

Support the ratification of the Rome Statute, generals

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Eva Kusuma Sundari, Jakarta | Opinion | Mon, December 16 2013, 11:06 AM

The president of the International Criminal Court (ICC), judge Song Sang-hyun of South Korea, visited Jakarta recently and met with the Indonesian foreign minister, the law and human rights minister and two senior officials from the Defense Ministry.

The talk with the defense officials is of great importance as it may indicate that the military is the stumbling block to the country ratifying the international human rights convention governing the ICC, known as the Rome Statute.

President Susilo Bambang Yudhoyono in a letter addressed to the ICC president dated April 20, 2012, said that acceding to the Rome Statute remained a priority in the government's National Plan of Action for Human Rights 2011-2014, which followed two previous national plans.

With a mere 12 months to go before this national plan expires, it is therefore timely to remind the President of his words of support for the ICC and ask when will they be translated into action?

One question that has often surfaced is whether Indonesia's accession to the Rome Statute would pave the way for an ICC investigation and/or prosecution of Indonesians who allegedly committed crimes of international concern as set out in the Rome Statute that occurred before Indonesia's accession to the statute.

The answer is no. The Rome Statute is prospective, not retroactive, in nature. Investigations can only be launched into serious crimes committed after a country becomes a party to the statute.

This principle of non-retroactivity is, in fact, specifically enshrined in the Rome Statute.

This principle of non-retroactivity means that the ICC is a court for the future, not a court for the past, and its major contribution is the prevention of atrocities as a guarantee of non-repetition.

Another question that has arisen from time to time in discussions concerning the accession to the Rome Statute is whether or not accession would impinge the sovereignty of a nation.

Again, this is not the case. The point that must be highlighted here is that the principle of complementarity, which, as is also the case with the principle of non-retroactivity, is included in the Rome Statute — meaning that the ICC will only intervene if a state party is unwilling or unable to do so.

The Rome Statute, with its principle of complementarity, therefore encourages rather than discourages the active national exercising of this sovereign prerogative: national courts doing what they are constitutionally responsible to do. Indonesia has a well-developed legal system, including a system of military jurisdiction.

With accession and the adoption of appropriate domestic legislation to support the Rome Statute, our national courts would simply continue to perform the duties with which they are already statutorily tasked. Any concerns about the possible infringement of national sovereignty are, therefore, groundless.

In the unlikely event that national courts refrained from discharging their responsibilities and the ICC saw fit to intervene, it must be recognized that such a minor and justified assumption of a role by the ICC would be more than justified in a world where the notion of absolute sovereignty in all circumstances has long ceased to exist.

I am referring to the Nuremberg Principles on individual criminal responsibility for the most serious crimes and the Universal Declaration of Human Rights, which were adopted by the UN General Assembly in 1946 and 1948, respectively.

Indonesia is a prominent member of the international community. By acceding to the ICC's Rome Statute, we would strengthen our standing. On the other hand, however, by continuing to delay, we are sending an unfortunate signal of ambivalence to all our friends worldwide on an issue of the utmost importance — nationally, regionally and internationally — that there can be no impunity for perpetrators of the most serious crimes known to humankind.

President Yudhoyono still has five House of Representatives sessions remaining to fulfill his promise to ratify the Rome Statute before a new president is inaugurated in October next year.

Therefore, he needs to convince his fellow generals that their objections to the ratification are, in fact, baseless. The President could go ahead and submit the bill on the ICC; the bill for which the House and the world have been waiting for almost nine years. Let that be your legacy to the all people in Indonesia and the world, Mr. President.

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