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The Rome Statute Impact: Challenge of Upholding Human Rights in Indonesia's Human Rights Court

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Abstract

This article examines the effect of enforcing gross human rights violations and the implications of Indonesia as a state that did not ratify the Rome Statute. This study is done by studying the legal basis of human rights courts in Indonesia. A doctrinal approach is used. The main legal materials used are the Human Right Court Law (2000) and human rights court decisions. The research findings indicate that the process of enforcing gross human rights violations requires integration between National Human Rights Commission as an investigator and the Attorney General's Office as an investigator. The substance of enforcing gross human rights violations is a formality because Indonesia, as a sovereign state, has the right to determine the model of enforcing gross human rights. However, in fact, there are still many gross human rights violations that cannot be resolved due to differences in perceptions of sufficient preliminary evidence. For this reason, reformulation of the Human Right Court Law (2000) is needed.

Keywords: ICC; Law Enforcement; Criminal Justice System; Human Rights; Non-Ratified

Introduction

The right to life is a fundamental human right that cannot be taken away by anyone. Respect for human life is an axiom of human rights thinking. The right to life is only to be recognized, not to be created, by post-Second World War instruments, including the European Convention on Human Rights. Likewise, according to Islamic legal sources, the right to life is one of the ten basic and fundamental human rights (Berween, 2022). The right to life means, above all, that murder is unlawful and must not go unpunished (Opsahl, 1993). This right is recognized globally, including in Indonesia, where it is protected by Article 28 of the 1945 Constitution. The state is responsible for protecting its citizens from all dangers. However, there have been instances where government agencies have taken lives, such as the Tanjung Priok, Wamena, Abepura, Wasior, and Panai cases. The international community has taken steps to prevent such crimes in response to widespread human rights violations. Various court models have been employed in states experiencing conflict, and those who violate human rights are punished. International policies and agreements established the permanent International Criminal Court (ICC), in The Hague, Netherlands.

The ICC is an intergovernmental court with the authority to prosecute individuals for international crimes. The Rome Statute was adopted at a diplomatic conference in Rome on July 17, 1998, and implemented on July 1, 2002. However, the jurisdiction is limited, and it can only act in cases involving citizens of member states or those referred by the United Nations Security Council. The Rome Statute, which became effective in 2002 after being ratified by 60 states, was adopted by 120 states on July 17, 1998. The Statute defines four international crimes, namely genocide, crimes against humanity, war crimes, and aggression. Furthermore, it categorizes nations into non-compliant members, non-ratified signatories, withdrawn signatories, and non-members and non-signatories, which has received both support and criticism and raises challenges for sovereign nations (Wind, 2009).

The North Atlantic Treaty Organization (NATO) members, such as the United Kingdom, France, Canada, and Italy, support the International Criminal Court because it helps prevent human rights breaches (Sefriani, 2007). However, African nations such as South Africa, Burundi, and Gambia withdrew from the ICC in 2016 (Ssenyonjo, 2018). The Philippines joined in 2011 and surrendered jurisdiction over human rights crimes committed within the country but later withdrew in 2018 (Yogaswara, 2021).

International courts are fundamentally ineffective because there are no plausible reasons why a state would prioritize compliance with international law. This means that states will not comply with international legal standards and will not follow international law if it is not in their best interests (Grimmel, 2015).The ICC is perceived as a court that prioritizes justice for victims' families and minimizes the chances of state interference in crimes. One of the unique characteristics of the ICC is its recognition of victims' rights through victim participation and reparations. *Victims*' rights are partly inspired by the 1985 UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power. The difference is that the ICC deals with mass casualties such as genocide (Wemmers, 2011). Since Indonesia is neither a member nor signatory of the Rome Statute, it cannot bring human rights violations to the ICC for prosecution. Despite having laws such as the Human Right Court Law (2000) in place to address severe violations, many cases remain unresolved. There are 12 high-profile cases of suspected human rights abuses, including the 1965-1966 events, the 1989 Talangsari, the 1997-1998 forced disappearances, the 1998-1999 riots, the 2003 Jambo Keupok, and the 2014 Paniai. The number of human rights violation cases investigated by National Human Rights Commission but not being followed up on by the Attorney General is arguably due to an ambiguous pattern of relations

between the two institutions in dealing with cases of gross human rights violations (Patra, 2018).

