

# The Implementation of the 1998 Rome Statute in Indonesia's National Law Through Act Number 26 Year 2000 on Human Rights Courts

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**ABSTRACT--***Severe human rights violations that occurred in Indonesia such as in Aceh, Papua, Jakarta, Poso and East Timor are included in the category of crime against humanity. Indonesia adopted the principles of international law into the national law, which was adjusted to the ideological values of the Indonesian nation, Pancasila, such as adopted the principle of genocide (mass eradication of an ethnic group) contained in article 6 of the 1998 Rome Statute and the principle of crime against humanity contained in article 7 of the 1998 Rome Statute. This means that the Rome Statute is partially enforced in the national law by being adoption in national legal provisions, namely through Act Number 26 Year 2000 on Human Rights Courts. The problem that arises is how the implementation of the 1998 Rome Statute in Indonesia's national law through Act Number 26 Year 2000 on Human Rights Courts. Article 6 of the 1998 Rome Statute concerning Genocide ( mass eradication of an ethnic group ) and article 7 of the 1998 Rome Statute concerning crime against humanity is included in the group of gross human rights violations. Indonesia has an interest in legislating Act Number 26 Year 2000 driven by the will to fulfill the complementary principles adhered to by the 1998 Rome Statute so that in this way Act Number 26 Year 2000 concerning justice in cases of gross violations of human rights has fulfilled minimum standards of international law. The 1998 Rome Statute is an international treaty that must not be reserved at all and that the ratification of the 1998 Rome Statute is fully binding on the state of ratification so that the Indonesian government must be careful in ratifying it, but in the interests of Indonesia several principles and provisions are adopted in the 1998 Rome Statute.*

**Keywords:** *implementation, 1998 Rome Statute, Act Number 26 Year 2000 on Human Rights Courts*

## I. INTRODUCTION

The struggle to uphold human rights is essentially part of the demands of history and culture of the world, including Indonesia. Therefore, between humans and humanity the whole world is one and the same. Diverse cultural differences throughout the world should be seen as a diversity of beautiful flowers in a paradise garden. The Unity in Diversity Creed is a crystallization and recognition of this. With differences and culture, if there is a culture that is contrary to the spirit of human rights, it is necessary to have a dialogue of approaches and a gradual resolution. Continuously

through the will and with that approach can soon be found a good and satisfying solution.

Viewed from the cultural aspect, as well as from history, customs, law, relationships and patterns of life of the Indonesian people in general, there are strong indications that the Indonesian people already have and are familiar with ideas, even values related to human rights. The material of philosophical and ethical values has been formulated in the 1945 Constitution of the Republic of Indonesia both in the Opening of the 1945 Constitution and in the body of the 1945 Constitution. Humanitarian terms are fair, civilized, populist, deliberative, social justice indicates the basic values of human rights. Likewise alenia 1 which states that independence is the right of all nations and occupation must be abolished and the second paragraph which states that independence leads people to independence, unity, justice and prosperity also clearly indicates that Indonesia is a democratic country that upholds human rights with the aim of unity, justice and prosperity. Democratic countries that uphold human rights are realized through the rule of law, as it is clearly formulated that Indonesia is a state of law, not a state of power. Several types of human rights have also been formulated in the 1945 Constitution of the Republic of Indonesia.[1]

The 1945 Constitution of the Republic of Indonesia which regulates human rights not only shows the close relationship between law and human rights, but also shows the substance of the law which also implements human rights in a positive law. This means that the issue of human rights as a constitutional mandate must be implemented, and the law functions to implement the policy. In Muladi's view the law can function as a means to implement national policies that have naturally been agreed upon as inputs for social modification. It is naturally proven that a top-down and bottom-up approach must be carried out and the term modification is a compromise to neutralize the weaknesses of the legal function as a means of social control and as a tool of social engineering. In terms of social modification, harmony, harmony and balance between individual interests, community interests and the interests of the state must always be maintained. Systemically, it must be realized that the

process of development in a cyberemetic manner is a "combined action." [2]

