

International Criminal Law and Indonesian Perspective

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Abstract

The framework of international human rights law is primarily based on States being legally obliged to protect human rights within their territory. If violation of human rights occurs then the State is responsible. However, in some instances, individuals are directly responsible for violations of human rights. This occurs in the area of international (criminal) law, for which there is usually universal jurisdiction.

Keywords

International Criminal Law, International Criminal Court, Violations of Human Rights, Individual Responsibility

Introduction

International criminal law is an autonomous branch of law which deals with international crimes and the courts and tribunals set up to adjudicate cases in which persons have incurred international criminal responsibility. It represents a significant departure from classical international law which was mainly considered law created by states for the benefit of states but tended to ignore the individual as a subject of the law. The Rome Statute of the International Criminal Court ('the Rome Statute') was signed on 17 July 1998 at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. On 1 July 2002, this first institution permanent international criminal judicial organ in history was established at The Hague. This is an important milestone in the development of international criminal law; it will have significant effects in the fields of international law, international criminal law and international relationships.

History

International criminal law is an autonomous branch of law which deals with international crimes and the courts and tribunals set up to adjudicate cases in which persons have incurred international criminal responsibility.

- Some precedents in international criminal law can be found in the time before *the first world war*. However, it was only after the war that a truly international criminal tribunal was envisaged to try perpetrators of crimes committed in this period. the Treaty of Versailles stated that an international tribunal was to be set up to try *Kaiser Wilhem II of Germany*. The Kaiser was granted asylum in the Netherlands. After *the second world war*, the Allied powers set up an international tribunal to try not only war crimes, but crimes against humanity committed under the Nazi regime.
- The Nuremberg Tribunal held its first session on 20 November 1945 and pronounced judgments on 30 September / 1 October 1946. A similar tribunal was established for Japanese war crimes (The International Military Tribunal for the Far East). It operated from 1946 to 1948.
- After war in Bosnia, the United Nations Security Council established the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 and, after the Genocide in Rwanda, the International Criminal Tribunal for Rwanda in 1994.

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- The International Law Commission had commenced preparatory work for the establishment of a permanent International Criminal Court in 1993; in 1998, at a Diplomatic Conference in Rome, the Rome Statute establishing the ICC was signed. The ICC issued its first arrest warrants in 2005.

International Criminal Law (ICL) Relates to Other Areas of International Law

Human Rights Law (HRL)

International Humanitarian Law (IHL)

The Law relating to State Responsibility (SR)

- ICL – HRL, ICL developed in this context to respond to gross violation of human rights exp. crimes against humanity, the law of the International Criminal Court (ICC) statute is to punish “the most serious crimes of concern to the international community as a whole” must be consistent with internationally recognized human rights
- ICL – IHL, ICL shares common roots with IHL, the body of law designed to protect victims of armed conflict. ICL and its application through international criminal tribunals (international criminal justice) are increasingly important for implementation of IHL
- IHL contains rules of conduct that bind States, armed groups and individuals and that are designed to solve humanitarian problem arising from armed conflicts
- ICL – SR, ICL it concerns the criminal responsibility of individuals, not States.

The responsibility of a State under int. law is a matter for separate branch of international law, and not dependent upon the legal responsibility of an individual

- ICL is the law that governs international crimes. That this discipline of law is where the penal aspect of international law, and the international aspect of national criminal law, converge.¹
- ICL often defined very broadly. “ICL may include all rules of substance and procedure covering the prosecution and punishment of individuals for violations of international law”.²
- War Crimes were one of the first categories of violations of international law which gave rise to individual criminal responsibility
- The U.S. Military Tribunal at Nuremberg defined an “international crime:
- An international crime is such act universally recognised as a criminal, which is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the State that would have control over it under ordinary circumstances...”.³

Indonesian Contexts: The Reflection of Rome Statue in Indonesia

In international forum, Indonesia was one of the states which attracted public attentions in the implementation and protection of human rights. Indonesia has not decided any decision towards Rome statute which was ratified and entered into force 1 July 2002. However, the Republic of Indonesia has taken anticipative and preventive actions to solve various problems relating to the implementation and the protection of the international human rights and other international crimes that might occur in Indonesia. Those anticipative actions

¹ M.C. Bassiouni in Kriangsak Kittichaisaree, (2002), “International Criminal Law”, New York: Oxford University Press.

