Available online at: http://jurnal.president.university.ac.id

PROBLEMATIKA HUKUM

| ISSN (Print) 2477-1198 | ISSN (Online) 2503-4812 |

INDONESIA'S URGENT NEED TO JOIN THE INTERNATIONAL CRIMINAL COURT (AMID HUMAN RIGHTS VIOLATIONS CONTEXT).

Oktavia Ajeng Kartika Dewi[1], Felicia Miyuki Luntungan[2], Petra Novita[3], Aisyah Zafira Usman[4], Najwa Khalilatur Rahmah[5].

[1] *Faculty of Law, President University, E-email*: oktavia.dewi@student.president.ac.id
[2] *Faculty of Law, President University, E-email*: felicia.anastasya@student.president.ac.id
[3] *Faculty of Law, President University, E-email*: petra.nahumury@student.president.ac.id
[4]*Faculty of Law, President University, E-email*: aisha.usman@student.president.ac.id
[5] Faculty of Law, President University, *E-email*: nazwa.rahmah@student.president.ac.id

Article

Keywords:

Rome statute, human rights, Indonesia, ICC

Received: July 13, 2021;
Reviewed: July 16, 2021;
Accepted: July 20, 2021;
Published: August 10, 2021

Abstract

This research was conducted with the aim of finding out the tendencies of the ICC from the perspective of Rome 1998. Using normative juridical research methods. International Criminal Court (ICC) permanent independent and international tribunals to try the crimes of genocide, crimes against humanity, war crimes and crimes of aggression, such as the four major international crimes of a host is humanism generis character. Humanitarian crimes, war crimes, genocide and aggression constitute a serious violation of rights Human rights (HAM). The crime classified as the most serious offense seriously so always pay attention International. There is an international focus on this practice gross violation of human rights does not matter the world is tamed with practice Human rights are harsh. Unfortunately, so far, there have been many perpetrators of gross human rights violations cannot be tried in the country where crime earned (Locus Delicti). In general, the perpetrators of gross human rights violations is a real person donation regimes tend to do it author protection. Another reason is that the perpetrators have not or have not been tried Serious crime is a legal system that in the country where the crime occurred it's not enough to fight fair trial of the author. Indonesia will get many benefits by becoming a member country and to incorporate into national law the provisions of the Rome Statute by Indonesia.

1. INTRODUCTION

The formation of the International Criminal Court (ICC) as part of efforts to address serious human rights violations worldwide is crucial. The establishment of the ICC has been portrayed as an effort to combat serious crimes, as the court uses crimes against humanity and war crimes as its jurisdictional basis. However, the ICC has been criticized for its perceived lack of effectiveness, as it can only prosecute cases involving states where the state itself commits human rights and war crimes. Meanwhile, individuals as non-state actors committing serious human rights violations are often exempt from the sanctions they should face after committing such crimes. Human rights activists worldwide recognize the importance of establishing an international criminal court to prosecute serious human rights violations. This is crucial for creating an international justice mechanism relatively free from international political intervention, supported by states and independent, and equally applicable to violators. Efforts to establish an international court have been ongoing since 1950, starting with the drafting of the International Criminal Court Statute by the United Nations General Assembly (UN) Commission on International Law (ILC). The tasks assigned were carried out by the ILC, but the results did not receive adequate responses from the United Nations General Assembly. In 1992, the UN General Assembly again requested the ILC to draft legislation on the International Criminal Court. The statute was completed in 1994 and ratified four years later at the UN conference in Rome on July 15-17, 1998. The ratification of the Rome Statute formed the basis for the establishment of the International Criminal Court (ICC). However, at the conference attended by 120 participating countries, not all countries expressed support for the establishment of the ICC. Twenty-one countries abstained, including seven countries such as the United States, China, and Israel. These countries had their reasons for doing so because of the Rome Statute. China argued that the investigative authority to exercise prosecutorial powers in enforcing ICC jurisdiction did not assist the concerned country. Meanwhile, the U.S. also had similar concerns to China, particularly through the ICC provisions for non-state parties. America also emphasized that the law must recognize the role of the Security Council in determining aggressive actions. According to Israel, based on its considerations, the act of transferring population to occupied territory qualifies as a war crime. Indonesia, as one of the countries attending the conference, rejected the Rome Statute, which had been ratified on July

