

Should RI ratify ICC Statute?

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Presidential Decree Number 40 of 2004, the Human Rights National Action Plan, mandated Indonesia to ratify the International Criminal Court (ICC), also known as the Rome Statute of 1998. Indonesia has not yet ratified the statute and it may exceed the deadline set by the Presidential Decree.

Four international crimes are covered by the statute: Genocide, crimes against humanity, war crimes and crimes of aggression. The reason Indonesia sought to ratify the ICC Statute in 2004 might have been to help improve its image internationally, with respect to human rights. But circumstances have changed and the question has now become whether or not Indonesia should ratify the statute.

The issue of international crimes has changed considerably since 2004 and this effects Indonesia's decision whether or not to ratify the ICC Statute. The fact is that international crimes are not only committed by developing countries, but also by developed and even superpower nations.

After the United States invaded Iraq, there were accusations that international crimes were committed. More recently, when Israel attacked Gaza, the Human Rights body of the United Nations (UN) stated that international crimes were committed.

Politically, it may be difficult to distinguish between heroes and culprits of international crimes. This is because it is difficult to differentiate between just and unjust war, legitimate and illegitimate war. Soldiers from a country which wins a combat or is considered to be superpower are the ones most likely to be considered heroes. But if a developing country loses a war they will be accused of committing international crimes.

It leads to reason then that culprits of international crimes can come from any country. Every human being that possesses military power is prone to committing international crimes. The ICC recently went beyond its power when it issued an arrest warrant for the current President of Sudan, Omar al Bashir, based on a UN Security Council (UNSC) resolution.

This is unprecedented as Sudan has not ratified the ICC Statute. One can argue that this contradicts article 11 paragraph (1) of the statute, which states, "The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute."

If this is condoned by the international community, the ICC and UNSC become an institution that trumps state sovereignty, even though this applies to a much weaker state. This, of course, contradicts international law, which exists under the premise that state has the highest sovereignty.

Another reason Indonesia has not ratified the statute is the progress it has made at the national level. Since 1998 Indonesia has made significant progress with regard to democracy and respect to human rights.

In 2000, Indonesia promulgated the Human Rights Law Court in order to try those accused of committing international crimes, namely crimes against humanity and genocide.

To date there have been three cases in which defendants were accused of committing international crimes. The East Timor, which occurred after the popular consultation of 1999, attracted international attention.

Even though the defendants have all been acquitted, bringing those responsible before the court proves that Indonesia is far from unwilling or genuinely unable to try those responsible.

The progress made by the Indonesian military (TNI) should also be noted. The TNI has undergone major reforms and no longer possesses the special status they enjoyed under the Soeharto administration. The TNI is no longer engaged in politics. In addition, the officers and soldiers are much more aware of human rights issues.

Interestingly enough, mid-level officers would, nowadays, prefer to pursue training or further their education as an investment for their post military career rather than get involved in conflict operations. This is not because they are afraid of giving their lives but because they do not want to be accused of violating human rights or committing international crimes after completing their duty.

This is different from the past when the TNI attracted the crème de la crème of a generation who saw pursuing a military career as a way to secure a powerful position and a chance of becoming part of the political elite.

Indonesia should not ratify the ICC at this stage. Of course there is no absolute answer. Indonesia would be wise to ratify the Statute if three conditions were met.

First, the international community should treat all those who commit international crimes the same. If Bashir can be issued an arrest warrant, then arrest warrants for high officials or former high officials from countries like the US and Israel should also be issued by the ICC.

Second, countries like the US should not pursue impunity for their soldiers who commit international crimes. Those responsible for the atrocities of Abu Ghraib and Guantanamo should be brought to justice. In the absence of a trustworthy national judicial system, they have to be brought before the ICC. This means the US has to also ratify the ICC Statute, the signing of which was withdrawn by the Bush administration.

Third, if Indonesia ratifies the treaty it should not be pressured to sign a Non-Surrender Agreement (NSA) by other countries. Under the Bush administration, the US was very aggressive in requesting countries that ratified the ICC Statute to sign a NSA with the US.

Whatever the Indonesian government decides, as Indonesia is making huge progress in democracy and respect to human rights, ratification will hopefully only become symbolic, as those responsible of committing international crimes will be tried domestically.

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