The National Commission on Human Rights has conducted investigations, but the Attorney General's Office still needs to take action due to missing evidence. Human rights cases that the Supreme Court has not followed up on include the 1965/1966 tragedy, the 1982-1985 mysterious gunshot (Petrus), the 1997-1998 enforced disappearances of activists, the 1998 Trisakti incident, the 1998 Semanggi I incident, and the 1999 Semanggi II incident. Then, the case of the Talangsari incident in 1989 and the May riots in 1998. This situation has contributed to Indonesia's slow progress in addressing human rights violations (Ibrahim, 2021). The Commission does not have the authority to identify the perpetrators, as its findings are based on suspicions. Some witnesses have provided names through the investigation file, and the government has proposed a non-judicial approach through the Truth and Reconciliation Commission (Junaedi, 2018; Marzuki & Ali, 2023).

The absence of complete evidence has prevented coordination between the National Commission on Human Rights and the Attorney General's Office, leading to a back-and-forth exchange of files for 13 years without a clear settlement. Article 20, paragraph 3 of the Human Rights Court Law (2000) states that the law promotes equal rights and is non-discriminatory to all. Since individuals or organizations with power can commit severe human rights violations, the Attorney General's Office and the National Commission must work together to identify the perpetrators. The establishment of a court for severe violations was first proposed in Parliament according to Article 43, paragraph 2, and is ad-hoc and politically-interventional.

The existence and implications of the ICC remain a relevant and unresolved issue, particularly regarding conflicting interests in establishing a national justice system for prosecuting crimes against humanity, such as in East Timor, Sierra Leone, Cambodia and Sri Lanka, which have tended to use hybrid courts (Cohen, 2007). The hybrid court model is also prospective for non-ratifying countries of the Rome Statute (Rohman, 2023; Nouwen, 2006). The research on the effectiveness of the Rome Statute, the formation and implementation of ICC, and the orientation of states are crucial. This research is also focused on the constantly evolving issues of crimes against humanity and their impact on national law (Rastan, 2008). In a recent study by Balta, the justice systems were compared regarding their ability to provide reparations for victims (Balta et al., 2021). The ICC provides extensive victim's rights through International Criminal Law, unlike the ECCC, which focuses more on national reconciliation. However, the implementation of

reparations has been slow due to its rigidity. It is important to consider the needs and goals of the victims, who can be classified as victims of specific actions, losses, and conditions, to carry out reparations effectively (Hearty, 2018). Eldekin analyzed the effectiveness of the ICC and International Criminal Law (ICL) in handling crimes against humanity (Elderkin, 2015).

The ICL is still relevant for protecting victims' rights, as the ICC cannot operate without domestic coordination. It has the potential to provide quasi-constitutional protection through criminal sanctions and has universal jurisdiction to enforce crimes against humanity. However, some argue that ICC Article 7 (1) should be interpreted based on purpose, with the term "humanity" referring to civilians (Ambos, 2020). According to Khan, the characteristics of the ICC are considered the main international criminal justice system. Despite this, its universal impact is diminished due to poor management and a perceived focus on African states, resulting in accusations of partiality. The ICC lacks an enforcement agency and relies on cooperation from party states, which has been limited in the past. This situation has hindered the court's power and ability to dispense justice. In 2012, only 5 out of 18 arrest warrants were executed by party states, indicating a lack of cooperation (Khan & Marwat, 2016).

