesatkan pihak lain.

e.g. The contract was declared void due to **fraud**.

G

Good Faith
Itikad Baik
Honesty of intention and absence of intent to defraud.

Kejujuran niat dan tidak adanya niat untuk menipu.

e.g. All contracts must be performed in **good faith** by both parties.

Guarantee
Jaminan
A legal promise that a debtor's obligation will be fulfilled, or else the guarantor will perform it.

Jaminan hukum bahwa kewajiban debitur akan dipenuhi, atau jika tidak, penjamin akan melaksanakannya.

e.g. The guarantor signed the contract to **guarantee** the debtor's performance of his obligation.

Guardianship
Perwalian
A person who has authority over a child who is under 18 years of age or who has never been married, and who is not under the authority of their parents.

Seorang yang memiliki wewenang atas seorang anak yang berusia di bawah 18 tahun atau yang belum pernah menikah, dan yang tidak berada di bawah wewenang orang tuanya.

e.g. Upon the death of both parents, the court established a **guardianship**, appointing the child's aunt as the legal guardian to care for the child's personal well-being and manage their inherited property.

H

Heir
Ahli Waris
The person who will receive the inheritance from the deceased.

Orang yang akan menerima warisan dari orang yang telah meninggal.

e.g. When a person dies without a will, their children and spouse are considered their primary compulsory **heirs** under the civil code, entitled to a statutory portion of the inheritance.

I

Inheritance
Waris
Transfer of assets from the testator to their heir(s).

Peralihan harta dari pewaris kepada ahli warisnya.

e.g. Before the **inheritance** can be distributed, the executor must first settle all outstanding debts and taxes of the estate from the collective assets.

J

Joint Liability
Tanggung Renteng
When two or more debtors are each liable for the entire debt.

Ketika dua atau lebih debitur masing-masing bertanggung jawab atas seluruh utang.

e.g. The co-debtors have **joint liability** under the agreement.

L

Legal Entities
Badan Hukum
Legal entities are also subjects of civil law as they can hold rights similar to those of individuals, such as the rights to own properties, to participate in legal processes, and to sue or be sued against other subjects of civil law.

Entitas hukum juga merupakan subjek hukum perdata karena mereka dapat memiliki hak-hak yang serupa dengan hak-hak individu, seperti hak untuk memiliki properti, berpartisipasi dalam proses hukum, dan menggugat atau digugat oleh subjek hukum perdata lainnya.

e.g. Civil law distinguishes between natural persons and **legal entities,** but both are granted legal personality, allowing them to be subjects of rights and duties.

Legal Notice
Somasi
A warning before the debtor is declared in breach of contract.

Peringatan sebelum debitur dinyatakan melanggar kontrak.

e.g. Before filing a lawsuit for breach of contract, the aggrieved party is often required to send a **legal notice** to the other party, demanding specific performance or payment of damages within a specified timeframe.

Legal Share
Legitieme Portie
The legal share in the descending line varies by the number of children: one child is entitled to one half, two children to two thirds each, and three or more children to three fourths each of their respective shares. Descendants may substitute the child they represent.

The legal share in the descending line varies by the number of children: one child is entitled to one half, two children to two thirds each, and three or more children to three fourths each of their respective shares. Descendants may substitute the child they represent.

Bagian hukum dalam garis keturunan menurun bervariasi tergantung pada jumlah anak: satu anak berhak atas setengah bagian, dua anak masing-masing berhak atas dua pertiga bagian, dan tiga anak atau lebih masing-masing berhak atas tiga perempat bagian dari bagian masing-masing. Keturunan dapat menggantikan anak yang mereka wakili.

e.g. A testator cannot freely dispose of their entire estate by will; they must first respect the legal share of their forced heirs, such as their descendants and ascendants.

Legally Capable
Cakap Hukum
A person's ability to perform legal acts in a lawful manner and be responsible for the legal consequences thereof.

Kemampuan seseorang untuk melakukan tindakan hukum secara sah dan bertanggung jawab atas konsekuensi hukumnya.

e.g. A minor is considered not **legally capable** of entering into a binding contract without the consent of their legal guardian or parent.

Legitimate Children
Anak Sah
A child conceived in wedlock and born within a valid marriage, a child conceived out of wedlock but born within a valid marriage, a child conceived within a valid marriage but born out of wedlock, or a child conceived by a husband and wife outside the womb and born by the wife.

Seorang anak yang dikandung dalam perkawinan sah dan lahir dalam perkawinan yang sah, seorang anak yang dikandung di luar perkawinan tetapi lahir dalam perkawinan yang sah, seorang anak yang dikandung dalam perkawinan yang sah tetapi lahir di luar perkawinan, atau seorang anak yang dikandung oleh suami dan istri di luar rahim dan dilahirkan oleh istri.

e.g. Under the civil code, **legitimate children** have an automatic legal filiation to both the mother and the husband of the mother, who is presumed to be the father.

Legal Share
Legitieme Portie
In relation to the descending line, if the testator leaves only one legal child, the legal share of the inheritance shall consist of half of the property which the child would be entitled to inherit upon death. In the event that there are two children, the legal share of the inheritance for each child shall be two thirds of whatever they would be entitled to inherit upon death. In the event that the deceased has left three or more children, then the legal share of the inheritance shall be three fourths of whatever each child should have inherited upon death. Children shall include the descendants, in any kind of degree; they shall, however only be regarded as substitutes for the child whom they represent in the inheritance of the testator.

Terkait dengan garis keturunan turun, jika pewaris meninggalkan hanya satu anak sah, bagian warisan yang sah bagi anak tersebut terdiri dari setengah dari harta yang berhak diwarisi oleh anak tersebut pada saat kematian. Jika terdapat dua anak, bagian warisan yang sah bagi masing-masing anak adalah dua pertiga dari apa yang berhak diwarisi oleh mereka pada saat kematian. Jika pewaris meninggalkan tiga atau lebih anak, maka bagian warisan yang sah bagi masing-masing anak adalah tiga perempat dari apa yang seharusnya mereka warisi pada saat kematian. Anak-anak termasuk keturunan dalam derajat apa pun; namun, mereka hanya dianggap sebagai pengganti bagi anak yang mereka wakili dalam warisan pewaris.

e.g. A testator cannot freely dispose of their entire estate by will; they must first respect the legal share of their forced heirs, such as their descendants and ascendants.

Levering
Peralihan Hak Milik
Legal action taken to transfer ownership of goods from the seller to the buyer.

Tindakan hukum yang diambil untuk mengalihkan kepemilikan barang dari penjual kepada pembeli.

e.g. The **levering** of the house and land must be executed before a notary public through a notarial deed of transfer, after which it must be registered in the land registry to be effective against third parties.

Limitation Period
Daluwarsa
Limitation period is a legal means of obtaining something or a reason for being released from an obligation after a certain period of time has elapsed and the conditions specified in the law have been met.

Masa tenggang adalah sarana hukum untuk memperoleh sesuatu atau alasan untuk dibebaskan dari suatu kewajiban setelah jangka waktu tertentu berlalu dan syarat-syarat yang ditetapkan dalam undang-undang telah terpenuhi.

e.g. The defendant raised the defense that the **limitation period** had expired, arguing that the plaintiff's claim was extinguished by law and should be dismissed by the court.

Loan for Use
Pinjam Pakai
The lending of an object for temporary use, to be returned later.

Peminjaman suatu benda untuk penggunaan sementara, yang harus dikembalikan kemudian.

e.g. The car was given under a **loan for use** agreement.

M

Marriage
Perkawinan
The spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on the One Almighty God.

Ikatan spiritual antara seorang pria dan seorang wanita sebagai suami dan istri dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan langgeng berdasarkan Tuhan Yang Maha Kuasa.

e.g. Under civil law, a **marriage** is a contract, but it is also a status that imposes specific legal duties and confers rights upon both spouses.

Mortgage
Hipotek
A mortgage is a property right over immovable goods that is used as collateral in the settlement of a contract.

Hipotek adalah hak atas barang tidak bergerak yang digunakan sebagai jaminan dalam penyelesaian suatu perjanjian.

e.g. To secure the business loan, the company granted a **mortgage** over its factory building to the bank, which was then formally registered in the land registry to be effective against third parties.

N

Natural Persons
Orang
Natural persons are individuals on which civil law is binding even before their births, to their births, throughout their lives, until their deaths.

Orang perseorangan adalah individu yang tunduk pada hukum perdata bahkan sebelum kelahiran mereka, pada saat kelahiran mereka, sepanjang hidup mereka, hingga kematian mereka.

e.g. A contract for the sale of a house is typically concluded between **natural persons**, requiring them to have the capacity to act to bind themselves legally.

Novation
Novasi
Debt renewal or an agreement originating from a new contract that terminates or cancels an agreement originating from an old contract and at the same time creates a new agreement originating from the new contract that replaces the agreement originating from the old contract.

Pembaharuan utang atau perjanjian yang berasal dari kontrak baru yang mengakhiri atau membatalkan perjanjian yang berasal dari kontrak lama dan pada saat yang sama menciptakan perjanjian baru yang berasal dari kontrak baru yang menggantikan perjanjian yang berasal dari kontrak lama.

e.g. The debtor and creditor agreed to a **novation** of their loan contract, changing the repayment schedule from monthly to quarterly installments and extinguishing the original payment plan.

Nullity
Batal Demi Hukum
A condition where a legal act has no effect from the beginning.

Suatu keadaan di mana suatu perbuatan hukum tidak memiliki efek sejak awal.

e.g. The **nullity** of the contract was declared by the court.

P

Performance
Prestasi
The fulfillment of an obligation or achievement of what was agreed.

Pemenuhan kewajiban atau pencapaian apa yang telah disepakati.

e.g. The execution of the **performance** in this agreement is contingent upon a condition, namely the obtaining of a building permit from the local government.

Pledge
Gadai
A movable security given by a debtor to secure a debt.

Jaminan bergerak yang diberikan oleh debitur untuk menjamin utang.

e.g. The creditor has the right to sell the **pledged** goods if the debt is unpaid.

Private Deed
Akta di Bawah Tangan
A document executed by parties privately without involvement of a public official.

Dokumen yang dibuat oleh para pihak secara pribadi tanpa keterlibatan pejabat publik.

e.g. The loan agreement was executed as a **private deed** signed only by the lender and borrower.

Presumption
Dugaan Hukum
A legal assumption that a fact exists until proven otherwise.

Asumsi hukum bahwa suatu fakta dianggap ada hingga terbukti sebaliknya.

e.g. There is a **presumption** of innocence in criminal law.

Pauliana Actio
Actio Pauliana
A creditor's lawsuit to annul a debtor's fraudulent transaction that harms the creditor.

Gugatan kreditur untuk membatalkan transaksi curang debitur yang merugikan kreditur.

e.g. The creditor filed a **Pauliana action** to cancel the sale made by the debtor in bad faith.

R

Rescission
Pembatalan
The cancellation or annulment of a contract, restoring parties to their pre-contractual positions.

Pembatalan atau pembatalan kontrak, mengembalikan para pihak ke posisi mereka sebelum kontrak.

e.g. The court granted **rescission** of the contract due to fraudulent misrepresentation.

Risk
Risiko
The obligation to bear losses caused by an event beyond the fault of either party.

Kewajiban untuk menanggung kerugian yang disebabkan oleh suatu peristiwa yang berada di luar kesalahan salah satu pihak.

e.g. Once the goods have been delivered, the **risk** passes to the buyer, meaning that if the goods are subsequently destroyed by an earthquake, the buyer is still obligated to pay the full price.

Revindication
Revindikasi
A legal action by the owner to recover property from someone who possesses it unlawfully.

Tindakan hukum yang dilakukan oleh pemilik untuk mengambil kembali properti dari seseorang yang memilikinya secara ilegal.

e.g. Through a **revindication** claim, the lawful owner demanded the return of the car that was sold without his consent.

S

Servitude
Pengabdian Pekarangan
A charge encumbering lands for the benefit and advantage of lands which belong to another individual. The charge shall not be imposed on or be for the benefit of an individual.

Beban yang membebani tanah untuk kepentingan dan keuntungan tanah yang dimiliki oleh individu lain. Beban tersebut tidak boleh dikenakan pada atau untuk kepentingan individu.

e.g. The landlocked property has a **servitude** of right of way over the neighbor's land, allowing the owner to pass through to reach the public road.

Subrogation
Subrogasi
The transfer of legal rights and obligations from old creditors to a third party or new creditors who have discharged the debtor's obligation. Subrogation occurs when one party takes over another's right to claim for repayment or compensation.

Peralihan hak dan kewajiban hukum dari kreditor lama kepada pihak ketiga atau kreditor baru yang telah melunasi kewajiban debitur. Subrogasi terjadi ketika satu pihak mengambil alih hak pihak lain untuk menuntut pembayaran kembali atau ganti rugi.

e.g. After paying the homeowner's insurance claim for fire damage, the insurance company exercised its right of **subrogation** to recover the costs from the contractor whose negligence caused the fire.

Suspension
Penangguhan Daluwarsa
A pause in the running of the prescription period due to legal reasons.

Penundaan dalam pelaksanaan periode resep karena alasan hukum.

e.g. The prescription was **suspended** during the debtor's absence.

T

Testimony
Kesaksian
A statement given by a witness under oath.

Pernyataan yang diberikan oleh seorang saksi di bawah sumpah.

e.g. The witness's **testimony** supported the defendant's case.

Testator
Pewaris
A deceased person who has assets and/or liabilities to be inherited.

Seorang yang telah meninggal dunia yang memiliki harta dan/atau utang yang akan diwariskan.

e.g. The **testator** revoked their previous will by physically destroying it, thereby rendering it null and void.

Testament
Wasiat
One-sided legal action regarding their last will or what should be done after the testator dies in a written form.

Tindakan hukum sepihak terkait dengan wasiat terakhir mereka atau apa yang harus dilakukan setelah pewaris meninggal dunia dalam bentuk tertulis.

e.g. In his **testament**, the deceased not only distributed his assets but also acknowledged his natural child and instituted them as a compulsory heir.

Unilateral Contract
Perjanjian Sepihak
A contract in which only one party makes a promise or obligation.

TPerjanjian di mana hanya salah satu pihak yang membuat janji atau kewajiban.

e.g. A donation agreement is considered a **unilateral contract**.

Unlawful Act
Perbuatan Melawan Hukum
An act or omission that violates another's legal right or duty imposed by law.

Perbuatan atau kelalaian yang melanggar hak hukum atau kewajiban yang ditetapkan oleh undang-undang milik orang lain.

e.g. The court found that the defendant's actions constituted an **unlawful act** causing damage to the plaintiff's property.

W

Waiver
Pelepasan Hal
The voluntary relinquishment or abandonment of a legal right or claim

Pengunduran diri atau pengabaian secara sukarela atas hak atau tuntutan hukum.

e.g. The creditor signed a **waiver** releasing the debtor from any further obligations under the loan agreement.

Witness
Saksi
A person who gives evidence or testifies in a case.

Pengunduran diri atau pengabaian secara sukarela atas hak atau tuntutan hukum.

e.g. The witness testified that he saw the accident happen.

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LOCAL CHAPTER
UNIVERSITAS PADJADJARAN

PURE CIVIL LAW 101

PART 1 : INTRODUCTION

WHAT IS PURE CIVIL LAW?

Pure civil law is a branch of law that governs **private legal relationships between individuals or legal entities and is primarily based on codified written rules.** It regulates matters such as **contracts, obligations, property rights, family law, and inheritance, which are systematically arranged in legal codes, particularly the Civil Code (Kitab Undang-Undang Hukum Perdata).** The application of pure civil law emphasizes legal certainty and consistency, as legal norms are clearly defined in statutory provisions.

In practice, pure civil law is applied and enforced through state judicial institutions, where judges resolve disputes by interpreting and applying written law, supported by legal doctrine and jurisprudence. Decisions issued under pure civil law are binding and enforceable, ensuring the protection of private rights and the orderly settlement of civil disputes within the legal system.

WHAT IS A PURE CIVIL LAW INSTITUTION?

A pure civil law institution is a formal legal body established by the state to exercise judicial authority in resolving disputes arising under civil law. In Indonesia, civil law dispute settlement is principally carried out through general courts (Pengadilan Negeri) as regulated under the judicial system. These institutions operate based on statutory law (written law) and apply codified legal rules, particularly those contained in the Civil Code (Kitab Undang-Undang Hukum Perdata) and other related legislation.

Pure Civil law institutions function to examine, adjudicate, and resolve disputes concerning private legal relationships, including contracts, property rights, family law, and inheritance. The proceedings before civil courts are governed by procedural law, primarily **HIR/RBg** and other procedural regulations, ensuring legal certainty, equality before the law, and the enforceability of judicial decisions.

Unlike alternative dispute resolution mechanisms, civil law institutions possess **coercive authority**, meaning that their decisions are binding and enforceable by law. Judges within civil law institutions are state-appointed officials who apply legal norms objectively based on statutory provisions, jurisprudence, and legal doctrine. As a result, civil law institutions play a central role in upholding legal order and protecting civil rights within the legal system.

WHAT ARE THE PURE CIVIL LAW INSTITUTION?

Pure civil law institutions are state-established judicial bodies authorized to examine, adjudicate, and resolve disputes arising from private legal relationships under civil law. In Indonesia, these institutions primarily include the **General Courts**, which handle civil matters such as contracts, property, unlawful acts, inheritance, and family law through the District Courts, High Courts, and the Supreme Court; the **Religious Courts**, which have jurisdiction over civil family and inheritance matters for Muslims; and the **Commercial Courts**, which deal with specific civil commercial disputes such as bankruptcy, PKPU, and intellectual property rights. Through the application of codified law and formal civil procedure, pure civil law institutions issue binding and enforceable decisions that ensure legal certainty and the protection of private rights.

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PURE CIVIL LAW 101

PART 2 : THE BENEFITS AND CONSIDERATION

WHY PURE CIVIL LAW?

Pure civil law **provides legal certainty and predictability because it is based on codified and written legal rules that clearly regulate private legal relationships.** By relying on statutes such as the Civil Code, parties can understand their rights and obligations in advance, reducing ambiguity in the resolution of civil disputes. This clarity is essential in matters involving contracts, property, family relations, and inheritance, where stability and consistency are required.

Moreover, pure civil law ensures authoritative and enforceable dispute resolution through state judicial institutions. Judges apply the law objectively and issue binding decisions that can be enforced by state authority, providing effective legal protection for private rights. The availability of legal remedies such as appeal and cassation further strengthens fairness and accuracy in the administration of justice, making pure civil law a reliable framework for resolving civil disputes.

WHAT TO CONSIDER?

When dealing with pure civil law, it is **important to consider the applicable written law, such as the Civil Code, because rights and obligations are determined mainly by statutory rules.** Understanding these provisions helps parties know their legal position and avoid misunderstandings.

Another consideration is the court process and enforcement. Civil law disputes are resolved through state courts that follow formal procedures, and their decisions are binding and enforceable by law. Parties should also be aware that the process may involve time, costs, and legal remedies such as appeals, which are part of the civil law system.

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UNIVERSITAS PADJADJARAN

PURE CIVIL LAW 101

PART 3 : FILLING A REQUEST

HOW TO FILE A REQUEST?

To file a request in pure civil law, the party seeking legal protection must submit a civil claim (lawsuit or petition) to the competent civil court. The process begins by determining the court with proper jurisdiction, usually the District Court (Pengadilan Negeri) where the defendant resides or where the legal relationship arose.

The claimant must prepare a written statement of claim that clearly sets out the identity of the parties, the facts of the case, the legal basis under civil law, and the remedies requested (such as performance, damages, or annulment). After the claim is registered with the court and the required court fees are paid, the court will summon the parties and proceed with hearings, examination of evidence, and legal arguments. The process concludes with a binding court judgment, which may be enforced through legal execution if the losing party fails to comply.

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EXERCISE SECTION

EXERCISES

A. LETS PLAY MATCH!

Match each legal term with its correct definition!

TERMS	DEFINITIONS
1.Good Faith	a. A legal action by the owner to recover property from someone who possesses it unlawfully.
2. Rescission	b. When two or more debtors are each liable for the entire debt.
3. Guarantee	c. The lending of an object for temporary use, to be returned later.
4. Loan For Use	d. A legal promise that a debtor's obligation will be fulfilled, or else the guarantor will perform it.
5. Joint Liability	e. The cancellation or annulment of a contract, restoring parties to their pre-contractual positions
6. Revindication	f. Honesty of intention and absence of intent to defraud

EXERCISES

B. FILL THE BLANK

Fill in each blank with the correct legal term from the list below. Use each word only once.

