



ICJ's Advisory Opinions: Legal Basis and Implication on Indonesia

Agit Y. Subandi¹, IM. Miraj Mirza², Sona Asnawi¹, Made Widhiyana¹

¹Law Faculty, Lampung University, Lampung, Indonesia

²Ph.D at Law Faculty, University of Groningen, Netherlands.

*corresponding author: Agit.yogi@fh.unila.ac.id

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Abstract

This paper explores the legal basis and implications of Advisory Opinions rendered by the International Court of Justice with special emphasis on their relevance to Indonesia. Using a normative-analytical approach and international legal theory, this study examines the role of the International Court of Justice in issuing Advisory Opinions and their impact on states behavior and institutional actions. The paper found that while the advisory opinions were not binding, they effectively provide clarification on complex legal issues, including human rights issues, environmental law, and territorial disputes. Advisory Opinions assist Indonesia in overcoming maritime disputes within the framework of ASEAN, such as the case of the North Natuna Sea, and in implementing international agreements such as the United Nations Convention on the Law of the Sea (UNCLOS) at the national level. Therefore, Advisory Opinions provide legal certainty, establish international legal norms, and facilitate cooperation between countries. This paper recommends that Indonesia use the Advisory Opinions to strengthen its legal arguments in addressing international disputes to which Indonesia is a party, increasing Indonesia's confidence in its role in diplomacy at the regional level, and in addressing transnational challenges such as environmental protection and regional security.

Keywords: advisory opinions; icj; indonesia



Abstrak

Tulisan ini mengeksplorasi landasan hukum dan implikasi dari Advisory Opinions yang diberikan oleh Mahkamah Internasional dengan penekanan khusus pada relevansinya dengan Indonesia. Menggunakan pendekatan normatif-analitis dan teori hukum internasional, studi ini mengkaji peran Mahkamah Internasional dalam mengeluarkan Advisory Opinions dan dampaknya terhadap perilaku negara dan tindakan kelembagaan. Makalah ini menemukan bahwa meskipun pendapat penasihat tidak mengikat, mereka secara efektif memberikan klarifikasi terhadap masalah hukum yang kompleks, termasuk isu-isu hak asasi manusia, hukum lingkungan, dan sengketa teritorial. Advisory Opinions membantu Indonesia secara mengatasi sengketa maritim dalam kerangka ASEAN, seperti kasus Laut Natuna Utara, dan dalam mengimplementasikan perjanjian internasional seperti Konvensi PBB tentang Hukum Laut (UNCLOS) di tingkat nasional. Karenanya, Advisory Opinions memberikan kepastian hukum, membentuk norma-norma hukum internasional, dan memfasilitasi kerja sama antar-negara. Tulisan ini merekomendasikan agar Indonesia memanfaatkan Advisory Opinions untuk memperkuat argumen hukumnya dalam mengatasi sengketa internasional di mana Indonesia menjadi pihak dalam sengketa, meningkatkan kepercayaan diri Indonesia dalam perannya pada diplomasi di tingkat regional, dan dalam mengatasi tantangan transnasional seperti perlindungan lingkungan dan keamanan regional.

Contoh:

Kata Kunci: *advisory opinions; mahkamah internasional; indonesia*

A. Introduction

Advisory Opinions of International Court of Justice (ICJ), despite lacking legal enforceability, assume a pivotal role within the realm of international law as they furnish

authoritative elucidations of intricate legal matters.¹ It assists nations and international entities in determining decisions on myriad of legal challenges.²

International issues that often addressed through ICJ's Advisory Opinions encompass territorial disagreements, human rights concerns, and global environmental affairs,³ that makes Advisory Opinions rendered by ICJ exert considerable influence on the evolution of international law,⁴ offering guidance that elucidates international legal norms,⁵ and serves as a vital

¹ Emily Crawford, *Non-Binding Norms in International Humanitarian Law: Efficacy, Legitimacy, and Legality*, Oxford University Press, 2022.

² Rozemarijn J. R. Holst, "Taking the Current When It Serves: Prospects and Challenges for an ITLOS Advisory Opinion on Oceans and Climate Change," *Review of European Comparative & International Environmental Law*, Vol. 32, No. 2, 2022, 217–225., <https://doi.org/10.1111/reel.12481>

³ Muhammad A. F. Efendi, "Positive Legislature Decisions by the Constitutional Court," *Jurnal Konstitusi*, Vol. 20, No. 4, 2023, hal. 622–639, <https://doi.org/10.31078/jk2044>

⁴ Hugh Thirlway, "The Recommendations Made by the International Court of Justice: A Sceptical View," *International and Comparative Law Quarterly*, Vol. 58, No. 1, 2009, hal. 151–162., <https://doi.org/10.1017/S0020589308000845>

⁵ Abha Saxena, dkk. "WHO Guidance on Ethics in Outbreaks and the COVID-19 Pandemic: A Critical Appraisal." *Journal of Medical Ethics*, Vol. 47, No. 6, Juni 2021, 367–373. <https://doi.org/10.1136/medethics-2020-106959>

reference in the peaceful resolution of disputes.⁶ Considering its global significance, understanding Advisory Opinions' alignment with Indonesia's legal context is an interesting topic to explore, as research on Advisory Opinions in supporting Indonesia's stance in maritime disputes, such as the North Natuna Sea, or in addressing transnational challenges like environmental protection and human rights are still very limited. This gap underlines the necessity of a focused examination of Advisory Opinions through the lens of Indonesia's interests in international law and diplomacy.

ICJ, as the foremost judicial authority within the United Nations (UN) framework, fulfils a significant function in the issuance of Advisory Opinions, which possess the potential to shape the interpretation and implementation of international law over an extended period.⁷ The significance of Advisory Opinions of the ICJ is also proven by the international practice of the use of Advisory Opinions as crucial references by nations and

⁶ Barbara Koremenos. "Contracting Around International Uncertainty." *American Political Science Review*, Vol. 99, No. 4, 2005, 549–565. <https://doi.org/10.1017/s0003055405051877>

⁷ Rebecca McMenamin. "Advisory Opinion on Obligations of States in Respect of Climate Change: Potential Contribution of Human Rights Bodies." *Climate Law*, Vol. 13, no. 3–4, October 17, 2023, 213–223. <https://doi.org/10.1163/18786561-bja10045>

international organizations in formulating their initiatives, as they offer a thorough and lucid examination of international legal standards.⁸

Therefore, this paper intends to prove the Advisory Opinions' critical role in strengthening Indonesia's arguments in territorial disputes or influencing Indonesia's compliance to the international treaties, such as UNCLOS or agreements on human rights and climate change by weighing on the fundamental questions regarding the regulations and legal framework that govern it in the international legal system,⁹ as well as the legal consequences that arise for the countries and international organizations involved.¹⁰ It is also pertinent to examine the Advisory Opinions' support for Indonesia in shaping its national policies with global orientation and in promoting regional cooperation within the ASEAN framework.

⁸ Peter Lawrence. "The International Court of Justice Advisory Opinion on Climate Change and Future Generations." *Chinese Journal of Environmental Law*, Vol. 8, no. 2, October 22, 2024, 284–300. <https://doi.org/10.1163/24686042-12340127>

⁹ Malcolm N. Shaw. *International Law*. Cambridge: Cambridge University Press, 2003.

