

The necessity to ratify the 1998 Rome Statute

Muladi, Jakarta | Opinion | Tue, August 23 2011, 7:00 AM

<http://www.thejakartapost.com/news/2011/08/23/the-necessity-ratify-1998-rome-statute.html>

Indonesia's hesitation to ratify the 1998 Rome Statute of the International Criminal Court (ICC) tends to cast doubts over the country's commitment to the root principles of democracy, particularly to the promotion and protection of human rights.

Surely its reluctance goes against the country's billing as the third-largest democracy in the world.

On July 17, 1998, at the headquarters of the Food and Agriculture Organization of the United Nations in Rome, Italy, 120 states voted for the adoption of the Rome Statute of the ICC.

Equipped with two other interrelated legal documents, namely the Elements of Crimes document and the Rule of Procedure and Evidence document, the Rome Statute of the ICC "could well be the most important institutional innovation since the founding of the United Nations" (Johansen, 1997).

Former United Nations secretary-general Kofie Annan (1998) described the ICC as "a gift of hope to future generations, and a giant step forward in the march toward universal human rights and the rule of law".

The Rome Statute is a treaty that established the permanent tribunal of the ICC and it came into force on July 1, 2002, the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the secretary-general of the United Nations. As of July 2011, 116 states are party to the statute. Indonesia has signed, but not yet ratified the statute, based on several reasons and arguments such as the presumption of the primacy position of ICC over national courts, anxiety over a possible threat to national sovereignty, poor information and a lack of preparation within the national legal system.

The ICC was established for the purpose of investigating and prosecuting individuals who commit "the most serious crimes of international concern," such as genocide, crimes against humanity, war crimes and crimes of aggression. No provision relating to individual criminal responsibility shall affect the responsibility of states under international law.

The ICC is therefore not a supra-national body but an international body, because it is only binding on its state parties. It is thus not a substitute for national criminal jurisdiction. Rather, the exercise of its jurisdiction is "complementary" to national criminal jurisdiction of its state parties when they are considered "unable" or "unwilling" to investigate or prosecute the case (Knoops, 2003).

Regarding the promotion and protection of universal human rights in a globalized world, there is a necessary re-characterization of state sovereignty from sovereignty as a privilege and control to sovereignty as a responsibility both for internal and external duties.

State authorities, national political authorities and the agents of state are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare as well as to the international community through the United Nations mechanism for their actions.

The existence of the ICC is very important in efforts to ensure that atrocities that deeply shock the conscience of humanity and threaten peace, security and the wellbeing of the world must not go unpunished and that their effective prosecution must also be ensured by taking measures at a national level and by enhancing international cooperation. The national criminal justice system remains the primary forum to be respected, unless it fails to perform professionally based on the statute standards.

The consistency to uphold the principle of non-retroactivity of criminal law; the prohibition of analogy and confirmation in cases of ambiguity; and that definitions shall be interpreted in favor of the persons being investigated, prosecuted or convicted; are another minimum guarantees of the statute that could realize the principles of legal certainty, justice and utility.

In a nutshell, Indonesia's ratification of the Rome Statute should be accelerated without too much worry. The ratification would also give a boost to its international reputation, particularly in connection with its current chairmanship of ASEAN.

The ratification is a manifestation of the country's third national goal stipulated in the Preamble of the 1945 Constitution, which mandates Indonesia to participate in the formation of a world order based on freedom, perpetual peace and social justice.

The inclusion of the statute's ratification in the National Plan of Action of Human Rights and the implementation of several standards of the statute adopted in the 2006 Law on Human Rights Court in terms of alleged gross violations of human rights in Timor Leste have positively impacted on Indonesia's efforts to familiarize the norms and values of the Rome Statute as a legal regime.

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