

**QUO VADIS THE IMPORTANCE OF
RATIFICATION OF THE ROME STATUTE
FOR LAW ENFORCEMENT AND HUMAN
RIGHTS IN INDONESIA IN TERMS OF
LEGAL SYSTEM THEORY**

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ABSTRACT

This study aims to provide an understanding of the urgency of the importance of Ratifying the Status of Rome for the enforcement of law and human rights in Indonesia which uses an analytical knife from Lawrence M Friedman's legal system theory. In Law number 26 of 2000 concerning the Human Rights Court has full legality in dealing with crimes of genocide and crimes against humanity but is this enough to make law enforcement in Indonesia fight or resolve human rights cases such as the Peter case, Semanggi I case and the - other cases need to apply a grand design for the settlement of these cases even more than that Indonesia's ratification will place Indonesia as one of the main supporters of international justice. In its implementation, Indonesia will join more than half of the world's people in ensuring that an effective justice system will prevent the worst crimes ever committed against humanity and ensure protection for all nations in the world, including Indonesia itself. This research is normative by using scientific literature such as written rules, theoretical and legal dogmas so that problems are resolved regarding the urgency of the importance of implementing the Rome Statute in Indonesia fulfilling three discussions, namely 1) The Importance of Ratification of the Rome Statute for Law Enforcement in Indonesia, 2) The Importance of Ratification of the Rome Statute Can Prevent Impunity in a Country, 3)

Legal System Theory as a model in the application of Rome Statute ratification in Indonesia. so that this study can know the importance of the Rome Statute rules in Indonesia because they can be bound by international courts.

Keywords: Ratification, Rome Statute, Legal System Theory



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INTRODUCTION

Indonesia is a state of law, this is stated comprehensively in the constitution as the basis of the highest State to govern society. For this reason, the 1945 Constitution has mandated rules to protect human rights contained in the 1945 Constitution both in the Preamble and torso. When reviewing further in the preamble, it was explained that explicitly the State of Indonesia proposed talks and its commitment in efforts to protect human rights. One of them is actively participating in efforts to realize world order based on independence, lasting peace, and social justice, which is also one of the ideals of the Indonesian nation. Meanwhile, after the reform, significant changes were made to the constitution (1945 Constitution) to ensure the protection of human rights in the fields of civil and political rights as well as social, economic and cultural rights. In 2002, the Second Amendment to the 1945 Constitution added more detailed rules governing the protection of human rights, especially in the field of civil and political rights, namely CHAPTER X A Article 28A – Article 28J. In the past, the details of the protection and enforcement of human rights were only regulated in constitutional law and other legal acts. In 2002, human rights protection focused more on the protection of human rights in the economic, social and cultural fields. (Hasibuan & Ashari, 2020)(Sitompul, 2017)(Mahmud Marzuki, 2013)

Therefore, this Law is the beginning of a milestone in human rights regulation because this Law regulates fundamental rights that must be protected, including those included in civil and political rights and those included in economic, social and cultural rights. This law regulates KOMNAS HAM as an independent institution. This independent institution has the functions of studying, researching, counseling, monitoring and meditation on human rights. (Mochtar, 2022)

As for international forums, this Rule does not hinder various efforts to protect human rights in international forums when efforts in national forums do not resonate. Article 7 paragraph (1) No. 39 of 1999 which states that everyone has the right to apply for legal remedies in national and international forums for violations

of human rights guaranteed by Indonesian law and international human rights law accepted by the Republic of Indonesia. This means that those who want to defend human rights are fundamental freedoms first (exhaustion of local remedies) before participating in regional or international forums. This is in line with the principle of complementarity espoused in the ICC. (Hiariej, 2016)

It also began in 2004 when President Megawati Soekarnoputeri endorsed the National Action Plan on Human Rights (RANHAM) 2004-2009. The draft states that Indonesia intends to ratify the Rome Statute in 2008. The president will form a national committee to implement the proposal. The government has also said repeatedly that the Rome Statute is under review and national legislation must be drafted to cooperate with the courts before ratification can take place. (Muttalib et al., 2012)

In August 2006, representatives of the Indonesian parliament attended a regional conference with all Asian parliaments on the International Criminal Court and committed to seek ratification/coronation in 2008 or earlier. The Indonesian Parliamentary Action Department (PGA) was also established in 2007, whereupon the PGA International Secretariat is very active in supporting the universality of the International Criminal Court.