Creditor | Debtor | Consent | Agreement | Deposit | Authentic Deed | Private Deed | Obligation | Levering | Confusio

1. The_____ has the right to demand payment from the debtor upon maturity of the loan.
2. The_____ failed to fulfill his obligation under the contract, resulting in a breach.
3. _____ must be freely given without coercion.
4. Both parties signed the _____ outlining their respective rights and obligations.
5. The ____ must be returned in the same condition.
6. The sale of land must be documented in an ____ prepared by a notary public.
7. The loan agreement was executed as a ____ signed only by the lender and borrower.
8. The seller has an ____ to deliver the goods within 30 days of receiving payment.
9. The _____ of the house and land must be executed before a notary public through a notarial deed of transfer, after which it must be registered in the land registry to be effective against third parties.
10. When the sole heir inherited both the estate of the deceased creditor and the debt owed to him by the deceased debtor, _____ occurred, extinguishing the debt because he became both the creditor and the debtor.

ANSWERS

A. LETS PLAY MATCH

TERMS	DEFINITIONS
1.Good Faith	a. A legal action by the owner to recover property from someone who possesses it unlawfully.
2. Rescission	b. When two or more debtors are each liable for the entire debt.
3. Guarantee	c. The lending of an object for temporary use, to be returned later.
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5. Joint Liability	e. The cancellation or annulment of a contract, restoring parties to their pre-contractual positions
6. Revindication	f. Honesty of intention and absence of intent to defraud

ANSWERS

B. FILL THE BLANK

Fill in each blank with the correct legal term from the list below. Use each word only once.

1. The **Creditor** has the right to demand payment from the debtor upon maturity of the loan.
2. The **Debtor** failed to fulfill his obligation under the contract, resulting in a breach.
3. **Consent** must be freely given without coercion.
4. Both parties signed the **Agreement** outlining their respective rights and obligations.
5. The **Deposit** must be returned in the same condition.
6. The sale of land must be documented in an **Authentic Deed** prepared by a notary public.
7. The loan agreement was executed as a **Private Deed** signed only by the lender and borrower.
8. The seller has an **Obligation** to deliver the goods within 30 days of receiving payment.
9. The **Levering** of the house and land must be executed before a notary public through a notarial deed of transfer, after which it must be registered in the land registry to be effective against third parties.
10. When the sole heir inherited both the estate of the deceased creditor and the debt owed to him by the deceased debtor, **Confusio** occurred, extinguishing the debt because he became both the creditor and the debtor.

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THE SANTIAGO PRINCIPLES AND THE INADEQUACY IN THE ESTABLISHMENT OF DANANTARA AS INDONESIA'S SWF

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Abstract

In order to stabilize and enhance the use of state funds, many countries have established their own Sovereign Wealth Funds as the medium to invest globally in various types of assets. The recognition of the establishment of Sovereign Wealth Funds led to the use of Santiago Principles ("**SP**") as an internationally endorsed framework for ensuring the operational adequacy of SWFs. The establishment of Danantara, under Law No. 1 of 2025, represents the manifestation of this global phenomenon. While Danantara aims to amplify the profitability of State-Owned Enterprises ("**SOEs**") and attract foreign investment, when compared to The Indonesia Investment Authority (INA), occurs critics regarding the adequacy of its supervisory policies and the ability to fully comply with the SP, specifically the principles of independence. This research engages a comparative analysis with the Kuwait Investment Authority (KIA), one of the oldest and most established Sovereign Wealth Funds, to evaluate differences in governance structures, transparency standards, and the implementation of operational independence. The research aims to assess the adequacy of Danantara's legal and institutional framework in aligning with the SP as international best practice.

Keywords: Sovereign Wealth Funds, Santiago Principles, Danantara, Investment.

I. Background

In this modern world, there is a system created with the aim of maximizing the utilization of the use of state funds. Generally, state funds are obtained from taxes paid by people, profits from imports and exports and country's foreign exchange reserves. In order to maximize those funds, an organization was established called the Sovereign Wealth Funds ("**SWFs**"). SWFs are state owned investment mediums that invest globally in various types of assets ranging from financial to real to alternative assets.[1] SWFs began with the commodity stabilization funds such as those established in the pre 1980s like The Kuwait Investment Authority ("**KIA**"), which were designed to smooth out the government spending during periods of volatile

[1]Bader Alhashel, "Sovereign Wealth Funds: A literature review", *Journal of Economics and Business*, 2014, p.

commodity prices[2]. SWFs have gained international recognition in the funds system as the global source of funds and the attention of economic experts.

The establishment of the majority SWFs in the world are either saving funds for future generation or fiscal stabilization funds with only a handful of pension reserve funds. Some countries may not have only one SWFs, they could have multiple SWFs with different objectives such as the Russian Federation.[3] The Russian Federation splits its former petrodollar stabilization fund into two entities, the Russian Reserve Fund (RRF) which runs to stabilizing funds intended to cover the deficits in budget from drops in oil prices and the National Wealth Fund (NWF) which seeks long term returns.[4] Each SWFs have their own unique investment strategy, they are grouped into three broad categories. Some SWFs such as Qatar Investment Authority, operate with narrower and more active investment mandates, often acquiring larger stakes in individual companies to promote national strategic interests including the local economic development.[5] Despite being recognized as a distinct category of investors, SWFs exhibit significant internal diversity, a characteristic that is continually expanding.

Since their importance in the international monetary and financial system has been globally recognized, SWF has undergone numerous developments. During the initial phase of the development of SWF, the absence of clear guidelines and governing principles posed significant challenges to their structure and operations. This is proven by the international liquidity crisis which severely threatened the capital reserves of many global banks in 2007.[6] To address this issue, several representatives of Sovereign Wealth Funds across the world met at IMF Headquarters in Washington, D.C. from April 30th through May 1st of 2008.[7] From these meetings, the SP emerged as the globally accepted standards for governance, investment, and risk management practices for SWFs that contains 26 Generally Accepted Principles and Practices (GAPP).[8]

These principles are widely regarded as the most appropriate and effective guidelines for supporting the governance and operations of SWFs. This recognition stems from several key factors, the SP represents a voluntary yet globally endorsed

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[2]Bernardo Bortolotti, Veljko Fotak and William Megginson, "The Rise of Sovereign Wealth Funds : Definition, Organization and Governance", 2015, p.8.
[3]Peter Kunzel *et.al*, "Investment Objectives of Sovereign Wealth Funds: A Shifting Program", International Monetary Fund (ed), "*Economics of Sovereign Wealth Funds",* p.137.
[4]Udaibir S. Dar *et.al*, "*Economics of Sovereign Wealth Funds : Issues for Policymakers*", Washington, D.C : International Monetary Fund, 2010, p.7.
[5]*Ibid*.
[6]IFSWF, "The origin of the Santiago Principles: Experiences from the past; guidance for the future", IFSWF, 2019, p. 20.
[7]International Monetary Fund, "Press Release: International Working Group of Sovereign Wealth Funds is Established to Facilitate Work on Voluntary Principles", (IMF, 1 May 2008), https://www.imf.org/en/News/Articles/2015/09/14/01/49/pr0897, accessed on 23 September 2025.
[8]Santiago Principles.

framework, they strike a careful balance between promoting transparency and respecting sovereign autonomy which is reflected in GAPP 6, and the principles provide comprehensive and practical guidance.[9] The SP addresses essential aspects such as the legal framework, institutional structure, governance mechanisms, risk management, and investment and operational practices. This ensures that SWFs have a well-defined structure, while the principles-based approach allows sufficient flexibility to accommodate the diverse legal and institutional contexts across different countries.

As a manifestation of the state's constitutional obligation in Article 33 of the 1945 Constitution, Prabowo Subianto, as the newly elected President of Indonesia has aimed in his new presidential policy to enhance the global competitiveness and accelerate the economic growth in SOEs.[10] Thereupon on 24 February 2025, Indonesia has officially established its SWF, the Badan Pengelola Investasi Daya Anagata Nusantara ("**Danantara**"). Prabowo appointed Rosan Roeslani as the Chief Executive Officer (CEO).[11] Danantara received an initial capital of 61 billion USD with aims to finance major infrastructure projects, expand Indonesia's global investment presence, and enhance SOEs profitability.[12]

The establishment of Danantara was regulated in Law Number 1 of 2025 Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises ("**Law on SOEs**") that serves as the operational foundation that is expected to support Danantara's role in managing the country's strategic investments effectively and sustainably. Similar provisions on mandating the establishment of SWFs in Indonesia were previously held by Indonesia Investment Authority ("**INA**"). Both are state-owned legal entities which focus on developing national investment and are wholly owned by the government. However, the background, purpose, operational scope, and organizational structure of the establishment of INA and Danantara were far-off different. In terms of supervision, INA has a more rigid framework and accountability mechanism, whereas Danantara has attracted criticism regarding the adequacy of its supervision policy. [13]

[9]Santiago Principles, GAPP 6.
[10]1945 Constitution, Article 33.
[11]Kholid Rafsanjani, "Danantara umumkan struktur organisasi, ini daftar lengkapnya", IDN Financials, 2025, https://www.idnfinancials.com/id/news/53381/danantara-umumkan-struktur-organisasi-ini-daftar-lengkapnya, accessed on 29 November 2025.
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[13]Sugarda, P. P. dkk. (2024). Sovereign Wealth Fund Development in Indonesia: Lessons Learned from Norway and Singapore. Yustisia, 13 (1), 89–116. https://doi.org/10.20961/yustisia.v13i1.80717.

II. Discussion

A. The Santiago Principles as a Guiding Framework for The Operation of Indonesian SWF

Fundamentally, the performance of an organization is the reflection of the principles or laws that the organization believes. SWFs as an organization is not an exception, SWFs have their own principles or laws that are believed by all the SWFs in the world that are part of IFSWF (International Forum of Sovereign Wealth Funds) as the basis for implementing all the policies they make. The principle is hereinafter referred to as The Santiago Principles ("**SP**"). The SP consists of 24 generally accepted principles and practices ("**GAPP**") to promote transparency, good governance, accountability, and prudent investment practices whilst encouraging a more open dialogue and deeper understanding of SWFs activities.[14] The SP itself which had been welcomed by the IMF's International Monetary Financial Committee in 2008 was drafted in order to help maintaining a stable global financial system and free flow of capital investment, to comply with all applicable regulatory and disclosure requirements in the countries in which SWFs invest, to ensure that SWFs invest on the basis of economic and financial risk and return related considerations and to ensure that SWFs have in place a transparent and sound governance structure that provides adequate operational controls, risk management and accountability.[15]

Thus, we can conclude that SWFs' adherence to SP is a key to gaining global trust and attracting international co-investors which is a core part of SWFs' or specifically Danantara's mandate. First and foremost, SP serves as the legal framework for the SWF. This part is clearly stated in principle 1 of The SP. Principle 1 states that all existing SWFs that are a part of the IFSWF have to comply with the SP which serve as the legal basis and guideline for SWFs in managing their operations.[16] The power of the SP is also evident in Principle 1.2 which clearly stated that the legal basis of SWFs' particularly in this context is that SP should be publicly disclosed.[17] With the disclosure of the SP, people all around the world can see the Principles and ultimately understand what SWFs should actually be doing. This allows people to question and oppose SWFs if one or more of their policies are not in accordance with the SP, resulting in financial losses for the country.

The SP is a comprehensive framework that covers three key aspects, they are governance, transparency and accountability. Governance, in the

[14]IFSWF, "Santiago Principles", https://ifswf.org/santiago-principles-landing/santiago-principles, accessed on 22nd October 2025.
[15]*Ibid*.
[16]IWG, "Sovereign Wealth Funds, Generally Accepted Principles and Practices Santiago Principles", 2008, pg.7.
[17]*Ibid*.

context of a Sovereign Wealth Fund (SWF), pertains to the distinct roles of the government, the governing bodies, and the fund managers in the critical decision-making processes.[18] This includes decisions regarding the flows into and out of the fund, the specific investments made, and the ultimate deployment of the accumulated assets toward defined economic objectives. Transparency requires Sovereign Wealth Funds (SWFs) to provide the public with adequate, complete, and timely information about their operations. Accountability for Sovereign Wealth Funds (SWFs) concerns the multi-layered oversight of the funds and the extent to which the government, governing bodies, and fund managers are held responsible for the decisions they make. [19]

In terms of governance, Indonesian SWF's purpose and investment strategy have to be publicly disclosed while ensuring the fund operates with operational independence from the government as a whole to avoid undue political influence. This compliance with the governance aspect as stated in The Santiago Principle is reflected in the two tier board structure which consists of Board of Directors and Supervisory Board. The Indonesian SWF should foster trust among global investors by publicly disclosing its legal basis, funding resources, audited financial reports, and investment policies as actions of transparency. The Indonesian SWF should foster trust among global investors by publicly disclosing its legal basis, funding resources, audited financial reports, and investment policies as actions of transparency. Additionally, the accountability aspects include the investment strategies developed by the Indonesian SWF whereby SWF must be responsible for all of the results of the investment strategies or investment measures taken.

B. The Implementation of Santiago Principles in Danantara

Danantara is an SWF that functions as the holding company for state-owned enterprises (**"SOEs"**) operating in Indonesia.[20] Danantara serves as a strategic investment management body responsible for consolidating and optimizing government investments to support national economic growth. When examining the governance, transparency, and accountability of an SWF, there are three principles that could be referred to. The first being GAPP 1 which states that "*The legal framework for the SWF should be sound and support its effective operation and the achievement of its stated objective(s).*".

[18]Stella Tsani et.al, *"Governance, transparency and accountability in Sovereign Wealth Funds: Remarks on the assessment, rankings and benchmarks to date"*, 2010, p.5.
[19]*Ibid.*
[20]Danantara, "*Tentang Danantara Indonesia*", https://www.danantaraindonesia.com/, accessed on 27 October 2025.

[21]Danantara has not fully complied with this principle, because Danantara's current regulations still contain issues that undermine its operational effectiveness and its ability to achieve its objectives. The existing laws and regulations governing Danantara do not yet provide clear boundaries of authority, consistent governance mechanisms, or sufficient institutional independence.

The second being GAPP 6 which affirm the SWF's needs of independence. GAPP 6 states that *"The governance framework for the SWF should be sound and establish a clear and effective division of roles and responsibilities in order to facilitate accountability and operational independence in the management of the SWF to pursue its objectives.".*[22] SWF's need for independence is also further emphasized in the third principle, GAPP 16, which expresses that "*The governance framework and objectives, as well as the manner in which the SWF's management is operationally independent from the owner, should be publicly disclosed.*".[23] The two principles ensure that while SWFs are owned by the state's government and it is used to further develop state's funds through investment, the operational management and execution rest solely within the institution. In practice, this means that one person should not hold government office while simultaneously hold office in the SWF's management. This principle exists so there is no role overlap between the SWFs and other bodies.

In Indonesia, Law No. 16 of 2025 on State Owned Enterprises (**"Law on SOEs"**) is the main guidelines of Danantara's operation. Article 3A-3AL Law on SOEs rules the allocation of responsibilities, duties, and its implementation.[24] Through this, we can clearly see that Danantara does not fully comply with GAPP 6 and GAPP 16. Through Article 3C of Law on SOEs, which regulates the duties and responsibilities of the Ministry of State Owned Enterprises (**"SOE"**), there seems to be a very broad scope and extensive power that the Ministry possesses.[25] As a result, Danantara's ability to make independent decisions and implement its investment strategies becomes constrained. Moreover, Article 3M of the Law on SOEs regulates that the organizing of the body consists of a supervisory board and an executive body.[26] Article 3N further specifies the composition of the Supervisory Board.[27] In point (c), it is stated that the Supervisory Board

[21]Santiago Principles, GAPP 1.

[22]Santiago Principles, GAPP 6.
[23]Santiago Principles, GAPP 16.
[24]Law No. 16 of 2025 on State Owned Enterprises.
[25]Law No. 16 of 2025 on State Owned Enterprises, Article 3C.
[26]Law No. 16 of 2025 on State Owned Enterprises, Article 3M.
[27]Law No. 16 of 2025 on State Owned Enterprises, Article 3N.

includes representatives from several ministries, the ministry responsible for coordinating economic affairs, the ministry in charge of finance, the ministry responsible for investment, and the State-Owned Enterprises Agency as members. However, this structure has led to issues related to unclear division of duties and overlapping authority. For instance, Erick Thohir simultaneously served as both the Minister of SOEs and the Chairman of Danantara's Supervisory Board before being appointed as the Minister of Youth and Sports while still serving in the Ministry of SOEs.[28] This dual role illustrates the lack of clear separation between supervisory and executive functions, which may result in conflicts of interest and weaken the effectiveness of oversight and governance within Danantara. This concentration of power may lead to governmental interference in operational matters, reducing Danantara's effectiveness as a sovereign wealth fund and its capacity to achieve its long-term objectives.

C. The Implementation of the Santiago Principles within the Kuwait Investment Authority Compared to Danantara

Kuwait as an oil producing country and a member of the Cooperation Council for the Arab States of the Gulf (GCC) has been very dependent on oil as the main source of the nation's income. Particularly, from the early 2000s to mid-2008 oil prices witnessed an unprecedented surge, reaching a peak of US$147 per barrel before collapsing by early 2010s. Recognizing the need to safeguard the nation's wealth for future generations, Sheikh Abdullah al-Salem al-Sabah, the ruler of Kuwait from 1950 to 1965, established Kuwait Investment Board (KIB) which later developed as KIA with the aim of investing the surplus oil revenue in order to provide a fund for the future and reduce reliance on limited resources.[29] With the establishment of KIA, Kuwait was able to be the first country to establish SWF in 1953. In addition, as a means of establishing a robust framework for investment practices by SWFs worldwide, SP was made to represent as a framework of generally accepted principles with appropriate governance and accountability arrangements of SWFs.[30]

In "*Governing the Wealth of Nations: The Santiago Principles at 15*", Paul Rose cited Ahmad Bastaki of the KIA who stated that, "*the Santiago*

[28]Tempo, "*Sederet Kontroversi Erick Thohir Selama Jadi Menteri BUMN*", https://www.tempo.co/politik/sederet-kontroversi-erick-thohir-selama-jadi-menteri-bumn-2070756, accessed on 26 October 2025.
[29]Xu Yi-chong and Gawdat Bahgat, The Political Economy of Sovereign Wealth Funds, Palgrave Macmillan: New York, 2020, p. 77-78.
[30]Al Sayed, A. 2023. "The Institutional Design of Sovereign Wealth Funds in the Context of Macroeconomic Stability and Development: a Comparative Analysis of Kuwait, Singapore, and Qatar." PhD thesis, University of Oxford, p. 27.

Principles is more of a comfort document for recipient countries to be reassured that what we do will be done responsibly. However, it is voluntary. We have considerably greater oversight in Kuwait than implied by the Santiago Principles. The domestic laws of Kuwait are more stringent than the Santiago Principles, so we consider the Santiago Principles to be secondary".[31] This implies that Kuwait will never be fully compliant with the SP if they were viewed as superseding home country regulations. KIA then furtherly proposed and clarified that the principles would be subject to home country laws, regulations, requirements, and obligations. This was proven in Kuwait's 1982 decree which stated that board members and employees of the fund may not disclose data nor information without permission from the board chair.

KIA's governance and operational frameworks are aligned with the GAPP 1, 6, and 16 of the SP. GAPP 1 mandates that KIA should operate within a robust legal framework which supports its objectives to preserve and grow Kuwait's wealth for future generations.[32] In accordance with GAPP 6, KIA should maintain a governance structure that ensures a clear separation of roles between the state as an owner and the fund's management which promotes accountability and operational independence.[33] Furthermore, GAPP 16 is reflected in KIA's practice of publicly disclosing its governance framework objectives, reinforcing its transparency in the global financial system.[34]

Compared to KIA, the establishment of Danantara as a state-owned sovereign wealth fund under Law on SOEs remains in the early stages of aligning itself with the SP. While Danantara has aimed to function as an investment vehicle in supporting national development and attracting global investors, many concerns have been raised regarding its adherence to the implementation GAPP 1, 6, and 16 of Santiago SP. The first concern lies in whether Danantara's institutional agenda is profit-oriented or development-oriented. It raises an ambiguity and doubts regarding the core objectives in accordance with GAPP 1 of the SP. Moreover, due to overlapping roles between political appointees and fund management, it potentially undermines accountability and operation independence in contrast to GAPP 6 and GAPP 16.

