



Legal Analysis of the Urgency to Ratify the Border Crossing and Border Trade Agreements between Indonesia and Malaysia

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ABSTRACT

The study analyzes the urgency of ratifying the BCA and BTA between Indonesia and Malaysia and examines the inconsistencies between Indonesian legal practice and the theoretical framework governing the ratification of international treaties. Using a normative and descriptive legal method with statutory, comparative, and conceptual approaches, this research evaluates the application of Law Number 24 of 2000 concerning International Treaties in relation to the unratified status of BCA and BTA despite their essential role in regulating cross border mobility and local trade in the border regions of Kalimantan. Data were obtained through an extensive literature study supported by juridical analysis in accordance with the characteristics of normative legal research. Findings reveal that although Indonesia has incorporated several substantive elements of BCA and BTA through ministerial regulations, such partial adoption does not comply with the principles of treaty ratification defined under national law and the VCLT 1969. The absence of formal ratification results in legal uncertainty, administrative inconsistency, and insufficient protection for border communities. This study concludes that formal ratification of BCA and BTA is essential to ensure legal certainty, support equitable economic development, and enhance the effectiveness of cross border cooperation between Indonesia and Malaysia. Strengthening the ratification mechanism also becomes necessary to reinforce Indonesia's credibility in fulfilling its international obligations and to align cross sectoral governance in strategic border regions.

Keyword: Border Crossing Agreement, Border Trade Agreement, International Law, Ratification

1. Introduction

Historically, local communities living along border regions have engaged in economic and social activities long before the emergence of modern sovereign states.¹ However, the establishment of territorial boundaries and the development of distinct national legal systems have gradually restricted the mobility of border communities, particularly in trade and social interaction. This condition creates a pressing need for legal arrangements that can facilitate and protect cross-border activities while upholding the sovereignty of each state.²

Relations between neighboring states inherently require clear legal frameworks to maintain stability, security, and the welfare of border communities. One of the essential mechanisms is the formulation of international agreements governing the movement of people and goods across national boundaries. In the context of Indonesia and Malaysia bilateral relations, two key legal instruments were established to regulate border areas: the 1967 Border Crossing Agreement (BCA) and the 1970 Border Trade Agreement (BTA). These agreements outline procedures for cross-border mobility and traditional trade that serve as an economic lifeline for communities in Kalimantan.³

Despite their significance, Indonesia has not formally ratified either agreement. Under the General Elucidation of Law No. 24 of 2000 concerning International Treaties, international agreements may be validated through ratification, accession, acceptance, or approval. Without ratification, the BCA and BTA hold only political value and do not produce legally binding effects within Indonesia's domestic legal system. This situation raises fundamental legal issues, especially concerning the principle of *pacta sunt servanda* as stipulated in Article 26 of the 1969 Vienna Convention on the Law of Treaties (VCLT), which requires every valid treaty to be performed in good faith.⁴

Theoretically, Indonesia adheres to a mixed system combining elements of monism and dualism. Certain international agreements particularly those affecting national sovereignty, security, or economic interests cannot take effect domestically without incorporation into national law. Under monism, a treaty becomes part of domestic law upon approval; under dualism, domestic legislation is required before the treaty becomes effective. Indonesia's mixed approach requires harmony between treaty ratification and its implementation. However, in practice, Indonesia often treats unratified treaties as though they are legally binding. This pattern is visible in the case of the BCA and BTA, which, despite having been signed more than five decades ago, still lack binding legal effect within the national legal order.⁵

The absence of ratification not only creates legal uncertainty but also leads to potential normative disharmony in the regulation of cross-border matters. This issue has gained greater urgency with the development of the new capital city, Ibu Kota Nusantara ("IKN"), which increases the strategic importance of Kalimantan's border region. Effective legal frameworks are essential to support the economic and social activities of local communities who rely on

¹ Saru Arifin, *Hukum Perbatasan Darat Antar Negara* (Sinar Grafika, 2022).

² Jonathan E. S. Pijoh, Cornelis Djelfie Massie, and Harold Anis, 'Prosedur Hukum Perjanjian Internasional pada Kegiatan Perdagangan di Kawasan Perbatasan Indonesia', *Lex Administratum*, 10.1 (2022), p. 169.

