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Legal Analysis of the International Agreement on Sister City Cooperation Surabaya-Liverpool in Conducting Parallel Diplomacy

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Abstract: *The sister city international agreement is an implementation of regional autonomy carried out by local governments in conducting parallel diplomacy. The Surabaya City Government seizes this opportunity and, among others, engages in sister city cooperation with Liverpool City. This study addresses the issue of the authority of the Surabaya City Government in making sister city international agreements and examines the strength and position of sister city international agreements in the form of a Memorandum of Understanding (MoU) from the perspective of international law. The type of research used in this study is juridical-normative, thus the approach employed is a statutory approach by examining all statutory regulations related to sister city international agreements. The results of this research indicate that through the analysis of statutory regulations in Indonesia related to international agreements, the Local Government, in this case, the Surabaya City Government, has the authority to make sister city international agreements in an effort to conduct parallel diplomacy with Liverpool City. The position and strength of the sister city international agreement between the Surabaya City Government and Liverpool City in the form of a Memorandum of Understanding (MoU) under international law are a valid international agreement with rights and obligations outlined therein and categorized as a treaty contract that only creates legal implications for the parties involved, namely the Surabaya City Government and Liverpool City.*

Keywords: *International Agreement, Sister City, Parallel Diplomacy*

BACKGROUND

International relations are a necessity for a country to meet various national interests that cannot be fulfilled domestically. One aspect of international relations is international cooperation, which encompasses various fields such as law, economics, social affairs, ideology, politics, culture, environment, and defense and security. Regarding the development of international relations, it is necessary for subjects of international law to formalize their relationships in an international agreement (Situngkir, 2019). An international agreement is a legal instrument that accommodates the will and consent of states or other subjects of international law to achieve common goals (Mauna, 2008). Such international agreements serve as the primary source of law to regulate the rights and obligations of subjects of international law who are bound by the international agreement.

The legal rules regarding the making of international agreements are found in the Vienna Convention on the Law of Treaties 1969, which specifically governs international

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agreements between states and serves as the foundation for countries when entering into international agreements with other nations. Indonesia also has legal instruments serving as the basis for the Indonesian government in making international agreements, regulated in Law No. 37 of 1999 on Foreign Relation and Law No. 24 of 2000 on International Agreement.

As the needs of various parties evolve, the practice of international agreements has expanded its subjects. Besides states, other actors capable of executing international agreements include international organizations, NGOs, multinational corporations (MNCs), media, minority groups, individuals, and local governments (Sinaga, 2010). This development signifies that states are no longer the sole actors in international relations capable of executing international agreements.

International agreements conducted by local governments, both at the provincial and district/city levels, can also be referred to as parallel diplomacy or often abbreviated as paradiplomacy. Paradiplomacy refers to the behavior and capacity to engage in foreign relations with foreign entities carried out by sub-state entities or local governments. Practices in paradiplomacy depict the global involvement of local governments, state governments, or provinces in international affairs typically undertaken by states (Mukti, 2020). The forms of international agreements in paradiplomacy practice vary, such as technical cooperation agreements, grant cooperation agreements, investment participation cooperation agreements, and sister city or twinning city cooperation agreements. Until now, Indonesia has had 47 cities from 33 provinces that have established sister city relationships (Towadi & Mustika, 2022). One of them is Surabaya, which has foreign partners during the administration of Tri Rismaharini, including Varna (Bulgaria), Kitakyūshū (Japan), and Liverpool (England).

The selection of the sister city cooperation between Surabaya-Liverpool in this research is motivated by the fact that the initiatives for the Surabaya-Liverpool partnership came from the local government level upon the proposal of the British Ambassador to Indonesia, Moazzam Malik, to Tri Rismaharini. Meanwhile, the partnerships with Varna and Kitakyūshū were initiated by Indonesian authorities at the central government level. Varna was proposed by the Indonesian Ambassador to Bulgaria, Immanuel Robert Inkiwirang, and Kitakyushu was initiated under the guidance of the Ministry of Foreign Affairs. Thus, in the Indonesian context, the initiating positions of these three cities differ.

The sister city cooperation based on Memorandum of Understanding (MoU) raises controversy regarding its status and strength as an international agreement because the actors involved in the agreement do not act on behalf of their respective countries. Therefore, the

author proposes to explore "Legal Analysis of the International Agreement on Sister City Cooperation Surabaya-Liverpool in Conducting Parallel Diplomacy".