Research that has been conducted includes: first, Zunnuraeni, assessing from a political point of view the law of Human Rights Protection in the Human Right Court Law (2000), namely as a spirit to provide guarantees of justice for victims and families of victims of gross human rights violations through an ad hoc court (Zunnuraeni, 2013). Second, Alexandra Huneeus analyses alternative forms of international judicial intervention in mass atrocity prosecutions; namely, this form of jurisdiction is inexpensive, and the prosecution is closer. However, quasi-criminal judicial review is a form that should be considered as an alternative and complement to existing accountability mechanisms (Huneeus, 2013). Third, the results of Salla's research, Indonesia's non-ratification of the Rome Statute, represent the reluctance of domestic decision-makers to join the ICC. Due to the desire to protect the country's sovereignty from external intervention. Indonesia seems rather indifferent to what the West thinks of its actions, not least because of its main reference group at the UN after ASEAN (Huikuri, 2016).

The three studies have not examined the issue of the impact of the Rome Statute and the ICC for non-ratifying states in the enforcement of gross human rights that correlate with the criminal justice system for the enforcement of gross human rights. For this reason, this study contributes: first, it examines and analyzes the model of enforcing human rights abuses for non-ratifying governments of the Rome Statute. Second, examine the model of enforcing human

rights infractions to ensure legal certainty for all parties. For this reason, this research contributes to the academic repertoire, especially the development of International Criminal Law.

Problems

This research focuses on, First, how the ICC affects the enforcement of gross human rights violations in Indonesia? And Second, how the model of enforcement of gross human rights violations in Indonesia is oriented towards legal certainty?

Methods

The problem formulation is addressed using a logical research approach with an ideological perspective (Hoecke & Ost, 2010). The main legal sources consulted were the Rome Statute of the International Criminal Court and the Human Right Court Law (2000),. The research also utilized legal materials in the form of Human Rights Court Decisions obtained from the Directory of Indonesia Supreme Court Decisions. To enrich and strengthen the analysis, this research also uses theories from books and reputable journals to enrich the depth of analysis. The first step consisted of a literature review to assess the findings of previous scholars in similar research and establish a basic understanding of the differences. This stage is essential to complement previous research (Snyder, 2019). The second step is to analyze the primary legal materials to assess the basis for severe human rights enforcement qualitatively (King et al., 2021). This step identifies the issues of the existence of the human rights criminal justice system, starting from the history of the enforcement of the human rights and the existence of the ICC. From several models of human rights criminal justice system, this research then analyzes specifically the process of implementing human rights courts in Indonesia. The final step is to draw conclusions and summarize findings from analyzing legal issues, legal materials, and conceptual theories (Muhdar, 2019).

Discussion

1. The influence of the ICC on the enforcement of severe human rights violations in Indonesia

The concept of universal human rights presents a significant challenge to state sovereignty and states' ability to act according to their interests within their borders (Eldridge, 2013). A tension between realism and idealism frequently characterizes the debate regarding human rights in international relations. Eldridge noted that the world community is comprised solely of states. In light of this challenge, ad hoc international criminal courts have been established to address human rights violations. The International Military Tribunal (IMT), the

International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR) are examples of such courts. The IMT was established through the London Agreement of 1945, which was signed by the US, UK, Soviet Union, and France, while the ICTY was established in 1993 to prosecute war crimes committed during the Yugoslav conflict, and the United Nations Security Council created the ICTR in 1994 response to the Rwandan tragedy (Shraga & Zacklin, 1994; Piliouras, 2002). There is growing support for creating a permanent international criminal court based on these experiences (Raimondo, 2008).

However, many states have expressed concern regarding the role of the ICC in addressing serious human rights cases, given the differences between the constitutional framework of national judiciaries and other quasi-judicial bodies. Some countries, such as Spain, have determined that ratifying the Rome Statute does not conflict with their constitution (Sekulow & Ash, 2020). Several provisions remain disputed, including complementary jurisdiction (Article 1) (Nnawulezi, 2023). Domestic procedures (Article 8); Domestic criminal procedures are more efficient but have their own pathologies. The coherence and professionalism make it efficient at handling large volumes of cases (Bibas, 2010).