RESEARCH METHODS

This research uses doctrinal legal research or normative juridical methods or literature research. Normative juridical research provides an overview of law defined as applicable norms and doctrinally includes prescriptive research that studies the purpose of law, justice. For the approach in the preparation of this research with a statutory approach and implementing rules below. The legal material in this study uses laws and regulations, books and articles about the urgency of ratifying the Rome Statute in Indonesia as the purpose of this paper in solving problems by providing proper prescriptions. The collection of legal materials in collecting legal materials is carried out by literature study. So that the results of the literature study review are used to find answers to this research problem with deduction analysis.

RESULTS AND DISCUSSION

The Importance of Ratification of the Rome Statute for Law Enforcement in Indonesia

Talking about the importance or absence of a regulation in force in a State there must be a principle of Certainty, Expediency and Justice which in fact can have implications for the wider community, that means the Rome Statute is a basic rule made by an International criminal court, the International Criminal Court (ICC)

which is engaged in dealing with four international crimes, namely crimes against humanity, war crimes, genocide, and crimes of aggression or war. (Subagja et al., 2021)

Therefore, the concept of discussing the importance of ratification of the Rome Statute for law enforcement in Indonesia is that we must first know the definition of ratification itself. Ratification is an activity of binding a State to an international treaty. Speaking of the process, ratification by signing the text of the agreement and being bound by all the provisions of the agreement. The ratification of the Rome Statute means that the state is subject to the provisions of the Rome Statute and then applies it to the national law of a State. One of the principles held in an International-based rule is the Complementary principle which the author will further describe the principles or principles in the Rome Statute which is part of the driving regulations (Panjaitan & Sinaga, 2017) (Research, n.d.).

But a little concept of complementary principle is the principle that a crime can become the jurisdiction of the international criminal court, then the trial is that an offender is first handed over to a national court, but when a national court is unwilling or unable to try the perpetrator of the crime, then the trial of the perpetrator is carried out by the International Criminal Court.

This concept is the importance of ratification of the Rome Statute for law enforcement in Indonesia, the author will describe some of the principles in the Rome Statute which nationally Indonesia uses these principles as a runway for dealing with various crimes.

Basic Ne bis In idem

In Indonesia itself, the principle ne bis in idem contained in article 76 paragraph (1) of the Criminal Code stipulates "Except in the event that the judge's decision may still be repeated, one may not be prosecuted twice for acts that an Indonesian judge has tried against him with a judgment that becomes permanent. In a sense in Indonesia because it adheres to the civil law legal system which makes the Law as one of the main sources in solving basic problems ne bis in idem judges of swapraja and customary courts, in places that have these courts. In this case, the first causa held in the principle ne bis in idem is the final decision in a criminal case that has permanent legal force so as to completely close the right to conduct or continue the prosecution. In the Rome statute especially article 17 in relation to Article 20 of the Rome Statute. This study is expected to provide a description of the jurisdiction of the International Criminal Court and the principle ne bis in idem in international criminal law with regard to Article 17 of the Rome Statute linked

to Article 20 of the Statute. Therefore, when the Rome statute is applied or ratified in Indonesia, of course, these two principles also have a very close relationship and remember that the Indonesian legal system adheres to a dualism system, namely separating criminal acts and automatic criminal responsibility, the emphasis is when there is a crime, it must be seen first whether someone is able to be responsible or not, so the application of ratification of the Rome statute is a grand design for Law enforcement in Indonesia for the improvement of human rights protection, the author agrees that in Indonesia itself there is already Law number 26 of 2000 concerning Human Rights Courts but this is not enough to handle cases that have occurred and harmed the community. (Jusuf, 2016)(Diantha & SH, 2014)

The role of the International Criminal Court can be a motivator to continue to intensify and increase Indonesia's role in efforts to protect international human rights, such as the country's goal stated in the Preamble of the 1945 Constitution, which is to actively participate in efforts to maintain world order and peace. As well as showing Indonesia's commitment that Indonesia can implement human rights protection through human rights courts effectively and efficiently by guaranteeing the principles of individual accountability, prosecution and punishment for perpetrators of crimes.