THEORETICAL STUDY

Overview of International Agreement

International agreement follow rules set at both global and Indonesian levels. The Vienna Convention of 1969 ("VC 1969") defines international agreements as written agreements between states, guided by international law, whether they're single documents or multiple related ones, regardless of their titles. The Vienna Convention of 1986 ("VC 1986") broadens this, stating that international treaties can involve one or more states and one or more international organizations, or just international organizations. Meanwhile, at the national level in Indonesia, there are regulations regarding International Agreements in Law No. 37 of 1999 on Foreign Relation and Law No. 24 of 2000 on International Agreement, which essentially states that an international agreement is an agreement, in a specific form and name, regulated by international law, made in writing, and resulting in rights and obligations in the field of public law.

Overview of the Position of International Agreement in International Law

International agreement is the only source of international law that allows states to formally participate in the process from formation to enforcement (Latipulhayat, 2021). With that rationale, some international law experts place international agreement as the most important source of international law. Others continue to debate this issue due to the general reference frequently used to discuss sources of international law. Article 38(1) of the Statute of the International Court of Justice does not explicitly mention the term "sources of international law" itself. According to former International Court of Justice judge Rosalyn Higgins, discussions on legal sources encompass the origins of the norms that form them (Higgins, 2000). Mochtar Kusumaatmadja and Etty R. Agoes classify two groups of sources of international law: 1. primary sources, consisting of international agreement, international custom, and principles of general law; and 2. subsidiary sources, comprising court decisions and teachings of the most prominent legal scholars from various countries. Regarding the primary sources of international agreement, a further classification is provided, consisting of two groups: 1. treaty contract (which only gives rise to law for the participants, in other words, international agreements in this class only regulate issues for the participants who make them); and 2. law-making treaty (directly creates rules for all members of the international community and not just for the contracting parties) (Kusumaatmadja & Agoes, 2003).

Overview of Parallel Diplomacy in International Cooperation

Parallel diplomacy, often referred to as paradiplomacy, was first conceptualized by Panayotis Soldatos as the activities of sub-national governments in their relations with foreign affairs (Paquin, 2020). Later, Ivo Duchachek explained that the term "para" in "diplomacy" simply denotes the actors involved, namely sub-states, whose international policies may run parallel, be coordinated, or complement those of the central government, but can also be in conflict with the policies and international politics of the state itself (Duchacek, 1990). Duchacek himself divided paradiplomacy into three characteristics: Trans-border, which involves sub-national government actors from different countries but with direct geographical borders; Trans-regional, which involves sub-national governments from different countries that do not share direct borders, but the countries where these sub-national governments are located share borders within one region; and Global, which involves sub-national governments conducting diplomacy from different countries, regions, and various parts of the world (Kuznetsov, 2015).

Considering the interactions and orientations of paradiplomacy practices, André Lecours divides them into three groups as follows: Sub-states, implementation is limited to economic orientations such as foreign investment, market expansion for exports, and mutualistic investments and does not involve complex elements such as politics or culture. This type of sub-state practice is carried out by states in the United States and Australia; Multipurposes, this refers to a decentralized model of foreign cooperation with economic, cultural, educational, health, and technology transfer orientations. European countries typically engage in this type of paradiplomacy practice, such as local governments in Germany and France. Some other countries practicing this type include Mali, Senegal, Tunisia, Vietnam, and Poland; and Protodiplomac, this involves complex interactions and orientations that include specific political motives and regional identity, often emphasizing the expression of their regional identity distinct from the central government's identity projection. They aspire to develop international relations policies that assert cultural uniqueness, political autonomy, and the national character of their societies. The implementation of this paradiplomacy can be observed to become conflictual. Some local governments engaging in this type include Quebec (Canada), Flanders (Belgium), Catalonia, and the Basque Country (Spain) (Lecours, 2008).

Study on Regional Autonomy by the Central Government to Local Governments

According to Article 1 paragraph 2 of Law No. 23 of 2014 on Local Government, as last amended by Law No. 9 of 2015 on the Second Amendment to Law No. 23 of 2014 on Local Government, the definition of local government is the implementation of government

affairs by the local government and the legislature according to the principles of autonomy and assistance with the principle of broad autonomy within the system and the principles of the Republic of Indonesia as defined in the Constitution of the Republic of Indonesia Year 1945. The form of the Indonesian state is a decentralized unitary state. Therefore, the central government of Indonesia provides policies of autonomy to local governments. The definition of regional autonomy itself is also regulated in the subsequent clause in Article 1 paragraph 6, regional autonomy is the right, authority, and obligation of autonomous regions to regulate and manage their own government affairs and the interests of the local community within the system of the Unitary State of the Republic of Indonesia. This principle of autonomy then provides a positive opportunity for local governments to independently develop their regions and make efforts for the sustainability of development in their areas (Safitri, 2016). One of the positive impacts of regional autonomy is that local governments can engage in foreign cooperation with other countries.