[31]Paul Rose, "Governing the Wealth of Nations: The Santiago Principles at 15", The International Lawyer, SSRN, 2023, p. 9.
[32]Santiago Principles, GAPP 1.
[33]Santiago Principles, GAPP 6.
[34]Santiago Principles, GAPP 16.

III. Conclusion

First, The SP are not merely guidelines but serve as the fundamental legal and operational framework for SWFs, like Danantara. Adhering to the 24 GAPP is crucial for building global trust and attracting international co-investors. The SP guarantees that SWFs operate with transparency, sound governance, and accountability, ensuring decisions are based on economic prudence to maintain a stable global financial system. *Second*, in practice, SWFs across the world still faces challenges in implementing the SP. One of those SWFs is Danantara in Indonesia. Danantara faces challenges in implementing various principles, three of them are the GAPP 1, GAPP 6, and GAPP 16 which regulate the governance, transparency, and accountability of SWFs. Danantara still faces challenges regarding the unclear division of roles and overlapping authority. Therefore, there is a concentration of power that may lead to governmental interference in operational matters, reducing Danantara's effectiveness as a sovereign wealth fund and its capacity to achieve its long-term objectives. *Third*, Danantara as a newly established SWF remains in the formative stages of aligning its operational and governance practices with the Santiago Principles. The ambiguity and the overlapping roles between political appointees and fund management reveals structural weakness which could hinder the SP principles. In contrast, KIA as the first SWF has demonstrated a mature and structured governance framework that aligns with GAPP 1, 6, and 16.

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Safeguarding Fair Trade: E-Commerce Disputes and the Limits of Consumer Protection Law in Indonesia

Graciella Rehalldine Marchellia, Muhammad Novero Wardhana

ISSUES

In recent years, there has been a dramatic increase in e-commerce businesses, and we will see further developments in digital commerce in the future. Digital commerce is not only found on online shopping platforms such as Tokopedia, Shopee, Lazada, and Blibli, but also found on social media platforms such as TikTok now offer online shopping features. Referring to data published by the Central Statistics Agency on E-commerce Statistics 2023, there was a sharp increase of 27.40 percent in 2023, indicating a growth of 3,816,750 businesses compared to 2022, which only had 2,995,986 businesses. This rapid growth is inseparable from the ease of infrastructure and regulations. However, behind the positive and stable growth in the e-commerce sector, there are still various issues related to consumer protection. This is a new challenge in the aspect of consumer protection. Cases such as goods not matching orders, transaction fraud, delays in delivery, and difficulties experienced by customers in claiming compensation still show that there is clear evidence that disputes between consumers and online businesses still occur frequently.[1]

And within the existing regulations in Indonesia, there are several legal instruments that regulate consumer protection and electronic transactions, such as Law Number 8 of 1999 concerning Consumer Protection (UUPK), Law Number 1 of 2024 concerning Information and Electronic Transactions (UU ITE), and Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems. However, in reality, the existing legal regulations have not been able to fully address and resolve the complexity of disputes that occur in the digital realm. This is exacerbated by the fact that available dispute resolution Mechanisms, such as the Consumer Dispute Settlement Agency (BPSK) or the courts, are often considered ineffective in resolving cross-platform or cross-jurisdictional transactions, especially those involving foreign businesses or when the evidence of the transaction is digital.

[1] SISTEM INFORMASI LAYANAN STATISTIK. 2023. Accesed on 1 November 2025, https://silastik.bps.go.id/v3/index.php/mikrodata/detail/Q3Q3a3RPbWo5Y043bmUwV0RXSmsrdz09

These limitations raise a fundamental question about the extent to which consumer protection in Indonesia can guarantee justice and legal certainty in the context of electronic commerce. In today's rapidly growing e-commerce era, consumer protection not only covers the right to information and transaction security but also the principle of fair trade between businesses and consumers. Because of this, it is important to review the effectiveness and limitations of the existing legal framework and seek new approaches aimed at strengthening e-commerce dispute resolution mechanisms in Indonesia with the goal of being more adaptive to the dynamics of technology and modern market behavior.[2]

FACTS

It is cited on the BPKN-RI website that consumer protection related to e-commerce platform users in Indonesia is considered inadequate for the Indonesian people, even though Indonesia itself is often seen as a potential market in the eyes of the world. Despite the fact that Indonesia has issued numerous laws and regulations regarding consumer protection, such as Law No. 8 of 1999, Law No. 19 of 2016 concerning Electronic Information and Transactions (ITE), Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems, and Law No. 1 of 2024 concerning Information and Electronic Transactions (ITE Law).[3]

The following discussion will explain in more detail Law No. 8 of 1999, which provides a strong foundation for consumer protection in general, including in the context of e-commerce. It regulates several important provisions and covers consumer rights, such as the right to comfort, security, and safety in the use of goods and services; the right to choose and obtain goods and services in accordance with the promised exchange value and conditions; and the right to accurate, clear, and honest information about the conditions and guarantees of goods and services. Furthermore, this law also stipulates the obligation for business actors to provide accurate and complete information, as well as to be responsible for losses incurred by consumers due to the use of goods or services that are produced or traded (Fista et al., 2023).[4]

Next, the following section will comprehensively explain Government Regulation No. 80 of 2019.[5] This regulation is a response to the rapid growth of online

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[2] Hamsah, M.A., 2019. Efektivitas Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Terhadap Jual Beli Dengan Sistem Transaksi Elektronik (E-Commerce). *Al-Ishlah: Jurnal Ilmiah Hukum*, *22*(2), pp.79-86.
[3] *Ibid.*
[4] Hamsah, M.A., 2019. Efektivitas Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Terhadap Jual Beli Dengan Sistem Transaksi Elektronik (E-Commerce). *Al-Ishlah: Jurnal Ilmiah Hukum*, *22*(2), pp.79-86.
[5] BPKN-RI, 2022, Accessed on 1November 2025, https://bpkn.go.id/siaranpers/detail/bpkn-ri-hasil-survey-indeks-kualitas-layanan-penggunaan-e-commerce-paling-rendah-diantara-parameter

shopping using electronic systems (e-commerce) and aims to regulate electronic commerce activities in a more specific manner. The provisions of this regulation are important and include requirements for business actors engaged in electronic commerce activities, registration obligations, and regulations regarding the protection of consumer personal data. In addition, this government regulation also regulates the mechanism for electronic dispute resolution and provides protection for consumers' personal data. In line with this, the Government Regulation also regulates the mechanism for protecting consumers' personal data and the mechanism for electronic dispute resolution. This regulation establishes a mechanism for electronic dispute resolution, protects consumers from harmful trading practices, and addresses issues such as misleading advertising and fraud. A crucial aspect of this regulation is that it is an obligation for business actors to be able to provide accurate, clear, and accountable information about the products and services offered, as well as to ensure that every transaction is carried out safely and transparently.[6]

Legal instruments and legislative frameworks that have been outlined are considered insufficient to resolve issues related to existing electronic contracts. In Indonesia, consumers in particular are in dire need of legal protection, which is protection provided to legal subjects in the form of sound legal instruments that are both preventive and repressive in nature. And specifically in Law No. 19 of 2016, Article 18 aims to accommodate the gap between technological barriers and the fulfillment of legal protection values in the practice of resolving electronic transaction disputes. Although this is clearly regulated in Article 18, in practice there are many cases of electronic contract disputes in Indonesia, even though the existence of Law Number 19 of 2016 has not yet become the main effort taken to resolve the disputes faced. However, in practice, conventional dispute resolution, which is considered less effective, is still often the preferred option. This conventional dispute resolution method is often faced with apathy from the parties involved and raises the issue of the value of the goods that are the subject of the dispute, which is often not proportional to the costs of legal consultation and dispute resolution mechanisms. This has resulted in low consumer interest in pursuing legal resolution of electronic contract disputes.[7]

REGULATIONS

1. Law Number 1 of 2024 concerning Information and Electronic Transactions (UU ITE)
2. Law Number 19 of 2016 Electronic Information and Transactions (ITE)

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[6] *Ibid.*

[7] Izazi, F.S., Sajena, P., Kirana, R.S. and Marsaulina, K., 2024. Perlindungan Hukum Terhadap Konsumen Dalam Transaksi E-Commerce Melalui Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Dan Peraturan Pemerintah (Pp) Nomor 80 Tahun 2019 Tentang Perdagangan Melalui Sistem Elektronik. *Leuser:Jurnal Hukum Nusantara*, *1*(2), pp.8-14.

3. Law Number 8 of 1999 concerning Consumer Protection (UUPK)
4. Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems.

ANALYSIS

Rapid development of e-commerce in Indonesia has in reality given rise to many complex legal dynamics, particularly in the context of consumer protection. Although based on legal provisions and various legal regulations and instruments such as Law Number 8 of 1999 concerning Consumer Protection, Law Number 1 of 2024 concerning Electronic Information and Transactions, and Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems, their implementation. The main weakness in this regard lies in the limitations of dispute resolution mechanisms and also in the fact that dispute resolution is often considered by some to be costly and time-consuming, as well as the low accessibility for consumers in claiming their rights. In reality, many cases of violations occur and cannot be resolved efficiently because the disputes occur in the cross-platform digital realm and often involve foreign businesses that do not have representative offices in Indonesia. This clearly shows that the principle of access to justice, which should be the foundation of consumer protection, has not been fully realized. From a theoretical perspective, legal protection for consumers covers two main dimensions, namely preventive and repressive.

The preventive dimension discusses efforts to prevent undesirable outcomes and should be realized through clear regulations that govern the obligations of business actors, information transparency, and personal data protection, as stipulated in Articles 4 and 7 of the UUPK.[8] However, in reality, it is unfortunate that many digital businesses still ignore these obligations by displaying inaccurate product information or not providing adequate refund guarantees. Often, customers encounter numerous obstacles when attempting to return goods or receive refunds. The repressive dimension, which deals with law enforcement in cases of violations, including dispute resolution mechanisms through the BPSK or the courts, is also often ineffective. As cited in the annual report by the Indonesian Consumers Foundation (YLKI), complaints about refunds rank first among issues related to online shopping. It is noted that 32% of consumers involved in online shopping complain about the lengthy refund process that exceeds the promised timeframe.[9]

This low effectiveness is also exacerbated by the absence of a national Online Dispute Resolution (ODR) system that is expected to accommodate and resolve

[8] Izazi, F.S., Sajena, P., Kirana, R.S. and Marsaulina, K., 2024. Perlindungan Hukum Terhadap Konsumen Dalam Transaksi E-Commerce Melalui Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Dan Peraturan Pemerintah (Pp) Nomor 80 Tahun 2019 Tentang Perdagangan Melalui Sistem Elektronik. *Leuser: Jurnal Hukum Nusantara*, *1*(2), pp.8-14.
[9] *Ibid.*

consumer disputes digitally. When compared to countries such as Singapore and the European Union, which have adopted Online Dispute Resolution (ODR) mechanisms, consumers are able to resolve e-commerce disputes without having to go through lengthy and expensive legal processes. The fact that Indonesia lags behind in terms of online dispute resolution indicates the need for regulatory reform that is more adaptive to technological developments and cross-platform transaction patterns. Therefore, an evaluation of the UUPK and PP No. 80 of 2019 is needed, as well as guidance on the establishment of an integrated online dispute resolution system and the need to improve consumer legal literacy so that the expected protection is not only formalistic but also substantive and effective in ensuring digital justice for the community.[10]

CONCLUSION

In recent years, the rapid development of e-commerce in Indonesia has brought significant economic opportunities, especially for micro, small, and medium enterprises (MSMEs) in Indonesia. However, behind these positive developments, there are negative aspects that have yet to be addressed with an efficient solution. This is the emergence of new challenges in consumer protection in the digital realm. Although various legal instruments, xsuch as Law No. 1 of 2024 concerning electronic information and transactions, as well as Government Regulation No. 80 of 2019, have provided a strong legal basis, in reality, their implementation still faces various limitations. The main weakness lies in the dispute resolution mechanism, which is not yet adaptive to the characteristics of cross-platform and cross-jurisdictional transactions.

Therefore, legal reform and the strengthening of digital dispute resolution mechanisms that are more efficient in responding to technological dynamics and modern market behavior are necessary. These efforts are important so that consumer protection is not only formalistic but also substantive in realizing justice and legal certainty in the era of digital commerce.[11]

GLOSSARY TABLE

No.	Terminology	Definition	Definition	Example	Source
1.	Fraud	*Penipuan*	act, expression to	The company	Meriem Webster

[10] Hukum Online, 2023, BPKN Imbau Konsumen Berhati-hati Saat Bertransaksi di Empat Aplikasi Digital, Accessed on 1 November 2025, http://www.hukumonline.com/berita/a/bpkn-imbau-konsumen-berhati-hati-saat-bertransaksi-di-empat-aplikasi-digital-lt63e5ab19afb6b/?page=2

[11] *Ibid.*

			induce another to part with something of value or to surrender a legal right	fell victim to a massive fraud scheme after being involved in fake invoice	dictionary
2.	Evidence	*Bukti/Petunjuk*	Something Submitted at a judicial or administrative proceeding for the purpose of proving a party's case	The **evidence** will show that the defendant is guilty beyond a reasonable doubt	Meriem Webster Dictionary
3.	Obligation	*Kewajiban*	Something that obligates one to a course of action	Unable to meet its obligations , the company went into bankruptcy	Meriem Webster Dictionary
4.	Disputes	*Sengketa*	an assertion of opposing views or claims	There is a labor ***dispute*** between workers and manageme nt	Meriem Webster Dictionary
5.	Exacerbate	*Memperburuk*	to make (something bad or unpleasant) worse	The new law only ***exacerbates*** the unemployme nt problem	Meriem Webster Dictionary

6.	Justice	*Keadilan*	the process or result of using laws to fairly judge cases, redress wrongs, and punish crimes	The role of the courts is to dispense ***justice*** fairly to everyone.	Meriem Webster Dictionary
7.	Regulations	*Peraturan*	a rule or order issued by an executive authority or regulatory agency of a government and having the force of law	***regulations*** on the disposal of waste	Meriem Webster Dictionary
8.	Compensation	*Ganti Rugi*	The act of compensatin g the state of being compensated	The court awarded the victims millions of dollars in *compensati on*	Meriem Webster Dictionary
9.	Misleading	*Menyesatkan*	to lead in a wrong direction or into a mistaken action or belief often by deliberate deceit	His comments were a deliberate attempt to ***mislead*** the public	Meriem Webster Dictionary
10.	Stipulate	Menetapkan/ menentukan	to make an agreement or covenant to	*stipulated* to a dismissal	Meriem Webster Dictionary

			do or forbear something	of the claim	

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ENFORCING LABOR LAWS IN RIGID COMPANIES IN THE ISSUE OF MENTAL HEALTH

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ISSUES

Mental health issues in the workplace are becoming an increasingly pressing concern, particularly in companies with rigid work systems. Rigid work organizations are characterized by closed hierarchical systems, centralized decision-making, inflexible working hours and high pressure to meet targets. In such situations, workers face not only physical demands but also chronic psychological stress. Psychosocial risks such as excessive stress, mental fatigue, depression, and work anxiety are consequences that are often invisible to the naked eye, but have a real impact on worker productivity and well-being. Unfortunately, Indonesia's labour law system does not yet fully recognise mental health as an integral part of worker protection. Law No. 1 of 1970 concerning Occupational Safety and Law No. 13 of 2003 concerning Manpower (which has been amended by Law No. 6 of 2023 concerning Job Creation) are more oriented towards protecting the physical safety of workers. The provisions in these regulations are still limited to providing a technically safe working environment free from physical hazards, without addressing psychosocial aspects or mental stress that may arise from unhealthy work organisation structures and cultures.

The implication of this normative vacuum is the absence of a clear legal obligation for employers to guarantee the mental health of workers. On the one hand, workers who experience psychological disorders due to work pressure do not have a strong legal basis to hold companies accountable. Besides that, companies are not encouraged to develop internal policies that support workers' mental health, such as counselling programmes, flexible working systems and/or mental health leave. This issue highlights a legal vacuum in the national labour law regime regarding protection of the non-physical aspects of employment relationships. Empirically, the implementation of labour supervision in Indonesia still shows weaknesses in addressing psychological well-being. The labour inspection instruments used by supervisors are generally administrative in nature and focus on the fulfilment of formal basic rights, such as minimum wages, working hours and social security. There are no evaluation indicators that measure the mental condition of workers or detect symptoms of psychological disorders in the workplace. This shows that the state has not yet established a supervisory mechanism that is responsive to contemporary occupational risks of a

psychological and emotional nature.

The stigma surrounding mental health in workplace culture is also a significant barrier to law enforcement.[1] Many workplaces tend to view workers with mental disorders as weak or unable to meet work demands, making them reluctant to voice complaints or seek help. The lack of legal education and understanding of workers' rights in the field of mental health has resulted in low reporting rates and minimised the possibility of legal intervention. This has led to systemic underreporting, which indirectly closes opportunities for the state to formulate accurate data-based policies. From a legal responsibility perspective, the absence of a classification of mental disorders as occupational diseases also makes it difficult to prove cases in civil and criminal courts. Workers who wish to file a compensation claim must be able to prove a causal link between their working conditions and their mental disorder, which in practice is very difficult to do without the support of a clear legal framework and formal medical recognition. This results in low effectiveness of legal protection for affected workers.

This situation contradicts the spirit of the constitution, which guarantees every citizen the right to obtain work and a decent livelihood for humanity as stipulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Within the framework of human rights and international labour law, particularly ILO conventions such as C155 on Occupational Safety and Health Recommendation R206, and Law No.8 2016 on national frameworks for occupational safety and health, the protection of workers' mental health is an integral part of the state's obligation to ensure a safe and healthy working environment. Considering all of the above issues, it is time for legislators and labour policy makers in Indonesia to reformulate labour protection norms by adding explicit clauses regarding the responsibility of employers to ensure the mental health of workers. In addition, it is necessary to establish derivative regulations, such as Government Regulations or Minister of Manpower Regulations, which technically regulate indicators, reporting mechanisms, compensation systems, and standards for the prevention of mental disorders in the workplace. Without progressive normative measures, the issue of mental health will continue to be a blind spot in Indonesia's labour law system.

FACTS

In Indonesia, the issue of workers' mental health has increasingly emerged as a critical component of occupational well being, yet remains underrecognised. According to a succinct brief by the national legislature, the modern workplace must address not only physical safety but also basic mental health initiatives such as individual counselling, group counselling, and early detection in the context of worker protection

[1] Adco Law, *Employment Discrimination in Indonesia: Legal Protections and Obligations*

policies. This official recognition signals that the burden of psychosocial rather than purely physical hazards is gaining attention within Indonesian labour discourse.[2]

Government profiles and national occupational safety data acknowledge psychological risks as a crucial component of job risk. The Indonesian National OSH Profile (2022), which was created with assistance from the ILO, demands for systematic hazard identification and management and clearly places mental and psychosocial concerns alongside conventional physical dangers. Even in cases where statutory wording is not always articulated in the updated phrase "mental health," this official acknowledgment offers an administrative foundation for implementing psychosocial protections under current K3 (Keselamatan dan Kesehatan Kerja) frameworks.

Significant loads of psychological distress are indicated by prevalence studies across occupational categories. Sectoral research conducted in 2023–2024 found that frontline and service workers, such as port health officers, medical personnel, and construction workers had higher rates of stress, anxiety, and depression. These conditions were frequently linked to long shifts, role ambiguity, and exposure to traumatic events. These results are in line with more general survey data showing that a sizable percentage of Indonesian workers report mental health issues related to their jobs, with multiple employer surveys (both academic and private) estimating prevalence rates in the tens of percent range.