Omnia Praesumuntur Rite Esse Acta Principle

This principle is usually known as the principle of trust, conceptually engulfing the existence of trust between States, especially trust in the feasibility of legal systems in other countries. Usually this principle is related to the assumption that even abroad all matters have been properly considered and determined by the judiciary. In international criminal cases, the transfer of offenders from another State is not necessarily based on an extermination treaty made between the two States, but rather based on the principle of trust and good relations between the two States. (Puspitasari, 2022)

The Principle of Reciprocity

In the national and international context, this principle is a very important concept to want good treatment from other countries. This is the same as when Indonesia ratifies the Rome statute automatically good treatment from other countries. The author analogizes the case of Oki who killed Gina Sutan Aswar to Indonesia for trial even though we do not have an expatriation agreement with America. And his locus delictnya occurred in America. Harnoko fewanto was then tried in a court in Indonesia, this is because there is a connection or relationship

with other countries, as well as when the Rome Statute is applied in Indonesia, the International Court of Justice automatically cooperates with Indonesia to resolve human rights cases. (SA & SH, 2017)

Attentaatclausule Principle

This principle animates the scope of international crime which means the perpetrator of a politically charged crime but related to the murder or attempted assassination of the head of State, king or other designations, then the requested State must hand over the suspect or accused. This is important because it relates to the principle of protection universally shared by the nations of the world that if a criminal act is related to the head of State, President or King then the State concerned has the right to prosecute the perpetrators. This is also contained in article 4 paragraph (2) of the Rome Statute which explains that "the Court may exercise the functions and powers, as provided for in this Statute, in the territory of each State party and by treaty of another State". When we analyze juridically what is contained in article 4 paragraph (2) of the Rome Statute above means when the Statute is enacted but the existence of Law number 26 of 2000, the precedence is the Law *lex specialis* considering that Indonesia adheres to the Monism system which uses national law as the main basis in solving problems, the Statute has the status of only cooperating with other States or engagement in resolving human rights cases its very heavy. (Mathovani, 2022)(Martowirono, 2017)(Mustamine & Nur, 2022)

So from the concept above, the author can briefly describe the conclusion that first, the ratification of the Rome Statute will also make a very positive contribution, upholding and protecting human rights in Indonesia and regional and world peace. In addition, the ratification of the Rome Statute will also make Indonesia seen as equal to other nations in the world that have already bound themselves to the international justice order. Second, the ratification of the Rome Statute in Indonesia is in line with the principles contained in national criminal law and international criminal law, so it is appropriate that ratification of the Rome Statute needs to be applied to ensure the protection of human rights which is still not massive protection in Indonesia.

The importance of ratifying the Rome Statute can prevent impunity in a state

In the 1970s Latin America, a military dictator in power over much of the continent was fighting an all-out war against left-wing guerrilla groups in the name of national security. Large groups of the population, members of communist and

social democratic parties, union leaders, as well as scientists, artists, scholars and religious leaders belonging to liberation theology were terrorized through systematic acts of torture and murder and thousands of people were disappeared.

In reality, not all perpetrators of crimes against humanity can be brought to justice. This also happened when the leaders of the war criminals were brought before the Nuremberg trials, where the responsibility was not imposed on them. In fact, acquittal from punishment appears to be a reward for what they have done and they are forgiven for the crime.

