

# Indonesia is ready and should ratify the ICC

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Prof. Hikmahanto Juwana wrote an interesting article on April 2, on whether Indonesia should ratify the Rome Statute of the International Criminal Court (ICC). The professor of law's position is clear, he is against the ratification.

The article is interesting, as Indonesia is now in the process of ratifying the ICC, and due to the controversy on the issuing by the ICC of an arrest warrant against Sudan President Omar al Bahsir.

In an article, "Should RI ratify ICC Statute?" Prof. Juwana argues that Indonesia should not ratify the Rome Statute. First of all, Prof. Juwana said Indonesia did not need to ratify the ICC because the country had promulgated the Human Rights Court Law (Law No. 26/2000), which had been able to bring to court three human rights abuse cases (the cases of Timor Timur 1999, Tanjung Priok 1984 and Abepura 2001).

He pointed out the reforms within the Indonesian Military (TNI), that the TNI was no longer involved in politics and made reports about respecting human rights.

Prof. Juwana proposed three conditions in order for Indonesia to ratify the Rome Statute; the need of the international community to treat all those who commit international crimes the same; that countries like the United States should not pursue impunity for their soldiers who commit international crimes; and that Non-Surrender Agreements (NSA) should not be imposed by other countries.

There is nothing wrong with these prerequisites. They are exactly the reasons why the ICC was established as a permanent Court, to complement existing ad hoc international courts such as the Nuremberg Tribunal, the Tokyo Tribunal and the International Criminal Tribunals for former Yugoslavia and Rwanda (ICTY and the ICTR) which are criticized more as political Courts.

What is more important to note, however, is that in order to make the ICC treat all countries equally, and not be politicized nor target only less developed or powerful states, Indonesia, as well as the states he specifically mentioned, the United States and Israel, should ratify the ICC.

Not ratifying the ICC with the argument that other big countries alleged to have committed international crimes have not ratified the ICC either, is like looking for justification to committing similar crimes.

Indonesia, as one of the world's largest democracies, is right in leading the move toward getting big and powerful countries onboard the international justice regime.

With the arguments above, this writer is convinced Indonesia is ready and should ratify the ICC without delay.

The ratification of the ICC by Indonesia will not merely improve its image with respect to human rights and provide only a symbolic significance, as Prof. Juwana said.

Much more than that, the ratification of the ICC will make sure that Indonesian citizens are protected from any possible acts of genocide, crimes against humanity and war crimes.

It will also make Indonesia able to prevent such crimes happening in the future, as well as to maintain peace in the region and in the world. Moreover, it will give Indonesia equal footing with other countries that committed themselves earlier to the order of international justice.

It is not only that the ratification of the ICC has been mandated by Presidential Decree No. 20, 2004 in the National Plan for Action on Human Rights (RANHAM).

The Indonesian Civil Society Coalition for the International Criminal Court (The Coalition), that has been working in parallel with the government on the process of ratifying the ICC could only list the advantages of the ratification and disadvantages of not ratifying the ICC.

Some of the principle advantages of the ratification are that it will give protection to citizens, including the Indonesian peace keeping force; it will enable Indonesia to play a bigger role in the international justice system; accelerate legal reform; improve human rights protection and many other benefits (Academic Paper of the Coalition, 2008).

However, some substantive issues are still "burning", and, accordingly, still need further discussion to resolve, such as the following:

First, some still think the ICC will disrupt national sovereignty. Based on the preamble of the Rome Statute, the ICC is complementary to national judiciary (the complementary principle). Article 17 (1) of the Rome Statute on the inadmissibility of the case guarantees this principle.

It is mentioned there that the ICC cannot intervene in criminal cases in national courts when a state is performing an investigation or prosecution, and if the case has been settled by a proper and fair court.

Based on this provision, the ICC is actually aimed at making the national criminal judiciary of a state run more effectively.

Thereby, the ICC will neither intervene in nor reduce the sovereignty of the legal system of Indonesia. National legal mechanisms remain the main avenue to prosecute crime.

Second, on the principle of nonretroactivity, some still think that alleged perpetrators of crimes which happened before the ICC comes into force will be brought before the court.

Article 24 of the Rome Statute states that nobody will be held responsible in term of penal law for things done before the Statute is put into effect. This provision shows that the Statute of Rome does not prevail retroactively, and that it holds dear the principle of legality as a cardinal principle in criminal law.

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