

# Why should we fear ratifying the ICC Statute?

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Indonesia's commitment to ratify the Rome Statute of the International Criminal Court has already been stated in Presidential Decree No. 40 of 2004 on the Human Rights National Action Plan. However Indonesia has not yet ratified it, which breaches promises made to the international community since the decree is part of Indonesia's foreign policy.

Some obstacles are arising from misinterpretations of the Rome Statute especially on complementarity and the role of the ICC prosecutor. The recent arrest warrant issued to President Omar Al Bashir of Sudan issued by the Office of the Prosecutor has also triggered debate of the position of the court on sovereignty issues.

Sovereignty is not only about respecting the domestic law and protection of nationals but more profoundly sovereignty should be interpreted as responsibility to protect citizens. This means, domestic law should not become the shield to protect perpetrators of serious violations of international law nor should we view the recent developments of domestic law applicable to international law but without any legal binding with international instruments as being adequate.

Ratification of the statute will make Indonesia's domestic law stronger and improve legal recourse. Thereby, there is no need to worry that the ICC will reduce the sovereignty of the domestic legal system

The conditions in which one may bring a case to the ICC will really be based on breaches in the domestic judicial framework aimed at protecting perpetrators, or to deal with unwillingness on the part of the state, or when the state legal system is unable to bring to justice alleged perpetrators of crimes within the jurisdiction. The exhaustion of national remedies and mechanisms remains the first resort to obtain prosecutions against crimes.

The fear of the position of the court in relation to international politics has been wrongly interpreted by some international law experts. The establishment of the court is completely aimed at legal issues and not generally at international politics issues.

It has to be understood that the court has a limited relationship with the United Nations (UN) as an equal entity as stated in Article 2 of the Rome Statute. Besides, in relation to the United Nations Security Council (UNSC), as stated to Article 13(2) of the statute, the court can only focus on legal matters in relation to non-state parties, in the context of respecting sovereignty.

As a non permanent member of the UNSC, Indonesian representative, Ambassador Marty Natalegawa delivered a positive statement responding to the report of the ICC prosecutor, Moreno Ocampo to the UNSC on the situation in Darfur in December 2007. Ambassador Natalegawa said, "Finally, we wish to underline the independence of the Court on the conduct of its work.

We believe that once a case has been referred to the Court, including by the Council, there should be no interference in the legal process. At the same time, we recognize and underline the responsibility

of the Security Council to ensure that Government of Sudan complies fully with the provisions of Security Council resolution 1593 (2005). There cannot be any impunity.”

This statement is evidence that Indonesia has made a full commitment to ratify as stated in the presidential decree and that this has already become part of our foreign policy. Also, this is concrete proof that Indonesia has no doubt that the court has independence and can play an impartial role to end impunity at international level.

Why then does Indonesia seem afraid to ratify the Statute? Actually this situation should become an opportunity for Indonesia since the United States (US) and other major states are not yet party to the Rome Statute. As a state party, Indonesia can play a concrete role in promoting international justice by referring situations in Palestine to the prosecutor of the ICC as part of full support for the Palestinians who suffer under Israeli occupation.

Second, often we do not have full confidence where we focus on a state such as the US when it may be disobeying international law. This is the right time to embrace international law as concrete law. The statute prohibits the right of the state to make reservations or to argue that one or more sections especially on sanctions under international treaties may somehow be not applicable or enforceable.

This means that recent developments in international law necessitate new realities in international relations, tending (hopefully) to transform minority opinions that international law is still in some kind of primitive stage.

There is no reason why Indonesia should delay the process of ratification of the Rome Statute. Indonesia should ratify the statute immediately. The international community is waiting for the Indonesian decision to joint a broad coalition on ending impunity and to embrace international justice.

Meanwhile, the recent situation in Sudan should not lead Indonesia to back down on its commitment to ratify the Rome Statute and recent developments in Indonesian domestic law should not be seen as obstacles to the ratification the Rome Statute.

The great changes in the political context affecting the reform of the TNI should also be embraced. The Indonesian Department of Defense has given a positive support to ratification efforts since they are in accordance with the internal reform which has been, is being, and will be performed within the scope of the Department of Defense and the TNI.

Understanding of the Rome Statute by our soldiers should make them realize that they would not always be the target of the ICC but that they could also become the victims of crimes taken to the ICC.

Concerning the role of the TNI as part of UN peace keeping operations, the Rome Statute provides a guarantee to every member of staff on such operations and from the many countries whose troops are on duty as part of a UN Peace Keeping Force.

The guarantee afforded includes warnings, prevention of, and protection from all kinds of criminal acts in the jurisdiction of the Court during their duty in a conflict area, rather than providing barriers to their work in peace keeping operations.

The Statute provides a more complete guideline on rules of engagement for peace keeping forces, so that members of the force can understand more clearly what they can do and what they must not do during the performance of their duties.

Another strong point for Indonesia is access to a human rights court which can administer justice on serious violations of international law. Although still not perfect, this court keeps improving itself, both on completeness of its legal instrument and its apparatus of law enforcement.

In conclusion, the ratification of the Rome Statute is a manifestation of the Preamble of Indonesian Constitution of 1945 in the framework of actively participating in maintaining peace, order and security in the world. Ratify the Rome Statute Now!

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