³ Sandy Nur Ikfal Raharjo and Hanizah Idris, 'Indonesia-Malaysia Cross-Border Cooperation in Managing Mobility of People at Disputed Border Area', *Asia-Pacific Social Science Review*, 25.1 (2025), p. 112, doi:<https://doi.org/10.59588/2350-8329.1561>.

⁴ Efik Yusdiansyah and Wicaksana Dramanda, 'Treaties as a Source of National Law in The Perspective of Constitutional Law', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 10.2 (2023), pp. 234–53, doi:[10.22304/pjih.v10n2.a5](https://doi.org/10.22304/pjih.v10n2.a5).

⁵ Emiel Salim Siregar and others, 'Eksistensi Hukum Internasional dalam Sistem Perundang-Undangan Nasional Indonesia', *Innovative: Journal Of Social Science Research*, 4.4 (2024), pp. 2852–68.

cross-border trade. Without a clear legal basis, the implementation of the BCA and BTA cannot optimally safeguard or empower border communities.⁶

Based on this background, this study addresses two central questions:

- 1) Why should Indonesia urgently ratify the BCA and the BTA with Malaysia?
- 2) How does Indonesia's current legal process diverge from the monist, dualist, or mixed theories that underpin its international and national legal systems?

The research employs a normative legal approach by examining national legislation, international conventions, and relevant academic literature. The objective is to articulate the urgency of ratifying the BCA and BTA as part of Indonesia's commitment to a coherent legal system and to strengthen legal certainty in cross-border governance between Indonesia and Malaysia.

2. Research Method

This research applies a normative juridical methodology that is predominantly grounded in library research, with an emphasis on the examination of secondary legal sources. The materials analyzed consist of statutory regulations, bilateral and multilateral treaties, academic books, peer-reviewed journal articles, and other credible legal documents relevant to the regulation of cross-border movement and trade between Indonesia and Malaysia. Through this method, the study systematically identifies and evaluates legal norms, doctrines, and principles that shape the governance of the BCA and BTA.⁷

To support the analysis, the study utilizes three complementary analytical approaches. First, the statutory approach is employed to scrutinize Indonesia's domestic legal instruments, particularly Law Number 24 of 2000 concerning International Treaties, as well as regulations related to treaty ratification and border administration. Second, the conceptual approach explores doctrinal perspectives on the interaction between international law and national law, including monist, dualist, and hybrid models, in order to determine Indonesia's normative stance in the application of international agreements.⁸

Third, the comparative approach is adopted to analyze and contrast the legal practices of Indonesia and Malaysia with respect to the ratification and implementation of cross-border agreements. By combining these approaches, the research seeks to evaluate the alignment of Indonesia's national legal system with international legal norms, particularly those enshrined in the 1969 VCLT and to examine the legal as well as administrative consequences arising from Indonesia's decision not to ratify the BCA and the BTA.

3. Results and Discussion

3.1 The Urgency of Ratifying the BCA and BTA between Indonesia and Malaysia

The urgency of ratifying the BCA and BTA between Indonesia and Malaysia constitutes a crucial issue within the framework of international law and border governance in

⁶ Siti Amila and others, 'Analisis Dampak Dan Resiko Pindahan Ibu Kota Negara Terhadap Ekonomi Di Indonesia', *Sahmiyya: Jurnal Ekonomi dan Bisnis*, 2.1 (2023), p. 12.

⁷ Meli Syafitri and Achmad Jaka Santos, 'Tantangan dan Solusi Penerapan Prinsip Rule of Law dalam Sistem Hukum Indonesia', *Karimah Tauhid*, 3.1 (2025), pp. 25–36.

⁸ Fabian Jambak, Didin Baharuddin, and Neng Erna Sry Denasty, 'National Law and International Law in Indonesian (Between Monism or Dualism)', *Budi Luhur Journal of Strategic & Global Studies*, 2.1 (2024), pp. 35–56, doi:10.36080/jsgs.v2i1.29.