In 1998 the Republic of Indonesia People's Consultative Assembly Decree No. XVII / MPR / 1998 concerning Human Rights, which stated in one of the points of consideration that the Indonesian nation as part of the world community should respect the human rights enshrined in the Universal Declaration of Human Rights of the United Nations - Nations and various other instruments regarding human rights, and furthermore in article 2 of the MPR Decree Number XVII / MPR / 1998 concerning Human Rights, assigns the President of the Republic of Indonesia and the House of Representatives of the Republic of Indonesia to ratify various United Nations instruments on the rights Human Rights, as long as they do not conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia. Human Rights Charter Humans who are an inseparable part of the Republic of Indonesia Decree MPR Number XVII / MPR / 1998 on Human Rights state that the Indonesian people have views on human rights and human obligations, which are sourced from religious teachings, universal moral values, and noble values of the nation's culture, and based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and that the formulation of human rights is basically based on a nation's understanding of the image, dignity, and dignity of man himself. The Indonesian people as members of the United Nations have the responsibility to respect the provisions contained in the Universal Declaration of Human Rights 1948. The Indonesian people view that human life is inseparable from God, fellow human beings, and the environment. The Indonesian people are essentially aware of, recognize, and guarantee and respect the human rights of others as well as an obligation. Therefore human rights and human obligations are integrated and inherent in human beings as individuals, family members, community members, members of a nation and citizens and members of the community of nations.

Act of the Republic of Indonesia Number 39 Year 1999 on Human Rights has been issued in 1999 which in one of the items mandates that the Indonesian nation as a member of the United Nations carry moral and legal responsibility to uphold and implement the Universal Declaration on Human Rights established by the United Nations, and various other international instruments on human rights that have been accepted by the Republic of Indonesia.

The Republic of Indonesia Act Number 26 Year 2000 on Human Rights Courts to resolve serious human rights violations in accordance with the provisions of Article 104 Paragraph (1) of Act Number 39 Year 1999 on Human Rights.

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The Republic of Indonesia Act Number 26 Year 2000 was issued in 2000 on Human Rights Courts to resolve serious human rights violations in accordance with the provisions of Article 104 Paragraph (1) of Act Number 39 Year 1999 on Human Rights.

As a constitutional state, Indonesia must have at least three (3) following main characteristics:

1. Recognition and protection of human rights that contain equality in the political, social, economic, legal, cultural and so on.
2. Free and impartial justice and not influenced by any other power.
3. Uphold the principle of legality. [3]

In the case of positive law in Indonesia, positive law harmonizes the law of various international agreements with the country's fundamental values. Harmonization of the law is a condition that must be met in the renewal of national law. There are several prerequisites for national law reform which must always be used as guidelines for legal policy makers in Indonesia. First, that national law must refer to the national ideology, Pancasila. Second, national law must reflect the human condition, in and Indonesian tradition. Third, national law must adapt international trends that are recognized by the international community, so that national law is no longer chauvinist. [4]

The political and legal realities that occurred in Indonesia in more than fifty years showed far from ideal, especially those related to human rights issues and in the era of the New Order regime which tended to be authoritarian. In the last decade, a number of grave human rights violations that have occurred in Indonesia have become increasingly prominent and widely discussed by many groups on various occasions, both domestically and internationally. This shows that gross violations of human rights are no longer solely national issues that can be settled on the grounds of national stability, but have become an international problem, where serious violators of human rights can be hunted down and ensnared with the law a country passes a court [5] if there is a complaint and strong evidence that a certain individual has committed a gross human rights violation.