¹⁰ Atip Latipulhayat. *Hukum Internasional: Sumber-Sumber Hukum*. Jakarta: Sinar Grafika, 2021.

This study also will delve into the essential elements that ascertain the validity of an Advisory Opinions within the realm of international legal practice. Specifically, this research seeks to contextualize these aspects within Indonesia's legal and diplomatic engagements, thereby bridging the gap between global norms and national practices. The methodology employed in this inquiry is a normative-analytical approach, which entails the examination of pertinent legal sources, in addition to referencing the decisions of the ICJ regarding the issuance of Advisory Opinions. This research expects to provide contributions to a more profound comprehension of the role, regulation, and implications of Advisory Opinions within the international legal framework.

B. Discussion

1. Regulations and Legal Framework of Advisory Opinions in the International Legal System

The primary legal foundation for this function of Advisory Opinions of ICJ is articulated in Article 96 of the UN Charter, which empowers both the General Assembly (GA) and the Security Council (SC) to solicit a legal opinion from the ICJ. This role constitutes a vital component of the broader international legal framework, contributing to the

clarification of legal norms, albeit in a non-binding capacity.¹¹ Furthermore, Article 65 of the ICJ Statute delineates a procedural structure for the court to issue Advisory Opinions, thereby facilitating adaptable and non-adversarial legal counsel.¹²

In the context of Indonesian legal framework, the integration of Advisory Opinions into Indonesia's legal system is supported by Article 11 of the 1945 Constitution that mandates the country's adherence to international norms and treaty obligations, as aligned with Article 96 of the UN Charter and Article 65 of the ICJ Statute, which relevance in the areas such as environmental commitments and maritime boundaries, where international legal standards play a pivotal role and the Advisory Opinions, as authoritative references, could guide Indonesia in navigating complex legal challenges, ensuring that domestic policies are consistent with global legal norms.

¹¹ Jörg Kammerhofer. "Beyond the 'Res Judicata' Doctrine: The Nomomechanics of ICJ Interpretation Judgments." *Leiden Journal of International Law*, 2023, 1–22. <https://doi.org/10.1017/s0922156523000547>

¹² Ninne Z. Silviani. "Implication to Status of Diego Garcia: An Enforcement of ICJ Advisory Opinion Over Chagos Archipelago." *Jurnal Komunitas Yustisia*, Vol. 5, No. 1, 2022, 400–414. <https://doi.org/10.23887/jatayu.v5i1.47843>

For instance, Indonesia has an ambitious mangrove rehabilitation target, which aims to restore 600,000 hectares by 2024 to align with the Sustainable Development Goals (SDGs) and this target necessitates strong governance and monitoring mechanisms to succeed.¹³ Advisory Opinions could provide interpretative guidance to ensure that these efforts are not only effective but also compliant with global environmental standards, thereby strengthening Indonesia's position in international environmental diplomacy.

Furthermore, challenges in tobacco control, where political-business interests and conflicts of interest hinder effective policy implementation, underscore the need for constitutional measures to address such conflicts.¹⁴ These measures could be informed by international legal frameworks and Advisory Opinions, ensuring Indonesia's

¹³ Sigit D. Sasmito, et al. "Challenges and Opportunities for Achieving Sustainable Development Goals through Restoration of Indonesia's Mangroves." *Nature Ecology & Evolution*, Vol. 7, no. 1, 2 January 2023, 62–70. <https://doi.org/10.1038/s41559-022-01926-5>

¹⁴ Putu Ayu Swandewi Astuti. "Policy Incoherence and Unwillingness of the Indonesian Government to Curb Its Alarming Tobacco Epidemic." *Tobacco Control*, Vol. 32, No. 4, 20 July 2023, 405–406. <https://doi.org/10.1136/tc-2023-058114> ; *look also*, Ibnu Sina Chandranegara and Dwi Putri Cahyawati. "Conflict of Interest Prevention Clause in the Constitution: The Study of the Indonesian Constitution." *Heliyon*, Vol. 9, no. 3, March 2023, e14679. <https://doi.org/10.1016/j.heliyon.2023.e14679>

domestic policies remain consistent with its international obligations.

Additionally, Indonesia's participatory governance in village development, while primarily focused on the economic and infrastructural growth, could integrate international legal insights to address broader issues such as gender equality.¹⁵ Similarly, in conservation efforts, prioritizing biodiversity and carbon targets, particularly in areas like Sulawesi, reflects Indonesia's commitment to global biodiversity goals, which could be further bolstered through the interpretative guidance of Advisory Opinions.¹⁶ By aligning its constitutional principles with international legal standards and leveraging Advisory Opinions, Indonesia can not only strengthen its participation in international law but also address transnational challenges effectively. The presence of regulatory frameworks within diverse international treaties and conventions significantly enhances the

¹⁵ Muhammad Syukri. "Gender Policies of the New Developmental State: The Case of Indonesian New Participatory Village Governance." *Journal of Current Southeast Asian Affairs*, Vol. 42, No. 1, April 2, 2023, 110–133. <https://doi.org/10.1177/18681034221149750>

¹⁶ Wulan Pusparini et al. "A Bolder Conservation Future for Indonesia by Prioritising Biodiversity, Carbon and Unique Ecosystems in Sulawesi." *Scientific Reports*, Vol. 13, No. 1, January 16, 2023, 842. <https://doi.org/10.1038/s41598-022-21536-2>

function of the ICJ.¹⁷ For instance, the Advisory Opinion rendered by the International Tribunal for the Law of the Sea (ITLOS) concerning the ramifications of climate change and the safeguarding of marine environments illustrates the ways in which global legal standards are evolving in response to worldwide challenges.¹⁸ Legal instruments such as the United Nations Convention on the Law of the Sea (UNCLOS) of 1982 serve as a crucial foundation for offering jurisprudential direction on matters pertaining to maritime jurisdiction and the responsibilities of sovereign states.¹⁹ This underscores the significance of Advisory Opinions in tackling intricate issues such as climate change and disputes over jurisdiction.²⁰

¹⁷ Nur Asyraf Munif Junaidy Nasser. "Peran Mahkamah Internasional Dalam Penyelesaian Sengketa Lingkungan Hidup Internasional." *Jurnal Ilmiah Hukum Dirgantara*, Vol. 9, No. 1, 2014. <https://doi.org/10.35968/jh.v9i1.302>

¹⁸ David Freestone et al. "Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Case 31." *The International Journal of Marine and Coastal Law*, Vol. 39, No. 4, October 4, 2024, 835–846. <https://doi.org/10.1163/15718085-bja10207>

¹⁹ Ben-Chao Fu. "Unification and Coordination of Maritime Jurisdiction: Providing a Judicial Guarantee for International Trade and Marine Transport." *Frontiers in Marine Science*, Vol. 9, March 24, 2022. <https://doi.org/10.3389/fmars.2022.848942>