Indonesia. The border areas between Indonesia and Malaysia, particularly in Kalimantan, hold strategic significance both economically and socially.⁹ Communities in these regions depend on cross border activities to fulfil their daily needs including the trade of essential goods, employment, and access to health services. However, since 1967 until today, the Border Crossing Agreement and the Border Trade Agreement that regulate and facilitate such local cross border activities have not yet been ratified by Indonesia, resulting in their implementation being limited to sectoral administrative policies.¹⁰

Substantively, the Border Crossing Agreement of 1967 regulates the mechanisms for cross border movement of people in border regions, including the issuance of the Pas Lintas Batas (border pass) for local residents with social, economic, or kinship ties across national boundaries. Meanwhile, the Border Trade Agreement of 1970 governs traditional cross border trade by stipulating provisions concerning commodity quotas, maximum transaction values, and exemptions from import duties for certain goods carried by border residents. Both agreements were formulated based on bilateral cooperation and mutual benefit, referring to the VCLT 1969 as the foundational framework for international treaty formation.¹¹

Notwithstanding their substantive conformity with international treaty principles, the absence of formal ratification has resulted in an ambiguous legal status of the BCA and BTA within Indonesia's domestic legal system. The partial implementation of these agreements through sectoral regulations issued by administrative authorities cannot be equated with provisional application as recognized under Article 25 of the VCLT 1969. Without an explicit declaration of provisional application or ratification, such practices risk operating beyond a clear legal mandate, thereby weakening the binding force of the agreements and exposing their implementation to legal uncertainty and institutional inconsistency.¹²

The absence of ratification results in inconsistency with international legal flows and increases legal uncertainty in cross border mobility and local trade mechanisms. This condition undermines the effectiveness of economic cooperation and creates the potential for violations of the rights of border communities, especially those guaranteed under principles of social and economic justice. In fact, both agreements were substantively drafted

⁹ Mohd Kamarulnizam Abdullah, Abdul Rahim Anuar, and Abubakar Eby Hara, 'Contesting Authority Discourses in Defining Relations Between Indonesia and Malaysia: A Case Study in the Kalimantan Border Areas', *Journal of International Studies*, 18 (2022), doi:10.32890/jis2022.18.7.

¹⁰ Fajar Apriani and Rahma Daniah, 'Traditional Cross-Border Trade in Forest Products Between Indonesia and Malaysia: An Analytical Study of a Border Trade Agreement', unpublished paper delivered at Joint Symposium on Tropical Studies (JSTS-19) (Kalimantan Timur, Indonesia, 2021) <<https://www.atlantispress.com/article/125955309>>.

¹¹ Sahid Fadhil Anandra and Indra Kusumawardhana, 'Tapal Batas Sang Garuda: Pendekatan Indonesia Dalam Diplomasi Dan Konflik Perbatasan Dengan Malaysia', *TheJournalish: Social and Government*, 4.4 (2023), pp. 413–32.

¹² Jan Klabbbers, 'Disagreement Reduced to Writing: Rethinking the Law of Treaties', *Academie de Droit International de La Haye. Recueil Des Cours*, 447 (2025), pp. 25–185.

in accordance with the principles of reciprocity, mutual benefit, and respect for state sovereignty as reflected in Article 2 and Article 26 of the VCLT 1969.¹³

Beyond domestic legal uncertainty, the prolonged non-ratification of the BCA and BTA also raises concerns regarding state responsibility under international law. Although Indonesia has not formally ratified these agreements, their long-standing implementation through administrative practices may create legitimate expectations for Malaysia and affected border communities. The continued reliance on unratified agreements without clear legal status risks placing Indonesia in a vulnerable position should disputes arise concerning inconsistent implementation or unilateral policy changes.¹⁴

From the perspective of the law of state responsibility, the failure to provide a coherent legal framework governing cross-border mobility and trade may be construed as a breach of the obligation to act (*bona fide*) in international relations. This situation weakens Indonesia's credibility as a treaty partner and undermines the predictability required for sustainable bilateral cooperation, particularly in sensitive border regions.¹⁵

This legal uncertainty is further intensified by Indonesia's approach to the relationship between international law and national law, which predominantly reflects a dualist orientation. Under this framework, international agreements do not automatically acquire legal effect domestically without a formal act of ratification. Consequently, the BCA and BTA lack direct applicability and cannot serve as a solid legal basis for law enforcement agencies or administrative bodies in regulating cross-border mobility and trade. This condition undermines the coherence of treaty implementation and limits the ability of the state to ensure consistent legal protection for border communities.¹⁶

The reliance on sectoral administrative regulations to operationalize the BCA and the BTA has also expanded the scope of administrative discretion in border governance. In the absence of a ratified treaty framework, executive agencies exercise broad interpretative authority in determining the scope, limits, and enforcement of cross-border mobility and trade policies. While such discretion may offer short-term flexibility, it poses long-term risks to the rule of law, particularly when administrative practices vary across regions and institutions.¹⁷

Without a binding legal instrument, discretionary governance lacks effective checks and balances, increasing the potential for arbitrary enforcement and unequal treatment of border

¹³ Charlene Janice and others, 'Pengaruh Border Trade Agreement (BTA) dan Border Crossing Agreement (BCA) sebagai Landasan Hubungan Diplomatik Indonesia-Malaysia', *Jurnal Sentris*, 2021, pp. 158–72.

