

No more delay to the ratification of the Rome Statute

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Paper Edition | Page: 7

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A group of government officials, NGO activists and journalists visited the International Criminal Court (ICC) in The Hague, Netherlands recently. Led by Deputy Law and Human Rights Minister Denny Indrayana, the delegation intended to learn about academic studies as well as administrative and technical procedures required for ratifying the 1998 Rome Statute (The Jakarta Post, March 4).

It was not the first mission sent by the government to the ICC. According to the president of the ICC, judge Sang-hyun Song, many Indonesian delegates have come to the court with the same objective, but the country missed the ratification momentum in 2008 based on the National Action Plan for Human Rights 2004-2009.

The ratification plan was then included in the National Action Plan for Human Rights 2011-2014, which sets the date of accession of the statute as 2013.

For many years, experts and government officials have been debating this issue. The opposition believes the ratification will endanger the sovereignty of the state and pave the way for prosecution of retired generals for their alleged involvement in past human rights abuses.

For almost a decade, the opposition has been unable to provide clever arguments for its resistance to the ratification.

Some say the ratification will discourage younger generations from joining the Indonesian Military (TNI). Of course, this argument ignores Indonesia's capability in international relations and highlights a lack of understanding about international law.

Up to now 121 states have ratified the Rome Statute, twice the number of parties when the statute entered into force in 2002. Indonesia has been busy buying time by searching for weaknesses in the court only to come to a conclusion that ratification of the statute would threaten state sovereignty.

In 2010, concerns loomed in Indonesia over the implementation of the complementarity principle, which the country's delegates in the Kampala Review Conference misunderstood. In connection with the principle of complementarity, Indonesia reemphasized the importance of Paragraph 10 of the Preamble and Article 17 of the statute and that the concepts of the "inability" or "unwillingness" of Indonesia to prosecute state officials for their role in human rights violations should not easily be used as a pretext for ICC intervention.

As a country that was involved actively in the negotiation of the statute, Indonesia has mistakenly understood the principle, which is the backbone of the court. The statement evinced Indonesia's failure to understand the substance of the Rome Statute.

At home, Indonesia has been busy with maneuvering by the security sector in proposing a number of bills that potentially jeopardize democracy and human rights, such as the bill on national security, the bill on social conflict management and the bill on state intelligence.

Special emphasis should be given to the bill on national security which, if endorsed by the House of Representatives before it ratifies the Rome Statute, will create a more repressive atmosphere in the country and as such, will shift the policy direction of the government.

Those developments lead to pessimism about the prospect of the ratification, although it is true that civil society can challenge the draconian bills in the Constitutional Court.

Even if the court upholds the draconian laws, the judges' interpretation of them will help state officials to identify dos and don'ts while conducting their duties. Furthermore, the main purpose of ratification is to change the attitudes, strategies and policies of the security apparatus.

The TNI and the National Police are the two primary actors in the security sector who often claim to be easy targets of the ICC because of their use of excessive force.

To minimize that situation, the international law provides full protection to security forces that use force within the legal framework. It means, they can use violence based on the principles of proportionality, necessity and last but not least humanity.

Moreover, Indonesia's accession to the Rome Statute will have a positive impact on the military, through a strengthening of clear rules of engagement during military operations which emphasize the protection of rights and fundamental freedoms.

It is time for our security forces to stop worrying about their activities but rather look for protection from the International Court. As we know, Indonesia is very active in sending peacekeepers under the United Nations' flag throughout the world, the statute will provide full protection to them if crimes occur in their areas of duty.

In other words, Indonesia has spent too much time studying the court, this is the right time to join the ICC. There is no reason for Indonesia to delay the ratification of the Rome Statute. The statute is not against the Constitution, but rather strengthens it by embracing Indonesia in a broad front against impunity.

In terms of security sector reform, ratification can support and enhance professionalism and respect for human rights among the security services and encourage further reform within the security sector. Besides, the international community is waiting for Indonesia's realization of its commitment to ending

impunity and embracing international justice.

The ratification will contribute to the process of Indonesia's transition to democracy by building a society that is able to say "no" to serious human rights violations and impunity.

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