² Marco Sassoli in Antonio Cassese (ed.), (2009), “International Criminal Justice”, New York: Oxford University Press.

³ Hostages Trial, 1948

were realized through the establishment of National Commission of Human Rights in 1993 and the enactment of Human Rights Law of the Republic of Indonesia Number 39 Year 1999 and Law of the Republic of Indonesia Number 26 Year 2000 of Human Rights Court. In short, through the prevention actions as described above, Indonesia has participated in preventing the international crimes especially crimes against humanity.

The enforcement of human rights in Indonesia was closely related to the national importance in order to get out from the crisis and develop its credibility and good name in the international forum. The demand of the enforcement of human rights in Indonesia by the United Nations could not be ignored especially in the case of Timor-Timur. There were two basic reasons underlying their demand: (1) they think that the Indonesian court could be unfair and partial. The international community was afraid that Indonesia would set free the perpetrators, and (2) there was an impunity of the perpetrators in crimes against humanity because most of the perpetrators were the government official either military or civil officials.⁴

In the history of Indonesian judiciary, the enforcement of human rights was established when Law of the Republic of Indonesia Number 26 Year 2000 of Human Rights Court was enacted. It responded the United Nations Resolution 1264/1999 which gave Indonesia the international responsibility. They had great demand on judging the perpetrators of crimes against humanity post-Timor-Timur Discussion or *Jajak Pendapat* under the supervision of the United Nations. United Nation Charter article 25 stated that the resolution of United Nation Security Council will legally bind all of its members. Therefore, as one of the members of the United Nations, Indonesia had no choice to implement the resolution.⁵ Then, Indonesia established ad hoc human rights court based on Law of the Republic of Indonesia Number 26 Year 2000 as ordered in Law of the Republic of Indonesia Number 39 Year 1999 of human rights. Based on the Law no.26, it was possible to establish permanent and ad hoc courts of human rights and prosecute the crimes against humanity occurred before the Law of the Republic of Indonesia Number 26 Year 2000 was enacted such as Timor-Timur which was started on March 2002 and Tanjung Priok which had processed until the jurisdiction of the highest court. This study would focus on the decisions of ad hoc jurisdiction court of human rights in Central Jakarta in the cases of Abilio Yose Osorio Soares, the former governor of Timor Timur province. They were given a three-year sentence. The point of their guilty was that they could prohibit their people or staffs not to do crimes against humanity. It did not happen to Tono Suratman, Brigadier General of National Army the former commander of Military Resort of Timor Timur. In his case, the court decision was letting him free because it was not proof that he had committed crime against humanity.

Finally, and Significance of the Study

This study aimed to give contributions to the academicians and the society described as follows:

- Theoretically, the results of the study were expected to give contributions to the knowledge development of law studies in Indonesia especially to the international law and the international criminal system studies, to understand the roles of the international court institution, and socialize the exercises of the International Criminal Law.

⁴ Hikmahanto Juwana, (2002), Beberapa Masalah Hukum Internasional dari Dugaan Pelanggaran Hak Asasi Manusia di Timor-Timur, in Bunga Rampai Hukum Ekonomi dan Hukum Internasional, Jakarta: Lentera Hati.

⁵ Sumaryo Suryokusumo, Pembentukan Pengadilan HAM Ad-Hoc Dalam Perspektif Hukum Internasional dan Hukum Nasional, paper presented in Human Rights Training for the prospective Ad-Hoc judges held by Ministry of Justice and Human Rights of the Republic of Indonesia, Jakarta, 16-21 December 2002

- Practically, this study aimed to give contribution to the enforcement of human rights jurisdiction faced by Indonesia to judge the perpetrators of the international crimes based on the jurisdiction of the international criminal court.

References

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