17, 1998.[1]

However, Indonesia expressed support for the ratification of the Rome Statute and the establishment of the ICC. Indonesia also stated its intention to ratify the Rome Statute in the future so that the ICC could have a presence in Indonesia if needed. This statement is interesting because, although Indonesia participated in the drafting of the Rome Statute, it did not accept the Rome Statute as a form of recognition of it as an international treaty. Therefore, according to the Rome Statute, Indonesia must take additional action to become part of the Rome Statute by following the attached procedures. Indonesia, along with other countries that have not adhered to the Rome Statute and have not adopted its provisions into national legislation Establishes that the ICC will intervene in the country's application of general human rights law. Indonesian officials can always give the impression that Indonesian citizens who commit serious human rights violations cannot be tried by the ICC because they are not parties to the Rome Statute. In practice, the willingness of the Indonesian government to respect the Rome Statute is reflected in the adoption of the Rome Statute by Indonesia in the National Action Plan for Human Rights 2004-2009 signed by President Megawati. The plan did not stop there; President Megawati also formed a national commission to study the Rome Statute and draft national laws to facilitate full cooperation with the ICC. The efforts of the Megawati government were accepted by the Presidential Decision as a legislator.[2]

2. RESEARCH METHODS

In this case, the author uses normative legal research methods. Normative legal research is the study of legal materials, both primary, secondary and tertiary legal materials. The approach used is normative juridical. [3] And also in collecting data, this research uses a research method (library research) through reviewing books, legislation, and various other written documents that are related to the existing problem.

Begin the writing by providing a brief overview of the topic, introducing the concept of impunity, and outlining the significance of addressing human rights violations in Indonesia. Clearly state the purpose of the discussion. Present the historical and contextual background of human rights issues in Indonesia, emphasizing instances of impunity and challenges faced in protecting citizens' rights. Provide relevant statistics, incidents, or examples to support the discussion. Operationalize key terms such as

[1]Abidin, Zainal., DPR-PGA mendukung Ratifikasi Statuta Roma, Jurnal ASASI Edisi Maret-April 2009. Hlm 159.
[2]Maruf, Kebijakan Indonesia Belum Meratifikasi Stuta Roma 1998,2017
[3] Bahder Johan Nasution, 2016. *Metode Penelitian Ilmu Hukum.* Bandung: Mandar Maju. Hlm 97).

"impunity," "human rights protection," and others to ensure a clear understanding of the concepts being discussed. Clearly define these terms within the context of the writing.

Conduct a comprehensive review of international efforts to combat impunity and protect human rights. Discuss major treaties, agreements, and initiatives that nations typically join to address these issues globally. Explore the role of international courts and decisions in this context. Examine Indonesia's current stance on human rights protection and its approach to addressing impunity. Analyze any existing legal frameworks or initiatives within the country and assess their effectiveness. Explore the contrasting viewpoints within Indonesia regarding its participation in international efforts. Present arguments from both sides—those in favor of joining global initiatives and those opposing such involvement. Emphasize the urgency for Indonesia to become a party to international treaties and initiatives. Highlight the importance of taking immediate action to combat impunity and strengthen human rights protection within the country.

3. DISCUSSION

The problem formulation above indicates that the practice of impunity persists in Indonesia. With impunity, ensuring human rights protection for Indonesian citizens becomes extremely challenging. Although it is a part of the international community's efforts to combat impunity and promote human rights protection for every citizen, becoming a party to international treaties and subsequently enacting such laws domestically presents a complex process.

This study will then delve into the efforts to protect human rights globally by examining international court decisions and a nation's interest in advocating for human rights protection in Indonesia. It is intriguing to explore the causes and trends in addressing human rights violation cases in the international arena, as these issues have often been shifted beneath the responsibility of individual states or international entities. Therefore, it is crucial for Indonesia to become a party to these international agreements.

Within the country, there are conflicting perspectives, with some supporting and others opposing these initiatives. Hence, it is essential to examine and understand the urgencies for Indonesia to become a party to international efforts in safeguarding human rights within its borders.