RESEARCH METHODS

This research focuses on studying sister city international cooperation agreements based on Memorandum of Understanding (MoU). It uses a normative juridical (doctrinal research) approach, which involves analyzing literature to understand legal principles and prescribe solutions (Marzuki, 2011). The research also utilizes the legislative approach, gathering legal materials through literature review. It employs both analytical and statute approaches. Primary legal sources include the VC 1969 and VC 1986, laws on Foreign Relations, laws on International Agreements, laws on Local Government, Government Regulations, Ministerial Regulations, and relevant regulations from the Ministry of Foreign Affairs and the Ministry of Home Affairs. Secondary legal materials such as books and journals are also used. The data collection method involves library research.

RESULTS AND DISCUSSION

Sister City by Local Government Based on Indonesian Legislation

Surabaya, in carrying out cooperation agreements with foreign parties, is based on legal foundations as follows: Law No. 37 of 1999 on Foreign Relations; Law No. 24 of 2000 on International Agreements; Law No. 23 of 2014 on Local Government, as last amended by Law No. 9 of 2015 on the Second Amendment to Law No. 23 of 2014 on Local Government; Government Regulation No. 2 of 2012 on Regional Grants; Government Regulation No, 27 of 2014 on the Management of State/Regional Property; Government Regulation No, 28 of 2018 on Regional Cooperation; Minister of Home Affairs Regulation No. 22 of 2020 on Procedures

for Regional Cooperation with Other Regions and Cooperation with Third Parties; Minister of Home Affairs Regulation No. 25 of 2020 on Procedures for Regional Cooperation with Foreign Local Governments and Cooperation with Institutions Abroad; and Minister of Foreign Affairs Regulation No. 3 of 2019 on General Guidelines for Foreign Relations by Local Governments.

There is an issue regarding the implementation of sister city agreements, namely that local governments, when executing agreements at the international level, cannot represent themselves even though they act for the interests of their own region. This is because international law only recognizes states and not local government as subjects of international law. Another issue is the authority of local government in conducting parallel diplomacy. This results in interdisciplinary involvement, namely: international law, constitutional law, and administrative law. The intersection of these three areas leads to a lack of clarity in rules (Novianti, 2013).

1. Law No. 37 of 1999 on Foreign Relations

Article 1 number 1 of Law No. 37 of 1999 on Foreign Relations states that Foreign Relations are any activities related to regional and international aspects carried out by the Government at the central and regional levels, or its institutions, state institutions, businesses, political organizations, community organizations, non-governmental organizations, or Indonesian citizens. Then, Article 5 Paragraph (1) of Law No. 37 of 1999 on Foreign Relations stipulates that Foreign Relations shall be conducted in accordance with free and active foreign policy, national laws and regulations, and international law and customs. Therefore, this Article regulates that all parallel diplomacy in Indonesia must be in the form of sub-state and multipurpose parallel diplomacy groups, not protodiplomacy as outlined in the preceding chapter on parallel diplomacy. Through those articles, local government, in this case, Surabaya, are included as legal subjects capable of conducting foreign relations or parallel diplomacy independently with other legal subjects, Liverpool, because it mentions the government at both central and regional levels.

2. Law No. 24 of 2000 on International Agreements

Furthermore, in accordance with the implementation of regional autonomy, Law No. 24 of 2000 on International Agreement grants authority to local government to enter into international agreements. This is evidenced by Article 5 paragraph (1) of Law Number 24 of 2000 on International Agreements, which states that State institutions and government agencies, both at the central and regional levels, whether departments or non-departments, that have plans to make international agreements, must first consult and coordinate on those plans with the Minister.

3. Law No. 23 of 2014 on Local Government

Law No. 23 of 2014 on Local Government has established provisions that contain clear governance arrangements for the central, provincial, and local government within the legal framework of local government. This serves as one of the legal bases for the Surabaya regarding clear authority boundaries in the implementation of the sister city with Liverpool. Article 9 Paragraph (1) of Law No. 23 of 2014 on Local Government outlines government affairs, which consist of absolute government affairs, concurrent government affairs, and general government affairs. In the same article, paragraph (4) explains that concurrent government affairs delegated to the Regions form the basis for the implementation of regional autonomy. These concurrent government affairs are further divided into two types: mandatory government affairs and optional government affairs. Surabaya implements the sister city partnership with Liverpool by utilizing regional autonomy in the area of concurrent government affairs.