Both micro and macroeconomic outcomes are correlated with psychosocial risks in Indonesian workplaces. Companies often underestimate the expenses associated with poor mental health, which include decreased productivity, increased presenteeism and absenteeism, and increased turnover. Employer focused research and case studies in Indonesia demonstrate quantifiable productivity decreases in the absence of mental health services and, on the other hand, productivity increases in response to focused stress-reduction and mental health promotion initiatives. From the standpoint of public policy, untreated work-related mental illness puts more strain on social insurance programs and public health services, including BPJS managed benefits where symptoms match the criteria for work-related illness.

Psychosocial harm is exacerbated in rigid (hierarchical, output-driven) organizations by power disparities and organizational culture. Supervisors and senior colleagues are often implicated in psychological harassment. According to ILO analyses of workplace violence and harassment in Asia, this imbalance of power increases the likelihood that victims won't report abuse. These interactions make psychosocial infractions less visible and make corrective action more difficult in Indonesian contexts with strong management authority and lax whistleblower protections. As a result, there are substantial practical enforcement gaps in addition to legislative protections.

An emerging policy concern is highlighted by recent Indonesian policy papers and legislative analyses: a surge in high profile worker mental health crises and growing

[2] American Psychological Association. *Mental health*. APA Dictionary of Psychology.

interest from legislators and regulators. These publications advocate for a comprehensive strategy that includes expanding access to occupational mental health services through BPJS and employer-provided support, enhancing inspectorate capability, encouraging employer mental health programs, and including psychosocial risk assessments into K3 audits.

REGULATIONS

ILO Occupational Safety and Health Convention, 1981 (No. 155)

ILO Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), ratified under Presidential Regulation No.34 of 2014.
Article 86 paragraph (1) and (2) of Law No. 13 of 2003 on Manpower (as amended by Law No. 6 of 2023)
Article 11, Article 45, Article 46, Article 50 on Law No.8 2016 on Protection of People with Disabilities

ANALYSIS

The legal landscape governing worker protection in Indonesia reveals a significant disparity between the scope of domestic legislation, its alignment with international standards, and the on the ground reality of psychological risks in rigid corporate environments. The increasing prevalence of mental health issues in the Indonesian workplace, particularly within rigid organizational cultures, reveals a profound mismatch between the modern psychological demands of labor and the outdated scope of existing legal protections. Rigid work systems defined by closed hierarchies, centralized decision making, inflexible hours, and high pressure are bending grounds for non physical, psychological risks such as chronic stress, mental fatigue, depression, and work anxiety. The current legal framework, while providing foundational rights, is structurally inadequate to address these modern hazards.

Indonesia's core labor statutes, Law No. 13 of 2003 on Manpower (as amended by Law No. 6 of 2023), establishes the employer's duty in ensuring Occupational Safety and Health (OSH/K3). However, the foundational law's orientation is heavily skewed toward physical safety, prioritizing a technically safe environment free from traditional physical hazards as also implied by its reference to the older Law No. 1 of 1970. The provisions are largely focused on technical controls, machinery, and working conditions, without explicitly or adequately legislating the psychosocial aspects of work that stem from unhealthy organizational structures and cultures.

The result is a normative vacuum, there is an absence of clear, explicit legal

obligation for employers to guarantee the mental healthcare of all workers. While the law does reference "working environment condition" in relation to manpower planning, this board term has not translated into a specific legal requirement for preventative measures against psychological harm. This omission created a significant liability gap for employers concerning work-induced mental health conditions, as psychosocial infractions do not carry the same legal weight or penalty as violations involving physical hazards.

Protection for mental health only becomes explicit for a specific cohort, People with Disabilities (PwD). Law No. 8 of 2016 explicitly recognizes and protects individuals with mental disabilities. This law guarantees their right to non discrimination treatment in employment and health. Furthering, it mandates specific support facilities, such as the provision of a psychologist or psychiatrist in legal contexts. However, this legislation is primarily an accommodation and remedial instrument for those with existing disabilities, it does not impose a general, prevent at duty on employers to ensure the work organization and culture prevent mentally harm to the entire workforce. The ILO conventions provide the International standard and the necessary legislative blueprint for reforming the Indonesian skewed. The ILO Occupational Safety and Health Convention, 1981 (No. 155), which is now recognized as a fundamental convention, is instrumental. Article 5 requires national OSH policy to cover the "adaptation to workers' physical and mental capacities". Thus provision is the key linking work organization directly to an employer's OSH responsibility, explicitly including mental capacity within the protective framework.

CONCLUSION

The result of the research demonstrated a clear normative and empirical gap within Indonesia's labor law framework, as the existing regulations on mental health protections for the workforce as stated on Law No.13 2003 on Manpower, Law No.8 2016 on Protection of People with Disabilities, and ratified conventions of ILO Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) and ILO Occupational Safety and Health Convention, 1981 (No. 155), where normatively, the aftermentioned laws should have been providing basics on mental health protection in the workplace, the research has brought substantive evidence that Indonesia's regulation for protection of mental health in the workplace are lacking substance for a consistent practice on mental health protection, as the national laws mentioned of Law No.13 2003 and Law No.8 2016 only covered general issues that occur on the workplace and lacking any mention of mental health protection, with Law No.8 2016 focuses only on the aspect of inclusivity of people with disabilities, and lacking any mention of mental health protection, with the ratified ILO Convention of No.187 also lacks any mention of the subject mental health protections into Indonesia's

labor law framework.

The lack of specification of mental health protections for Indonesia's framework on labor law are potentially serious issues in the near-future and needed to be mitigated by revisions of current Indonesian Labor Law frameworks with aspect of mental health protections of acknowledgement of mental disorders in the office, mitigation by staff training, as well paid leave for cases of severe mental health disorders that occurred in the workplace.

GLOSSARY TABLE

No.	Terminology	Definition	Definition	Example	Source
1.	**Rigid**	*Kaku*	Laws, rules, or systems that are rigid cannot be changed or varied, and are therefore considered to be rather severe.	A slow culture has a rigid system.	Collins Dictionary
2.	**Mental/emotional Distress**	*Kesehatan Mental*	If it occurs as the result of an accident, coverage usually extends to this specific type of psychological condition.	He's very moody and depressed from emotional distress	The Law Dictionary
3.	**Organizational Culture**	*Budaya Organisasi*	Principles and practices that define the unique atmosphere	The hangout is essential because it was an	The Law Dictionary

			within an organization.	Organizational Culture	
4.	**Policy Framework**	*Kebijakan Kerangka Kerja*	The set of guidelines, as well as long term goals which are taken into account when policies are being made. These give the direction in which the firm is moving.	A Policy Framework is provided for the next regulation of consumer protection for legalization.	The Law Dictionary
5.	**Statutory**	*Undang-Undang*	Relating to a statute; created or defined by a statute; required by a statute; conforming to a statute.	There is no escape from these charges since they are statutory.	The Law Dictionary
6.	**Omission**	*Kealpaan*	If something exacerbates a problem or bad situation, it makes it worse.	If I have succeeded you may now be able to rectify the omission we referred to at the beginning	Collins Dictionary

				of this conversation	
7.	**Exacerbate**	*Memperburuk*	If something exacerbates a problem or bad situation, it makes it worse.	This will certainly exacerbate issues of food accessibility and affordability that already exists.	Collins Dictionary
8.	**Obligation**	*Obligasi*	If I have an obligation to a person, it is my responsibility to look after them or take care of their interest.	I have an obligation as the CEO of Rockstar Games to fulfill the interests of the public, my investor's demand, and my employees' wellbeing.	Collins Dictionary
9.	**Infractions**	*Pelanggaran*	An infraction of a rule or law is an instance of	At the same time, the "sotys" and councillors acted as	Collins Dictionary

			breaking it.	the court of first instance for minor infractions and arguments.	
10.	**Empirical Laws**	*Hukum Empiris*	Capable of being proven or disproven from an observation or experiment.	An inspection on the influx of vehicles on the Border has begun to determine smuggling cars by checking influx patterns and tactics commonly used by smugglers.	Merriam-Webster Dictionary

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Dental Health Issues Predominate in Indonesia's Mass Health Screenings: Minister's Report

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ISSUES

In an effort to elevate public health standards and promote early identification of medical conditions, the Indonesian Ministry of Health (Kemenkes) has initiated a nationwide complementary health screening program, officially launched on February 10, 2025. Health Minister Budi Gunadi Sadikin reported that preliminary data from the National Free Health Screening Program (CKG) reveal dental health issues as the most prevalent concern among participants.[1] Outpacing chronic conditions such as hypertension, diabetes, and obesity. In a press briefing on Thursday, Budi highlighted that the initiative has successfully reached over 8,2 million Indonesians since its commencement.[2] He further emphasized that hypertension, diabetes, and obesity remain significant risk factors for severe diseases such as cardiovascular disorders, stroke, and renal failure, which continue to rank among the leading causes of mortality in the nation.

The CKG initiative represents a strategic government measure designed to provide free access to essential health examinations for all citizens. The program is available annually to individuals of every age group, beginning on their birthday and extending up to 30 days thereafter. Its central objective is to enhance the overall quality of life while enabling the early detection and management of potential health complications. Beyond healthcare facilities, the program's implementation has also been expanded to educational institutions and community-based environments, ensuring broader public engagement and

[1] *Indonesia.go.id - Ini Capaian dan Temuan dalam Program Cek Kesehatan Gratis 2025*. (n.d.). https://indonesia.go.id/kategori/berita/9523/ini-capaian-dan-temuan-dalam-program-cek-kesehatan-gratis-2025?lang=community-based1
[2] Indonesia.go.id - Ini Capaian dan Temuan dalam Program Cek Kesehatan Gratis 2025. (n.d.-b). https://indonesia.go.id/kategori/berita/9523/ini-capaian-dan-temuan-dalam-program-cek-kesehatan-gratis-2025?lang=1

accessibility.

Although hypertension, diabetes, and obesity statistically remain the leading causes of chronic illness and mortality in Indonesia, findings from the National Health Screening Program (CKG) reveal that dental health problems are the most frequently detected among participants. This phenomenon raises critical questions regarding the health policy priorities that position oral health as a central focus in the nation's early detection efforts. Nevertheless, several critical questions arise regarding the effectiveness and broader impact of the program's implementation. Among them are: how successful the CKG initiative has been in reaching communities across Indonesia's diverse regions; to what extent these screenings have effectively facilitated the early detection of prevalent health conditions such as dental disorders, hypertension, diabetes, and obesity; and how significantly the program contributes to mitigating the risk of chronic diseases that remain leading causes of mortality nationwide.

FACTS

The National Free Health Screening Program (Cek Kesehatan Gratis or CKG) was officially implemented by the Indonesian Ministry of Health on February 10, 2025, as part of the government's long-term strategy to promote preventive healthcare and reduce the burden of non-communicable diseases (NCDs). The initiative provides complimentary medical examinations that cover vital health indicators, including blood pressure, blood sugar levels, cholesterol, body mass index (BMI), and dental check-ups.[3]

In its initial phase, the program successfully reached over 8.2 million citizens across 38 provinces, with the highest participation rates recorded in Central Java, East Java, and West Java.[4] The health screenings were conducted not only in hospitals and public health centers (puskesmas), but also in schools, universities, and workplaces to improve accessibility for various age groups and socioeconomic backgrounds.[5]

Preliminary data from the Ministry of Health indicate that dental and oral health

[3] Indonesia.go.id – *Ini Capaian dan Temuan dalam Program Cek Kesehatan Gratis 2025*. Retrieved from https://indonesia.go.id/kategori/berita/9523/ini-capaian-dan-temuan-dalam-program-cek-kesehatan-gratis-2025?lang=1
[4] Ministry of Health of the Republic of Indonesia (Kemenkes RI). (2025). *Laporan Awal Program Cek Kesehatan Gratis Nasional 2025*.
[5] CNN Indonesia. (2025, February 12). *Kemenkes Gelar Pemeriksaan Kesehatan Gratis di Sekolah dan Kampus*.

problems were the most common findings among participants, surpassing cases of hypertension, diabetes, and obesity.[6] This outcome highlights a long-overlooked public health issue, as the Basic Health Research Report (Riset Kesehatan Dasar / Riskesdas) previously found that over 57% of Indonesians have never visited a dentist, and 90% of the population experience untreated dental issues.[7]

Health Minister Budi Gunadi Sadikin emphasized that the CKG program aims not only to detect chronic diseases early, but also to educate citizens on the importance of preventive health behavior and to reduce national healthcare costs in the long term.[8] In addition, the Ministry has collaborated with BPJS Kesehatan and regional health offices to integrate screening data into a national digital health record system, allowing for more efficient monitoring and follow-up treatments.[9]

Despite its positive outcomes, several implementation challenges have been reported, such as limited medical personnel, unequal distribution of screening facilities in remote areas, and public unawareness about the program's availability.[10] Nonetheless, the government continues to promote the initiative through online platforms and community-based campaigns to ensure broader participation and sustainability.[11]

REGULATIONS

- The 1945 Constitution of the Republic of Indonesia, Article 28H paragraph (1)
- Law No. 11 of 2008 on Electronic Information and Transactions, as amended by Law No. 1 of 2024
- Law No. 23 of 2014 on Regional Government
- Law No. 30 of 2014 on Government Administration
- Law No. 27 of 2022 on Personal Data Protection

[6] Kompas. (2025, February 15). *Kemenkes: Masalah Gigi Jadi Temuan Tertinggi dalam Program Cek Kesehatan Gratis.*
[7] Badan Penelitian dan Pengembangan Kesehatan. (2018). *Laporan Nasional Riskesdas 2018.* Jakarta: Kemenkes RI.
[8] Tempo.co. (2025, February 10). *Menjadi Sehat Lewat Deteksi Dini: Program Baru Kemenkes untuk Semua Warga.*
[9] BPJS Kesehatan. (2025, March 3). *Integrasi Data Skrining Nasional dengan Rekam Medis Digital.*
[10] Antara News. (2025, March 5). *Tantangan di Daerah Terpencil dalam Pelaksanaan Program Cek Kesehatan Gratis.*
[11] DetikHealth. (2025, February 20). *Pemerintah Dorong Partisipasi Masyarakat dalam Program Skrining Gratis Nasional.*

- Law No. 17 of 2023 on Health
- Government Regulation No. 28 of 2024 on the Implementation of Law No. 17 of 2023 on Health
- Presidential Regulation No. 82 of 2018 on Health Insurance, as amended by Presidential Regulation No. 59 of 2024
- Minister of Health Decree No. HK.01.07/MENKES/33/2025 on Technical Guidelines for Free Health Screening on One's Birthday

ANALYSIS

The establishment of the Cek Kesehatan Gratis (CKG) program represents a significant advancement in Indonesia's preventive health policy framework. Rooted in Law No. 17 of 2023 concerning Health, the initiative reflects the state's constitutional duty under Article 28H paragraph (1) of the 1945 Constitution, which guarantees every citizen the right to physical and mental well-being. The legal foundation provided by Government Regulation No. 28 of 2024 and Ministerial Decree No. HK.01.07/MENKES/33/2025 operationalizes this mandate, ensuring that preventive health services—specifically early detection—are systematically accessible to all Indonesians.

From a public health policy perspective, the program aligns with the promotive–preventive paradigm emphasized in Indonesia's 2023 Health Law. By enabling early detection of chronic and non-communicable diseases (NCDs) such as hypertension, diabetes, and obesity, the program seeks to reduce future healthcare expenditures and disease burdens. The inclusion of dental health screenings—a finding that emerged as the most common health issue detected—demonstrates the government's shift toward recognizing oral health as a critical yet historically neglected component of overall health.[12]

Legally, the CKG program can be understood as a concrete implementation of the State's obligation to fulfill the right to health, as elaborated in Article 44 of Law No. 17 of 2023, which mandates the provision of accessible and equitable preventive health services. The Ministerial Decree HK.01.07/MENKES/33/2025 translates this obligation into actionable mechanisms: free screenings conducted annually on an individual's birthday,

[12] Kompas. (2025, February 15). *Kemenkes: Masalah Gigi Jadi Temuan Tertinggi dalam Program Cek Kesehatan Gratis.*

accessible through puskesmas, hospitals, schools, and mobile health units. The regulation also integrates digital health systems—specifically through the SATUSEHAT Mobile Application—to streamline registration, data collection, and follow-up care, in accordance with Law No. 27 of 2022 on Personal Data Protection and Law No. 11 of 2008 on Electronic Information and Transactions

Despite its solid legal foundation and well-intentioned goals, the CKG program faces a number of policy and legal challenges that call into question its long-term effectiveness and compliance with the right to health. Firstly, there exists a clear disparity between the program's universal promise and Indonesia's uneven healthcare infrastructure. Remote and underdeveloped regions continue to struggle with a shortage of healthcare workers, limited diagnostic facilities, and logistical barriers that prevent equal access to screenings. This creates a de facto inequality that undermines the State's obligation under Article 28H of the Constitution to provide equal health opportunities for all citizens. The decentralization of healthcare delivery exacerbates this issue: while regional autonomy enables local responsiveness, it also results in inconsistent program implementation, data collection, and service quality across provinces.[13] This urban trend reflects that CKG implementation is easier and cheaper in cities, but fails to address structural inequalities that leave peripheral populations behind. The implementation of health decentralization policies over the past eight years has been incomplete. This has resulted in regional disparities, particularly conflicts of role between the central and regional governments and unmanaged activities. It is said that the suboptimal implementation of health decentralization policies has led to the emergence of increasingly poor regions, while others have become increasingly wealthy. The health sector is more technical in nature. The decentralization of health care was initially intended to bring services closer to the community and improve them, especially for people in remote areas. However, budgeting problems that remain unresolved and the tug-of-war between the central and regional governments over health data have resulted in suboptimal health services.

Beside, the shortage of qualified medical personnel presents a substantive barrier to effective screening. Many puskesmas in rural areas lack trained dentists, nurses, and

[13] Antara News. (2025, March 5). *Tantangan di Daerah Terpencil dalam Pelaksanaan Program Cek Kesehatan Gratis.*

laboratory staff capable of conducting accurate diagnostics. This raises concerns regarding quality assurance, as inadequate testing may lead to misdiagnosis or false reassurance, which could expose health facilities and the Ministry of Health to potential liability under administrative or tort law. Furthermore, overdiagnosis and unnecessary treatment—if screening thresholds are not evidence-based—may waste resources and create new forms of inequity in healthcare access. The concept of overdose in this context does not refer solely to excessive drug dose, but also includes the phenomena of overdiagnosis and overtreatment. This condition can cause individuals to receive treatment, referrals, or additional examinations that are not actually necessary, resulting in the overuse of healthcare services. As a result, healthcare resources such as medical personnel, facilities, and budgets are allocated to handle cases that are not substantive, while groups of people who are in real need, especially in poor, remote areas, or those with chronic diseases, are neglected. If negligence in meeting professional and service standards is found in the process, it has the potential to violate Article 276 of Law Number 17 of 2023 concerning health, which affirms the right of patients to obtain information about their health condition, adequate explanations regarding the services received, and medical services in accordance with the needs, professional standards, and quality that should be guaranteed by healthcare service providers.

At a further level, the heavy reliance on digital data systems introduces a complex legal dimension related to data privacy and cybersecurity. The integration of medical information through the SATUSEHAT platform, while beneficial for efficiency, increases the risk of data breaches or misuse. Under the Personal Data Protection Law (Law No. 27 of 2022), health data is categorized as "specific personal data," demanding heightened protection and explicit consent for collection and use. Questions arise about whether citizens are sufficiently informed about how their health data will be stored, shared, and potentially analyzed by third parties. The absence of detailed operational guidelines on data retention and cross-institutional access may result in non-compliance with privacy standards and erode public trust in government health initiatives.The Indonesian Ministry of health (Kemenkes RI) has received reports of online phishing attempts carried out via email by irresponsible parties using the name SATUSEHAT Kemenkes RI.[14] In response to this,

[14] Waspada email phishing mengatasnamakan SATUSEHAT. (2024, April 30). Kemenkes. https://kemkes.go.id/id/waspada-email-phishing-mengatasnamakan-satusehat?

Setiaji, Expert Staff for Health Technology and Chief of Digital Transformation Office (DTO) at Kemenkes, urged all parties to increase their awareness of various forms of cybercrime that could disrupt the implementation of digital transformation in the health sector. The Ministry of Health emphasized that all official websites and email addresses of the institution only use the kemkes.go.id domain, while its official social media accounts on platforms such as WhatsApp, Instagram, and X (Twitter) have been verified with and official check mark on their profiles. According to reports received, the phishing links were sent via emails not using the official Kemenkes domain to several healthcare facilities (fasyankes), with the content requesting verification of health data on the SATUSEHAT system. Kemenkes reiterates that official information regarding SATUSEHAT can only be accessed through the website satusehat.kemkes.go.id.