From the historical story of impunity above, until now Indonesia has still not ratified the Rome Statute even though some of the international crimes in the Rome Statute have been adopted by Law Number 26 of 2000 concerning Human Rights Courts. Indonesia's need to ratify is to eliminate the practice of impunity, improve legal instruments, law enforcement officials, and law enforcement procedures, ensure witnesses and victims get protection; and provide guarantees of human rights protection for citizens. If we explore in laws and regulations related to human rights such as Law Number 26 of 2000 which is now the *Ius Constitutum* in the State of Indonesia, there is one provision that provides an opportunity for the reopening of cases of gross human rights violations that occurred before the promulgation of the Law on Human Rights Courts regulated in Articles 43 and 44 concerning Ad Hoc Human Rights Courts and Article 46 which regulates the invalidity of expired provisions in gross human rights violations. The inclusion of the above provisions is intended so that cases that occurred before the promulgation of the Law on Human Rights Courts can be tried. It also carries the meaning of preventing or avoiding impunity in cases of gross human rights violations. The inclusion of the above provisions is intended so that cases that occurred before the promulgation of the Law on Human Rights Courts can be tried. It also means preventing or avoiding impunity for cases of gross human rights violations.

Not only avoiding impunity when the ratification was put forward by Indonesia, even though Indonesia already has Law Number 26 of 2000 but for the benefit of many people it is also the case of previous cases that until now have not been controlled such as the clover case, A little story about the case is the Semanggi Tragedy refers to 2 incidents of public protests against the implementation and agenda of the MPR Special Session which resulted in civilian deaths. The first incident known as the Semanggi I Tragedy occurred on November 11-13, 1998, during the Indonesian transitional government, which caused the death of 17 civilians. The second incident known as the Semanggi II Tragedy occurred on September 24, 1999 which caused the death of a student and 11 other people

throughout Jakarta and caused 217 injuries. From this, in addition to preventing impunity, the importance of ratification of the Rome Statute for Indonesia is to obtain Active and Direct Preferential Rights in All ICC Activities Indonesia will be able to provide votes and views on matters related to the (Yunara, 2019) provisions of the Rome Statute and other matters concerning the regulation and implementation of the ICC. Indonesia will be able to give preference to play an active role in all ICC activities including the protection of its citizens.

From the above concept, it can be concluded that First, the rulers can no longer practice for any reason, including impunity with the intention of protecting using national legal mechanisms, either by holding courts aimed at protecting perpetrators or amnesty. These rulers must think long to make political policies that result in serious crimes because the International Criminal Court has the authority to investigate and prosecute serious crimes that occur and determine that national courts are held to meet the requirements of independence and impartiality. Second, with respect to the International Criminal Court's vast reach in applying its jurisdiction even if its presence is complementary. Perpetrators in addition to not being able to take refuge through the national legal mechanism of their country also cannot take refuge in other countries even if that country is not a party to the statute. In practice, states that have become parties have transformed the Rome Statute of the International Criminal Court so that the provisions of the statute become part of full national law. Third, specifically for peacekeeping states, the International Criminal Court protects peacekeeping personnel from possible acts categorized as serious international crimes and does not threaten the existence of peacekeepers operating in conflict areas. In other words, the International Criminal Court provides legal protection for peacekeeping personnel.

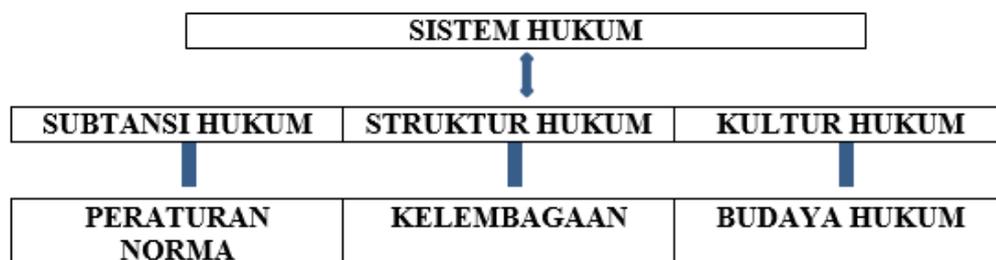
Legal System Theory as a model in the application of the ratification of the Rome Statute in Indonesia

In line with existing developments, the concept of the legal state began not to be interpreted as a thinner concept, but as a thicker concept, namely in addition to prioritizing law in a formal perspective, the state of law in the thicker concept also prioritizes substantive social welfare.