In theory, many terms are used to refer to international agreements. These terms and conditions are agreements, pacts, treaties, charters, understandings, protocols, agreements, arrangements, modus vivendi and agreements, etc. When international cooperation is forced, there are parties who stand in the way of members of the community of nations and try to experience the consequences. International

agreements are governed by international law and constitute binding obligations under international law, which can be bilateral or multilateral.

Legal entities in this case are not only international institutions, but also countries. The meaning of an international agreement is not only understood by experts, but also in the 1969 Vienna Convention. In this agreement, what is meant by an international agreement is an agreement made by two or more countries: for the accumulation of legal consequences. Strict inter-state agreements as subjects of international law. The many synonymous terms and classifications used in international agreements are primarily intended to define and classify agreements between states that are part of the international community. In implementing/observing international agreements, in principle every nation is formed based on the principles of the agreement, as stated in Article 26 of the 1969 Vienna Convention.

This principle is the principle of the Pacta Sunt Servanda that bahatakanji is bahaan. Therefore, the parties must comply with the commitments and obligations based on the agreement. If there are too many there, for example if there are nation-states that violate the rules described above, then it is impossible to build a diagonal and harmonious peace, but if Kusource Kusumate, There are two ways to create international agreements. First, there is an international agreement which consists of 3 (three) phases, namely: negotiation, agreement and becoming strong. These three agreements are used for agreements that are prepared meaningfully and aim to approve the agreements contained in the agreement. Ten ten, only through two stages, encounter and development. Agreements that use this stage are generally used for short-term agreements, but are not as important as short-term agreements. There are four categories in international agreements:

1) Ratification of international agreements, namely: having. Ratification (ratification), namely when a country begins to ratify an international award agreement for an international agreement;
2) Accession, namely if a country ratifying an international agreement does not respect the text of the agreement; regarding acceptance of approval, automatic acceptance of a country's approval of an international agreement;
3) There are also international pay agreements (now in force).

When an international agreement is ratified, an agreement does not necessarily bind the parties to the agreement. Signing an international treaty requires ratification to be binding. International agreements bind the parties until the agreement is ratified. The death of the government, to receive a power of attorney for an agreement that binds a country that has signed an international agreement, a power of attorney is required. Officials who do not need to be represented are the president and ministers. An international technical cooperation agreement that implements an agreement that is already in force and whose subject matter is the extension of the powers of an administrative body from an administrative body, ministerial or non-ministerial, to be confirmed without the need for a power of attorney.

Government ratification of an international agreement in accordance with the requirements of the international agreement. Ratification of an international agreement occurs based on the provisions signed by the agreement. International agreements subject to ratification enter into force at the end of the ratification procedures provided for by law.

Ratification of international agreements is carried out by law or by presidential decree. Ratification according to the law requires the approval of the DPR. Ratification by presidential decree only requires notification to the DPR. In its function and authority mechanism, the DPR can request accountability or information from the government regarding international agreements that have been made. If national interests are harmed, international agreements can be terminated at the request of the DPR. Law No. 24 of 2000. Indonesia is a country that adheres to dualism, this can be seen in Article 9 paragraph 2 of Law no. 24 of 2000, which states that "The ratification of international agreements as intended in paragraph (1) is carried out by law or presidential decree." Thus the implementation of international agreements In theory, many terms are used to refer to international agreements. These terms and conditions are agreements, pacts, treaties, charters, understandings, protocols, agreements, arrangements, modus vivendi and agreements, etc. When international cooperation is forced, there are parties who stand in the way of members of the community of nations and try to experience the consequences. International agreements are governed by international law and constitute binding obligations under international law, which can be bilateral or multilateral.

Legal entities in this case are not only international institutions, but also countries. The meaning of an international agreement is not only understood by experts, but also in the 1969 Vienna Convention. In this agreement, what is meant by an international agreement is an agreement made by two or more countries: for the accumulation of legal consequences. Strict inter-state agreements as subjects of international law. The many synonymous terms and classifications used in international agreements are primarily intended to define and classify agreements between states that are part of the international community. In implementing/observing international agreements, in principle every nation is formed based on the principles of the agreement, as stated in Article 26 of the 1969 Vienna Convention.