²⁰ *Ibid.*

The procedure for soliciting an Advisory Opinion from the ICJ entails a structured protocol that initiates with the formal lodging of an application by an authorized entity, exemplified by the GA or the SC.²¹ Such submissions are required to fulfil specific criteria to ensure their relevance to the pertinent international legal inquiries that necessitate resolution. This procedural framework is designed to uphold transparency and guarantee that the ICJ engages solely with matters that fall within its defined jurisdiction. Furthermore, this methodology underscores the significance of procedural integrity in sustaining the legitimacy of the Advisory Opinion.²² In addition to that, Advisory Opinions are frequently grounded in an extensive array of international legal instruments,²³ encompassing specific treaties such as the Geneva

²¹ Yuen-li Liang. "The Establishment of an International Criminal Jurisdiction: The First Phase." *American Journal of International Law*, Vol. 46, No. 1, January 20, 1952, 73–88. <https://doi.org/10.2307/2194631>

²² Peter Dauvergne. "The Necessity of Justice for a Fair, Legitimate, and Effective Treaty on Plastic Pollution." *Marine Policy*, Vol. 155, September 2023, 105785. <https://doi.org/10.1016/j.marpol.2023.105785>

²³ K. Halvorsen, R. Førde, and P. Nortvedt. "The Principle of Justice in Patient Priorities in the Intensive Care Unit: The Role of Significant Others: Table 1." *Journal of Medical Ethics*, Vol. 35, No. 8, August 2009, 483–487. <https://doi.org/10.1136/jme.2008.028183>

Conventions and the Rome Statute.²⁴ The ICJ operates to synthesize diverse sources of international law in order to formulate holistic legal guidance.²⁵ This endeavour contributes to the establishment of legal coherence and addresses the dynamic requirements of the global community, particularly concerning issues related to environmental protection amidst armed conflict.²⁶

Overall, the Advisory Opinion of the ICJ serves a pivotal function within the international legal framework as a conduit for the advancement and elucidation of legal principles. With a robust legal foundation, this capacity enables the ICJ to furnish authoritative legal counsel in addressing worldwide issues without the direct enforcement of obligatory mandates. This makes it an

²⁴ Rafi Nasrulloh Muhammad Romdoni. "Legal Responsibility for Environmental Damage Caused by Russian and Ukrainian Wars: International Humanitarian and Criminal Law Perspectives." *UNIFICATION: Journal of Legal Studies*, Vol. 10, No. 2, October 7, 2023, 106–115. <https://doi.org/10.25134/unifikasi.v10i2.8153>

²⁵ Michael A. Becker. "Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)." *American Journal of International Law*, Vol. 109, No. 4, October 20, 2015, 851–858. <https://doi.org/10.5305/amerjintelaw.109.4.0851>

²⁶ David Plunkett. "Negotiating the Meaning of 'Law': The Metalinguistic Dimension of the Dispute Over Legal Positivism." *Legal Theory*, Vol. 22, No. 3–4, December 27, 2016, 205–275. <https://doi.org/10.1017/S1352325216000070>

important tool in the development of dynamic and adaptive international law.

2. Legal Consequences of Advisory Opinion Decisions for Countries and International Organizations

a) Binding Strength vs. Consultative Nature

The Advisory Opinion of the ICJ is not legally binding but has significant legal weight in providing guidance to countries and international organizations.²⁷ The Advisory Opinions of the ICJ, though not legally binding, hold substantial interpretative authority in addressing intricate international legal issues, particularly in maritime disputes such as those in the North Natuna Sea. These opinions offer Indonesia a critical tool to clarify legal standards under UNCLOS, reinforcing its sovereign claims over the Exclusive Economic Zone (EEZ) amidst competing assertions in the South China Sea region. For instance, Advisory Opinions could provide a robust legal basis to legitimize Indonesia's stance by offering technocratic interpretations, akin to the historical role of expert guidance in disputes like the Suez Canal.²⁸ Such

²⁷ Atip Latipulhayat, *Op.cit.*

²⁸ Jan Eijking, "Historical Claims to the International: The Case of the Suez Canal Experts." *International Studies Quarterly*, Vol. 67, No. 3, June 14, 2023. <https://doi.org/10.1093/isq/sqad041>

interpretations not only enhance the credibility of Indonesia's claims but also promote broader acceptance among international stakeholders.

Within the ASEAN framework, where Indonesia is a key actor, Advisory Opinions could further serve as authoritative references in crafting regional agreements or declarations. These opinions align with Indonesia's consistent advocacy for peaceful dispute resolution and adherence to international legal norms. For example, they could assist in establishing cooperative mechanisms under UNCLOS, fostering alignment on maritime entitlements and regional security. Similar to the process of developing conservation guidelines, which rely on inclusive stakeholder input and evidence-based frameworks,²⁹ Advisory Opinions can strengthen Indonesia's capacity to lead ASEAN in addressing maritime disputes through collective and informed decision-making. Additionally, the impartial and non-binding nature of Advisory Opinions mirrors the significance of unbiased, evidence-driven guidelines in

²⁹ Henry Häkkinen et al. "Co-developing Guidance for Conservation: An Example for Seabirds in the North-East Atlantic in the Face of Climate Change Impacts." *Conservation Science and Practice*, Vol. 5, No. 8, August 23, 2023. <https://doi.org/10.1111/csp2.12985>

sectors such as medicine and sports.³⁰ By ensuring these opinions remain devoid of commercial or national biases, they can serve as a foundation for sustainable regional agreements and foster compliance with international norms. This impartiality reinforces Indonesia's position as a proponent of regional stability and legal coherence.

Advisory Opinions also hold potential beyond dispute resolution. For Indonesia, they can provide strategic guidance in areas such as environmental governance and resource conservation, especially given the nation's commitment to UNCLOS principles and its leadership in advancing ASEAN's collective response to transnational challenges. By leveraging these opinions, Indonesia can navigate complex legal scenarios, ensuring its domestic policies are consistent with its international obligations. Thus, ICJ Advisory Opinions are invaluable in bolstering Indonesia's influence within ASEAN and in the international community at large. By utilizing these

³⁰ Berthold Koletzko et al. "Medical Guidelines Must Not Be Influenced by Commercial Interests." *United European Gastroenterology Journal*, Vol. 11, No. 6, July 7, 2023, 582–583. <https://doi.org/10.1002/ueg2.12416>; also Lauren V. Fortington et al. "Are We Levelling the Playing Field? A Qualitative Case Study of the Awareness, Uptake and Relevance of the IOC Consensus Statements in Two Countries." *British Journal of Sports Medicine*, Vol. 57, No. 21, November 2023, 1371–1381. <https://doi.org/10.1136/bjsports-2022-105984>

interpretative tools, Indonesia not only strengthens its legal arguments in disputes like the North Natuna Sea but also reinforces its leadership role in promoting regional cooperation and adherence to international law.