The jurisdiction of the ICC is considered a last resort. It is limited by the principles of universal jurisdiction, which requires a state to bring criminal proceedings regardless of the location or nationality of the perpetrator or victim, and complementary jurisdiction, which ensures that perpetrators of crimes cannot escape punishment through the existence of national and international justice systems (Manley, 2016; El Zeidy, 2002). According to customary law, national legal means are given priority in enforcing serious human rights crimes(Noorloos, 2021). The ICC may only exercise its jurisdiction in cases where the state cannot or unwillingly prosecute such crimes, as stipulated in Article 17 of the Rome Statute (Triyana, 2008).

The principle of compliance gives states the freedom and opportunity to address human rights violations within their borders (Nsereko, 2013). There are three ways to enforce human rights norms, including national legal means, hybrid models, and the International Criminal Court. The use of this court model is based on the development and principle of aut dedere aut judicare (Plachta, 1999). Maxim aut dedere aut judicare means that the state where the criminal is found should either extradite or prosecute him (Bassiouni, 2023).

Indonesia, where gross human rights violations have been reported, prioritizes independent resolution through its political configuration of laws. However, it also relies on international support and pressure. As a sovereign state,

Indonesia has the authority and choice to address violations based on its capabilities (Martin, 2019). The state holds primary responsibility for exercising criminal jurisdiction and long-term accountability (Huneeus, 2013). They are required to investigate and prosecute human rights violations and international humanitarian and criminal laws in line with their sovereignty responsibilities (Roht-Arriaza, 1990). Opinions on domestic justice may vary, and jurisdiction can cover many offenses and offenders, including low- and middle-level perpetrators and bystanders. States have different types of jurisdiction, such as prescriptive, adjudicative, and enforcement power, resulting in domestic selectivity in the jurisdiction of crimes and affecting the prosecutor's discretion (van Sliedregt, 2021).

On the other hand, the ICC's strict legal construction principle causes limitations in interpretation even though this principle comes last in contrast to domestic jurisdictions (Davidson, 2017). While the Rome Statute clearly outlines the obligations of states parties, the ICC is limited to enforcement. The ICC thus requires political will from state parties. Some cases include the African Union (AU) asking its members not to cooperate with the ICC in the arrest of Sudan's former president. However, this decision is contrary to the member's obligation to comply with the rules of the Rome Statute. The AU's decision not to cooperate with the ICC can be said to be for political reasons (Shamsi, 2016).

Domestic courts are free to apply their norms while following universally accepted standards and limitations on discretion. States should also have laws allowing territorial and extraterritorial jurisdiction over international and national crimes. Domestic systems may have statutory limitations, such as time limits for prosecution, which can lead to impunity for serious crimes. National legal systems should be carefully designed or interpreted to selectively apply to severe human rights violations (Cryer et al., 2019).

The priority is to use national legal means in line with state sovereignty, defined by Jean Bodin as an absolute and eternal power (Philpott, 1995). Sovereignty is considered pre-legal and represents a monolithic entity, although some view it as a decision made in extraordinary situations (Howland & White, 2009; Cryer, 2005; Heinze, 2010). Sovereignty is established when an entity has authority over a defined territory. The relationship between sovereignty and humanity is dynamic and influenced by historical, geopolitical, conceptual, and behavioural factors (Barkin & Cronin, 1994). Despite the existence of the International Criminal Court, some states, including Indonesia, still employ humanitarian actors to reinforce their sovereignty. However, it is tragic when a state struggles to gain legitimacy through the humanitarian community. Despite

international pressure to prosecute severe human rights violators, Indonesia often relies on its national legal channels. The state has ratified the 1949 Geneva Convention and the Convention for the Prevention and Punishment of the Crime of Genocide, which are reflected in Indonesian legal products related to human rights court jurisdiction.

2. The model for enforcing severe human rights violations in Indonesia is oriented toward legal certainty

Human rights include three main elements for human existence as a social being; human integrity, freedom, and equality. These three elements were conceptualized into human rights notions and understandings. As a sovereign state, Indonesia guarantees the rights of its citizens to obtain justice, including severe human rights violations. This reflection implies that the rule of law is an absolute element in achieving legal certainty (Sulistiyono & Isharyanto, 2018).