¹⁴ Seid Demeke Mekonnen and Henok Asmelash, 'Reforming Ethiopian Bilateral Investment Treaties in Line with Domestic Development Policies: Challenges, Prospects and Simplified Reform Options', *Journal of African Law*, 69.1 (2025), pp. 73–92, doi:10.1017/S0021855324000214.

¹⁵ Lingling He and Xiaobo Zhao, 'Resolving Investor Protection in Climate-Related Disputes: Some Legal Reflections', *Environmental Policy and Law*, 55.6 (2025), pp. 230–43, doi:10.1177/18785395251385826.

¹⁶ Yik-Chan Chin and Jingwu Zhao, 'Governing Cross-Border Data Flows: International Trade Agreements and Their Limits', *Laws*, 11.4 (2022), p. 63, doi:10.3390/laws11040063.

¹⁷ Miraziz Khidoyatov, 'Legal Aspects of Structuring Cross-Border Transactions in The Context of Changing International Regulation', *The American Journal of Political Science Law and Criminology*, 07.03 (2025), pp. 14–21, doi:10.37547/tajpslc/Volume07Issue03-03.

communities. This condition contradicts fundamental principles of legal certainty, which require that restrictions on mobility and economic activities be grounded in clear and foreseeable legal norms.

Beyond ensuring legal certainty, the ratification of the BCA and the BTA is essential for strengthening policy harmonization across sectors such as customs, immigration, and trade. Administrative irregularities have caused overlaps between central and regional government authorities and may hinder the implementation of national strategic projects, including the development of the new capital city IKN located near the border regions.¹⁸

In the absence of a ratified legal framework, border communities are often compelled to rely on informal or extra-legal mechanisms to sustain their livelihoods. The lack of legal clarity in cross-border movement and trade increases the risk of informal economic practices that may be perceived as illegal under national regulations, thereby exposing local residents to potential criminalization. Rather than addressing unlawful conduct, this situation reflects a structural legal vacuum that disproportionately affects border communities who depend on cross-border interactions for economic survival.¹⁹

Rather than merely serving as instruments for facilitating cross-border interaction, the BCA and the BTA should be understood as preventive regulatory mechanisms within border governance. A ratified legal framework enables the state to regulate economic activities *ex ante*, reducing reliance on punitive enforcement mechanisms after violations occur. In this sense, ratification functions as a preventive legal tool that minimizes conflict, reduces enforcement costs, and enhances compliance by aligning regulatory norms with socio-economic realities in border regions.²⁰

The absence of ratification reverses this logic, shifting governance from regulation to repression. Instead of guiding lawful conduct through clear norms, the state is compelled to respond reactively to informal practices, thereby entrenching legal uncertainty and social tension in border areas.

Beyond its domestic implications, the ratification of the BCA and the BTA also carries broader regional significance within the ASEAN framework. From the perspective of international law, ratification represents a formal acceptance and recognition of international obligations, marking the willingness of a state to be legally bound. By ratifying the BCA and the BTA, Indonesia would not only reinforce its bargaining position within ASEAN but also reaffirm its commitment to equitable and sustainable cross border cooperation.

¹⁸ Kp Suharyono Soemarwoto Hadiningrat, 'Opportunities and Challenges in the Development of A Sustainable Capital City of Nusantara', *Jurnal Lemhannas RI*, 12.1 (2024), pp. 53–64, doi:10.55960/jlri.v12i1.534.

¹⁹ Beauty Dzawanda and Mark Makomborero Matsa, 'Strategies for Survival in an Informal Economy: Illegals of Zimbabwean Informal Cross Border Traders at Ports of Entries in Southern Africa', *International Journal of Community Well-Being*, 4 May 2023, pp. 1–19, doi:10.1007/s42413-023-00191-z.

²⁰ Viacheslav Tuliakov, Oleksandra Yanovska, and James Holmes Armstead, 'Criminal Compliance as a Mechanism for Improving the Investment Climate: The Experience of the United States and Ukraine', *Baltic Journal of Economic Studies*, 11.3 (2025), pp. 36–50, doi:10.30525/2256-0742/2025-11-3-36-50.