Moreover, concerns also emerge regarding the financial sustainability and regulatory clarity of the program. Although the Ministerial Decree No. HK.01.07/MENKES/33/2025 stipulates that implementation costs shall be covered by the Ministry's budget, there is no explicit allocation for long-term funding or mechanisms to ensure continuity at the regional level. This uncertainty raises questions about whether local health authorities can consistently maintain the program without compromising other essential services. Additionally, the Decree lacks explicit procedural rules regarding referrals, follow-up treatments, and patient compensation in cases of administrative error or service denial, creating regulatory ambiguity and potential administrative-law gaps.

Finally, there is the issue of legal liability and redress mechanisms. The current regulatory framework does not clearly specify how citizens can seek remedies for harm arising from negligent screening, data mishandling, or denial of service. This gap could hinder access to justice and weaken accountability, contrary to the principle of good governance. The absence of clear complaint procedures or compensation mechanisms suggests that the legal protection offered by the program remains incomplete. Normatively, complaint procedures in public programs such as CKG should include: transparent and easily accessible reporting channels (e.g., help desks, online forms, or through the SATUSEHAT application); verification and internal investigation stages by health facilities or the Health Office; clear deadlines for resolving complaints and guarantees of patients' rights to receive a formal written response; and administrative compensation mechanisms, such as

reimbursement of costs, re-examination at no additional cost, or further referral. These provisions are in line with Articles 276 and 277 of Law Number 17 of 2023 concerning Health, which affirm patients' rights to quality health services and the right to compensation for negligence on the part of health workers or health service facilities.

Taken together, these factors illustrate that while the CKG program is a progressive and legally sound initiative, its successful implementation requires more than legislative intent. It must be supported by consistent regulatory enforcement, accompanied by the development of a more operational regulatory framework, including national standards for screening, service quality guidelines, and procedures for handling patient complaints. Strengthened coordination between the central and regional governments is also necessary to avoid differences in policy implementation in the field. The effectiveness of Indonesia's decentralized health system is largely determined by the clarity of the division of responsibilities and the existence of a structured inter-governmental oversight mechanism. In addition, sustainable funding and adequate personnel training are required. Improving the capacity of medical personnel needs to be institutionalized through tiered training programs, competency-oriented certification, and incentives for health workers serving in remote areas. This step aims to ensure that screening is carried out in accordance with professional standards as mandated in Articles 276 and 277 of Law Number 17 of 2023 concerning Health, while minimizing the risk of ethical and administrative violations. Then a strong data protection framework and the establishment of effective oversight and complaint mechanisms. Addressing these challenges is important not only to fulfill the right to health within the national legal framework, but also to align Indonesia's health care system with global standards such as the WHO's Universal Health Coverage (UHC) principle.

Sustainable funding, adequate personnel training, robust data protection frameworks, and the establishment of effective oversight and grievance mechanisms. Addressing these challenges is essential not only for fulfilling the right to health within the national legal framework but also for aligning Indonesia’s healthcare system with global standards such as the WHO Universal Health Coverage (UHC) principle.[15]

CONCLUSION

[15] WHO. (2024). *Universal Health Coverage: Moving Together to Build Healthier Societies.*

The Cek Kesehatan Gratis (CKG) program stands as a pivotal policy innovation in Indonesia's ongoing effort to strengthen preventive healthcare and uphold the constitutional right to health for all citizens. As outlined in the preceding sections, the initiative emerged as a strategic response by the Ministry of Health to promote early disease detection and elevate national health standards. The data presented through the program's early implementation—particularly the prominence of dental health issues—reveals a crucial gap in public health awareness and access to routine care. This finding underscores the importance of preventive measures that extend beyond chronic disease management and into broader aspects of everyday health behavior.

From a legal and policy standpoint, the CKG program is firmly grounded in the framework established by Law No. 17 of 2023 concerning Health, which mandates accessible and equitable preventive services as a core obligation of the State. Supporting regulations such as Government Regulation No. 28 of 2024 and Ministerial Decree No. HK.01.07/MENKES/33/2025 translate these principles into practice through clear operational mechanisms—offering free health screenings annually on citizens' birthdays, integrated through digital platforms and local healthcare facilities. This comprehensive structure reflects the government's commitment to ensuring that preventive health measures become an integral and sustainable component of Indonesia's healthcare system.

However, as the analysis demonstrates, the success of this initiative depends on overcoming several persistent challenges. Structural disparities in healthcare infrastructure, unequal distribution of medical personnel, and gaps in digital literacy continue to limit equitable access, particularly in rural and remote regions. Moreover, legal vulnerabilities related to data protection, consent, and program funding present potential risks to both administrative accountability and public trust. Without consistent enforcement, adequate budget allocation, and robust oversight mechanisms, the program's long-term sustainability may be jeopardized.

Despite these obstacles, the CKG initiative remains a transformative step toward realizing Indonesia's vision of universal health coverage and preventive public health governance. It serves not only as a mechanism for early disease detection but also as a platform for strengthening citizen participation, promoting digital integration in healthcare, and redefining the role of the State in safeguarding public well-being. To maximize its

impact, the government must continue refining its regulatory instruments, strengthening inter-ministerial coordination, and ensuring that every citizen—regardless of region or socioeconomic background—can truly benefit from the program.

In essence, the Cek Kesehatan Gratis program symbolizes the convergence of law, policy, and public health in Indonesia's national development agenda. Its future success will depend on how effectively the State translates constitutional guarantees into consistent, equitable, and rights-based healthcare delivery that embodies both the spirit and the substance of Indonesia's commitment to health for all.

GLOSSARY TABLE

No.	Terminology	Definition	Explanation	Example	Source
1.	Prevalence	*Prevalensi*	The state or condition of being widespread or commonly occurring, especially in reference to diseases.	"The **prevalence** of dental problems exceeded that of hypertension and diabetes."	Oxford English Dictionary (OED)

2.	Commencement	*Permulaan / Awal Pelaksanaan*	The beginning or start of an event, policy, or period of time.	"The program has successfully reached millions since its **commencement**."	Cambridge Dictionary
3.	Phenomenon	Fenomena	A fact or event observed to exist or happen, especially one that is unusual or difficult to understand.	"This **phenomenon** raises questions about the nation's health priorities."	Merriam-Webster Dictionary
4.	Facilitate	*Memfasilitasi*	To make an action or process easier or help it progress more smoothly.	"The screenings are designed to **facilitate** early detection of diseases."	Cambridge Dictionary

5.	Mitigate	*Mengurangi/ meredakan*	To make something bad, harmful, or unpleasant less severe.	"The initiative aims to **mitigate** the risk of chronic illnesses."	Oxford Learner's Dictionary
6.	Mandate	*Mandat*	An official order or authority to carry out a policy, course of action, or duty.	"The Ministry acts under a legal **mandate** to ensure public health."	Black's Law Dictionary (11th ed.)
7.	Disparity	*Kesenjangan*	A great difference or inequality, especially in social or economic conditions.	"Regional **disparity** limits equal access to health services."	Merriam-Webster Dictionary

8.	Equitable	*Adil / Setara*	Fair and impartial; treating all people equally and without discrimination.	"The government is obligated to ensure **equitable** access to preventive care."	Cambridge Dictionary
9.	Redress	*Pemulihan / Ganti Rugi*	The act of setting right an unfair situation or providing compensation for a wrong.	"Citizens need access to redress mechanisms for administrative errors."	Oxford English Dictionary (OED)
10.	Sustainability	*Keberlanjutan*	The ability to continue or be maintained over time, especially without depleting resource.	"The **sustainability** of the program depends on consistent funding."	Cambridge Dictionary

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Analisis atas Penerapan Pajak Karbon sebagai Instrumen Mitigasi Perubahan Iklim di Indonesia

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FACTS

Pajak karbon di Indonesia pertama kali diatur dalam Undang-Undang Nomor 7 Tahun 2021 tentang Harmonisasi Peraturan Perpajakan ("**UU HPP**"), yang mulai berlaku pada 29 Oktober 2021. Pajak ini merupakan bentuk komitmen pemerintah dalam menekan laju emisi gas rumah kaca ("GRK") serta mendukung pencapaian *Nationally Determined Contribution* ("NDC") Indonesia, yaitu target penurunan emisi sebesar 31,89% dengan upaya sendiri dan 43,20% dengan dukungan internasional pada tahun 2030.[1]

Penerapan pajak karbon dilakukan secara bertahap, dimulai pada 1 April 2022, dengan sektor awal yang dikenai adalah Pembangkit Listrik Tenaga Uap ("PLTU") batu bara.[2] Ketentuan pelaksanaannya diatur lebih lanjut melalui Peraturan Presiden Nomor 98 Tahun 2021 tentang Nilai Ekonomi Karbon ("**Perpres 98/2021**") dan Peraturan Menteri Keuangan Nomor 21/PMK.010/2022 ("**PMK 21/PMK.010/2022**"). Tarif pajak karbon ditetapkan sebesar Rp30,00 per kilogram karbon dioksida ekuivalen (CO_2e), yang berlaku pada mekanisme perdagangan emisi (*cap and trade*) serta pungutan atas emisi yang melebihi batas (*cap*).[3] Pajak ini dikenakan terhadap kegiatan yang menghasilkan emisi karbon, dengan skema pembayaran berbasis *self-assessment* oleh wajib pajak.

Pada tahap awal implementasinya, kebijakan pajak karbon diterapkan pada sektor PLTU batu bara melalui mekanisme *cap and tax*, dengan tarif paling rendah sebesar Rp30,00 per kilogram CO_2e sebagaimana disampaikan oleh Arifin Tasrif selaku Menteri Energi dan Sumber Daya Mineral ("ESDM") dalam Rapat Kerja dengan Komisi VII DPR RI pada 15 November 2021. Penerapan terbatas ini dimaksudkan untuk menguji kesiapan administrasi, mekanisme pelaporan emisi, serta koordinasi antarinstansi sebelum diperluas ke sektor lain sesuai dengan peta jalan pajak karbon yang disusun pemerintah.[4] Pemerintah juga memperkenalkan Bursa Karbon Indonesia (IDX Carbon) yang resmi beroperasi pada 26 September 2023, sebagai wadah perdagangan sertifikat karbon dan instrumen pasar karbon

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[1] Badan Pengelola Informasi Karbon, *"Komitmen dalam NDC,"* Ditjen PPI Karbon, https://karbon.ditjenppi.org/faq-iklim-dan-karbon/komitmen-dalam-ndc, diakses 8 November 2025.
[2] H. N. Maghfirani, N. Hanum, dan R. D. Amani, "Analisis tantangan penerapan pajak karbon di Indonesia," *Juremi: Jurnal Riset Ekonomi*, vol. 1, no. 4, 2022.
[3] Undang-Undang Nomor 7 Tahun 2021 tentang Harmonisasi Peraturan Perpajakan
[4] Badan Pengelola Informasi Karbon, "*Carbon Tax Diterapkan di Pembangkitan per 1 April 2022*," Kementerian ESDM, https://www.esdm.go.id/id/berita-unit/direktorat-jenderal-ketenagalistrikan/carbon-tax-diterapkan-di-pembangkitan-per-1-april-2022, diakses 10 November 2025.

lainnya.

ISSUES

Kebijakan pajak karbon di Indonesia berakar dari komitmen global terhadap pengendalian perubahan iklim sebagaimana tertuang dalam *Paris Agreement* yang diadopsi pada tahun 2015 dan diratifikasi oleh Indonesia melalui Undang-Undang Nomor 16 Tahun 2016 tentang Pengesahan Paris Agreement To The United Nations Framework Convention On Climate Change ("**UU 16/2016**"). Melalui ratifikasi tersebut, Indonesia menetapkan target penurunan emisi gas rumah kaca sebesar 29% dengan upaya domestik dan hingga 41% dengan dukungan internasional pada tahun 2030, sebagaimana tercantum dalam NDC.[5] Komitmen ini kemudian diterjemahkan ke dalam berbagai instrumen kebijakan nasional, termasuk penerapan mekanisme nilai ekonomi karbon ("NEK") dan instrumen fiskal berupa pajak karbon untuk mendorong transisi menuju pembangunan rendah karbon serta pencapaian target *Net Zero Emission* pada tahun 2060.

Penerapan pajak karbon di Indonesia yang diatur dalam UU HPP dan telah dimulai secara bertahap sejak 1 April 2022 untuk sektor PLTU batu bara, menghadapi tantangan kompleks yang berpotensi mengurangi efektivitasnya dalam mencapai target NDC 2030. Secara struktural, kebijakan ini masih terbatas cakupannya dan implementasi penuhnya yang berlangsung hingga 2024, didukung oleh infrastruktur pendukung, sistem pelaporan, serta regulasi turunan yang belum lengkap, sehingga berisiko menimbulkan inkonsistensi dan celah penghindaran pajak. Secara teknis, tarif yang ditetapkan sebesar Rp30 per kg CO2e dianggap belum cukup memberikan sinyal harga yang kuat untuk mendorong perubahan perilaku emisi, sementara skema *self-assessment* tanpa pengawasan memadai berisiko tinggi terhadap ketidakakuratan pelaporan.

Sebagian penerimaan pajak karbon direncanakan dialokasikan untuk pendanaan aksi mitigasi perubahan iklim, pengembangan energi terbarukan, serta program sosial dan kompensasi energi bagi masyarakat berpendapatan rendah. Namun, hingga tahun 2024, implementasi penuh kebijakan ini masih bersifat terbatas karena penyesuaian infrastruktur, kesiapan industri, serta harmonisasi regulasi antar sektor. Meskipun demikian, kebijakan pajak karbon menjadi salah satu pilar penting dalam strategi transisi energi dan pembangunan ekonomi rendah karbon di Indonesia yang diharapkan mampu menekan emisi sekaligus memperkuat keadilan fiskal dan lingkungan.

Di sisi penerimaan, meskipun sebagian dana direncanakan untuk energi terbarukan dan kompensasi masyarakat, masih belum terdapat kejelasan terkait mekanisme regulasi teknis turunan, kapasitas pengawasan yang terbatas, serta kesiapan infrastruktur (seperti pasar karbon) dan akuntabilitas penyaluran yang berpotensi mengurangi manfaat nyata bagi transisi energi yang berkeadilan. Secara sosial-ekonomi, kebijakan ini menghadapi resistensi

[5] S. Syaharani dan M. A. Tavares, "Nasib target emisi indonesia: pelemahan instrumen lingkungan hidup di era pemulihan ekonomi nasional," *Jurnal Hukum Lingkungan Indonesia*, vol. 7, no. 1, 2020.

dari kalangan industri yang resah terhadap penurunan daya saing di tingkat global, dan pada akhirnya dapat berdampak pada berkurangnya lapangan kerja. Selain itu, rendahnya tingkat pemahaman masyarakat mengenai tujuan dan mekanisme penerapan pajak karbon juga berpotensi menimbulkan penolakan publik, karena kebijakan ini sering kali dinilai semata sebagai beban fiskal baru.

REGULATIONS

- Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup ("**UU PPLH**")
- Undang-Undang Nomor 16 Tahun 2016 tentang Pengesahan Paris Agreement To The United Nations Framework Convention On Climate Change ("**UU 16/2016**")
- Undang-Undang Nomor 7 Tahun 2021 tentang Harmonisasi Peraturan Perpajakan ("**UU HPP**")
- Peraturan Presiden Nomor 98 Tahun 2021 tentang Nilai Ekonomi Karbon ("**Perpres 98/2021**")
- Peraturan Menteri Keuangan Nomor 21/PMK.010/2022 ("**PMK 21/PMK.010/2022**")
- Peraturan Menteri Lingkungan Hidup Dan Kehutanan Nomor 21 Tahun 2022 tentang Tata Laksana Penerapan Nilai Ekonomi Karbon ("**Permen LHK 21/2022**")
- *Paris Agreement* under the *United Nations Framework Convention on Climate Change (UNFCCC)*, adopted in Paris on 12 December 2015, ratified by Indonesia through Law Number 16 of 2016. ("**Paris Agreement**")

ANALYSIS

Pajak karbon merupakan salah satu instrumen kebijakan fiskal yang diatur dalam UU HPP, yang menandai langkah konkret Indonesia dalam mendukung mitigasi perubahan iklim. Pajak ini dikenakan terhadap emisi karbon yang berdampak negatif bagi lingkungan hidup, dengan tujuan utama menekan laju emisi GRK serta mendorong transisi menuju ekonomi rendah karbon. Melalui kebijakan ini, negara berupaya menginternalisasi biaya lingkungan ke dalam aktivitas ekonomi yang menghasilkan polusi, sehingga para pelaku usaha didorong untuk beralih ke teknologi yang lebih efisien dan ramah lingkungan.

1. **Peran pajak karbon sebagai salah satu instrumen kebijakan fiskal untuk mendukung mitigasi perubahan iklim di Indonesia**

   Pajak karbon berperan sebagai pengendali emisi gas rumah kaca dengan meningkatkan biaya produksi bagi aktivitas yang intensif karbon sehingga mendorong industri dan sektor energi untuk mengurangi ketergantungan pada bahan bakar fosil. Selain berfungsi sebagai pengendali emisi, pajak karbon juga berperan strategis dalam membiayai transisi menuju ekonomi rendah karbon. Oleh sebab itu,

penerimaan negara yang diperoleh dari pajak karbon kemudian dapat diarahkan untuk mendukung berbagai program mitigasi dan adaptasi perubahan iklim, antara lain dengan pembangunan infrastruktur energi terbarukan, pengembangan transportasi publik yang berkelanjutan, peningkatan efisiensi energi di sektor industri, serta kegiatan rehabilitasi dan konservasi lingkungan.

Pajak karbon juga dapat berperan sebagai bagian integral dari strategi nasional dalam mencapai komitmen iklim yang tertuang dalam NDC Indonesia. Sebagaimana diketahui, Indonesia telah menetapkan target penurunan emisi dari 29% hingga sebesar 31,89% dengan upaya sendiri dan mencapai 43,20% dengan dukungan internasional dengan target pada tahun 2030.[6] Penerapan pajak karbon menjadi salah satu instrumen penting karena dana yang diperoleh dari penerimaan pajak karbon digunakan untuk mengatasi dampak negatif emisi karbon. Dengan demikian, pajak karbon bukan hanya menjadi instrumen penting, tetapi juga instrumen untuk mencapai tujuan perlindungan lingkungan. Dengan adanya kebijakan ini, pemerintah dapat menunjukkan komitmen yang kuat terhadap upaya global dalam menahan laju kenaikan suhu bumi, sejalan dengan tujuan *Paris Agreement* untuk menjaga kenaikan suhu global tidak melebihi 1,5°C.[7]

2. Penerapan Pajak Karbon Mencerminkan Prinsip Keadilan bagi Berbagai Lapisan Masyarakat

Pada hakikatnya, penerapan pajak karbon seharusnya mencerminkan prinsip proporsionalitas dan tanggung jawab lingkungan. Perlindungan dan pengelolaan lingkungan hidup dilaksanakan berdasarkan beberapa asas, salah satunya adalah *polluter pays* (pencemar membayar). Asas *polluter pays* menyatakan bahwa setiap penanggung jawab yang usaha dan/atau kegiatannya menimbulkan pencemaran dan/atau kerusakan lingkungan hidup wajib menanggung biaya pemulihan lingkungan.[8] Prinsip *polluter pays* menjadi dasar moral dan yuridis dari kebijakan ini bahwa semakin besar tingkat emisi yang dihasilkan, semakin besar pula kewajiban finansial yang ditanggung pelaku.[9] Dengan demikian, industri besar yang menjadi penyumbang utama emisi seharusnya menanggung beban pajak yang lebih tinggi dibandingkan konsumsi rumah tangga. Keadilan distributif juga harus dijaga melalui alokasi sebagian penerimaan pajak untuk mendukung kelompok masyarakat berpendapatan rendah, misalnya dalam bentuk subsidi energi bersih atau kompensasi harga energi.