4. Government Regulation No. 28 of 2018 on Regional Cooperation

In addition, Government Regulation No. 28 of 2018 on Regional Cooperation serves as a more technical and detailed regulation regarding regional cooperation within the framework of Law No. 23 of 2014 on Local Government as outlined above. The general provisions in this government regulation specify four forms of regional cooperation, namely: Regional Cooperation with Other Regions (KSDD), Regional Cooperation with Third Parties (KSDPK), Regional Cooperation with Foreign Local Governments (KSDPL), and Regional Cooperation with Foreign Institutions (KSDLL). Surabaya, in conducting parallel diplomacy with Liverpool, can be categorized under the form of regional cooperation known as KSDPL. The forms of KSDPL are specified in Article 24 of Government Regulation No. 28 of 2018 on Regional Cooperation, which include: twin/sister province cooperation, twin/sister city cooperation, and other forms of cooperation. Regarding the sister city cooperation agreement between Surabaya and Liverpool, this falls under the second form of KSDPL as stipulated above, which is twin/sister city cooperation or sister city cooperation.

Then, Article 30 Paragraph (1) of Government Regulation No. 28 of 2018 on Regional Cooperation states that KSDPL must obtain approval from the Local People's Representative Council (DPRD). In this regard, there is regulatory harmonization with Article 154 Paragraph (1) letter g of Law No. 23 of 2014 on Local Government, which states that the DPRD of regencies/cities has the duty and authority to approve international cooperation plans conducted by the regional government of regencies/cities.

The analysis above, based on Law No. 37 of 1999 on on Foreign Relation, Law No. 24 of 2000 on International Agreement, Law No. 23 of 2014 on Local Government as last amended by Law No. 9 of 2015 on the Second Amendment to Law No. 23 of 2014 on Local Government, and Government Regulation No. 28 of 2018 on Regional Cooperation, indicates that the Regional Government—in this case, Surabaya—has the authority to make international agreement in its efforts to conduct parallel diplomacy. This must be done by taking into account the concurrent government affairs that have been regulated and ensuring compliance with the principle of a free and active foreign policy. When making an international sister city agreement with Liverpool, Surabaya must also obtain approval from the Surabaya City Council (*DPRD Kota Surabaya*) and conduct consultations and coordination with the Ministry of Home Affairs and the Ministry of Foreign Affairs.

Surabaya-Liverpool Sister City Agreement in International Law Perspective

Based on the discussion provided earlier, the international sister city agreement Surabaya-Liverpool is formalized in the form of a Memorandum of Understanding (MoU), preceded by a Letter of Intent (LoI). However, the existence of an international sister city agreement in the form of an MoU raises many doubts and questions about its status from legal scholars. One of these doubts was conveyed by Damos Dumali Agusman whether it is classified as an international agreement considering the following points: 1. the parties to the sister city agreement act on behalf of their respective institutions and not on behalf of their nations; and 2. the content of the sister city agreement is of a technical and administrative nature and does not entail rights and obligations for states under international law (Agusman, 2017). The doubts surrounding the sister city agreement are based on the VC 1969 and VC 1986.

The definition of international treaties based on the VC 1969 and VC 1986 has been widely accepted and is a codification of international custom as well as what has been contained in Indonesian legislation, namely Law No. 24 of 2000 on International Agreement which refers to the two conventions above and has been described in the previous discussion. According to the VC 1969 and VC 1986, international agreements are made and implemented by: between states; between one or more states and one or more international organizations; and between international organizations. It has been clearly mentioned in both conventions for parties as legal subjects who can make international agreements. Local governments in this case are not given space as subjects that can make international agreements.

The development of VC 1969 and VC 1986 does not give local governments status as subjects of international law that can make international agreements. More generally,

international law also does not provide opportunities to include local governments as subjects of international law that can formulate and make international agreements (Qasthari, 2017). However, in reality there have been many international agreements where the subject or parties are local governments, one of which is the sister city agreement Surabaya-Liverpool. The sister city agreement has been known and widely practiced in various parts of the country including the local goverments in Indonesia which has implemented sister city agreements with local governments from various countries.