Furthermore, within the context of local economic development, ratification will create opportunities to enhance the economic capacity of border communities through facilities provided under the Pas Lintas Batas and exemptions from import quotas that allow residents to conduct transactions within certain limits without being subject to customs duties. These provisions support the welfare of local communities impacted by the development of Ibu Kota Nusantara while reducing economic disparities between central and peripheral regions.²¹

From a rights-based perspective, the ratification of the BCA and BTA constitutes an essential measure to fulfill the state's obligation to protect the socio and economic rights of border communities. Legal recognition of cross-border mobility and traditional trade mechanisms enables the state to safeguard access to livelihoods, prevent discriminatory enforcement of border regulations, and promote equitable development in peripheral regions. In this context, ratification functions not merely as a legal formality but as a substantive instrument to ensure social and economic justice for communities situated at the margins of national development.²²

Thus, the urgency of ratifying the BCA and the BTA is not merely administrative in nature but reflects broader national strategic interests aimed at ensuring economic, legal certainty, and the integration of border regions into inclusive national development.

3.2 The Inconsistency of Indonesia's Legal Process with Monist, Dualist, and Mixed Theories in the Ratification of International Treaties

Indonesia theoretically adopts a mixed approach between monism and dualism in the application of international law within the domestic legal system. The approach is reflected in Law Number 24 of 2000 concerning International Treaties, which stipulates that an international treaty becomes legally binding only after undergoing a domestic legalization process through ratification by statute or presidential decree depending on the subject matter regulated in the treaty.²³

In monist theory, international law and national law constitute a single unified legal system, meaning that international treaties become directly applicable without requiring further domestic approval.²⁴ Conversely, dualist theory considers the two as separate legal systems and therefore requires ratification or domestic legislation for international treaties to have effect within national law. In Indonesia, ratification is required for treaties relating to political matters, peace, national defense and security, territorial boundaries, sovereignty, human rights, environmental protection, the creation of new legal norms, and foreign loans

²¹ Salsa Muafiroh and Rudy Parluhutan Tambunan, 'Systematic Study of Political Ecology and the Role of Local Community in the Development of the Ibu Kota Nusantara', *Sustainable Urban Development and Environmental Impact Journal*, 2.1 (2025), pp. 63–76, doi:10.61511/sudeij.v2i1.2025.1785.

²² Saudin J. Mwakaje, 'Protection of Geographical Indications and Cross-border Trade: A Survey of Legal and Regulatory Frameworks in East Africa', *The Journal of World Intellectual Property*, 25.1 (2022), pp. 31–44, doi:10.1111/jwip.12204.

²³ Achmad Hariri and Basuki Babussalam, 'Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia', *Walisongo Law Review (Walrev)*, 6.2 (2024), pp. 146–70, doi:10.21580/walrev.2024.6.2.25566.

²⁴ Rika Kurniaty and others, *Pengantar Hukum HAM Internasional* (Universitas Brawijaya Press, 2021).

or grants as stipulated in under Law Number 24 of 2000 of Article 10 including the BCA and the BTA. Therefore, Indonesia may be characterized as adopting a selective and pragmatic approach between monism and dualism depending on national interests and the substance of the treaty.²⁵

Despite its theoretical flexibility, Indonesia's mixed approach to the relationship between international law and national law has generated a condition of normative confusion in treaty implementation. The absence of a clear doctrinal orientation allows international agreements to be selectively internalized based on policy preferences rather than consistent legal principles. As a result, treaties that substantively affect public interests may remain unratified while their provisions are partially applied through administrative measures, thereby weakening legal predictability and undermining the coherence of Indonesia's treaty practice.²⁶

The formation of an international treaty generally involves several important stages which include negotiation, signature, and ratification. The negotiation stage is undertaken by official representatives of each state to discuss and agree on the substantive elements of the treaty, covering political, economic, and security considerations. Article 7 of the Vienna Convention 1969 provides the legal basis for states to appoint individuals with Full Powers to conduct treaty negotiations.²⁷

The final stage is ratification, through which a state formally declares its consent to be bound by the treaty. In Indonesia, ratification is carried out in accordance with Law Number 24 of 2000, which assigns ratification authority either to statutory enactments or presidential decrees depending on the substance of the treaty.²⁸

However, the practical application of these principles demonstrates inconsistencies with international treaty law and Indonesia's own domestic legal requirements. Since the beginning, the ratification process for the BCA and BTA has experienced prolonged stagnation despite repeated attempts and discussions by both states. Efforts to ratify these treaties have surfaced since 1984 and reappeared in various bilateral forums in 2009 and in subsequent years, but no definitive resolution has been reached. This failure illustrates

²⁵ Fulvio Maria Palombino, *Duelling for Supremacy: International Law vs. National Fundamental Principles* (Cambridge University Press, 2019).

