

Ratification of ICC won't threaten RI sovereignty

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Indonesian Minister of Justice and Human Rights Yusril Ihza Mahendra has raised fears that if Indonesia ratifies the Rome Statute on the International Criminal Court (ICC), then ICC prosecutors will have wide powers in Indonesia to initiate investigations and prosecutions of crimes against humanity, genocide and war crimes.

However, there is no reasonable basis for Yusril's concern that ratification will threaten Indonesian sovereignty.

There are very limited circumstances under which an ICC prosecutor can enter a contracting state like Indonesia and investigate and prosecute ICC crimes.

The "complementarity principle" under the ICC statute ensures that Indonesia always has the primary right and responsibility to handle all major human rights violations. The ICC prosecutor can only become involved as a "complement" to Indonesia's legal system if that legal system fails to uphold international standards of human rights.

If a horrible violation of human rights occurs in Aceh, for example, it is Indonesia's police, prosecutors and courts that have the responsibility to investigate the violation and pursue justice according to the law.

If the police and prosecutors do not conduct an investigation, if they fail to prosecute or if the trial is a sham, only then is the door open for an ICC prosecutor to become involved in the case.

In other words, the ICC statute is a "backup" that is relevant only if Indonesia's system fails to produce justice. This is not a threat to sovereignty. It is a kind of "insurance policy" supporting basic human rights.

Ratifying the ICC keeps primary control and sovereignty in the hands of Indonesians, where it belongs. But it also provides Indonesians with a useful "complement" when powerful domestic political figures protect gross violators of human rights.

If anyone should be concerned about ratifying the ICC, it should be future mass murderers and torturers, not ordinary Indonesians.

It is inappropriate to use nationalistic arguments about sovereignty to protect future violators of human rights from having to face an ICC prosecutor if Indonesia's own domestic legal system is too corrupt or weak to reach an outcome based on law and justice.

There are many other safeguards built into the ICC statute that ensure Indonesian sovereignty will not be threatened.

Minister Yusril also raised concern that an ICC prosecutor could initiate an investigation based solely on information he or she received from sources other than state parties or the UN Security Council, known as an investigation *proprio motu*.

It is true that an ICC prosecutor can receive information and evidence relating to a gross violation of human rights from any reliable source, including NGOs. But a prosecutor must get authorization from the Court Pre-Trial Chamber before starting any legal actions against a defendant.

The Pre-Trial Chamber is a control mechanism within the ICC to ensure that *proprio motu* investigations conducted by an ICC prosecutor will not be used for political purposes and that they meet all ICC requirements.

A member state such as Indonesia has an opportunity to provide evidence to the Pre-Trial Chamber to reject an investigation. The Indonesian government could also submit evidence that the case was being seriously investigated by domestic authorities or had been tried fairly and fully.

The important point is that proper procedures and institutions like the Pre-Trial Chamber exist to protect state sovereignty from improper threats motivated by overzealous prosecutors or politics, rather than by genuine violations of human rights that have gone unpunished.

Another safeguard concerns nonretroactivity. The ICC treaty applies only to crimes committed after July 1, 2002, or after the date of accession by the state concerned.

This means that past and current political and military leaders do not need to worry about possible ICC actions if Indonesia ratifies the Rome Treaty in the near future. Crimes committed during the New Order period, for example, cannot be raised at all.

It is only future violators of human rights that need to be concerned, and then only if Indonesia's own legal system fails miserably to deliver justice.

There are no grounds for fear in signing the ICC statute. On the contrary, there are several positive reasons why the Indonesian government should move quickly to ratify the treaty.

Indonesia's legal system is in a transition from defending violators of human rights to prosecuting them. The faster the country makes progress in that direction, the better. Ratifying the ICC treaty moves us faster along that path while maintaining our national sovereignty.

Recent disappointing court decisions in key human rights cases ranging from East Timor to Tanjung Priok suggest that Indonesia needs the additional pressure the ICC statute provides.

If Indonesia's progress in upholding basic human rights slows down or stops, the ICC statutes offer Indonesia's citizens important international protections against future gross violators of human rights.

It is unacceptable for government officials in this era of democratization and *reformasi* to argue against such protections for the Indonesian people without valid grounds for doing so.

Indonesians should not feel embarrassed to ratify a treaty that, in effect, provides international "supervision" over domestic legal institutions that sometimes fail to produce justice. Even developed countries like the UK and France have ratified the ICC treaty and are willing to accept an international role if their own domestic legal systems fail.

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