

Don't worry, we don't look back: ICC President ensures

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The House of Representatives Commission I, tasked to deliberate the ratification of the Rome Statute, is apparently unconvinced of the urgency of the treaty's ratification. Some worry that the treaty might be used to bring those allegedly responsible for past human rights abuses to justice, which according to some officials will put Indonesia to shame. International Criminal Court (ICC) president Song Sang-hyun, talked about the matter with The Jakarta Post's Margareth S. Aritonang during his recent visit to Jakarta.

Question: Can you explain what ICC has been doing to deal with international human rights crimes?

Answer: We are an 11-year old international criminal court that is based on the Rome Statute. The ICC has the jurisdiction to only cover the most horrendous crimes, namely: war crime, genocide and crimes against humanity.

Joining the ICC means you must look forward to the future. So if, for example, Indonesia joins the ICC then the court would only exercise jurisdiction over the crimes committed in the country's territory after it joined the ICC. There is absolutely no retroactivity.

I knew somehow that there would be some kind of misunderstanding over the ICC's non-retroactivity principle. All the crimes committed in the past will have to be exclusively handled by your own national legal or judicial system.

We have 122 state party nations at the moment, plus international organizations like the United Nations. There are also many local, national and international NGOs that work with us.

This is indeed a huge international system of criminal justice, underlining a new trend in the global society; a most progressive trend for the collective justice that will ensure peace, security, justice, rule of law, democracy and even sustainable

development.

Thus, why should one of the world's largest countries such as Indonesia just turn away from this new trend and close your eyes?

Your leaders have to make the decision to jump in and actively participate in the process rather than arguing.

Regarding the horrendous rights abuses before the establishment of the ICC, the effects of which are still ongoing, the public sees this as a loophole to bring such cases to the ICC. This has caused some Indonesians to worry. Is this justifiable?

No, I don't think so. I have clarified that point numerous times to Indonesian officials. It is not at all possible to interpret the treaty that way. It is possible for a lawyer to try to interpret the treaty that way, but the Rome Statute clearly states otherwise. You don't have to worry about this.

How will you step in into Indonesia's judicial system if one day the country finally ratifies the Rome Statute?

There are three triggering mechanisms to start the ICC procedures. First, the most common and most frequently used mechanism is for a state party to make a referral to the ICC prosecutor. The statute states that only the state can make a referral to the ICC. Second, a referral made by the UN Security Council, but this mechanism has so far only been used when a non-state party would have to refer to the ICC. We have two such instances: Sudan and Libya. This mechanism would not be needed in the first place if Indonesia joined the ICC. Third, by the initiative of the ICC's prosecutors. Based on their communication, information and intelligence, the prosecutors may reach a conclusion that a situation is so serious that an initiative must be taken. There was only one incident when such procedure was applied. That's Kenya. (The ICC is conducting an ongoing investigation into the post-election violence in Kenya between 2007 and 2008).

Why is it important for Indonesia, as a big ASEAN nation, to ratify the Rome Statute?

It would encourage other countries in Southeast Asia and in the Islamic world to join the ICC as well. This could be an enormous boost for the collective international

efforts to provide justice to the victims of the most heinous atrocities and to prevent such crimes altogether.

Has the ICC promoted the Statute in the US too?

The ICC community has been actively promoting the Rome Statute across the world, including in the US. I have personally reached out to many stakeholders in the US and I am happy to say that the US is today highly supportive of the ICC's operations. US officials have stated the country fully respects the freedom of every state to accede the treaty, and are indeed content to see others join the ICC.