This principle is the principle of the Pacta Sunt Servanda that bahatakanji is bahaan. Therefore, the parties must comply with the commitments and obligations based on the agreement. If there are too many there, for example if there are nation-states that violate the rules described above, then it is impossible to build a diagonal and harmonious peace, but if Kusource Kusumate, There are two ways to create international agreements. First, there is an international agreement which consists of 3 (three) phases, namely: negotiation, agreement and becoming strong. These three agreements are used for agreements that are prepared meaningfully and aim to approve the agreements contained in the

agreement. Ten ten, only through two stages, encounter and development. Agreements that use this stage are generally used for short-term agreements, but are not as important as short-term agreements.

Officials who do not need to be represented are the president and ministers. An international technical cooperation agreement that implements an agreement that is already in force and whose subject matter is the extension of the powers of an administrative body from an administrative body, ministerial or non-ministerial, to be confirmed without the need for a power of attorney. Government ratification of an international agreement in accordance with the requirements of the international agreement. Ratification of an international agreement occurs based on the provisions signed by the agreement. International agreements subject to ratification enter into force at the end of the ratification procedures provided for by law.

Ratification of international agreements is carried out by law or by presidential decree. Ratification according to the law requires the approval of the DPR. Ratification by presidential decree only requires notification to the DPR. In its function and authority mechanism, the DPR can request accountability or information from the government regarding international agreements that have been made. If national interests are harmed, international agreements can be terminated at the request of the DPR. Law No. 24 of 2000. Indonesia is a country that adheres to dualism, this can be seen in Article 9 paragraph 2 of Law no. 24 of 2000, which states that "The ratification of international agreements as intended in paragraph (1) is carried out by law or presidential decree." Thus, the implementation of international agreements The ad hoc system in Indonesia can be used to prosecute perpetrators of serious human rights violations in the past.

The Indonesian government does not need to worry about the ICC's jurisdiction over the Indonesian state. As ICC President Sang Hyun Song said, the Indonesian government does not need to worry about ratifying the Rome Statute because the ICC will not interfere in domestic affairs. The ICC only handles cases where the domestic justice system is dysfunctional. Because apart from adhering to the non-retroactive principle, the ICC also adheres to the complementary principle. This principle is contained in paragraph 10 of the Preamble to the Rome Statute, which means that the ICC is only a complement when national courts are unwilling or unable to prosecute serious violations against humanity, which is the basic reason that dismisses States' concerns about international law. sovereign intervention. state when it becomes a party to the Rome Statute.

Article 1 of the Rome Statute also states that the purpose of establishing the Court is to exercise jurisdiction over perpetrators of international crimes as stated in the Statute and has the function of complementing the country's national justice system. Based on Article 17 paragraph (1) of the Rome Statute, the ICC is prohibited from exercising its jurisdiction over the same crime when the crime has been or is being committed. tried by national courts. In addition, the ICC cannot investigate and

prosecute cases that have been investigated and prosecuted by relevant national authorities. Furthermore, the ICC is also prohibited from investigating, prosecuting and trying cases that have been investigated by state authorities according to its jurisdiction, where the state decides not to prosecute the person concerned unless the decision is due to the reluctance or inability of that state. worry.

Then, the ICC also does not have jurisdiction over cases that are not serious enough to be followed up. The ICC also does not have jurisdiction over perpetrators of serious human rights violations who have been convicted or acquitted in a proper and fair trial. Thus, it can be seen that the provisions contained in the Rome Statute clearly state that the ICC is the last resort (ultimum remidium) in enforcing the law for serious human rights violations. Because seen from Article 17 paragraph (1) Letters a, b, and c, it is emphasized that the national judiciary, which is an extension of the judicial power of a sovereign state, cannot be controlled by the ICC.