Pemerintah sebagai regulator memegang peran sentral dalam memastikan keadilan dalam penerapan pajak karbon, baik melalui penetapan tarif yang

[6] Pemerintah Republik Indonesia, *Enhanced Nationally Determined Contribution (NDC) – Republic of Indonesia*, Kementerian Lingkungan Hidup dan Kehutanan, September 2022.
[7] Perjanjian Paris (Paris Agreement), *United Nations Framework Convention on Climate Change*, disahkan di Paris pada 12 Desember 2015, Pasal 2 ayat (1) huruf a.
[8] Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup
[9] E. K. Purwendah dan E. M. Erowati, "Prinsip Pencemar Membayar (Polluter Pays Principle) dalam Sistem Hukum Indonesia," *Jurnal Pendidikan Kewarganegaraan Undiksha*, vol. 9, no. 2, 2021.

transparan, mekanisme pengawasan yang akuntabel, maupun pengelolaan pendapatan pajak yang diarahkan secara tepat sasaran. Sebagian dari penerimaan tersebut seharusnya dialokasikan untuk mendorong inovasi energi hijau, mendukung pengembangan teknologi rendah karbon oleh pelaku usaha, termasuk Usaha Mikro, Kecil, dan Menengah ("UMKM"), serta menjaga stabilitas harga energi agar tetap terjangkau bagi masyarakat. Di sisi lain, keterlibatan konsumen melalui edukasi publik dan penyediaan informasi yang terbuka menjadi penting agar masyarakat memahami bahwa kebijakan pajak karbon tidak semata-mata merupakan beban fiskal, melainkan bentuk investasi jangka panjang bagi peningkatan kualitas lingkungan. Hal ini dikarenakan pungutan karbon mendorong pengurangan emisi gas rumah kaca, mempercepat transisi ke energi bersih, dan menurunkan polusi udara, sehingga manfaatnya dirasakan dalam jangka waktu yang panjang berupa lingkungan yang lebih sehat dan berkelanjutan. Lebih jauh, kebijakan ini juga berfungsi mendorong sektor industri beralih ke penggunaan energi terbarukan dan bahan bakar yang lebih efisien. Pendapatan negara yang diperoleh dari pajak karbon dapat dialokasikan untuk memperkuat sistem perpajakan dan kepabeanan, mendukung upaya mitigasi perubahan iklim, membiayai program sosial dan kesehatan masyarakat, serta membantu menekan defisit dan beban utang pemerintah, sehingga manfaat ekonomi dan ekologinya dapat dirasakan secara merata oleh seluruh lapisan masyarakat.[10]

Mekanisme penerapan yang adil juga tercermin dalam desain tarif pajak karbon yang mengikuti nilai pasar karbon melalui IDX Carbon, dengan tarif minimal Rp30,00 per kilogram CO_2e.[11] Selain itu, pungutan karbon, baik dalam perpajakan pusat dan daerah, kepabeanan dan cukai, maupun pungutan negara lainnya ditetapkan berdasarkan kandungan karbon, potensi emisi karbon, jumlah emisi karbon, dan/atau kinerja aksi mitigasi perubahan iklim sebagaimana diatur dalam Pasal 35 ayat (1) Peraturan Menteri Lingkungan Hidup dan Kehutanan Nomor 21 Tahun 2022 tentang Tata Laksana Penerapan Nilai Ekonomi Karbon ("**Permen LHK 21/2022**") jo. Pasal 58 ayat (1) Perpres 98/2021.[12] Kebijakan tarif berbasis pasar ini memastikan setiap pelaku membayar sesuai kadar emisinya, sehingga prinsip proporsionalitas dapat terwujud. Selain itu, penerapan bertahap di berbagai sektor mulai dari energi, limbah, hingga pertanian memberi waktu adaptasi bagi industri untuk menyesuaikan diri, sekaligus menjaga stabilitas ekonomi nasional.

3. **Tantangan dan Hambatan Pengendalian Emisi Gas Rumah Kaca dalam pelaksanaan pajak karbon di Indonesia**

Seiring dengan pelaksanaan pajak karbon di Indonesia, muncul berbagai

[10] R. A. A. Nugraha et al., "Implementasi Kebijakan Pajak Karbon dalam Menciptakan Aktivitas Ekonomi Hijau Pada PLTU Batubara," *Prosiding Seminar Nasional Ekonomi dan Perpajakan*, vol. 4, no. 1, 2024.
[11] Undang-Undang Nomor 7 Tahun 2021 tentang Harmonisasi Peraturan Perpajakan
[12] Peraturan Menteri Lingkungan Hidup dan Kehutanan Nomor 21 Tahun 2022 tentang Tata Laksana Penerapan Nilai Ekonomi Karbon.

hambatan dan tantangan yang bersifat struktural dan sosial. Dari sisi industri, muncul resistensi yang disebabkan oleh kekhawatiran atas beban pajak yang akan menaikkan biaya produksi dan menurunkan daya saing, yang pada akhirnya berdampak pada lapangan kerja. Dari sisi masyarakat, rendahnya pemahaman publik tentang manfaat pajak karbon menyebabkan kebijakan ini berpotensi dipersepsikan negatif. Selain itu, kelemahan pengawasan hukum dan belum lengkapnya regulasi teknis turut menjadi hambatan dalam memastikan penerapan yang konsisten di lapangan.

Hambatan lain yang perlu diperhatikan adalah risiko akan ketimpangan ekonomi akibat distribusi beban pajak yang tidak merata. Tanpa desain kompensasi yang jelas, kelompok berpendapatan rendah berpotensi menanggung dampak kenaikan harga energi secara lebih berat. Kesenjangan regional juga bisa muncul, terutama di daerah yang sangat bergantung pada energi fosil atau sektor industri berat. Untuk mengatasi hal tersebut, diperlukan strategi transisi yang adil melalui dukungan teknologi, insentif fiskal, dan mekanisme perlindungan sosial yang memadai.

Efektivitas pelaksanaan kebijakan ini juga masih menghadapi sejumlah tantangan dan ancaman, antara lain adalah resistensi dari sektor industri yang khawatir akan kenaikan biaya produksi karena penerapan pajak karbon akan secara langsung meningkatkan biaya produksi. Karena industri-industri yang memiliki emisi karbon tinggi, seperti sektor batubara, petrokimia, dan semen, akan menghadapi tambahan beban biaya yang signifikan akibat pajak yang dikenakan atas emisi karbon yang mereka hasilkan.

Selain itu, lemahnya pengawasan dan belum lengkapnya regulasi teknis pelaksanaan berpotensi menimbulkan inkonsistensi terhadap penerapan pajak karbon serta penghindaran pajak. Di sisi lain, pajak karbon dapat memicu inflasi karena pajak ini meningkatkan biaya produksi terutama untuk industri yang menggunakan bahan bakar fosil. Karena perusahaan yang mengandalkan energi fosil harus membayar pajak tambahan sesuai jumlah karbon yang mereka emisi sesuai dengan prinsip *polluter pays*, sehingga biaya produksi mereka naik. Kenaikan biaya ini biasanya diteruskan ke konsumen dalam bentuk harga barang dan jasa yang lebih tinggi, sehingga memicu inflasi atau kenaikan harga secara umum. Hal ini juga menambah beban bagi masyarakat berpendapatan rendah jika tanpa kompensasi yang memadai juga kurangnya pemahaman masyarakat tentang pentingnya pajak karbon dapat menjadi kendala dalam penerimaan kebijakan ini.

Untuk menghadapi tantangan-tantangan tersebut, pemerintah menerapkan pajak karbon secara bertahap, dimulai dari sektor PLTU batubara sejak tahun 2022. Tahapan ini sejalan dengan kesiapan infrastruktur dan perangkat regulasi, termasuk dukungan dari Perpres 98/2021. Namun, kebijakan ini juga menimbulkan perdebatan, terutama karena kekhawatiran terhadap naiknya harga energi akibat produsen harus membayar pajak berdasarkan emisi karbon yang dihasilkan. Hal ini menyebabkan

harga bahan bakar fosil meningkat, dan kenaikan harga energi tersebut dapat meningkatkan biaya produksi bagi sektor industri yang padat energi dan bergantung pada bahan bakar fosil, sehingga menurunkan daya saing industri. Oleh sebab itu, keberhasilan penerapannya sangat bergantung pada pengawasan terhadap keberjalanan pajak karbon, transparansi terhadap setiap aktivitas yang menghasilkan gas CO2e, dan edukasi publik agar masyarakat memahami tujuan serta manfaat dari kebijakan ini bagi keberlanjutan lingkungan.

Dalam konteks solusi, beberapa langkah dapat diambil agar pajak karbon berjalan efektif sekaligus berkeadilan. Pemerintah perlu memperluas edukasi dan sosialisasi kebijakan ini, baik kepada pelaku industri maupun masyarakat umum. Selain itu, desain tarif pajak harus disusun secara bertahap dan mempertimbangkan kemampuan adaptasi sektor-sektor strategis. Reformasi administratif melalui digitalisasi pelaporan dan audit berbasis risiko juga diperlukan untuk meningkatkan efisiensi dan kepatuhan. Tak kalah penting, prinsip transparansi dan akuntabilitas harus ditegakkan melalui pelaporan berkala mengenai penerimaan, alokasi, dan dampak kebijakan. Dengan demikian, pajak karbon tidak hanya menjadi instrumen fiskal semata, tetapi juga wujud komitmen Indonesia menuju ekonomi hijau yang adil, inklusif, dan berkelanjutan.

CONCLUSION

Pajak karbon di Indonesia yang dilandasi oleh UU HPP dan dioperasionalkan melalui Perpres 98/2021 serta PMK 21/PMK.010/2022, merupakan sebuah terobosan kebijakan fiskal yang strategis. Kebijakan ini memiliki peran yang pertama sebagai instrumen pengendali emisi dengan menerapkan prinsip *polluter pay*s melalui tarif sebesar Rp30 per kg CO2e, sehingga mendorong peralihan menuju teknologi dan energi yang lebih bersih.

Kemudian yang kedua sebagai sumber pendanaan untuk iklim, yang penerimaannya dialokasikan guna mendukung pengembangan energi terbarukan, program mitigasi adaptasi, serta memberikan kompensasi dan perlindungan sosial, khususnya bagi masyarakat rentan. Keberhasilan kebijakan ini ke depan sangat bergantung pada pelaksanaan strategi transisi yang berkeadilan. Hal ini mencakup edukasi dan sosialisasi yang masif untuk membangun penerimaan publik, desain tarif dan mekanisme yang proporsional serta transparan, penguatan infrastruktur dan regulasi pendukung, seperti IDX Carbon, serta reformasi administratif melalui digitalisasi. Dengan langkah-langkah tersebut, pajak karbon tidak hanya akan menjadi alat fiskal semata, tetapi juga pilar utama dalam mewujudkan transisi menuju ekonomi hijau yang berkelanjutan dan inklusif, sekaligus memenuhi komitmen iklim Indonesia dalam *Paris Agreement* dan NDC.

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Penerapan Mekanisme *Disgorgement* Sebagai Bentuk Perlindungan dan Kepastian Hukum Terhadap Pelanggaran *Insider Trading* di Indonesia

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FACTS

Pasar Modal merupakan salah satu formula strategis dalam membangun perekonomian nasional di Indonesia. Indeks transaksi pasar modal di Indonesia menunjukkan tren fantastis, yakni mencapai angka 1,29 juta kali transaksi per hari.[1] Hal ini mendemonstrasikan pertumbuhan pasar modal selama 48 tahun berdiri yang terus berkembang seiring dengan perkembangan zaman. Sejalan dengan perkembangan sektor pasar modal, terdapat kontribusi strategis dari berbagai lembaga, baik pemerintahan maupun non pemerintahan yang turut berpartisipasi dalam pelaksanaan, pengawasan, serta perkembangan sektor pasar modal.

Tren volume transaksi di bidang pasar modal tidak jarang memunculkan indikasi pelanggaran, salah satunya adalah insider trading atau pengungkapan informasi material oleh orang dalam. Pelanggaran ini melibatkan seseorang yang atas kedudukannya dan/atau profesinya mengungkapkan informasi material kepada publik, penerima informasi material dari orang dalam (*tippee*) dan orang yang menerima informasi material berikutnya (*secondary tippee*).[2] Meskipun masih terdapat tantangan dengan tingkat kompleksitas yang tinggi mengenai kerangka regulasi mengenai insider trading, Otoritas Jasa Keuangan (**"OJK"**) terus berupaya mencegah compound loss dengan menerbitkan POJK Tahun 65 Tahun 2020 (**"POJK 65/2020"**) sebagai bentuk perlindungan dan kepastian hukum yang menjamin kepentingan investor yang telah dirugikan akibat pelanggaran di bidang pasar modal.

Peraturan mengenai penerapan *disgorgement* tidak hanya terbatas pada penetapan nominal denda, tetapi juga mencakup perintah untuk mengembalikan keuntungan yang tidak sah kepada investor. Lebih lanjut, kerangka disgorgement bersifat memperbaiki (*remedy*) dibandingkan menghukum (*punitive*). Penerapan mekanisme disgorgement murni dilaksanakan untuk mengganti kerugian pelanggar kepada investor yang dirugikan, bukan mengganti kerugian perekonomian makro. Hal ini didasarkan bahwa setiap pengembalian keuntungan tidak sah tidak melebihi jumlah kerugian yang dialami investor. Apabila pihak yang melakukan pelanggaran tidak mampu mengembalikan keuntungan tidak sah tersebut, maka OJK memiliki kewenangan untuk melakukan upaya hukum, seperti memproses lebih lanjut ke tahap penyidikan sesuai Undang-Undang Otoritas Jasa Keuangan (**"UU OJK"**),

[1] Detail Siaran Pers IDX, 2025, *Pasar Modal Indonesia Teguhkan Komitmen untuk Mewujudkan Ekonomi Mandiri, Berdaulat, dan Maju*, 11 Agustus, Halaman 1, Jakarta.
[2] Muhammad Yasin, 2025, *Insider Trading: Tippee dan Konsep Disgorgement*. customer@hukumonline.com dan redaksi@hukumonline.com. 23 Juni 2025.

mengajukan gugatan perdata sesuai dengan peraturan perundang-undangan yang berlaku; serta mengajukan permohonan pernyataan kepailitan sesuai peraturan perundang-undangan yang berlaku.

ISSUES

Insider Trading atau lebih dikenal dengan transaksi orang dalam adalah bentuk pelanggaran yang sering terjadi di sektor pasar modal. Istilah ini secara umum dimaknai sebagai transaksi efek yang dilakukan oleh pihak yang dianggap "orang dalam". Insider Trading memuat 6 unsur, yaitu: adanya perdagangan efek; dilakukan oleh orang-orang dalam perusahaan; terdapat inside information; informasi tersebut masih bersifat rahasia; perdagangan dimotivasi oleh informasi tersebut; dan tujuannya adalah mendapat keuntungan.[3] Praktik ini dilarang secara tegas di Undang-Undang No 8 Tahun 1995 tentang Pasar Modal (**"UU PM"**) dan Undang-Undang No 4 Tahun 2023 tentang Pengembangan dan Penguatan Sektor Keuangan (**"UU PPSK"**) karena dianggap mengganggu mekanisme pasar yang efisien dan fair serta berpotensi untuk merusak tatanan pasar modal yang telah lama dibangun karena pelanggaran atas penetapan harga yang tidak alami. Salah satu contohnya adalah susunan pasar yang terindikasi pelanggaran *insider trading*, keadaan serta harga efek akan dikapitalisasi secara individual serta menciptakan iklim tidak aman kepada para investor yang ingin terjun di sektor pasar modal Indonesia.

Menanggapi hal tersebut, lembaga-lembaga yang bergerak untuk melaksanakan sektor pasar modal perlu memperkuat tali koordinasinya dalam upaya melawan serta mencegah pelanggaran-pelanggaran di sektor pasar modal. Hal ini dituangkan lewat diundangkannya POJK 65/2020 sebagai langkah serius OJK dalam memberantas rantai pelanggaran di sektor pasar modal. Peraturan ini memuat kerangka mekanisme pengembalian kerugian investor sebagai perwujudan remedial action untuk melindungi kepastian hukum pihak investor serta dana kompensasi oleh pelaku yang ditujukan sebagai peringatan keras terhadap pelanggaran di sektor pasar modal.

REGULATIONS

- Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal ("UU PM");
- Undang-Undang Nomor 4 Tahun 2023 tentang Pengembangan dan Penguatan Sektor Keuangan ("UU PPSK");
- Peraturan Otoritas Jasa Keuangan Nomor Nomor 49/POJK.04/2016 tentang Dana Perlindungan Pemodal ("POJK 49/2016");

[3] Ivana Ajeng Prastiwi, Riska Titi Hardiyanti. 2020. *Perdagangan Orang Dalam (Insider Trading)*. 3(1). 56.

- Peraturan Otoritas Jasa Keuangan Nomor 65/POJK.04/2020 tentang Pengembalian Keuntungan Tidak Sah dan Dana Kompensasi Kerugian Investor di Bidang Pasar Modal ("POJK 65/2020").

ANALYSIS

1. Penyebab Pengaturan *Insider Trading* Dinilai Belum Cukup Menimbulkan Efek Jera Bagi Pelaku Walaupun Telah Memuat Larangan dan Sanksi Yang Tegas

Praktik *insider trading* telah diatur dan dilarang secara tegas dalam UU PM. Namun, pengaturan tersebut dinilai belum cukup menimbulkan efek jera bagi para pelaku. Dalam Pasal 95 sampai dengan Pasal 97 UU PM, secara eksplisit diatur bahwa pihak dalam dilarang melakukan transaksi jual beli efek berdasarkan informasi orang dalam yang belum tersedia untuk umum, dilarang memberitahukan informasi tersebut kepada pihak lain, serta dilarang memberikan saran kepada pihak lain untuk membeli atau menjual efek berdasarkan informasi tersebut.[4] Lebih lanjut, Pasal 104 UU PM mengatur sanksi pidana bagi pelanggar ketentuan tersebut berupa pidana penjara paling lama 10 tahun dan denda paling banyak Rp15.000.000.000,00 (lima belas miliar rupiah). Secara normatif, ketentuan tersebut sudah cukup kuat untuk memberikan dasar hukum yang jelas terhadap pelaku insider trading, tetapi secara empiris penerapannya masih belum efektif.

Salah satu alasan utama mengapa pengaturan ini belum menimbulkan efek jera adalah lemahnya penegakan hukum dan sulitnya pembuktian unsur "informasi orang dalam". Dalam praktiknya, pelaku sering kali menyamarkan identitas dan jejak transaksinya melalui pihak ketiga (*nominee*) atau memanfaatkan waktu publikasi informasi yang sulit dilacak. Kondisi tersebut membuat aparat penegak hukum kesulitan membuktikan bahwa pelaku benar-benar menggunakan informasi material yang belum tersedia untuk umum. Selain itu, koordinasi antar lembaga seperti OJK, Bursa Efek Indonesia (**"BEI"**), kepolisian, dan kejaksaan masih belum optimal, sehingga proses penegakan hukum terhadap pelaku insider trading sering kali terhambat. Meskipun ancaman sanksi pidana dalam undang-undang cukup berat, dalam praktiknya sebagian besar pelanggaran hanya dijatuhi sanksi administratif, seperti peringatan tertulis, pembekuan izin, atau denda administratif yang relatif ringan dibandingkan dengan potensi keuntungan besar yang dapat diperoleh dari insider trading. Akibatnya, efek jera menjadi lemah karena risiko hukum yang dihadapi pelaku jauh lebih kecil dibandingkan dengan manfaat ekonomi yang

[4] Saputra, M. R. (2025). Analisis Hukum Atas Insider Trading Sebagai Kejahatan Bisnis Implikasi Dan Tantangan Penegakan Hukum di Indonesia: Legal Analysis of Insider Trading Practices as a Business Crime: Implications and Challenges for Law Enforcement in Indonesia. Res Nullius Law Journal, 7(1), 34-47.

diperoleh.[5] Di sisi lain, keterbatasan sistem pengawasan OJK dan BEI juga menjadi faktor penting, karena volume transaksi yang sangat besar, ditambah kompleksitas pola transaksi para pelaku, membuat upaya deteksi dini terhadap *insider trading* masih belum optimal.