The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child are all treaties to which Indonesia not just a signatory, but also state party to those conventions. As a result, the Indonesian government has obligations to comply with the provisions of these treaties, and the government should ensure that its policies and regulations do not contradict or violate the treaties.

Despite Indonesia's ratification of key human rights instruments, human rights violations are common, and accountability and the rule of law are weak. The criminal justice system has yet to become a solution for those seeking justice, particularly victims of human rights violations and their families (Dewi et al., 2017).

The demand for the prosecution of various gross human rights violations committed in the past has caused this nation to reflect on the tragedies that occurred at the time. One of the demands of victims, their families, and sympathetic parties is that those who have violated human rights in the past be held accountable. During this period of transition, they demanded justice. The demand for justice focuses not only on historical human rights violations but also on similar historical human rights violations. Not only will similar human rights violations occur in the past, but they will also occur in the future (Junaedi, 2018).

Referring to civilization's history of dealing with crimes against humanity, the human rights court model is classified into direct enforcement, indirect enforcement, and the hybrid model (Hiariej, 2009).

Table 1. Model of international crime enforcement

No	Type	Description
1	Direct enforcement system	Enforcement by the International Criminal Court is ad hoc.
2	Indirect enforcement system	Enforcement through the national criminal law of each state where international crimes occur.
3	Hybrid Model	Enforcement through national law and international law

Source: (Gilligan, 2006)

Based on the three criteria for the enforcement model in Table 1, Indonesia adopted the second model, namely an indirect enforcement system for cases of severe human rights violations following the voting in East Timor. After the poll, there was coercion from the UN Security Council through resolution No. 1264 of 1999, which urged the government to take responsibility through an ad hoc human rights court. Therefore, as a reaction to this resolution, several regulations were issued:

a. Decree of the Chairman of the National Human Rights Commission No.770/TUA/IX/99 and No.797/TUA/X99 concerning establishing a commission for human rights violations in East Timor;

b. the Human Right Court Lieu of Law (1999) was repealed and replaced by the Human Right Court Law (2000);

c. Presidential Decree Number 6/M/2002 Appointment of Ad Hoc Judges to the Court of Human Rights

The human rights courts in Indonesia are categorized as ad hoc, indicating that they are established indirectly. The Indonesian government enacted the Human Right Court Law (2000), serving as the foundation for these courts, in compliance with Article 104 of the Human Right Law (1999). Nevertheless, the presence of ad hoc judges, selected based on their expertise in decision-making, may raise concerns regarding the impartiality and objectivity of the judges in human rights cases, as their appointments may be influenced by political considerations rather than justice (Sulistiyono & Isharyanto, 2018).

The government of Indonesia passed the Human Right Court Law (2000) to enhance its image in the international community, despite its reluctance to address past serious human rights violations. These laws and regulations are perceived as Indonesia's efforts to prevent international intervention related to crimes against humanity in its domestic affairs.

However, the jurisdiction of the human rights courts remains a subject of crucial debates, including the retroactive nature of trials (Article 43, Paragraph 1),

the absence of an expiration date (Article 46), and the dependence on recommendations from the People's Representative Council (Article 43, Paragraph 2). The retroactive principle in the Human Right Court Law (2000) contradicts the principle of legality. Nonetheless, this deviation stems from the importance placed on justice in human rights cases and is not codified in the same manner as national criminal law (Hiaiej, 2014). Friedman stated that the enforcement of serious human rights should consider three crucial concepts: legal structure, substance, and culture (Lawrence M. Friedman, 1975). This statement highlights the importance of evaluating the legal system based on the interaction between sub-systems and the tangible nature of its operations.