The ICJ's consultative function allows UN organs or specialized agencies to request legal views on specific issues,³¹ as seen in the 1996 Advisory Opinion on Nuclear Weapons.³² Although it does not contain legal obligations, this opinion influences the formation of norms and the application of international law through widely accepted interpretations. This procedure bears resemblance to other judicial mechanisms, such as the European Court of Human Rights, which facilitates the articulation of legal interpretations that enhance the enforcement of human rights standards.³³ The Advisory Opinion significantly advances the evolution of international law through its authoritative, albeit consultative, interpretations.³⁴ By

³¹ Erika de Wet. "Holding International Institutions Accountable: The Complementary Role of Non-Judicial Oversight Mechanisms and Judicial Review." 2010, 855–882. https://doi.org/10.1007/978-3-642-04531-8_30

³² Margaret A. Berger and Aaron D. Twerski. "Uncertainty and Informed Choice: Unmasking Daubert." *Specialty Law Digest. Health Care Law*, No. 326, 2006.

³³ Barbara Koremenos, *Op.cit.*

³⁴ Peter Hilpold. "The Ukraine Crisis, the Nuclear Threat and the ICJ Opinion of 1996." *Global Policy*, Vol. 14, No. 2, May 28, 2023, 396–402. <https://doi.org/10.1111/1758-5899.13201>

invoking Article 65 of the ICJ Statute, this opinion underscores the Court's position as the preeminent judicial authority.³⁵ While it lacks binding force, the rigorous deliberative process and the legal acumen employed in the formulation of the opinion bolster its legitimacy and acceptance within the international community.³⁶ In this framework, the ICJ's Advisory Opinion offers legal guidance that is frequently operationalized in practice by states and international entities.³⁷

An illustration of the impact of the Advisory Opinion is evidenced in the 2004 case concerning the Israeli Wall.³⁸ Although not binding, this opinion is used as a reference by countries and international organizations to evaluate violations of international human rights law.³⁹ This role

³⁵ Philippe Sands. "Climate Change and the Rule of Law: Adjudicating the Future in International Law." *Journal of Environmental Law*, Vol. 28, No. 1, March 2016, 19–35. <https://doi.org/10.1093/jel/eqw005>

³⁶ Rosalyn Higgins. "Policy Considerations and the International Judicial Process." *International and Comparative Law Quarterly*, Vol. 17, No. 1, January 17, 1968, 58–84. <https://doi.org/10.1093/iclqaj/17.1.58>

³⁷ Erika de Wet, *Op.cit.*

³⁸ Yaël Ronen. "The Obligation of Non-Recognition, Occupation and the OPT Advisory Opinion." October 14, 2024. <https://doi.org/10.59704/1bbe124e441defdd>

³⁹ Andreas J. Ullmann and Andreas von Staden. "A Room Full of 'Views': Introducing a New Dataset to Explore Compliance with the

differentiates Advisory Opinions from ICJ decisions which are binding in accordance with Article 59 of the ICJ Statute, which are designed to resolve disputes with formal legal obligations.⁴⁰ The interaction between binding and non-binding legal instruments shows the complexity of international law in providing guidance and resolving conflicts.⁴¹

ICJ decisions in cases such as *Nicaragua vs. United States* highlight the importance of binding in resolving international disputes. In contrast to Advisory Opinions, binding decisions have the ability to ensure compliance with international law. This enforcement is similar to domestic mechanisms, such as the Supremacy Clause in the US, which require international treaties to be adhered to unless otherwise stated. This mechanism substantiates the primacy of international law in establishing legal certainty for the nations concerned.⁴²

Decisions of the UN Human Rights Treaty Bodies' Individual Complaints Procedures." *Journal of Conflict Resolution*, Vol. 68, No. 2-3, March 15, 2024, 534-561.
<https://doi.org/10.1177/00220027231160460>

⁴⁰ Peter Hilpold. *Op.cit.*

⁴¹ Peter Hilpold. "The ICJ Advisory Opinion on Kosovo: Different Perspectives of a Delicate Question." *SSRN Electronic Journal*, 2012.
<https://doi.org/10.2139/ssrn.1734443>

⁴² Carlos Manuel Vázquez. "Treaties as Law of the Land: The Supremacy Clause and the Judicial Enforcement of Treaties." *Harvard Law Review*, 2008.

As a result, the Advisory Opinions rendered by the ICJ assume a significant function in the evolution of international jurisprudence, albeit their consultative character differentiates them from obligatory judicial decisions. These advisory pronouncements possess the capacity to shape public sentiment and international policy through their provision of authoritative legal counsel. Nonetheless, the efficacy of an Advisory Opinion remains contingent upon its recognition and execution by the state or international entity that solicited the opinion.

b) Legal Impact for Countries

The Advisory Opinions rendered by the ICJ, while devoid of legal enforceability, exert considerable influence on the formulation of state policies and the dynamics of international relations by offering authoritative elucidations of international legal principles. A pertinent illustration of this phenomenon can be observed in the 2004 ruling regarding Israel's construction of the separation barrier, wherein the ICJ determined that such construction contravened international law, thereby inciting the UNGA to advocate for Israel to cease its

building activities.⁴³ This instance exemplifies the capacity of ICJ opinions to shape international policy, notwithstanding their non-binding nature. Advice from international institutions can also change countries' policies, as seen in the impact of ICES and other organizations that use expert advice to strengthen their policies.⁴⁴

The ICJ's Advisory Opinion on the legality of the use of nuclear weapons in 1996 also showed great influence even though it was not legally binding. This opinion encourages nuclear weapons states to consider their policies, bearing in mind the principles of humanity and international law emphasized by the ICJ.⁴⁵ Although this opinion does not provide a definitive legal ruling, it has become a reference point in global discussions on nuclear disarmament, showing how the interpretation of

⁴³ Vahid Reza doost. "Unveiling the 'Author' of International Law — The 'Legal Effect' of ICJ's Advisory Opinions." *Journal of International Dispute Settlement*, July 19, 2024. <https://doi.org/10.1093/jnlids/idae015>

⁴⁴ Sebastian Linke, Kåre Nølde Nielsen, and Paulina Ramírez-Monsalve. "Roles for Advisory Science in the International Council for the Exploration of the Sea (ICES)." *Marine Policy*, Vol. 148, February 2023, 105469. <https://doi.org/10.1016/j.marpol.2022.105469>

⁴⁵ Margaret A. Berger and Aaron D. Twerski. *Op.cit.*

international law can influence state policy on crucial global issues.⁴⁶

States' responses to ICJ Advisory Opinions can vary and are often influenced by international and domestic political dynamics.⁴⁷ The case of Israel's non-compliance with the Advisory Opinion on Wall Construction is an example of how a country can reject the ICJ's opinion if it conflicts with its national interests.⁴⁸ This dynamic aligns with the perspectives articulated by Fang and Stone, who underscore that the efficacy of international organizations' influence is contingent upon the moderation of their policy stances and their congruence with domestic policies. This illustrates that despite the ICJ issuing a robust opinion, the execution of that opinion may be constrained by domestic and political considerations. The Advisory Opinion rendered by ICJ regarding the utilization of nuclear armaments illustrates the manner in which sovereign states may react to advisory opinions that

⁴⁶ S. R. Roff. "Under-Ascertainment of Multiple Myeloma among Participants in UK Atmospheric Atomic and Nuclear Weapons Tests." *Occupational and Environmental Medicine*, Vol. 60, No. 12, 2003. <https://doi.org/10.1136/oem.60.12.e18>