Tidak hanya faktor penegakan hukum, budaya kepatuhan dan etika bisnis di kalangan pelaku pasar modal juga masih relatif lemah. Sebagian pelaku pasar menganggap insider trading bukan merupakan pelanggaran serius, melainkan bagian dari strategi investasi yang lazim dilakukan. Pandangan tersebut menunjukkan masih kurangnya pemahaman terhadap prinsip keterbukaan dan keadilan dalam perdagangan efek. Selain itu, belum adanya *case law* atau yurisprudensi yang konsisten dari pengadilan terkait kasus insider trading juga menyebabkan tidak adanya kepastian hukum serta lemahnya efek jera bagi pelaku. Permasalahan utama tidak terletak pada substansi undang-undangnya, melainkan pada efektivitas implementasi dan penegakannya. Ketentuan dalam UU PM, khususnya Pasal 95 sampai dengan Pasal 97, serta sanksi yang diatur di Pasal 104, sudah cukup tegas dan komprehensif. Namun, tanpa penegakan hukum yang konsisten, peningkatan kapasitas pengawasan OJK, koordinasi antar lembaga penegak hukum, serta penguatan budaya etika bisnis di sektor pasar modal, pengaturan insider trading tidak akan mampu memberikan efek jera yang nyata bagi para pelakunya.

2. Mekanisme Disgorgement Fund Sebagaimana Diatur Dalam POJK 65/2020 Dalam Menutup Kekosongan Keadilan Dalam Penegakan Hukum Insider Trading di Indonesia

Insider trading merupakan suatu istilah yang digunakan untuk menyebut tindakan "praktek ilegal" yang dilakukan oleh seorang investor yang memperoleh informasi mengenai peluang dan keuntungan dalam transaksi jual beli saham.[6] Tindakan ini seringkali disebut sebagai "perdagangan orang dalam". Mengingat pelanggaran di pasar modal memiliki karakteristik yang khas, pelaku di pasar modal yang memiliki akses terhadap informasi material yang belum tersedia untuk umum dikenal dengan istilah "orang dalam."

Dalam proses menentukan apakah suatu *insider trading* benar-benar dilakukan, diperlukan beberapa faktor penentu, seperti informasi material yang dimiliki oleh orang dalam dan belum tersedia untuk umum, serta terjadinya suatu trading yang dihasilkan oleh informasi material tersebut. Berdasarkan hal tersebut,

[5] Khoirunnisaa, N. F., dan M. A. Masnun. (2023). Perlindungan Hukum Bagi Investor Terhadap Insider Trading Dalam Perspektif Undang-Undang Nomor 8 Tahun 1995 Tentang Pasar Modal: Kasus Insider Trading Dalam Perspektif Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal. NOVUM: Jurnal Hukum, 10(03), 91-100.
[6] Riyanto, A. & Suwardi, (2021, Juli), Insider trading dan kendalanya di pasar modal, Business Law, BINUS University. https://business-law.binus.ac.id/2021/07/18/insider-trading-dan-kendalanya-di-pasar-modal/

dapat dilihat bahwa *insider trading* merupakan suatu tindakan yang secara tegas dilarang karena dianggap dapat merusak tatanan pasar modal yang ada. Selain itu, hal tersebut juga dapat menimbulkan efek atau dampak lainnya yang berakibat pada perekonomian dalam arti luas.[7] Sebagai contoh, adanya insider trading dapat dianggap berbahaya dalam mekanisme pasar yang adil dan efisien, berdampak negatif bagi para emiten, dan mengakibatkan kerugian materiil bagi investor.

Pada dasarnya, *disgorgement* merupakan upaya yang dilakukan oleh OJK untuk memberikan perintah tegas mereka kepada pihak yang melakukan pelanggaran terhadap peraturan perundang-undangan di bidang pasar modal untuk mengembalikan sejumlah uang yang diperoleh sebagai keuntungan atau kerugian yang dihindari secara tidak sah atau melawan hukum. Sedangkan mengenai *disgorgement fund* merupakan dana yang dihimpun dari pengenaan *disgorgement* terhadap pihak yang melakukan pelanggaran terhadap peraturan perundang-undangan di bidang pasar modal dengan tujuan untuk diadministrasikan dan didistribusikan kepada pihak yang dirugikan atas pelanggaran terhadap peraturan perundang-undangan di bidang pasar modal, dan pihak yang dirugikan dimaksud telah mengajukan klaim dalam jangka waktu yang ditentukan.

Berdasarkan hal-hal tersebut, tentunya diperlukan kebijakan dan regulasi yang tegas terhadap praktik *insider trading*. Negara Indonesia memberikan respons terhadap kebijakan yang seharusnya diberlakukan pada kasus insider trading melalui OJK yang menerbitkan POJK 65/2020 yang di dalamnya berisikan peraturan mengenai pengembalian keuntungan tidak sah serta dana kompensasi kerugian investor di bidang Pasar Modal.

Peraturan ini memuat kebijakan mengenai informasi mengenai kewenangan OJK dalam halnya pengembalian dana, kebijakan terhadap rekening yang bersengketa, kerugian investor, serta hal yang berkaitan dengan hal-hal terkait kerugian investor di bidang Pasar Modal lainnya.

3. **Bagaimana Seharusnya Konsep Disgorgement Fund Dikonstruksikan Agar Efektif Sebagai Mekanisme Pemulihan Kerugian Investor Akibat Insider Trading di Indonesia?**

OJK pernah menerbitkan Peraturan Otoritas Jasa Keuangan Nomor 49/POJK.04/2016 Tahun 2016 tentang Dana Perlindungan Pemodal (**"POJK 49/2016"**) sebagai upaya untuk melindungi kepentingan atas kerugian investor akibat pelanggaran pasar modal. Peraturan ini dinilai tidak memiliki kerangka hukum yang optimal karena mekanisme penggantian kerugian yang tidak cukup memuat kepastian hukum terhadap pelanggaran pasar modal.

[7] Munir Fuady, *Op. Cit.*, hlm171-172.

OJK akhirnya merancang POJK 65/2020 sebagai perlindungan hukum yang lebih akurat untuk melindungi kepentingan investor atas kerugiannya di bidang pasar modal. Peraturan ini secara komprehensif mengatur mekanisme pengembalian keuntungan tidak sah yang diperoleh akibat pelanggaran pasar modal dan pembentukan serta pendistribusian dana kompensasi kepada investor yang dirugikan dan memenuhi syarat klaim.

Peraturan ini memuat mekanisme pengelolaan dan distribusi oleh Administrator yang ditunjuk OJK. Administrator dapat berupa perseorangan serta badan hukum dan bertugas untuk menyusun rencana distribusi dan melakukan distribusi dana kompensasi kerugian investor sesuai dengan yang termuat dalam Pasal 15 POJK 65/2020. Selama masa aktifnya, administrator akan memastikan bahwa investor yang dirugikan telah memenuhi syarat untuk mengajukan klaim atas penggantian kerugian dan kompensasinya. Dalam masa penghimpunan dana, OJK juga akan menilai visibilitas dana disgorgement berdasarkan kelayakan penggunaan dana pengembalian keuntungan tidak sah. Penilaian tersebut berasal dari dana yang dihimpun, jumlah investor yang mengalami kerugian, dan kelayakan administratif. Bilamana OJK menilai fisibel, dana disgorgement akan dibentuk dan didistribusikan kepada investor yang dirugikan. Sebaliknya, bilamana tidak fisibel, dana disgorgement akan digunakan untuk mengembangkan sektor pasar modal melalui sosialisasi, pelatihan, dan seminar di bidang pasar modal.[8]

CONCLUSION

Pengaturan *insider trading* di Indonesia pada prakteknya telah diatur secara tegas dalam UU PM dan berbagai peraturan OJK. Namun, efektivitas pengaturan tersebut dalam menimbulkan efek jera bagi pelaku masih sangat terbatas. Hambatan utama terletak pada lemahnya penegakan hukum, sulitnya pembuktian unsur informasi orang dalam, keterbatasan sumber daya dan teknologi pengawasan. Sanksi pidana yang berat dalam regulasi sering kali tidak diimplementasikan secara konsisten, sehingga pelanggaran lebih banyak diselesaikan dengan sanksi administratif yang ringan dan tidak sebanding dengan potensi keuntungan dari insider trading. Hal ini menyebabkan pelaku tidak merasa terancam oleh risiko hukum yang ada.

Selain itu, celah hukum dalam regulasi, khususnya terkait cakupan pelaku dan teori yang digunakan (*fiduciary duty theory*), membuat pelaku di luar hubungan fidusia sulit dijerat hukum. Oleh karena itu, adopsi *misappropriation theory* dan harmonisasi regulasi menjadi sangat penting untuk memperkuat perlindungan hukum dan menutup celah yang ada.

[8] Lihat Pasal 24 ayat (2) Peraturan Otoritas Jasa Keuangan No 65 Tahun 2020 Pengembalian Keuntungan Tidak Sah dan Dana Kompensasi Kerugian Investor di Bidang Pasar Modal

Sebagai respons atas kekosongan keadilan dan perlindungan investor, OJK menerbitkan POJK 65/2020 yang mengatur mekanisme *disgorgement fund*. Mekanisme ini bertujuan untuk mengembalikan keuntungan tidak sah kepada investor yang dirugikan dan memberikan kompensasi secara adil. *Disgorgement fund* dinilai sebagai langkah remedial yang efektif, proporsional, dan preventif, meskipun masih menghadapi tantangan dalam pembuktian dan implementasi di lapangan

Untuk memastikan efektivitasnya, diperlukan penguatan kapasitas pengawasan, peningkatan teknologi deteksi, serta sinergi antar lembaga penegak hukum. Dengan demikian, permasalahan utama bukan terletak pada substansi undang-undang, melainkan pada efektivitas implementasi, penegakan hukum, dan penguatan budaya etika bisnis. Penguatan mekanisme disgorgement fund, revisi regulasi, serta peningkatan kapasitas dan koordinasi institusi menjadi kunci untuk menciptakan efek jera yang nyata dan perlindungan optimal bagi investor di pasar modal Indonesia.

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Memoranda Hukum atas kasus "*Deripaska v. Montenegro*": Penerusan *Bilateral Investment Treaty (BIT)* Kepada Negara Penerus dalam Kasus Suksesi Negara dalam Hukum Internasional

Oleh : Akhsana Fitra Suyono

FACTS

Republik Federal Yugoslavia (FRY) adalah federasi beranggotakan dua negara yang dibentuk pada tahun 1992 antara Serbia dan Montenegro, dua republik yang tersisa dari bekas Republik Federal Sosialis Yugoslavia setelah empat republik lainnya memisahkan diri dari FRY dan menjadi negara-negara merdeka Slovenia, Kroasia, Makedonia, dan Bosnia dan Herzegovina.

FRY mengalami restrukturisasi lebih lanjut pada tahun 2003 setelah diberlakukannya Piagam Konstitusi Serbia dan Montenegro, yang mengakibatkan perubahan nama wilayahnya menjadi Negara Persatuan Serbia dan Montenegro (Negara Persatuan). Piagam Konstitusi tersebut mengizinkan baik Serbia maupun Montenegro untuk membubarkan negara persatuan melalui referendum kemerdekaan.

Setelah referendum yang mendukung kemerdekaan, Montenegro memisahkan diri dari Uni Negara pada 3 Juni 2006, ketika Parlemennya mengadopsi Deklarasi Republik Montenegro yang Merdeka, berdasarkan Keputusan tentang Pengumuman Kemerdekaan Republik Montenegro yang diadopsi pada sidang yang sama.

Setelah mendapatkan kemerdekaan, pada tanggal 4 Juni 2006, Kementerian Luar Negeri Montenegro mengirimkan nota diplomatik kepada Menteri Luar Negeri Rusia, di mana dinyatakan: Republik Montenegro akan mematuhi semua prinsip hukum internasional dan semua perjanjian serta ketentuan perjanjian internasional yang ditandatangani oleh negara serikat Serbia dan Montenegro.

Kemudian Pada tanggal 26 Juni 2006, Kementerian Luar Negeri Rusia menjawab nota tersebut dalam sebuah nota diplomatik yang ditujukan kepada Kementerian Luar Negeri Montenegro, di mana disebutkan Kementerian Luar Negeri Federasi Rusia menyampaikan hormatnya kepada Kementerian Luar Negeri Republik Montenegro. Selain itu, dengan tujuan untuk mengembangkan kerja sama bilateral antara Federasi Rusia dan Republik Montenegro, Federasi Rusia siap untuk menjalin

hubungan diplomatik dengan Republik Montenegro pada tingkat kedutaan besar. Pada tanggal 4 Agustus 2006, Kementerian Luar Negeri Montenegro mengirimkan nota diplomatik kepada Kementerian Luar Negeri Rusia, di mana dinyatakan: Kementerian Luar Negeri Republik Montenegro menyampaikan hormatnya kepada Kementerian Luar Negeri Federasi Rusia dan dengan hormat memberitahukan bahwa sesuai dengan poin 3 dari Keputusan Majelis Republik Montenegro tentang deklarasi kemerdekaan Republik Montenegro tanggal 8 Juni 2006, Republik Montenegro merupakan negara penerus dari Uni Negara Serbia dan Montenegro sehubungan dengan perjanjian dan kesepakatan internasional yang telah ditandatangani oleh Uni Negara Serbia dan Montenegro dan yang telah diaksesinya. Dalam hal ini, Republik Montenegro menegaskan kesiapannya untuk mematuhi semua perjanjian dan kesepakatan yang berlaku antara Federasi Rusia dan Uni Negara Serbia dan Montenegro.

Pada tanggal 16 Agustus 2006, Kementerian Luar Negeri Rusia menjawab dalam sebuah nota diplomatik yang berisikan bahwa Kementerian Luar Negeri Federasi Rusia menyampaikan hormatnya kepada Kementerian Luar Negeri Republik Montenegro dan sehubungan dengan nota Kementerian Nomor 03/04
-1414 tanggal 4 Agustus 2006, dengan hormat memberitahukan bahwa pihak Rusia mempertimbangkan kesiapan Republik Montenegro sebagai penerus Uni Negara Serbia dan Montenegro untuk melaksanakan kewenangan dan memenuhi kewajiban yang timbul dari semua perjanjian internasional yang berlaku antara Federasi Rusia dan Uni Negara Serbia dan Montenegro.

ISSUES

Sengketa ini berkaitan dengan tindakan yang diduga dilakukan oleh Tergugat yaitu Montenegro yang mengakibatkan Penggugat yaitu Oleg Vladimir Deripaska kehilangan nilai investasinya di pabrik peleburan aluminium Kombinat Aluminijuma. Montenegro diduga melanggar *Bilateral Investment Treaty* ("BIT") antara Rusia dan 'Republik Federal Yugoslavia' (FRY) yang ditandatangani pada tahun 1995 sebelum Montenegro merdeka dan menjadi negara yang berdaulat.

Akan tetapi Montenegro mengajukan bantahan bahwa BIT antara 'Republik Federal Yugoslavia' (FRY) dan Rusia tidak berlaku dan mengikat bagi Montenegro karena

tidak ada suksesi otomatis kepada *Bilateral Investment Treaty* dan tidak ada perjanjian antara Montenegro dan Rusia yang menyebabkan penerusan *Bilateral Investment Treaty*.

REGULATIONS

1. Vienna Convention on the Law of Treaties 1969 ("**VCLT**")
2. Vienna Convention on Succession of states in respect of Treaties 1978 ("**VCSST**")

ANALYSIS

1. Suksesi Otomatis Kepada *Bilateral Investment Treaty* dalam Suksesi Negara

Istilah suksesi negara merujuk pada penggantian satu negara oleh negara lain dalam tanggung jawab atas hubungan internasional suatu wilayah.[1] Dalam konteks penerusan perjanjian kepada negara penerus terdapat 2 teori yaitu *automatic succession* dan *clean slate*. *Automatic succession* mengacu kepada doktrin dimana negara penerus secara otomatis terikat oleh perjanjian bilateral yang telah disetujui oleh negara pendahulu.[2] Sedangkan *Clean slate* mengacu kepada doktrin dimana negara baru bebas dari segala kewajiban yang dibebankan kepada Negara pendahulunya.[3] Akan tetapi terdapat banyak perdebatan mengenai penerapan doktrin *automatic succession* dalam kasus suksesi negara oleh para ahli.

Perdebatan terkait dengan apakah suatu *Bilateral Investment Treaty* ("BIT") otomatis berpindah kepada negara penerus berakar pada perbedaan pandangan antara *practice* negara-negara dan literatur akademik. Rezin hukum investasi tidak memberikan jawaban yang bersifat absolut, sehingga tribunal arbitrase cenderung melakukan analisis berbasis konteks, termasuk *conduct of the parties, state practice,* dan niat para pihak pasca suksesi. Doktrin *automatic succession* sering dikaitkan dengan perjanjian multilateral atau perjanjian yang "*territorially embedded",* seperti perjanjian perbatasan, hak navigasi, atau rezim kepemilikan aset. Namun, sejumlah akademisi berpendapat bahwa BIT pada dasarnya merupakan perjanjian yang bersifat personal antara dua negara, sehingga negara penerus tidak secara otomatis terikat kecuali terdapat indikasi persetujuan eksplisit atau

implisit.[4] Hal tersebut menjadikan posisi BIT berbeda dengan *real treaties* yang melekat pada wilayah yang hampir selalu diteruskan secara otomatis.

Beberapa tribunal investasi memberikan pendekatan yang lebih hati-hati terhadap klaim suksesi otomatis terhadap BIT. Misalnya, dalam kasus Euram Bank v. Slovakia, tribunal menegaskan bahwa suksesi perjanjian bilateral menuntut adanya bukti kesepakatan antara negara penerus dan negara mitra *treaty*.[5] Putusan-putusan seperti ini memperkuat pandangan bahwa tidak ada prinsip universal yang memaksa negara penerus otomatis mengadopsi BIT pendahulunya. *State practice* modern menunjukkan kecendrungan bahwa negara-negara secara aktif melakukan *treaty confirmation exchanges* untuk menghindari ketidakpastian hukum. Banyak negara pasca suksesi contohnya Ceko, Slovakia, dan negara-negara pecahan Uni Soviet mengirimkan *succession notes* yang secara eksplisit meminta pengakuan bilateral atas kelanjutan BIT.

Dumberry dan Shaw berpendapat bahwa karakter BIT yang menciptakan hak langsung pada investor tidak hanya kewajiban antar negara yang menjadikan isu suksesi lebih kompleks. Penerapan suksesi otomatis berpotensi membebani negara baru dengan kewajiban proteksi investasi yang tidak pernah dinegosiasikan olehnya.[7] Oleh karena itu, tribunal cenderung mensyaratkan adanya bukti kesediaan negara penerus untuk mengambil alih kewajiban tersebut, baik melalui deklarasi sepihak yang jelas, pertukaran diplomatik yang eksplisit, maupun tindakan konduktual lainnya.

Berkenaan dengan konteks Deripaska v. Montenegro, ketiadaan *clear mutual intent* menjadi faktor utama mengapa tribunal menolak klaim suksesi otomatis. Meskipun terdapat pernyataan umum dari Montenegro terkait dengan kesediaannya melanjutkan perjanjian, tribunal menilai bahwa pernyataan tersebut tidak bersifat *treaty specific* dan tidak disertai penerimaan eksplisit dari Rusia.

2. Bentuk Persetujuan yang Diperlukan Untuk Meneruskan *Bilateral Investment Treaty* kepada Negara Penerus

Dalam kasus suksesi negara, negara penerus dapat memberikan persetujuan dalam bentuk eksplisit ataupun persetujuan implisit.[8] Persetujuan eksplisit merujuk pada pernyataan yang jelas, baik secara lisan maupun tertulis, sedangkan persetujuan implisit diperoleh dari perilaku para pihak dan situasi sekitarnya. Berdasarkan Pasal 11 VCLT

disebutkan bahwa Persetujuan suatu Negara untuk terikat oleh suatu perjanjian dapat dinyatakan melalui penandatanganan, pertukaran instrumen yang membentuk perjanjian, ratifikasi, penerimaan, persetujuan, atau akses, atau dengan cara lain jika disepakati demikian.[9]

Dalam kasus Deripaska v. Montenegro, pengadilan memutuskan bahwa *Bilateral Investment Treaty* tidak dapat diteruskan kepada Montenegro karena tidak terdapat bukti yang cukup bahwa Montenegro setuju untuk meneruskan baik secara eksplisit maupun implisit.