The legal framework for severe human rights abuses in the courts is linked to law enforcement authorities. However, a lack of coordination between investigators and prosecutors undermines the process. Firstly, the Human Right Court Law (2000) does not specify a clear timeline for submitting investigation results, merely mandating that it should be conducted "immediately." Secondly, there is no deadline for initiating an investigation by the prosecutor, despite the Human Right Court Law (2000) setting a time limit for the completion of investigations (90 days with possible extensions of 90 and 60 days, totalling 240 days or 8 months). This absence of a deadline for initiating an investigation creates further uncertainty in resolving human rights crimes, particularly during the investigation stage. Lastly, there are no provisions to resolve differences between investigators and prosecutors, which can impede addressing abuses. The Human Right Court Law (2000) was established to address severe human rights violations in East Timor due to international pressure and support from the UN High Commission on Human Rights. The law represents a significant step in creating a formal system for protecting human rights and reinforces existing human rights protection outlined in the Human Right Law (1999)

The Asian Human Rights Commission supports the statement of the Commission for the Disappearances and Victims of Violence (KontraS), the Indonesian Legal Aid Foundation (YLBHI), Amnesty International Indonesia, and the Families of the Victims of the Paniai case, which highlighted many irregularities in the General Investigation process of the Serious Human Rights Violations of the Paniai case by the Attorney General's Office of the Republic of Indonesia. In addition to the East Timor case, Indonesia has attempted to uphold human rights law in the Abepura, Tanjung Priok, and East Timor cases, all of which continue to raise concerns among victims' families and the general public. In these processes, a lack of coordination between the Attorney General's Office (AGO) and victim families has resulted in weak indictments and prosecutions. This includes failing to hold those in the chain of command accountable for what happened in

Paniai in 2014, not just field actors but also policymakers. We are concerned that the Attorney General's Office will be less effective in this process. Coupled with the fact that only one of 15 cases of gross human rights violations has been elevated to the investigation during President Jokowi's nearly eight years in office, victims' families have reason to be sceptical.

There are many gross human rights violations in Indonesia, but the fact is that almost all cases tried are acquitted by the courts. Although the State has the right and obligation to prosecute perpetrators of gross human rights violations, the Indonesian government's policy is to establish a Human Rights Court. However, the implementation of this instrument is a mere formality. Indonesia needs to ratify the Rome Statute, although as an international instrument, it has many shortcomings, such as selective enforcement. Namely, laws and sanctions are only applied to small countries that are powerless against the international community (Sefriani, 2011). In addition, the basis for implementing the ICC is cooperation, thus making the process of implementing adjudication at the ICC weak and ineffective.

Since the enactment of the Human Right Court Law (2000), Indonesia has tried cases of crimes against humanity three times, namely the East Timor and Tanjung Priok cases settled at the Jakarta Ad Hoc Human Rights Court and the Abepura human rights violation case settled at the Makassar Ad Hoc Court. After the East Timor referendum, Indonesia began to try cases of alleged human rights violations with 18 defendants. Six of these defendants were convicted at first instance, namely Abilio Jose Osario Soares for three years, Lt. Col. Soejarwo for five years, Eurico Barros Gomes Gutarres for ten years, and Major General. Adam Rachmat Danuri, three years; Colonel M. Nur Muis, five years; and Lt. Col. Hulmen Gultom was sentenced to three years. However, the defendants filed an appeal and even a judicial review until acquitted.

The second case was the human rights violations in Tanjung Priok in 1984 and was tried at the Central District Court. The Tanjung Priok tragedy has indeed been brought into the legal process. An ad hoc human rights court took place in Jakarta starting in 2003. In the first instance, it convicted 12 defendants and instructed the State to provide compensation, restitution, and rehabilitation to victims and their families. A model for resolving the Tanjung Priok case using a local wisdom approach, as is characteristic of Indonesia (Dewanto, 2022).

The panel, chaired by Andi Samsan Nganro, sentenced Sutrisno Mascung to three years in prison. Meanwhile, the ten members of Squad III led by Mascung received a lighter sentence, namely two years in prison. The judge's verdict for Mascung et al. was lower than that of the prosecutor, Widodo Supriyadi, who demanded ten years.