⁴⁷ Songying Fang and Randall W. Stone. "International Organizations as Policy Advisors." *International Organization*, Vol. 66, No. 4, October 10, 2012, 537-569. <https://doi.org/10.1017/S0020818312000276>

⁴⁸ Songying Fang and Randall W. Stone. *Op.cit.*

lack binding authority by developing foreign policies that consider the repercussions for global peace and security. In their responses to ICJ advisory opinions, states frequently consider their international standing and prevailing global norms, notwithstanding the non-binding nature of these opinions. The compliance with global accords such as the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) exemplifies how international policy may be shaped by global standards and external pressures, even in the absence of legal obligations that compel state compliance.⁴⁹

Overall, despite its lack of legal enforceability, the ICJ Advisory Opinion significantly impacts the development of state policy and the dynamics of international relations. Through its authoritative elucidation of international law, the ICJ possesses the capacity to shape the evolution of global perspectives and diplomatic strategies, ultimately motivating states to harmonize their policies with established international legal standards. The reactions of states to this opinion illuminate how international law, while not universally obligatory, can nonetheless affect

⁴⁹ Barbara Koremenos. *Op.cit.*

the intricacies of interstate relations and the adherence to international legal norms.

c) Legal Impact on International Organizations

The ICJ holds a pivotal position in shaping the policy frameworks and operational modalities of international organizations through the issuance of its advisory opinions. Despite their non-binding nature, ICJ opinions often provide authoritative interpretations of international law that influence the behaviour of states and international organizations. For example, the Advisory Opinion on the Palestinian territories occupied by Israel shows significant implications for third countries and international organizations, encouraging non-recognition and non-cooperation with illegal situations.⁵⁰ This opinion also influences global policy, especially in the case of military support for Israel by countries such as the UK.⁵¹

⁵⁰ Yussef Al Tamimi and Andreas Piperides. "Third State Obligations in the ICJ Advisory Opinion." October 14, 2024. <https://doi.org/10.59704/576960e83e125451>

⁵¹ Stacy-ann Robinson and Eli Bertan. "The Limits of Advisory Opinions in the Pursuit of Climate Justice through International Courts." *Georgetown Journal of International Affairs*, Vol. 25, No. 1, June 2024, 45–52. <https://doi.org/10.1353/gja.2024.a934885>

ICJ opinions also serve as a guide in resolving international disputes and guiding states in their obligations. For example, in the Chagos case, the ICJ provided an interpretation of the law used by the ITLOS, showing how the ICJ's opinion was taken as an authoritative statement by international organizations.⁵² Additionally, although non-binding, the ICJ's opinion on climate change has encouraged countries to pay closer attention to their obligations under the UN Convention on the Law of the Sea, which requires them to prevent marine pollution.⁵³

Indonesia's participation in UN bodies such as the General Assembly and ITLOS demonstrates the practical significance of Advisory Opinions in shaping its policies. For instance, through its active role in discussions on maritime disputes, Indonesia can leverage ICJ and ITLOS advisory opinions to strengthen its stance on Exclusive Economic Zone (EEZ) rights and sustainable marine governance. The Advisory Opinion concerning the protection of marine biodiversity offers valuable guidance for Indonesia's ratification and implementation of international agreements, ensuring compliance with its

⁵² Vahid Rezadoost. *Op.cit.*

⁵³ David Freestone et al. *Op.cit.*

obligations under UNCLOS and supporting national marine conservation efforts. This alignment is particularly critical as Indonesia faces challenges in managing regional marine protected areas (RMPAs), where administrative transitions and limited resources have hampered effective governance and community partnerships.⁵⁴ Furthermore, the gap between policy and practice in human rights and conservation, as observed in Papua Province, underscores the need for more inclusive and consultative approaches that respect local communities' rights and traditional practices.⁵⁵

The recent UN multilateral agreement on the conservation of marine biodiversity beyond national jurisdiction offers Indonesia a framework to enhance its marine governance, emphasizing the protection of long-term biological diversity and equitable sharing of marine resources.⁵⁶ Additionally, initiatives such as the proposal

⁵⁴ Jamaluddin Jompa et al. “The Transference of Marine Protected Area Management Authority in Indonesia: Problems Encountered, Consequences and Ways to Move Forward.” *Marine Policy*, Vol. 155, September 2023, 105756. <https://doi.org/10.1016/j.marpol.2023.105756>

⁵⁵ Paul A. Barnes et al. “The Gap between Policy and Practice for Human Rights in Conservation: A Case Study in Papua Province, Indonesia.” *Oryx*, Vol. 57, No. 3, May 9, 2023, 360–69. <https://doi.org/10.1017/S0030605323000066>

⁵⁶ Jennifer Jacquet, Gabrielle Carmine, and Jeremy Jackson. “UN Multilateral Agreement Offers an Opportunity to Protect High Seas

of the Natuna Islands as a UNESCO Global Geopark reflect Indonesia's commitment to integrating international standards into local conservation and tourism development, despite challenges in funding and governance.⁵⁷ However, these efforts are further complicated by potential conflicts of interest in law-making, where economic and political interests can influence decision-making processes, highlighting the need for constitutional safeguards against such conflicts.⁵⁸ By strategically utilizing advisory opinions and international agreements, Indonesia can address these challenges, thereby strengthening its marine governance and conservation policies.

Advisory opinions rendered by international judicial entities, including the ICJ and the ITLOS, assume a significant role in elucidating the legal obligations incumbent upon international organizations.⁵⁹ While

Biodiversity.” *Science Advances*, Vol. 9, No. 25, June 23, 2023. <https://doi.org/10.1126/sciadv.adj1435>

⁵⁷ Mustajadli and Junriana. “Rencana Aksi Badan Pengelola Kawasan Geopark Kabupaten Natuna dalam Pengembangan Pariwisata Menuju UNESCO Global Geopark (UGGp).” *Governance*, Vol. 11, No. 1, February 25, 2023, 26–39. <https://doi.org/10.33558/governance.v11i1.5894>

⁵⁸ Ibnu Sina Chandranegara and Dwi Putri Cahyawati. *Op.cit.*

⁵⁹ Dapo Akande. “The Competence of International Organizations and the Advisory Jurisdiction of the International Court of Justice.”

these opinions lack direct binding authority, they exert considerable influence over the conduct of states and international organizations by offering unambiguous interpretations of international law.⁶⁰ For instance, the Advisory Opinion concerning the Palestinian territories and Israeli policy exemplifies the capacity of the ICJ's opinions to shape international diplomacy and the policy orientations of third states.⁶¹ Furthermore, these opinions can guide Indonesia in crafting its environmental policies, particularly in reducing marine pollution and addressing trade-related disputes that involve international legal obligations. The ICJ's interpretative guidance could aid Indonesia in aligning its domestic policies with international norms, fostering compliance and enhancing its diplomatic leverage. Additionally, through a more structured approach, the ICJ and ITLOS opinions provide guidance for states to resolve international conflicts in a

European Journal of International Law, Vol. 9, No. 3, January 1, 1998, 437–67. <https://doi.org/10.1093/EJIL/9.3.437>