According to the teachings of the Legal System, historically see that the State of law was originally as a formal state of law which we often understand as a night watchman State or a formal legal State. Because in its journey, the formal law state actually causes social inequality, eventually gradually turning into material law that includes social legitimacy as a basis for making any policy. Before entering the

concept of the importance of ratification of the Rome statute in Indonesia, the author elaborates the conception of the legal system theory proposed by Lawrence M Friedman, System etymologically comes from English called Systema which means Components, Unity and Subsystems while in terminology the system is a unity that is inseparable from each other when one is separated it can impact other systems. Legal system theory according to Friedman will be divided into three parts which if we correlate with ratification which is conceptually a process of binding a country to international agreements. The process of binding yourself means ratifying by signing the text of the agreement and being bound by all provisions in the agreement. The ratification of the Rome Statute means that the state is subject to the provisions of the Rome Statute and then applies it to the national law of a state. This is so that the country fully cooperates with the ICC.

The author agrees that all policies are not perfect, the regulations that are built must have a driving effect or an inhibiting impact in accordance with the adigium of the law *Salus De Peopole Error La Supreme Loi* which means that all forms of error are human things so the maximum is when the ratification of the Rome Statute has implications for adverse society as explained in the research journal Apriyani Dewi Azis that when ratification is It happened that Indonesia could not vote on the provisions or implementation of the Rome Statute. Indonesia does not have a significant bargaining position, for example, it is difficult to defend and protect citizens charged with crimes under the jurisdiction of the ICC. But this time the author agrees when the Rome statute is enforced in Indonesia because the analysis knife that the author put forward uses the legal system theory of Lawrence M Friedman which consists of



Let us dissect whether a rule of the Rome Statute can operate according to its effectiveness in the legal theory of this system Another way to imagine these three legal subsystems is to imagine the legal structure of some kind of type of machine, the substance is the manufacturer of the machine and the legal culture is anything

or anyone who decides to turn on or off and determines how the machine is used which will start from

1. Legal structural.

In his book *Normative Jurisprudence* Friedman put it in his view of what is Structural "To begin with, the legal system has a legal system structure consisting of elements of this kind: the number and size of courts; their jurisdiction. Structure also means how the legislature governs, what procedures the police department follows, and so on. Structure, on the street, is a kind of cross-section of the legal system of a kind of still photo, by freezing its action" Legal structure is not only an institution (institution) but also concerns institutions in which it concerns the organization, administration (procedures) and human resources apparatus. An institution is a body (institution) that runs a substitution of the system (which is authorized to apply laws). Organization is a unity (structure and so on) consisting of parts (people and so on) in the association and so on for certain purposes, administration is a way of managing (running). The human resources apparatus is the person involved in running the system. So talking about the system Bringing perpetrators of international crimes to justice and punishing them is a form of State obligation (state responsibility) and a form of human rights protection provided by the State to its citizens.

In an exception to carry out these obligations, Indonesia is often hampered by various weaknesses and inadequacies of the existing legal system. The existence of this structural must also be synchronized between one institution and another, if we review one by one normatively explained in Law number 26 of 2000 concerning Human Rights Courts, especially in Article 2 that the Human Rights Court is a special court within the General Court. This means that the court deals with serious human rights cases but the question is whether the crimes in the masses have been resolved? Such as the clover crime case, the Peter case and the Munir case and so on. The need for synchronization between national and international institutions so that it guarantees the principle of legal certainty and justice in resolving long-standing crime cases. Why is that? Because when we allow it to happen continuously, the application of the principle of *Crimine Punnishment Without Is The Self* which means that there is a crime without completion or punishment is the same as committing the crime itself, this principle is very fundamental in the field of international law, especially when talking about the urgency of the Rome Statute in Indonesia. This

principle means that when law enforcement knows of a crime and he allows the crime to happen, it is the same as he committed the crime himself.