A. Deklarasi kemerdekaan Montenegro tidak cukup untuk meneruskan B*ilateral Investment Treaty*

Montenegro mengeluarkan deklarasi kemerdekaan setelah menjadi negara berdaulat yang menyatakan bahwa Montenegro akan menerapkan dan mengambil alih perjanjian internasional dan kesepakatan yang telah ditandatangani dan diratifikasi oleh Negara Serikat Serbia dan Montenegro yang berkaitan dengan Montenegro dan yang sesuai dengan sistem hukumnya.

Berdasarkan pasal 7 VCSST dijelaskan bahwa kewajiban atau hak berdasarkan perjanjian yang berlaku terhadap suatu wilayah pada tanggal terjadinya suksesi negara-negara tidak menjadi kewajiban atau hak negara penerus atau negara-negara pihak lain dalam perjanjian-perjanjian tersebut hanya karena fakta bahwa negara penerus telah membuat pernyataan sepihak yang mengatur kelanjutan berlaku perjanjian-perjanjian tersebut terhadap wilayahnya.

Selain itu pasal 7 dari ILC *guiding principle applicable to unilateral declarations of States capable of creating legal obligations,* juga menjelaskan bahwa sebuah deklarasi sepihak hanya menimbulkan kewajiban bagi negara yang membuatnya jika hal tersebut dinyatakan dengan jelas dan spesifik. Dalam hal terdapat keraguan mengenai ruang lingkup kewajiban yang timbul dari deklarasi tersebut, kewajiban tersebut harus ditafsirkan secara terbatas. Dalam menafsirkan isi kewajiban tersebut, prioritas utama harus diberikan pada teks deklarasi, bersama dengan konteks dan keadaan di mana deklarasi tersebut dibuat.

Dalam kasus ini, pernyataan-pernyataan dari Montenegro tidak ditujukan secara khusus kepada Rusia sebagai negara asal penggugat, melainkan merupakan pernyataan umum mengenai niat Montenegro secara umum, terkait dengan perjanjian internasional

yang sebelumnya berlaku bagi Negara Serikat dan tidak dapat menimbulkan akibat hukum karena negara-negara umumnya diharapkan untuk mengonfirmasi niat mereka melalui prosedur formal tertentu, seperti pemberitahuan, umumnya kepada depositori perjanjian, yang mengidentifikasi perjanjian atau perjanjian-perjanjian yang ingin diikuti oleh negara tersebut. Oleh karena itu, deklarasi kemerdekaan Montenegro saja tanpa adanya tindak lanjut dari negara tidak cukup untuk menimbulkan konsekuensi hukum terhadap penerusan BIT.

B. **Pertukaran surat diplomatis antara Rusia dan Montenegro tidak menimbulkan konsekuensi hukum untuk meneruskan B*ilateral Investment Treaty***

Setelah Montenegro menjadi negara berdaulat, Montenegro mengirim surat diplomatis ke beberapa negara termasuk Rusia. Terdapat 2 pertukaran surat Diplomatis yang terkirim antara Rusia dan Montenegro. Surat pertama dari Montenegro dikirim pada tanggal 4 Juni 2006 tidak menunjukkan permintaan secara eksplisit untuk tanggapan yang mengkonfirmasi kesediaan Rusia untuk melanjutkan berlaku bagi Montenegro berbagai perjanjian bilateral yang sebelumnya telah disetujui Rusia dengan Negara Persatuan. Sebaliknya, dalam paragraf terakhir Nota tersebut, Montenegro mengajukan permintaan secara eksplisit kepada Rusia, yaitu agar Rusia mengakui kedaulatan dan kemerdekaan Montenegro dari Negara Persatuan yang sebelumnya.

Kemudian, pada tanggal 26 Juni 2006 Rusia merespon Permintaan eksplisit Montenegro untuk tanggapan terkait pembentukan hubungan diplomatik, akan tetapi Rusia tidak mengakui pernyataan niat sepihak Montenegro untuk “mematuhi semua perjanjian”, dan juga tidak menyatakan posisi Rusia sendiri terkait hal tersebut, yaitu apakah Rusia juga akan terus mematuhi perjanjian bilateral terkait Montenegro. Rusia sama sekali tidak membahas masalah perjanjian tersebut.

Pada tanggal 4 Agustus 2006 Montenegro kembali mengirim surat ke rusia dengan tujuan Untuk menghindari keraguan bahwa ia menganggap dirinya sebagai “negara penerus dari Uni Negara Serbia dan Montenegro dalam hal perjanjian internasional,” hal itu dilakukan dengan harapan dapat memicu tanggapan tambahan dari Rusia, kemungkinan besar tanggapan yang setuju bahwa Rusia pun akan terus mematuhi perjanjian-perjanjian pendahulu terkait Montenegro.

Pada tanggal 16 Agustus 2006 Rusia membalas surat kedua dari Montenegro dengan kalimat “mempertimbangkan” yang mengindikasikan Rusia mengakui pernyataan Montenegro, tanpa memberikan pernyataan apa pun mengenai posisi mereka sendiri dan tidak juga menyertakan Setiap usulan konkret untuk mencapai kesepakatan dengan Montenegro terkait suksesi perjanjian.

.Dari kedua pertukaran instrument ini tidak mencerminkan persetujuan bersama untuk kelanjutan oleh Montenegro dan Rusia atas “semua perjanjian bilateral sebelumnya antara FRY dan Rusia”. Faktanya, pertukaran tersebut dapat dilihat sebagai tawaran dari Montenegro tentang kelanjutan keseluruhan, tanpa adanya konfirmasi/penerimaan yang jelas dari Rusia.

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Analisis Yuridis Implementasi Paris Agreement terhadap Mekanisme *Carbon Trade* dalam Peraturan Presiden Nomor 110 Tahun 2025

Fulvianendra Aptarakha, Pramudya Bhaskara D., Jesica Ceria Harianja

Background

Carbon Trade merupakan salah satu instrumen penting dalam upaya global menurunkan emisi gas rumah kaca ("GRK"). Melalui mekanisme ini, pelaku usaha dapat memperdagangkan hasil penurunan emisi sebagai dorongan ekonomi bagi kegiatan yang ramah lingkungan. Indonesia memiliki potensi besar dalam pengembangan pasar karbon, terutama dari sektor kehutanan, energi, dan industri, yang berkontribusi signifikan terhadap pencapaian target *Net Zero Emission* nasional.[1] Namun, peluang tersebut juga diiringi dengan potensi risiko penyimpangan, seperti terjadinya *double counting*, *double issuance*, atau manipulasi data emisi. Praktik-praktik semacam ini dapat menurunkan kepercayaan publik dan mengancam integritas serta kredibilitas pasar karbon nasional.

Dalam hukum internasional, Paris Agreement menjadi landasan utama pelaksanaan mekanisme nilai ekonomi karbon. Pasal 6 ayat (2) Paris Agreement menegaskan bahwa kerjasama sukarela antarnegara dalam penggunaan hasil mitigasi yang dialihkan secara internasional harus mendorong pembangunan berkelanjutan, menjamin integritas lingkungan, serta menerapkan pencatatan yang kuat untuk mencegah penghitungan ganda.[2] Selanjutnya, Pasal 13 membentuk *Enhanced Transparency Framework* sebagai dasar bagi pelaporan dan verifikasi aksi mitigasi iklim yang transparan dan akuntabel.[3] Selain itu, Pasal 15 mengatur mekanisme kepatuhan yang bersifat transparan dan non-punitif guna memastikan pelaksanaan perjanjian berjalan efektif. Ketiga pasal ini mencerminkan prinsip *safeguard* merupakan sistem standar, kebijakan, perencanaan, pelaksanaan, dan kepatuhan untuk melindungi manusia dan lingkungan dari bahaya yang berperan penting dalam menjaga integritas, transparansi, dan akuntabilitas pasar karbon.[4] Sebagai langkah konkrit, pemerintah Indonesia telah menerbitkan Peraturan Presiden Nomor 110 Tahun 2025 tentang Penyelenggaraan Nilai Ekonomi Karbon dan Pengendalian Emisi Gas Rumah Kaca Nasional (**"Perpres 110/2025"**) yang menggantikan Peraturan Presiden Nomor 98 Tahun 2021 tentang Penyelenggaraan Nilai Ekonomi Karbon untuk Pencapaian Target Kontribusi yang Ditetapkan Secara Nasional dan Pengendalian Emisi Gas Rumah Kaca dalam Pembangunan Nasional (**"Perpres 98/2021"**). Perpres 110/2025 memperkuat tata kelola nilai ekonomi karbon melalui penerapan safeguard mechanism untuk mencegah kecurangan dan memastikan transparansi dalam setiap transaksi karbon. Selain mengatur sistem *carbon trade*,

[1] SIP Law Firm. (2025, February 25). *Hukum carbon trade di Indonesia*. https://siplawfirm.id/hukum-perdagangan-karbon-di-indonesia/?lang=id
[2] *Paris Agreement*, Article 6 (2), Dec. 12, 2015, United Nations Treaty Collection, Treaty Series, vol. 3156
[3] *Paris Agreement*, Article 13, Dec. 12, 2015, United Nations Treaty Collection, Treaty Series, vol. 3156
[4] *Paris Agreement*, Article 15, Dec. 12, 2015, United Nations Treaty Collection, Treaty Series, vol. 3156

Perpres 110/2025 juga menegaskan peran Sistem Registri Unit Karbon ("SRUK") sebagai basis untuk melakukan pencatatan dan verifikasi penurunan emisi yang terintegrasi dengan kerangka transparansi internasional[5] dan Sistem Registri Nasional Pengendalian Perubahan Iklim (SRN PPI) sistem penyediaan dan pengelolaan data dan informasi tentang aksi serta sumber daya untuk Mitigasi Perubahan Iklim dan Adaptasi Perubahan Iklim di Indonesia pada tingkat *Nationally Determined Contribution* ("NDC").[6] Dengan penerapan pengawasan yang kuat, integritas data yang terjaga, dan harmonisasi dengan prinsip Paris Agreement, kebijakan ini diharapkan memperkuat posisi Indonesia dalam mencapai target pengendalian emisi dan menurunkan kemungkinan kecurangan (fraud) terjadi dalam carbon trade.

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- Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup (**"UU 32/2009"**)
- Undang-Undang Nomor 16 Tahun 2016 tentang Pengesahan Paris Agreement To The United Nations Framework Convention On Climate Change (**"UU 16/2016"**)
- Peraturan Presiden Republik Indonesia Nomor 110 Tahun 2025 tentang Penyelenggaraan Instrumen Nilai Ekonomi Karbon dan Pengendalian Emisi Gas Rumah Kaca Nasional (**"Perpres 110/2025"**)
- Paris Agreement Tahun 2015 (**"Paris Agreement"**)

Encyclopedia

- *Internationally Transferred Mitigation Outcomes*: Satuan pengurangan atau penghapusan emisi GRK yang dapat diperdagangkan antar negara.[7]
- *Sustainable Development Mechanism*: Sebuah pasar karbon internasional baru, dan istilah yang lebih informal untuk berbagai perangkat dan kerangka kerja yang digunakan untuk menganalisis dan meningkatkan keberlanjutan proyek, yang seringkali berkaitan dengan lembaga keuangan pembangunan.[8]
- *Nationally Determined Contribution*: Rencana aksi iklim yang diajukan oleh setiap negara berdasarkan Perjanjian Paris untuk mengurangi emisi GRK dan beradaptasi dengan perubahan iklim.[9]

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[5] Lihat Pasal 1 angka 20 Perpres 110/2025
[6] Lihat Pasal 1 angka 19 Perpres 110/2025
[7] *Overview of Article 6.4 of the Paris Agreement. The Mechanism Regional Collaboration Centres Webinar Series: II*, Google Share PDF, diakses dari https://share.google/tlnvYH00R1Fjs61qY.
[8] Carbon Market Watch. (2017, May). *Building blocks for a robust sustainable development mechanism*.
[9] United Nations Framework Convention on Climate Change (UNFCCC). *Nationally Determined Contributions* (NDCs). Diakses dari https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs

- *Measurement, Reporting, and Verification*: Kegiatan untuk memastikan bahwa data dan/atau informasi Aksi Mitigasi dan Aksi Adaptasi telah dilaksanakan sesuai dengan tata cara dan/atau standar yang telah ditetapkan serta dijamin kebenaran dan keakuratannya.[10]
- *Enhanced Transparency Framework*: Komponen utama dari *Paris Agreement* yang mengatur mekanisme pelaporan bagi setiap negara mengenai kemajuan mereka dalam pelaksanaan aksi mitigasi dan adaptasi terhadap perubahan iklim.[11]

Analysis

Carbon trade merupakan mekanisme pasar untuk mengendalikan emisi GRK melalui pemberian nilai ekonomi terhadap pengurangan emisi. Pihak yang berhasil menekan emisi di bawah batas yang ditentukan dapat menjual kelebihannya dalam bentuk kredit karbon kepada pihak lain.[12] Mekanisme ini bertujuan untuk menciptakan insentif ekonomi bagi pelaku usaha sekaligus mendorong transisi menuju ekonomi rendah karbon.[13]

Berdasarkan hukum positif Indonesia, *carbon trade* memiliki dasar hukum pada UU 32/2009 dan UU 16/2016. Implementasinya diatur lebih lanjut melalui Perpres 110/2025, yang menegaskan tata kelola, mekanisme bursa karbon, serta sistem pengawasan untuk mencegah praktik *fraud*. Sebelumnya, pengaturan ini diatur melalui Perpres 98/2021, yang dalam evaluasinya masih menghadapi kendala pada penjualan kredit karbon di pasar sukarela. Padahal, pasar sukarela memiliki peran penting dalam aksi mitigasi perubahan iklim akibat kesenjangan tata kelola *carbon trade* internasional. Oleh karena itu, terbitnya Perpres 110/2025 menjadi tindak lanjut atas evaluasi Perpres sebelumnya dan menunjukkan komitmen Indonesia dalam pengendalian perubahan iklim melalui instrumen ekonomi yang berkeadilan. Selain itu, penerapan carbon trade juga berfungsi sebagai sarana untuk mencapai target NDC Indonesia dalam menurunkan emisi GRK secara berkelanjutan.[14]

Dalam perspektif internasional, carbon trade telah diatur dalam Pasal 6 ayat (2) Paris Agreement, yang menjelaskan mekanisme kerjasama internasional melalui *Internationally Transferred Mitigation Outcomes* (ITMO) dan *Sustainable Development Mechanism*

[10] Lihat Pasal 1 angka (26) Perpres 110/2025.
[11] United Nations Framework Convention on Climate Change. (n.d.). *Enhanced transparency framework – Technical material*. Retrieved November 2, 2025, https://unfccc.int/process-and-meetings/transparency-and-reporting/support-for-developing-countries/consultative-group-of-experts/enhanced-transparency-framework-technical-material.
[12] Bagaskara. (n.d.). *Memahami mekanisme carbon trade: Panduan lengkap*. Mutu Certification International. diakses : https://mutucertification.com/memahami-mekanisme-perdagangan-karbon-panduan-lengkap/
[13] Adyana, N. (2024). *Penerapan pajak karbon di Indonesia: Kajian ekonomi, politik, dan sosial*. Universitas Brawijaya, 4(1), Maret 2024.
[14] Pratama, R. A. (2024, August 16). *Menuju implementasi pajak karbon*. Media Keuangan (MK+). Diakses : https://mediakeuangan.kemenkeu.go.id/article/show/menuju-implementasi-pajak-karbon

(SDM).[15] Indonesia wajib menyesuaikan kebijakan nasionalnya dengan prinsip transparansi dan integritas lingkungan. Mekanisme ini mendorong negara pihak untuk saling berbagi hasil pengurangan emisi secara terukur dan dapat diverifikasi. Selain itu, penerapannya harus memastikan bahwa tidak terjadi *double counting* atas capaian penurunan emisi.

Dalam hal ini, Perpres 110/2025 menjadi bukti konkret implementasi Paris Agreement dalam sistem hukum nasional guna mendukung keadilan iklim dan pembangunan berkelanjutan. Pasal 58 menyatakan bahwa carbon trade dilakukan melalui Bursa Karbon, seperti IDX Carbon, dan/atau melalui perdagangan langsung.[16] Setiap transaksi karbon yang dilakukan oleh pelaku usaha penghasil emisi wajib tercatat dalam SRUK sebagaimana diatur dalam Pasal 59 agar dianggap sah secara hukum serta dapat ditelusuri asal-usulnya dalam rangka pemenuhan target NDC Indonesia. Namun, dalam pelaksanaan SRUK masih terdapat kekurangan berupa belum adanya kejelasan terkait sektor-sektor yang tercakup secara spesifik, sehingga diperlukan kejelasan kebijakan serta *roadmap* yang terarah untuk memastikan efektivitas pelaksanaan perdagangan karbon dan pencapaian target NDC Indonesia.[17]

Untuk menjamin transparansi carbon trade, implementasi Pasal 13 dan 15 Paris Agreement menekankan sistem transparansi, akuntabilitas, dan mekanisme kepatuhan yang bersifat non adversarial guna menjamin kredibilitas pelaksanaan komitmen iklim. Prinsip tersebut menjadi landasan penting dalam mekanisme *carbon trade*, di mana kejelasan data dan integritas pelaporan diperlukan untuk mencegah terjadinya *fraud*. Dalam hukum positif Indonesia, hal tersebut diimplementasikan melalui penerapan *safeguard* guna memastikan pelaksanaan *carbon trade* yang transparan dan berintegritas.

Sebagai tindak lanjut pasal 13 dan 15 Paris Agreement yang menekankan pentingnya transparansi dan akuntabilitas dalam pelaporan aksi iklim, Indonesia mengadopsi prinsip tersebut ke dalam kebijakan nasional melalui Pasal 76 Perpres 110/2025. Pasal tersebut secara tegas mengatur *Measurement, Reporting, and Verification* (**"MRV"**) sebagai mekanisme untuk memastikan keakuratan data dan kredibilitas pengurangan emisi.[18] MRV memiliki peran yang besar dan krusial terhadap *carbon trade* karena sistem ini menjamin bahwa setiap kredit karbon yang diperdagangkan benar-benar mewakili pengurangan emisi gas rumah kaca. Dengan adanya regulasi ini, potensi terjadinya *fraud* berupa *double counting*

[15] *Paris Agreement*, Article 6(2), Dec. 12, 2015, United Nations Treaty Collection, Treaty Series, vol. 3156
[16] Lihat Pasal 58 Perpres 110/2025
[17] Shahab, N. (2025, October 20). *Kerangka kerja tata kelola karbon baru Indonesia perkuat registri nasional dan kesiapan pasar*. TanahAir.net. https://tanahair.net/id/kerangka-kerja-tata-kelola-karbon-baru-indonesia-perkuat-registri-nasional-dan-kesiapan-pasar/
[18] Pasal 76 Peraturan Presiden Republik Indonesia Nomor 110 Tahun 2025 tentang Penyelenggaraan Instrumen Nilai Ekonomi Karbon (NEK) dan Pengendalian Emisi Gas Rumah Kaca (GRK) Nasional.

dan manipulasi data dapat diminimalisir serta menjamin kepastian hukum bagi pelaku usaha, pemerintah, maupun investor.[19]

Conclusion

Perpres 110/2025 menjadi bentuk konkret implementasi Paris Agreement dalam sistem hukum nasional dengan memperkuat mekanisme *carbon trade* melalui mekanisme *safeguard* dan sistem MRV serta Keberadaan SRUK berperan penting sebagai dasar pencatatan dan verifikasi pengurangan emisi untuk menjamin transparansi serta kredibilitas setiap *carbon trade*. Namun, dalam pelaksanaannya SRUK masih menghadapi kekurangan, terutama terkait kejelasan sektor mana saja yang tercakup dan terintegrasi dengan sistem internasional. Oleh karena itu, diperlukan kebijakan yang lebih jelas dan *roadmap* yang terarah agar efektivitas perdagangan karbon dan pencapaian target ND Indonesia dapat tercapai.

[19] Aji Prasetyo, "*Pentingnya Safeguard untuk Cegah Fraud dalam Transaksi Nilai Karbon*," HukumOnline, 15 Oktober 2025, diakses :, https://www.hukumonline.com/berita/a/pentingnya-safeguard-untuk-cegah-fraud-dalam-transaksi-nilai-karbon-lt68ef7d683c439/

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