According to the panel, the eleven defendants were jointly proven to have committed gross human rights violations by committing murder that resulted in several deaths and injuries. They were proven to have violated Article 7(b) in Article 9 letter a, Article 37 of the Human Right Court Law (2000) in conjunction with Article 55 of the Indonesia Criminal Code. Unfortunately, the verdict was overturned at the cassation level, and the 12 defendants were acquitted.

The third case is human rights violations that occurred in Papua, divided into four cases: the Abepura incident (2000), the Wasior incident (2001), the Wamena incident (2003), and the Paniai incident (2014). The Panel of Judges of the Abepura Human Rights Court started on May 7, 2004, and was held in Makassar. In their verdict, they stated that the Defendants, Johny Wainal Usman and Daud Sihombing, were not legally proven to have committed gross human rights violations in the form of crimes against humanity by way of murder and persecution because they considered that the mass attack carried out at that time was merely mentioned as a reactive action and was carried out according to operational standards. The pursuit at that time was only carried out against people suspected of being involved in the attack on the Abepura Police Sector Headquarters (Mapolsek) on December 7, 2000, including civilian areas.

The most recent human rights court case in Indonesia was the Paniai human rights violations trial held at the Makassar District Court with verdict No. 1/Pid.Sus.HAM/2022/PN Mks. The verdict dealt with command responsibility with the following elements charged:

a. One of the Defendant's actions was murder;

b. Committed as part of a widespread or systematic attack;

c. Which the accused knew was directed against a civilian population; and

d. A military commander or someone effectively acting as a military commander.

However, the panel of judges acquitted the Defendant, although two of the five gave dissenting opinions. The reasoning of the two judges referred to the First Indictment as set out in Article 42 paragraph (1) letters a and b bis, Article 7 letter b, Article 9 letter a, Article 37 of the Human Right Court Law (2000), the elements of which are as follows: 1. Military Commander or someone who effectively acts as a Military Commander; 2—his effective control; 3. Is committing or has just committed gross human rights violations in the form of murder; 4. Did not exercise proper control over the troops; 5. Knew or, based on the circumstances at the time, should have known.

Table 2. Verdicts on Papuan human rights cases

Indictment	charges	Decision
1. Article 42 paragraph (1) letter a and letter b bis Article 7 letter b, Article 9 letter an Article 37 of the Human Right Court Law (2000) 2. Article 42 paragraph (1) letter a and letter b Jis Article 7 letter b, Article 9 letter h, Article 40 of the Human Right Court Law (2000)	Punishment to the Defendant Major Inf. (Ret.) ISAK SATTU, therefore, with imprisoned for 10 (ten) years	1. Stating that Defendant Major Inf. (Ret.) ISAK SATTU has not been proven legally and convincingly guilty of committing gross human rights violations as charged in the First and Second indictments. 2. Acquit the Defendant, therefore, from all charges of the Public Prosecutor; 3. Restore the rights of the Defendant in his/her capacity, position, dignity, and respect;

Source: (*Decision of the Makassar District Court Number 1/Pid.Sus-HAM/2022/PN Mks*, 2022)

Although the Human Right Court Law (2000) in Indonesia is 20 years old until now, it has been applied massively and only as a complement to legal norms. According to the author, there are many obstacles in realizing justice for victims and families of victims because the massiveness of human rights courts in Indonesia can be said to be ineffective. Many cases of human rights violations occurred after the establishment of the Human Rights Court. However, the fact is that the investigation files carried out by the Attorney General's Office can only be submitted to the Human Rights Court for an apparent reason. The Attorney General's Office has taken refuge in Article 46 of the Human Right Court Law (2000) regarding the principle of non-expiration. A recommendation from the House of Representatives (DPR) is required to initiate an investigation into alleged human rights violations (Morris, 2000).