2. Legal Substance

Legal substance deals with written norms made by the legal institution itself that serves to regulate society in the environmental order. When we analyze the written rules stipulated in article 7 of the Rome Statute which also relates to the effectiveness of the law in force in Indonesia, the Rome Statute affirms that the resolution of a case still prioritizes national legal remedies both formally and materially with principles and principles in accordance with international law. This means that the International Criminal Court opens up a great opportunity to streamline national legal systems and domestic courts in prosecuting perpetrators of crimes. This is called a complementary approach through a pattern that is strategic and more focused. That is, this can encourage law enforcers and the government as well as all parties to actively participate in law enforcement and human rights protection. So that by becoming a party to the International Criminal Court, inevitably a country will be motivated to carry out the enforcement of human rights through the effectiveness of law and its national justice system which is motivated by one of the fundamental principles of the International Criminal Court, namely the principle of complement.

3. Legal Culture

When we talk about everything, whether it's a policy built by the government, when people can't accept the policy, automatically the logical consequence is that the policy is in imbalance. Because talking about legal culture is talking about whether people can accept the applicable law or not, the Tektization of the legal culture when ratification occurs Indonesian ratification will place Indonesia as one of the main supporters of international justice. In doing so, Indonesia will join more than half of the world community in ensuring that an effective justice system will prevent the worst crimes ever committed against humanity and ensure protection for all nations of the world, including Indonesia itself.

CONCLUSION

From the sub-points described above, a synthesis or final conclusion can be drawn from this paper which uses legal system theory to assess whether the application of ratification of the Rome Statute is a responsive regulation or not in a society. Given that ratification is a process of binding itself from other international States, the direction of the author here is how to review the rules that will dictate which can benefit society. (a). Philosophically, the application of ratification of the Rome Statute is in line with what is contained in the constitution or the 1945 NRI Constitution where the 1945 Constitution has formulated human rights protection arrangements in the 1945 Constitution both in the Preamble and the torso. From the Preamble, Indonesia explicitly and implicitly stated its statement and commitment in efforts to protect human rights. One of them is done through an active role in efforts to implement world order based on independence, lasting peace, and social justice which is also one of the goals of the Indonesian nation.

That after the reform, the 1945 Constitution underwent important changes in order to ensure the protection of human rights both in the field of civil and political rights as well as those included in social, economic and cultural rights. So that ratification that occurs when it is applied inevitably leads to cooperation with international courts in dealing with crimes that have occurred for a long time such as the case of Peter, etc. (b). Juridically, Article 46 regulates the invalidity of expired provisions in gross human rights violations. The inclusion of the above provisions is intended so that cases that occurred before the promulgation of the Law on Human Rights Courts can be tried. It also carries the meaning of preventing or avoiding impunity in cases of gross human rights violations. The inclusion of the above provisions is intended so that cases that occurred before the promulgation of the Law on Human Rights Courts can be tried. It also means preventing or avoiding impunity for cases of gross human rights violations. And also it is in line with the principles in international crime that need and permeate each other in relating international crimes and violations (c). Sithologically, Indonesia's ratification will place Indonesia as one of the main supporters of international justice. In doing so, Indonesia will join more than half of the world community in ensuring that an effective justice system will prevent the worst crimes ever committed against humanity and ensure protection for all nations of the world, including Indonesia itself.

With the needs of the community can be met and the principle of reciprocity that the author has stated in the sub-point above. (2) Solutions or Recommendations. The solution to the problem of the urgency of ratification of the Rome statute in Indonesia is (a) Keep ratifying because it is part of the grand design of government policy because in fact the principle of *ven haat vermoendhaat* is that government policy is considered correct so that the policy is in accordance with

the needs of the community (b). The existence of flexible transactions or cooperation with international courts in combating or resolving cases that have been left behind where the crime is very dangerous (c) The existence of alignment of one institution on a national scale by taking into account principles such as (1) Human Capital, which is in accordance with the needs of the community. (2). Social Capital, the purpose of ratifying the Rome Statute is to cooperate with the International Court of Justice in resolving human rights cases that have occurred considering that the Indonesian system uses the monism system in the international scope, namely using national law first.

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