

# What the Rome Statute means for Indonesia

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After a long debate, the step taken by the Indonesian government to finally ratify the Rome Statute of the International Criminal Court should be welcomed as a gesture that shows more commitment to the protection of human rights in this country.

At the ASEAN level, Indonesia will be the third party to ratify the statute after Cambodia (2002) and the Philippines (2011), and extends the overall list of states that have done so to 122.

The Rome Statute, which was issued in 1998 and came into force on July 1, 2002, essentially regulates the establishment and work of the International Criminal Court (ICC).

The ICC has jurisdiction in four limited crimes, namely genocide, crimes against humanity, war crimes and crimes of aggression.

If we look further into the document, the crimes in question not only threaten human life but also include violence or destruction against physical infrastructure or buildings that have significant functions for humanitarian purposes, such as hospitals, as well as religious and cultural identities.

As stated in Article 12 of the statute, the ICC applies its jurisdiction in three ways.

First, when a situation in which one or more of the above-mentioned crimes appears to have been committed and is referred to the prosecutor by a state party in accordance with Article 14.

Second, when a situation in which one or more of such crimes appears to have been committed and is referred to the prosecutor by the UN Security Council under Chapter VII of the Charter of the United Nations.

Third, the prosecutor will initiate an investigation in respect of such a crime in accordance with Article 15 based on the information on crimes within the jurisdiction of the ICC.

Until now, the ICC has heard cases occurring in African countries, such as the Democratic Republic of the Congo, Uganda, the Central African Republic, Sudan (Darfur), Kenya, Libya, Cote d'Ivoire and Mali.

So far, more than 30 people from those countries have been indicted, with some of them being taken into custody either by the ICC or national authorities, and others still on the run.

On one side, if the step to ratify the statute is being perceived as clouded by political interests, I would think that this action is rather late, since the application of this statute is

non-retroactive in nature.

It means that the ICC can only bring to justice cases that take place after a state ratifies the statute. In the Indonesian context, the atrocities that followed the referendum in Timor Leste in 1999 and the May 1998 riots, for example, do not qualify for the ICC hearing.

Nevertheless, this ratification is still very important since it will prevent people or groups from perpetrating gross human rights violations in the future.

The ratification will require the government, judiciary power and law enforcement authorities to reform themselves to be able to bring such crimes, if any are committed, to the ICC, without having to debate whether such a trial would be deemed as damaging state sovereignty. By ratifying the statute, Indonesia will take part in the global movement against impunity.

The view that insists that Indonesia should not rush to ratify the statute simply because developed countries like the US are not yet parties to it, is misleading.

Ratifying the statute is testament to Indonesia's maturity and willingness to protect human rights to the maximum. By doing so, Indonesia will play a significant role in strengthening the statute to become an international law that universally binds and puts more pressure on countries to bring serious crimes at home to the international court.

Furthermore, Indonesia's accession to the statute will inspire other countries to follow suit.

The concern that the ICC is an instrument of developed and powerful countries in intervening in developing countries' domestic affairs is exaggerated, since the ICC clearly states its full respect for the judicial mechanism at the national level. Article 17 of the statute rules that a case is admissible for the following reasons: if the case is being investigated or prosecuted by a state that has jurisdiction over it, unless the state is unwilling or genuinely unable to carry out the investigation or prosecution; if the case has been investigated by a state that has jurisdiction over it and the state has decided not to prosecute the individual concerned, unless the decision resulted from the unwillingness or inability of the state to prosecute; if the person concerned has already been tried for conduct that is the subject of the complaint, and a trial by the court is not permitted under Article 20, paragraph 3; and if the case is not of sufficient gravity to justify further action by the court. Therefore, if a state where the crime takes place has a willingness to bring the case to justice, there is no reason for the ICC to hear the case.

Although Indonesia is now currently under urgent circumstances that fall within the jurisdiction of the ICC, recent developments have indicated the potential for such crimes to take place in the future.

Violence against certain religious followers or certain ethnic groups, which government or law enforcement officials tend to ignore, has been rampant in the country.

The course of national politics, which is still very unpredictable, has also provided a loophole for certain actors to justify any means, including the committing of serious crimes, to achieve or maintain their political goals.

Thus, ratification of this statute will underline the responsibility of the state to protect its people from any serious crimes against humanity. The statute will also deter the state from committing the violence itself.

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