On this basis, there are different interpretations of the continuity of the investigation process. First, according to the Attorney General, the first step is establishing a human rights court. According to Komnas HAM, the first step is to investigate alleged human rights violations and then ask the DPR for a recommendation and presidential decree. The Human Right Court Law (2000), instead of being a mechanism for resolving cases of gross human rights violations, accommodates the political interests of the State to avoid accountability for cases of gross human rights violations through the Human Rights Court, or in other words, accommodates impunity. This is due to various legal loopholes that lead to protracted delays in the legal process of cases of gross human rights violations, namely the ambiguity of provisions regarding the definition and purpose of the

investigation, the absence of a time limit for investigators to determine whether Komnas HAM's investigation file can be continued to the investigation stage or still needs to be completed, to the absence of arrangements regarding the mechanism for resolving disagreements between Komnas HAM and the Attorney General as an investigator. Komnas HAM's authority as an investigator is also minimal, namely investigation and without the authority to make forced efforts in the form of forced summons, arrest, and detention. One of the characteristics of gross human rights violations is the involvement of state actors, so the resolution process must be carried out by independent institutions as much as possible.

The advantage of ratifying the Rome Statute for Indonesia is that it facilitates investigation and prosecution even though it can still use national legal instruments under Article 86 of the Statute. First, ratifying the Rome Statute has no impact on Indonesia's jurisdiction to continue to be able to prosecute perpetrators of gross human rights violators because the ICC is a delegation from a country that is considered unable and unwilling to prosecute even as the last option. Delegating universal jurisdiction to international courts can be an innovation outside the usual meaning of universal jurisdiction, so the legal status of jurisdiction based on the delegation must still be determined.

Second, disclosure in the investigation becomes clear even though the data is sensitive, at least to ensure that justice for victims and families can be realized. Third, it strengthens the mechanism of severe human rights enforcement in Indonesia because the Human Right Court Law (2000) only regulates two forms of crimes: genocide and crimes against humanity. However, despite its establishment, the court faces several weaknesses in enforcement (Hadiprayitno, 2010; Junaedi, 2014). The court's competence is limited by the civil-military judicial dichotomy, where the competency is based on the perpetrator's identity rather than the type of crime committed. The competence of military courts is effective in enforcing violations of military discipline. Still, the lack of impartiality, independence, and due process-oriented principles weakens the overall implementation of the court. This condition is further evidenced by the prevalence of impunity for perpetrators, as shown by several cases tried by the Human Rights Court (Kotecha, 2020).

Additionally, the jurisdiction of the court is limited to only covering genocide and crimes against humanity, lacking coverage of war crimes and violations of the Geneva Convention 1949, which can occur in internal armed conflicts. This limitation has been criticized and suggested that war crimes should also be included within the jurisdiction. Furthermore, the criminal justice system has also been criticized for its inability to provide substantial justice for severe human

rights crimes, often resulting in the acquittal of perpetrators. The process also neglects the rights of victims for compensation and recovery. According to Irene, Indonesia's human rights enforcement model is dialogue-based to uncover human rights violations rather than punish perpetrators. As a result, the Indonesian government's strategy is defensive (Hadiprayitno, 2010).

Conclusion

This study concluded that Indonesia, as a sovereign state, has a strong desire to protect human rights. The state takes decisive action to address gross violations and aligns its efforts with the principles set out by the Rome Statute by implementing the Human Right Law (1999) and the Human Right Court Law (2000). However, the emphasis on procedural aspects in establishing human rights courts has led to a lack of accountability for gross violations, contrary to the basic principles of justice and civilization. To address this, substantial changes in the law's substance, structure and culture are required. Substantive expansion refers to the ICC's jurisdiction over human rights crimes. This expansion is useful in harmonizing the types of gross human rights crimes that exist in Indonesia. The Human Right Court Law (2000)has been in force for two decades, but the reality is that the enforcement of gross human rights violations in Indonesia is still problematic. In fact, several cases indicating gross human rights violations have been stalled. They cannot be followed up on due to the unclear mechanism of the gross human rights criminal justice system.

This research is limited to cases of gross human rights violations in Indonesia. Therefore, the author recommends further research related to obstacles to the investigation process of gross human rights violations in the Indonesian criminal justice system.

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