

Achieving universal humanism and global justice

Usman Hamid and Aristo Pangaribuan, Jakarta | Opinion | Tue, April 03 2012, 9:38 AM

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In a landmark hearing on March 14, the International Criminal Court (ICC) found former rebel leader Thomas Lubanga Dyilo guilty of forced conscription and enlisting children under the age of 15 in the conflict in Congo. It was the first verdict for the court, a decade after its inception.

Hollywood star Angelina Jolie, who was also present at the hearing, said that the verdict was a victory for children. "This is the day when these children will feel there is no impunity for what happened to them."

Another landmark came in December, when Laurent Gbagbo, the Ivory Coast's former president, became the ICC's first imprisoned head of state.

The ICC's verdicts show that it is starting to become effective in achieving global justice, but there is a long way to go. The unprecedented achievements help spread the message to leaders and commanders around the world that they can no longer behave with impunity.

Be you a head of state, warlord or rebel leader, you must face the consequences of your actions when mass crimes have been committed. The principle of equality before the law plays the most important role in determining the universality of humanity and justice.

The ICC can answer criticisms of "victor's justice", leveled at the tribunals established by the Allied forces at Nuremburg and Tokyo following World War II.

What about Indonesia's stance on the ICC?

A new book in Indonesian, *Towards A Global Justice: Definitions, Challenges and the Importance of the Rome Statute*, recently published by the International Center for Transitional Justice and the Indonesia Civil Society Coalition for the ICC, makes the case that Indonesia should ratify the Rome Statute, adapt its laws and strengthen the nation's commitment to ending impunity.

The book discusses the history of how Indonesia was initially set to ratify the Rome Statute in 2008 through a presidential decree. The government rescheduled the commitment in 2011 by issuing another presidential decree to ratify the statute in 2013 and the Convention on Disappearances by 2012.

Whether Indonesia should become a party to the ICC remains controversial. Our commitment to upholding universal humanism is not in question.

The debate focuses on whether Indonesia needs the ICC to achieve this goal. Some say we do not

need to work with foreigners. What about state sovereignty: Will the ICC respect it or will the court require compromise?

Why has the US not become a member and should this be relevant to Indonesia?

Perhaps a more relevant question is why more than 120 states across the globe have now ratified the Rome Statute and become members of the ICC.

In Indonesia, many mass atrocities have remained unresolved. It cannot be said that such crimes belong to the past. Impunity allows the practice to continue, as reports of recent violations in Papua demonstrate.

Much of the opposition to ratification is based on a mistaken understanding of two of the ICC's fundamental powers. First, the ICC has no jurisdiction to investigate any crimes committed before the date on which a state ratifies the agreement, although Indonesia would still have a duty under international law to prosecute those responsible for domestic crimes.

Second, as stated above, the Rome Statute means that the ICC has no jurisdiction to conduct any investigation or prosecution unless a state has failed to effectively do so in its national jurisdiction.

Some other questions about how the ICC will function will become clear as more cases follow the recent first decision in Lubanga. For example, the procedure to date has been for the ICC prosecutor's office to inform a member state in writing that it has information that a crime has been committed in that state after the date of ratification and request to be updated on the progress of national investigation and prosecution.

The nature of such investigation and prosecution will determine whether the ICC considers that a state is either unwilling or unable to prosecute. The court will be unable to investigate any crimes committed before the date of ratification. If national trials are conducted after ratification, they must reflect that a state is willing and able to effectively prosecute, or the ICC's mandate will arise.

If Indonesia ratifies the Rome Statute, it accepts a duty to prosecute perpetrators of mass crimes in its national jurisdiction. In order to do so, effective national laws must be in place.

Indonesia was one of the first countries in the world to include crimes against humanity and genocide in its national laws, through the Human Rights Law.

However, these laws urgently need to be amended. In particular, the war crimes related to two armed groups involved in a conflict, such as the past conflict in Aceh, were never included as part of this law.

In addition, uncertain legal terms in the law have slowed progress on a number of cases in which the National Commission on Human Rights (Komnas HAM) has already completed inquiries and found crimes against humanity. Amending this law will unlock a national process for the prosecution for specific cases already investigated by Komnas HAM and to prepare us for ratification of the Rome

Statute.

At the same time, attention needs to be given to the criminal code and criminal procedure code, with suitable amendments to ensure future prosecutions are effective.

We have legitimate concerns that crimes committed in our country might be subject to politicized or unfair treatment before an international court.

However, ratification of the Rome Statute will enable Indonesia to be part of the growing international consensus that we must all be committed to climbing out of a past tainted by impunity for the most terrible crimes committed against humanity.

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