When a country is “willing” and “able to enforce the law against perpetrators of serious human rights violations, the ICC cannot interfere with the jurisdiction of that country's courts. This also aims to provide certainty that the presence of the ICC is an effort to make the national justice system more effective. Because as previously mentioned the ICC does not function as a substitute for a country's national court. The main responsibility for punishing perpetrators of gross human rights violations remains with the country even though the country is a party to the ICC (has ratified the Rome Statute). The concept of a state being declared not "willing" and "unable" has been determined in the Rome Statute Article 17 paragraphs (1) and (2). It is very difficult to determine the condition of a state that is not willing to impose. law against perpetrators of serious human rights violations. Even though the criteria for a country do not want to be contained in Article 17 paragraph (1) of the Rome Statute. The criterion in question is the existence of a national court which was formed on the basis of protecting perpetrators of human rights violations more seriously than criminal responsibility. The second criterion is unjustified delays in bringing the perpetrator to justice. In addition, law enforcement carried out by the state is not independent and favors the perpetrators of serious human rights violations. Meanwhile, to assess the state's inability to enforce the law against perpetrators of serious human rights violations, it can be seen in Article 17 paragraph (3). The article states that there are 2 (two) conditions that make a country can be said to be "incompetent". This situation is a state of collapse or a state of failure so that it cannot carry out a fair trial, or a state of failure that can be significant when the state exists as an organization but cannot obtain the necessary evidence or cannot examine the case.

Based on this explanation, Indonesia cannot be classified as a country that cannot "steal" or as a country that cannot "rule". Therefore, the proposed ratification of the Rome Statute will not make Indonesia a country where the ICC can apply it. The ICC will only help Indonesia if serious human rights violations occur in Indonesia. In practice, it should be borne in mind that the ICC can apply it

under certain conditions in countries that are not parties to the Rome Statute. these requirements. Meanwhile, to assess the state's inability to carry out: implementing the law against perpetrators of serious human rights violations is included in article 17 paragraph 3. This article states that there are 2 (two) conditions that make a state can be said to be "incompetent".

This condition is the condition of a state that is destroyed or a state that has failed to such an extent that it is unable to administer a fair trial or a state that lacks substantial capacity when the state as an organization is still standing, but cannot obtain the necessary evidence or cannot carry out its activities. Based on this explanation, Indonesia cannot be classified as a reluctant country or a reluctant country. Therefore, the proposed ratification of the Rome Statute will not happen. Indonesia is a country that can be led by the ICC. Only the ICC will provide assistance to Indonesia if serious human rights violations occur in Indonesia. When applying, keep in mind that the ICC can be invoked against a person who, under certain circumstances, is not a party to the Rome Statute. These conditions are: in cases submitted by the UN Security Council to the ICC (article 13 of the Rome Statute); in the case of a citizen who is not a party to a criminal offense in the territory of a Member State of the Rome Statute or a country that has accepted the ICC for the crime in question (Article 12, paragraph 2, letter a) and 3, Rome Statute); if the non-state party has agreed to commit crimes relating to certain crimes (Article 12, paragraph 2, letter a) and 3, Rome Statute).

If the Security Council believes that the ICC should use it in a country, perhaps, unless that country has the capacity to reject it (rather than) to deny it with the effectiveness of the country affected by the command of the armed forces of the country against the author. This effectiveness is reflected in the existence of legal provisions regarding human rights violations. Such regulations should regulate which measures can qualify as human rights violations, how the law should be applied to human rights violations and how citizens can be protected from serious human rights violations. that person.

The law in question must have legitimacy that makes it enforceable and binding. This means that the law is made by those who have the authority to issue and disseminate the law and is used as a reference in law enforcement in the area where the law was developed. This force was used in 2005 in Darfur, Republic of Sudan. On 31 March 2005, the United Nations Security Council passed a resolution stating, among other things, that the situation in Darfur constituted a threat to international peace and security, referring the case to the ICC and recommending to the government of Sudan and all parties to the conflict to cooperate fully and provide everything the court and prosecutor need to conclude this agreement. Darfur, resolution, because it is believed that the state does not have the power to refuse because the state does not have applicable legal regulations or regulations, there are no regulations that can be used to legitimize these regulations, so these regulations have no binding force. If the same thing is practiced in Indonesia when serious human rights violations occur that prevent the state from carrying

out its functions. So, regardless of whether Indonesia is a party or not, ICC countries can submit applications in Indonesia. Meanwhile, the second condition is that the ICC can exercise its jurisdiction over a State that is not a Party to the ICC, in the event that a citizen of a State that is not a Party commits an offense in the territory or territory of an ICC member State. ICC Rome or countries that have accepted the jurisdiction of the ICC, in this case those who are under the jurisdiction of the ICC, are only perpetrators of serious human rights violations who are not citizens of the ICC.