⁶⁰ Nicole De Silva and Anne Holthoefer. “Hidden Figures: How Legal Experts Influence the Design of International Institutions.” European Journal of International Relations, Vol. 30, No. 1, March 24, 2024, 52–77. <https://doi.org/10.1177/13540661231210931>

⁶¹ Vahid Rezaadoost. *Op.cit.*

peaceful manner, even in the absence of binding legal obligations.⁶²

3. Fundamental Aspects of the Decision *Advisory Opinion* which determines its validity in international law

a) Supporting principles

The Advisory Opinions issued by the ICJ play a key role in the development of international law. Although not legally binding, these decisions make significant contributions to the understanding and application of international law principles, such as legality, legitimacy and fairness. These principles are the basis that guarantees the relevance and influence of advisory opinions in the international legal system. The principle of legality emphasizes the importance of requests being based on international law, ensuring that the ICJ's opinion is based on valid legal analysis.⁶³

⁶² András Miklós. "The Basic Structure and the Principles of Justice." *Utilitas*, Vol. 23, No. 2, June 23, 2011, 161-82. <https://doi.org/10.1017/S0953820811000045>

⁶³ P. Liste. "Jutta Brunnee, Stephen J. Toope. Legitimacy and Legality in International Law." *European Journal of International Law*, Vol. 22, No. 2, May 1, 2011, 589-93. <https://doi.org/10.1093/ejil/chr032>

The principle of legality in international law ensures that the opinion given by the ICJ is based on applicable legal norms. As seen in the Advisory Opinion on the Israeli-Palestinian separation wall in 2004, this principle underscores the importance of clear legal norms to maintain the integrity of international law.⁶⁴ This perspective, despite lacking binding authority, functions as a significant reference that affects the execution of international legal norms.⁶⁵ In the Indonesian context, the principle of legality is reflected in Law No. 24 of 2000 concerning International Agreements, which governs the ratification of international treaties and agreements. This law highlights the necessity for domestic legal norms to align with international obligations, ensuring Indonesia's adherence to global legal standards. Advisory Opinions can serve as persuasive authority in interpreting these obligations, guiding Indonesia's legislative and judicial practices, particularly in addressing complex issues such as maritime disputes and environmental commitments. Consequently, the concept of legality encompasses not merely formal adherence, but also the extent to which

⁶⁴ Rebecca McMenamin. *Op.cit.*

⁶⁵ *Ibid.*

sustainable practices enhance the pre-eminence of law within the sphere of international relations.⁶⁶

The principle of legitimacy attributed to the ICJ significantly enhances its capacity to deliver advisory opinions. As the principal judicial entity within the United Nations framework, the ICJ possesses authority that is broadly recognized by member states of the UN. Although the opinions rendered by the ICJ lack binding force, they are esteemed for their potential to shape international legal standards. For instance, the Advisory Opinion concerning the employment of nuclear weapons (1996) holds considerable legitimacy in spite of its advisory character, as it is acknowledged as a foundational reference for international dialogues regarding state responsibilities in upholding peace and security.⁶⁷ In Indonesia, the legitimacy of Advisory Opinions can also be recognized in their application as jurisprudence or persuasive references in judicial decisions. Indonesian courts, when addressing cases involving international agreements, could utilize Advisory Opinions to interpret treaty provisions or clarify state obligations under Law No. 24 of 2000. This approach would reinforce Indonesia's

⁶⁶ Nicole De Silva and Anne Holthoefler. *Op. cit.*

⁶⁷ Peter Hilpold. *Op.cit.*

commitment to aligning its legal practices with international standards while fostering judicial innovation in the resolution of transnational legal issues.

However, the legitimacy of this construct is not without its challenges, particularly in relation to the potential disruption of established legal doctrines. For instance, in the arena of climate change, the request for an Advisory Opinion serves as a reaction to the protracted nature of international negotiations, thereby prompting inquiries regarding the equilibrium between judicial interpretation and diplomatic mechanisms in the evolution of international law.⁶⁸ Nonetheless, the legitimacy of the ICJ opinion is bolstered by a pervasive acknowledgment of its significance within the international community,⁶⁹ which demonstrates substantial authority in the formulation of global legal frameworks and norms.⁷⁰ The concept of justice constitutes a fundamental element of the ICJ's role in fostering transparency and precision within the realm of

⁶⁸ Peter Hilpold, *"The ICJ Advisory Opinion..., Op.cit.*

⁶⁹ Beth A. Simmons. "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs." *American Political Science Review*, Vol. 94, No. 4, December 1, 2000, 819–35. <https://doi.org/10.2307/2586210>

⁷⁰ Peter Hilpold. *Op.cit.*

international relations.⁷¹ Indonesia's commitment to social justice, as reflected in its international practices, aligns with the second principle of Pancasila and is evident in various domains, including regional development, legal reform, foreign policy, and sustainable ocean management. The integration of Sustainable Development Goals (SDGs)⁷² into regional development plans highlights Indonesia's efforts to promote equitable growth, although challenges remain in fully localizing these goals due to limited resources and a focus on economic elements.⁷³ In the legal domain, Indonesia's progressive approach to corruption case resolution demonstrates a commitment to substantive justice, enhancing the effectiveness of law enforcement and reducing corruption cases through adaptive legal frameworks.⁷⁴ On the international stage, Indonesia's ambivalence in the Russia-Ukraine conflict

⁷¹ Peter Dauvergne. *Op.cit.*

⁷² Agit Yogi Subandi. "A Brief History of Sustainable Development Principles and Its Implementation in International Law and Indonesian Law." *Pranata Hukum*, Vol. 17, No. 1, January 31, 2022, 28–48. <https://doi.org/10.36448/pranatahukum.v17i1.267>

⁷³ Hisam Ahyani et al. "Prinsip-Prinsip Keadilan Berbasis Ramah Gender (Maslahah) dalam Pembagian Warisan di Indonesia." *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)*, Vol. 5, No. 1, July 12, 2023, 73–100. <https://doi.org/10.20885/mawarid.vol5.iss1.art6>

⁷⁴ Syamsul Haling et al. "The Paradigm Shift in Corruption Case Resolution in Indonesia: A Study on the Progressive Legal Approach." *Evolutionary Studies in Imaginative Culture*, September 25, 2024, 102–113. <https://doi.org/10.70082/esiculture.vi.1370>

underscores its balancing act between upholding sovereignty norms and advocating for peaceful resolutions, reflecting its broader foreign policy principles of non-alignment and equal sovereignty.⁷⁵ Furthermore, Indonesia's sustainable ocean development policies aim to harmonize economic growth with environmental sustainability, although obstacles such as fragmented management and inadequate infrastructure pose significant challenges.⁷⁶ These efforts collectively illustrate Indonesia's dedication to social justice and equitable solutions, resonating with the International Court of Justice's emphasis on justice and providing a framework for advancing its foreign policy objectives in line with its national philosophy.