Referring to the 1994 International Court of Justice (ICJ) Qatar/Bahrain Case, the ICJ responded to the document “Minutes signed by Foreign Ministers of Bahrain, Qatar and Saudi Arabia 1990” or abbreviated as “1990 Doha Minutes” classifying the document as an international agreement. The ICJ explained the points of its decision as follows: 1. in order to ascertain whether an agreement of that kind has been concluded, the Court must have regard above all to its actual terms and to the particular circumstances in which it was drawn up; 2. the Minutes are not a simple record of a meeting; they do not merely give an account of discussions and summarize points of agreement and disagreement. They enumerate the commitments to which the Parties have consented. They thus create rights and obligations in international law for the Parties. They constitute an international agreement; 3. having signed such a text, the Foreign Minister of Bahrain is not in a position subsequently to say that he intended to subscribe only to a "statement recording a political understanding” and not to an international agreement”; and 4. the Court concludes that the Minutes of 25 December 1990, like the exchanges of letters of December 1987, constitute an international agreement creating rights and obligations for the Parties.

Under the VC 1969 and VC 1986 as well as ICJ jurisprudence does not consider the title of a document to be determinative of whether it is an international agreement. The practice of countries in titling international agreements also varies. In addition to the terms Letter of Intent (LoI) or Memorandum of Understanding (MoU), there are various other terms including: Protocol, Joint Declaration, Final Act, Side Letter, Minutes of Meeting, Letter of Understanding, Record of Understanding. The existence of many variations related to the nomenclature of international agreements is intended to adjust to the material being regulated and indicates the existence of different objects of cooperation, the subject or actor of the agreement, the weight, and the level of international relations. In Indonesia, the MoU level is below the Agreement and followed by the nomenclature of Arrangements, Exchange of Notes, and others. Article 29 of the VC 1969 states that: “Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire

territory ...” The rule explains that a country can enter into an international agreement with a special validity status for part of the territory or territory of the country such as the Surabaya-Liverpool sister city with the MoU nomenclature which applies specifically to the territory of the Surabaya with certain fields. Quoting from the opinion of Jawahir Thontowi, the MoU made by the local government in implementing the sister city agreement can be classified as the same as a treaty (Thontowi, 2009).

CONCLUSIONS AND RECOMMENDATIONS

Based on Law No. 37 of 1999 on Foreign Relation, Law No. 24 of 2000 on International Agreement, Law No. 23 of 2014 on Local Government as last amended by Law No. 9 of 2015 on the Second Amendment to Law No. 23 of 2014 on Local Government, Government Regulation No. 28 of 2018 on Regional Cooperation, Minister of Foreign Affairs Regulation No. 3 of 2019 on General Guidelines for Foreign Relations by Local Governments, and Minister of Home Affairs Regulation No. 25 of 2020 on Procedures for Regional Cooperation with Local Governments Abroad and Regional Cooperation with Institutions Abroad shows that the Local Government, in this case the Surabaya, has the authority to make International Agreement for Sister City Cooperation in an effort to conduct parallel diplomacy with Liverpool.

The position and strength of the international sister city agreement between Surabaya and Liverpool in the form of a Memorandum of Understanding according to international law is a valid international agreement and has the rights and obligations contained in the Memorandum of Understanding. The position of the Memorandum of Understanding in international law can be categorized in the treaty contract category which only gives rise to law for the participants who make it, namely Surabaya and Liverpool. After the existence of many parallel diplomacy practices in various countries, it is debatable whether it can be categorized as an international custom or not. According to Antonio Cassese, there are 2 (two) elements that must be fulfilled to prove the existence of an international custom, namely: 1. the practice or custom of states; and 2. the belief of the states that the custom is carried out on the basis of legitimate and binding actions (opinio juris) (Cassese, 2005).

Sefriani then divides these two elements into cumulative requirements to be considered as customary international law. Point 1 as a factual element and point 2 as a psychological element (Sefriani, 2016). This can be presented in the form of a table as follows:

Table 1. Elements of Customary International Law in the Practice of Parallel Diplomacy in Countries of the World

No.	Factual Elements	Psychological Elements
1.	The practice of parallel diplomacy has been practiced by many countries in general.	The opinio juris of countries practicing parallel diplomacy that their actions are legitimate and binding.
2.	The practice of parallel diplomacy is repeated by the countries that conduct it.	
3.	Parallel diplomacy has been practiced for decades	

Source: (Suwartono, 2023)

The table above shows that cumulatively, the practice of parallel diplomacy can be said to be a customary international law because it has fulfilled the factual element and the psychological element.

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