²⁶ Abdurrahman Al-Fatih Ifdal, 'Diplomacy and Treaty Governance by Indonesia as Norm-Shaping Practices to Align National Interests of Indonesia', *JURNAL HUBUNGAN LUAR NEGERI*, 9.2 (2024), doi:10.70836/jh.v9i2.76.

²⁷ Jan Christoph Bublitz, 'What Is "Thought"? Interpreting and Constructing Article 18 ICCPR in Light of the Vienna Convention', in *The Law and Ethics of Freedom of Thought, Volume 2*, ed. by Jan Christoph Bublitz and Marc Jonathan Blitz, Palgrave Studies in Law, Neuroscience, and Human Behavior (Springer Nature Switzerland, 2026), pp. 217–54, doi:10.1007/978-3-031-91466-9_8.

²⁸ Marthin Adolf Alexander Silaban, 'Perbandingan Pengaturan Tindakan Pidana Penodaan Agama di Indonesia dengan Pakistan (Tinjauan Berdasarkan Mixed Law System)', *Honeste Vivere*, 35.1 (2025), pp. 12–24.

Indonesia's lack of consistency in fulfilling its international commitments and reflects the absence of a clear legal position regarding the two agreements.²⁹

The prolonged stagnation in the ratification of the BCA and BTA indicates that the core issue lies not in legal incapacity, but in a deficit of political commitment. The existing legal framework under Law Number 24 of 2000 already provides sufficient mechanisms for treaty ratification, suggesting that the delay reflects a lack of prioritization rather than normative constraints. This condition blurs the distinction between political discretion and legal obligation, allowing administrative convenience to prevail over formal compliance with international treaty law.³⁰

Instead of undertaking formal ratification as mandated under Law Number 24 of 2000, the government has pursued partial adoption of the substantive elements of the two agreements through sectoral regulations. Several provisions of the BCA and the BTA have been incorporated into the MLHR No. 34 of 2016 on the Procedures for Issuance, Extension, Refusal, Cancellation, and Revocation of the Pas Lintas Batas, which regulates the Pas Lintas Batas derived from the BCA, and the PMK No.80 of 2019 concerning the Import and Export of Goods Carried by Cross Border Travelers and the Granting of Import Duty Exemptions for Goods Carried by Cross Border Travelers, which adopts trade quota provisions derived from the BTA. Although these measures provide administrative foundations for border community activities, they normatively contradict under Article 26 of the VCLT 1969 because substantive treaty obligations are applied without lawful ratification. Consequently, this practice highlights discrepancies between administrative measures and international legal obligations, ultimately weakening legal certainty and the legitimacy of cross border treaty implementation in Indonesia.³¹

This practice also raises a fundamental issue concerning the hierarchy of Indonesia legal system. The incorporation of substantive treaty provisions into ministerial regulations, while the treaties themselves remain unratified, contradicts the principle of legal hierarchy that requires lower-level regulations to derive their authority from valid higher norms. In this context, ministerial regulations effectively function as substitutes for treaty ratification, despite lacking the constitutional and statutory legitimacy required to transform international obligations into binding national law.³²

This inconsistency becomes even more evident in the technical implementation of the Pas Lintas Batas (border pass). The Border Crossing Agreement establishes a validity period of three years for the Pas Lintas Batas, whereas the MLHR stipulates a validity period of only

²⁹ Sandy Nur Ikfal Raharjo and Hanizah Idris, 'Reimagining Cross-Border Cooperation From Indonesia-Malaysia Experiences: A Thematic Literature Review', *JAS (Journal of ASEAN Studies)*, 13.1 (2025), pp. 117–37, doi:10.21512/jas.v13i1.12440.