The ICJ plays a pivotal role in the amicable settlement of conflicts by offering elucidations that enhance the understanding of the application of international law, as exemplified in cases pertaining to

⁷⁵ Baiq Wardhani and Radityo Dharmaputra. "Indonesia's Ambivalence in the Russia-Ukraine War: Balancing Equal Sovereignty Norms with a Familial Approach." *Contemporary Security Policy*, Vol. 45, No. 4, October 2024, 627–642. <https://doi.org/10.1080/13523260.2024.2397926>

⁷⁶ Lucky Wuwung, Alistair Mcllgorm, and Michelle Voyer. "Sustainable Ocean Development Policies in Indonesia: Paving the Pathways towards a Maritime Destiny." *Frontiers in Marine Science*, Vol. 11, September 10, 2024. <https://doi.org/10.3389/fmars.2024.1401332>

plastic pollution and principles of distributive justice.⁷⁷ However, the principles of justice in international practice are not always easy to implement, because they are influenced by economic and political factors that limit the fair distribution of justice for all parties.⁷⁸

The ICJ also plays an important role in strengthening the principles of justice in international law, especially through advisory opinions which provide interpretations of international conventions. His views on genocide, for example, clarified states' obligations and strengthened global efforts to combat human rights violations.⁷⁹ Furthermore, the Advisory Opinion pertaining to climate change elucidates the capacity of the ICJ to incorporate human rights obligations within the framework of environmental protection, thereby underscoring the significance of intergenerational equity.⁸⁰ Overall, the foundational principles of legality, legitimacy, and justice underpin the significant function of the ICJ in rendering advisory opinions that substantially shape the evolution of

⁷⁷ András Miklós. *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Peter Lawrence. *Op.cit.*

⁸⁰ Daniel Bodansky. "Advisory Opinions on Climate Change: Some Preliminary Questions." *Review of European, Comparative & International Environmental Law*, Vol. 32, No. 2, July 7, 2023, 185–192. <https://doi.org/10.1111/reel.12497>

international law. Although the ICJ's opinions are not legally binding, they carry considerable authority in establishing international legal norms, fortifying the global legal framework, and aiding nations in amicably resolving conflicts in accordance with well-defined international legal standards.

b) The Relationship of Advisory Opinion with the Development of International Law

Advisory Opinions issued by international judicial bodies, including the ICJ and the ITLOS, assume a pivotal function in the formulation of international law through the provision of authoritative interpretations of legal statutes.⁸¹ Despite their non-binding nature, Advisory Opinions exert a considerable influence on the conduct of states and international organizations. For example, the ICJ's opinion on climate change could expand the principle of preventing harm and strengthen the concept of intergenerational equality as part of sustainable development, by introducing human rights obligations in

⁸¹ Yoshifumi Tanaka. "The Role of an Advisory Opinion of ITLOS in Addressing Climate Change: Some Preliminary Considerations on Jurisdiction and Admissibility." *Review of European, Comparative & International Environmental Law*, Vol. 32, No. 2, July 23, 2023, 206–216. <https://doi.org/10.1111/reel.12459>

that context.⁸² This creates a complementary alternative path to strengthening international climate change law.

The 1996 ICJ Advisory Opinion on the legality of the use of nuclear weapons has become an important reference in international discourse regarding weapons of mass destruction. While this opinion is non-binding, its relevance increases with geopolitical tensions and fears of nuclear conflict.⁸³ This opinion also highlights how the interpretation of international law, including in agreements related to nuclear weapons, is influenced by moral considerations, showing that legal interpretation is not only formalistic, but is influenced by ethical dynamics and public opinion.⁸⁴

Furthermore, advisory opinions rendered by international judicial institutions such as the ICJ and the ITLOS hold significant importance in the formulation of international legal norms pertaining to human rights, environmental protection, and maritime law. For instance,

⁸² Jorge Contesse. "The Rule of Advice in International Human Rights Law." *American Journal of International Law*, Vol. 115, No. 3, July 30, 2021, 367–408. <https://doi.org/10.1017/ajil.2021.22>.

⁸³ Peter Hilpold. *Op.cit.*

⁸⁴ Benedikt Pirker and Izabela Skoczeń. "Inside the Treaty Interpreter's Mind: An Experimental Linguistic Approach to International Law." *Leiden Journal of International Law*, Vol. 36, No. 3, September 24, 2023, 519–48. <https://doi.org/10.1017/S0922156523000134>

a prospective advisory opinion from the ICJ concerning climate change could reinforce the responsibilities of states toward future generations and enhance the prevention of harm. Additionally, such an opinion could incorporate human rights obligations previously articulated by the United Nations human rights treaty bodies, thereby enriching the evolution of jurisprudence in this domain.⁸⁵ This aligns with the imperative to expedite the global response to the pressing challenge of climate change.

The foundational legal principles that underpin the Advisory Opinion, including legality, legitimacy, and fairness, are essential for comprehending its function and impact on the evolution of international law. Although it does not possess binding authority, the Advisory Opinion continues to shape the creation and progression of international legal norms, delineates the rights and responsibilities of states with clarity, and aligns international policy with contemporary challenges.

⁸⁵ Peter Lawrence. *Op.cit.*

c) Philosophy and Legal Theory Underlying Advisory Opinion

Advisory Opinions within the realm of international law, exemplified by those promulgated by the ICJ and the ITLOS, serve as non-binding yet authoritative elucidations of legal principles. These opinions furnish pivotal insights regarding intricate matters, such as climate change, and endeavour to incorporate human rights considerations into the framework of international law.⁸⁶ From the perspective of legal theory, Advisory Opinions may be conceptualized as counsel that facilitates decision-making processes, akin to the functions performed by advisors within social practices that are designed to offer direction.⁸⁷ Although not binding, these advisory opinions play an important role in influencing the development of international law by providing clarification of states' rights and obligations. From the perspective of Hans Kelsen's legal positivism, which views law as a system of rules established by legitimate authority, the Advisory Opinion functions as an interpretive tool, not as a binding

⁸⁶ Rebecca McMnamin. *Op.cit.*

⁸⁷ Roy Kreitner. "Pigs and Positivism: Between Jurisprudence and Politics." *Law & Social Inquiry*, Vol. 44, No. 2, May 31, 2019, 498–504. <https://doi.org/10.1017/lsi.2019.16>.

mandate.⁸⁸ International law, according to Kelsen, is based on the consensus of states,⁸⁹ and although Advisory Opinions do not create legal obligations, they influence state practice by providing interpretations that clarify rights and obligations within the framework of international law.⁹⁰ Thus, although not binding, Advisory Opinions function as an important tool in guiding state behaviour in the context of international law.

In the view of legal naturalism, which emphasizes justice and morality, Advisory Opinion plays an important role in upholding universal values such as human rights and justice.⁹¹ Despite its lack of legal enforceability, this opinion possesses significant moral authority that can shape international standards and ethical values. A pertinent illustration is the Advisory Opinion regarding Palestine's entitlement to self-determination, which, while not altering Palestine's legal status, enhances the moral and ethical underpinnings of international law.⁹² In this

⁸⁸ Jörg Kammerhofer. *Op.cit.*

⁸⁹ Hans Kelsen. *General Theory of Law and State*. 2017.

⁹⁰ David Plunkett. *Op.cit.*

⁹¹ Christian Reus-Smit. "The Politics of International Law." In *The Politics of International Law*, ed. Christian Reus-Smit. New York: Cambridge University Press, 2004, 14–44.