The ICC may exercise jurisdiction over a state that is not a party to the ICC if the non-party state has agreed to exercise jurisdiction over a particular crime. In this case, Non-Signatory States are subject to the jurisdiction of the ICC, where it will likely receive assistance until ratification of the Rome Statute. In accordance with the principle of non-ordering. This article stipulates that if a country agrees to be bound by the Rome Statute and becomes a party to this Statute, that country must accept and implement all the provisions of the Rome Statute without exception.

Therefore, this requires the attention of the international community as a whole and the need to carry out national actions aimed at international cooperation. Raising the Rome Statute so that Indonesia plays its role in the international world. After becoming a party to the contract and having adopted the applicable provisions regarding human rights and criminal law. Because when a State becomes a party to the Rome Statute, therefore, the ICC will assist in the development of national legislation because the purpose of establishing the ICC is to make national law effective in combating serious violations of human rights. By becoming part of the ICC, Indonesia can easily adapt the substance of the Rome Statute to Indonesian criminal law, so that the goal of protecting the human rights of Indonesian citizens can be easily achieved.

4. CONCLUSIONS

Indonesia's position that it has not yet become a multi-country declaration was proven to be unfounded in the discussion, because the ICC adheres to the principle of non-retroactivity, the principle of complementarity, and there are no requirements in the Rome Statute. . which requires national laws to be prepared for parties. Indeed, when a country has provided assistance to implement the effectiveness of its national laws, as the ICC prioritizes this goal over the ICC. The Indonesian government must immediately commit to becoming a party to the Rome Statute with accession, because Indonesia does not need it.

The Rome Statute expires, and membership is available to countries that have not signed the Rome Statute. This is based on two main considerations, meaning that becoming a State Party to the Rome Statute will bring greater convenience to Indonesia in implementing its foreign policy and offers many advantages for Indonesia, especially in combating flagrant human rights violations.

Renewal of the 1998 Rome Statute concerning the International Criminal Court is very necessary, considering that there are still legal loopholes that are often misused which hinder the ICC in carrying out law enforcement. With the renewal of the 1998 Rome Statute, the ICC can firmly implement its authority in carrying out law enforcement against crimes against humanity to achieve comprehensive justice (To achieve justice for all) and to prevent crimes against humanity from occurring in the future (To deter future crimes). against humanity)

References

Journal:

Abidin, Zainal., DPR-PGA mendukung Ratifikasi Statuta Roma, Jurnal ASASI Edisi Maret-April 2009.

Maruf, Kebijakan Indonesia Belum Meratifikasi Statuta Roma 1998, 2017

Internet

Pengertian Perjanjian Internasional Menurut para-Ahli, https://www.sridianti.com/%20%20pengertian-perjanjian-internasionalmenurut-para-ahli.html, accessed13 December 2023.

Ratifikasi Statuta Roma Tergantung Kesiapan Pemerintah, https://www.dpr.go.id/id/berita/%20%20komisi3/2013/mei/16/5819/ratifikasi-statutaroma-tergantung-kesiapan-pemerintah, accessed13 December 2023.

Kebijakan Indonesia belum Meratifikasi Statua Roma https://media.neliti.com/media/publications/90155-ID-11-kebijakan-indonesia-belum-meratifikas.pdf, accessed13 December 2023.

Legal Documents

Keputusan Presiden Republik Indonesia Nomor 40 Tahun 2004 Tentang Rencana Aksi

Nasional Hak Asasi Manusia Indonesia Tahun 2004-2009.

Ketetapan MPR Nomor XVII/MPR/1998 tentang Hak Asasi Manusia.

Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang No. 24 Tahun 2000 tentang Perjanjian Internasional.

Undang-Undang No. 26 tahun 2000 tentang Pengadilan HAM.