³⁰ Michal Onderco and Valerio Vignoli, 'Treaty Legalization, Security Interests, and Ratification of Multilateral Disarmament Treaties', *Conflict Management and Peace Science*, 42.3 (2025), pp. 223–44, doi:10.1177/07388942241243259.

³¹ Budi Pramono, *Penegakan Hukum di Perairan Indonesia* (Scopindo Media Pustaka, 2021).

³² Haroon Khalid, *Family Rights in Pakistan: Intersecting International Obligations and Plural National Legal Frameworks*, 3.2 (2025), doi:https://doi.org/10.59075/ijss.v3i2.1219.

two years. This discrepancy results in disharmony among institutions in interpreting and implementing the agreement, causing administrative confusion and inconsistent legal treatment for border communities that could have been avoided had the agreements been formally ratified and fully integrated into national law.³³

Moreover, the formulation and implementation of the BCA and the BTA reveal weak institutional coordination among the Ministry of Foreign Affairs, Trade, and Home Affairs. The absence of formal ratification renders Indonesia passive in internalizing international treaty obligations despite the fact that the substantive provisions clearly relate to national interests and the welfare of border communities.

The inconsistency between theory and practice demonstrates the urgent need to restructure Indonesia's mechanism for international treaty ratification. Such restructuring is essential to ensure alignment with principles of international law and Indonesia's domestic legal system and to reaffirm the country's legal position within the international arena. Ratification should not merely be viewed as an administrative procedure but rather as a constitutional commitment to legal certainty and adherence to international norms.

From a constitutional perspective, the failure to ratify treaties that significantly affect public interests raises concerns regarding compliance with Article 11 of the 1945 Constitution, which mandates state involvement in international agreements of strategic importance. In this sense, ratification should be understood not just as an administrative option, but to ensure legal certainty and democratic accountability in the management of international obligations.³⁴

Therefore, political commitment and institutional reform are required to ensure that every international treaty affecting public interests is formally ratified to achieve legal certainty.

4. Conclusion

Ratification of the BCA and BTA between Indonesia and Malaysia carries strategic urgency in strengthening legal certainty, the effectiveness of cross border cooperation, and the welfare of border communities. The absence of ratification of these two agreements since 1967 and 1970 has created a normative vacuum that results in irregular implementation, weak legal protection for local communities, and limited effectiveness of economic policies in the border areas of Indonesia and Malaysia particularly Kalimantan. In fact, the BCA and BTA were formulated based on the principles of reciprocity, mutual benefit, and respect for state sovereignty as regulated in the VCLT 1969. Ratification becomes an essential instrument to reinforce Indonesia's commitment to its international obligations, strengthen its diplomatic position within the ASEAN region, and ensure the synchronization of cross sectoral policies particularly in the fields of immigration, trade, customs, and the

³³ Budi Hermawan Bangun, 'Kebijakan Terhadap Dampak Penutupan PLBN Badau Terhadap Perdagangan Lintas Batas Selama Pandemi Covid-19', *JATISWARA*, 38.3 (2023), pp. 277–90.

³⁴ Akhwan Nadzirin and Retno Mawarini Sukmariningsih, 'Does the State Civil Apparatus Violate Neutrality During Elections?', *Journal of Sustainable Development and Regulatory*, 3.2 (n.d.), pp. 400–33, doi:<https://doi.org/10.53955/jsderi.v3i2.112>.

development of national strategic areas such as the Capital City of Nusantara. Therefore, ratification is not just an administrative measure but also a manifestation of socio and legal certainty and economic justice for communities living in border regions.

The inconsistency between theory and practice in the ratification process of international treaties in Indonesia reflects structural weaknesses within the national legal system. Normatively, Indonesia adheres to a mixed approach between monism and dualism as regulated in Law Number 24 of 2000 concerning International Treaties. However, in practice the government has implemented the substance of the BCA and BTA through ministerial regulations without undergoing a formal ratification process. Such action contradicts of the Article 26 of the VCLT 1969 because the substance of the treaties has been applied without legitimate approval. This condition generates normative dualism between international legal obligations and administrative implementation at the national level which ultimately undermines the legitimacy and legal certainty of cross border treaty implementation. Therefore, a more assertive and consistent reform of the ratification mechanism is required by strengthening inter institutional coordination and clarifying the hierarchy of norms in treaty approval. Such reform is crucial to maintain Indonesia's credibility before the international community while ensuring the realization of legal justice, economic benefit, and the protection of the rights of border communities within the framework of sustainable national development.

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