⁹² Tarek Ladjal and Mohd Roslan Mohd Nor. "Palestine-Israel Conflict: Rationalism vs Realism 1988-2017." *Journal of Al-Tamaddun*,

instance, the Advisory Opinion serves to advance justice and human rights as fundamental tenets of international law.⁹³

In the domain of international relations theoretical frameworks, including realism and constructivism, the Advisory Opinion serves as an instrument to confer legal legitimacy and elucidation in matters of international contention.⁹⁴ Although lacking binding authority, such opinions possess the capacity to shape both international and domestic policy by offering strategic guidance that assists states in manoeuvring through intricate legal challenges.⁹⁵ From the perspective of realism, it is perceived as a mechanism employed by states to secure legal legitimacy, whereas constructivism underscores the significance of Advisory Opinion in the development and transformation of international norms through social engagement and collective comprehension.⁹⁶

Vol. 13, No. 1, June 28, 2018, 37–44.
<https://doi.org/10.22452/IAT.vol13no1.4>.

⁹³ *Ibid.*

⁹⁴ Christian Reus-Smit. *Op.cit.*

⁹⁵ David R. Arahal et al. “Guidelines for Interpreting the International Code of Nomenclature of Prokaryotes and for Preparing a Request for an Opinion.” *International Journal of Systematic and Evolutionary Microbiology*, Vol. 73, No. 3, March 15, 2023.
<https://doi.org/10.1099/ijsem.0.005782>.

⁹⁶ Christian Reus-Smit. *Op.cit.*

d) The Role of Advisory Opinion in the Formation of International Legal Norms

The Advisory Opinions rendered by ICJ assume a pivotal function in the evolution of international legal norms by elucidating intricate legal dilemmas, despite their lack of binding legal authority. These opinions furnish critical insights on matters pertaining to human rights, environmental jurisprudence, and the phenomenon of climate change.⁹⁷ By providing a clear judicial view, as in climate change cases, advisory opinions can clarify states' obligations and strengthen the legitimacy of international law.⁹⁸ This shows how the ICJ's opinion can shape more structured international policy.⁹⁹

Moreover, the Advisory Opinion significantly enhances the codification of international law by elucidating principles that remain ambiguous or are in a state of evolution, particularly evident in the realms of human rights and environmental law.¹⁰⁰ The opinion rendered by the ICJ, which examines the responsibilities of

⁹⁷ Daniel Bodansky. *Op.cit.*

⁹⁸ Rebecca McMenamin. *Op.cit.*

⁹⁹ David R. Arahall et al. *Op.cit.*

¹⁰⁰ Jörg Kammerhofer. *Op.cit.*

states towards posterity and the principle of harm prevention, possesses the capacity to engender novel norms that are more suitably aligned with contemporary global challenges.¹⁰¹ This interpretation, while not legally binding, offers a crucial foundation for the prospective evolution of international legal norms.¹⁰²

Advisory Opinions may serve as a significant impetus for legal innovation, particularly in domains that are confronted with emerging global challenges, such as climate change.¹⁰³ In the Indonesian context, Advisory Opinions could provide valuable interpretative guidance to align Indonesia's commitments under the Paris Agreement and the Treaty on the Prohibition of Nuclear Weapons (TPNW) with global legal standards. For instance, the ICJ's ruling regarding the utilization of nuclear weapons exemplifies its capacity to influence international norms, elucidate the obligations of states, and facilitate the formulation of novel principles that incorporate considerations for environmental

¹⁰¹ Elliot Marrow, "Why Should Other People Be the Judge': The Codification of Assessment Criteria for Gender-Affirming Care, 1970s–1990s," *History of Psychology* 26, no. 3 (August 2023): 210–46, <https://doi.org/10.1037/hop0000238>.

¹⁰² Rebecca McMenamín. *Op.cit.*

¹⁰³ Daniel Bodansky. *Op.cit.*

preservation and sustainability.¹⁰⁴ This is particularly relevant to Indonesia's efforts in addressing transnational challenges, such as achieving its nationally determined contributions (NDCs) for greenhouse gas reductions and promoting regional security through ASEAN's peace and stability initiatives. Furthermore, this ruling functions as a crucial reference point in the formulation of state policy pertaining to entrenched environmental dilemmas, including the governance of nuclear armaments and their repercussions on human existence and the natural environment.¹⁰⁵ By integrating Advisory Opinions into its policymaking processes, Indonesia can strengthen its position in addressing regional and global environmental and security concerns, ensuring that its policies reflect both international norms and national priorities.

Instances such as the ICJ's advisory opinion regarding Israel's separation barrier illustrate the capacity of Advisory Opinions to impact governmental policy, notwithstanding their lack of direct enforceability. This opinion underscores infractions of international law and incites scrutiny of policies that diverge from established international legal standards, especially in

¹⁰⁴ Jörg Kammerhofer. *Op.cit.*

¹⁰⁵ Rebecca McMenamin. *Op.cit.*

cases involving the rights of civilians and occupied territories.¹⁰⁶ Although non-binding, ICJ opinions still play an important role in providing legal direction that influences domestic and international policy.¹⁰⁷

Overall, while not possessing direct binding authority, the Advisory Opinion of the ICJ significantly contributes to the development of international legal norms. By delivering comprehensive and impactful legal analyses, these opinions have the capacity to reinforce the international legal architecture, establish novel principles, and assist states in the formulation of policies concerning intricate global challenges, such as nuclear disarmament and climate change.

C. Conclusion

Advisory Opinions issued by the ICJ play a crucial role in the international legal framework, providing interpretative guidance on complex legal issues despite

¹⁰⁶ Elya Milner and Alexandre Sandy Kedar. "Squaring the Circle: Settler Colonialism, the International Law of Occupation and the Separation Barrier." *Political Geography*, Vol. 105, August 2023, 102929. <https://doi.org/10.1016/j.polgeo.2023.102929>.

¹⁰⁷ GUY HARPAZ. "When Does a Court Systematically Deviate from Its Own Principles? The Adjudication by the Israel Supreme Court of House Demolitions in the Occupied Palestinian Territories." *Leiden Journal of International Law*, Vol. 28, No. 1, March 27, 2015, 31–47. <https://doi.org/10.1017/S0922156514000521>.

their non-binding nature. Rooted in the UN Charter and the ICJ Statute, these opinions strengthen international legal standards and influence the policies of states and international organizations. Examples such as the Advisory Opinion on the Palestinian separation barrier demonstrate their impact in shaping global policies and providing legal legitimacy. Key principles of legality, legitimacy, and justice underpin the validity of Advisory Opinions, making them essential tools for the progressive development of international law. They contribute to codifying new norms, enhancing legal clarity, and maintaining global legal order. Indonesia should strategically utilize Advisory Opinions to address critical legal challenges. For maritime disputes, such as in the North Natuna Sea, Advisory Opinions can bolster Indonesia's claims under UNCLOS. In climate change governance, these opinions can support Indonesia's commitments under the Paris Agreement. Furthermore, leveraging Advisory Opinions within ASEAN can enhance Indonesia's role in fostering regional stability and ensuring legal compliance in cooperative agreements. By integrating these opinions into its policy frameworks, Indonesia can strengthen its position in international law and diplomacy.

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