Various serious human rights violations that occurred in several regions of Indonesia such as Aceh, Papua (Abepura case in 2000), Jakarta (Tanjung Priok, Semanggi I November 1998 and Semanggi II September 1999), Poso and East Timor (before independence from Indonesia and events 1999), became a big concern for the international world. The form of gross human rights violations that occurred in Indonesian territory is included in the category of crimes against humanity or known as crimes against humanity [6] as the development of international law [6]. The handling of various gross human rights violations which some have entered the judicial process (East Timor in 1999 and Tanjung Priok in 1984) is far from a sense of justice, some perpetrators

who have various potential to commit violations actually get vonnis who frees them from various charges of committing crimes towards humanity.[7]

This effort to protect human rights from gross violations of human rights is an implementation of the development of international law to combat crimes against humanity. At first the concept of crime against humanity was developed in the context of the law of war which was based on the 1907 Hague Convention (Hague Convention).[8] The convention among others states that humanitarian law is the basis for the protection of warring parties (combatants) and civilians in an armed dispute. Based on that, then later in the year 1915 a massacre of Turkish citizens of Armenian descent who invited humanitarian intervention from Britain, France and Russia, the event was classified as a crime against humanity and civilization (crimes against humanity and civilization). It has since been recognized by the international community that the state must be held responsible for crimes against humanity committed against its citizens. After World War II, the International Military Court in Nuremberg separated war crimes from crimes against humanity. Article 6 of the London Charter defines war crimes as violations of the laws and customs of war which include among others murder, cruel treatment, or forced deportation to be made into slaves, committed against civilians. Crimes against humanity include killing, extermination, slavery, deportation, and other inhumane acts committed against civilians, both those committed before or during the war, and include torture of civilians based on political, racial, and political reasons religion. In the 1990s a tragic event occurred in the former Yugoslavia which killed thousands of people, displaced more than 2.2 million people, and killed more than 200 personnel of UN agencies, including members of the UN Peacekeeping Force. This event then invited the UN Security Council to form the International Criminal Court for the Former Yugoslav State (the International Criminal Tribunals for the Former Yugoslavia / ICTY) in 1993. A year later, inter-ethnic conflict in Rwanda took a short time to take the lives of around 800,000 people and resulted in the displacement of around 2 million people, again invited the Security Council to establish the International Criminal Tribunal for Rwanda (the International Criminal Tribunals for Rwanda / ICTR). Both international and international hoc criminal courts include crimes against humanity as a form of crime that falls within the jurisdiction of both courts, in addition to genocide and war crimes based on the Geneva Conventions of 1949 and war laws and customs. In carrying out the mandate given by the international community, the two international courts (ICTY and ICTR) use the Nuremberg principles, particularly in terms of holding individual actors accountable. The decisions of the Nuremberg (and also Tokyo) Court did not clearly explain the concept of individual criminal responsibility. Its decisions do not specify the extent to which individuals must account for crimes committed collectively, systematically, and bureaucratically at the highest levels of government, so that they are deemed not to have fulfilled a

universal sense of justice. The development of international law to combat crimes against humanity reached its peak when on July 17, 1998, the UN Diplomatic Conference adopted the Rome Statute on the establishment of the International Criminal Court (Rome Statute on the Establishment of the International Criminal Court / ICC), which will prosecute very serious crimes and the attention of the international community, namely genocide, crimes against humanity and war crimes. The inclusion of crimes against humanity in the Statute which is a multilateral agreement, reinforces the concept as a treaty norm (norms based on an international treaty). From the provisions in the Statute it can be seen that crimes against humanity not only occurred during wars or armed conflicts but also during peace time. While the party responsible for the crime is not limited to the state, but also includes parties who are not state.

From the description above, the problems that can be analyzed are as follows:

How was the application of The 1998 Rome Statute in Indonesia's national law through Act Number 26 Year 2000 on Human Rights Courts?

## II. RESEARCH METHOD

This study uses a normative juridical approach that fully uses secondary data. Normative legal research is carried out by studying or analyzing secondary data in the form of secondary legal materials by understanding the law as a rule or norm which is a benchmark for human behavior that is deemed appropriate. Research with this normative juridical method basically emphasizes the deductive method as a general grip, and the inductive method as a supporting work procedure.

## III. RESEARCH RESULTS AND DISCUSSION

- A. *Entry into force of the 1998 Rome Statute through the Adoption of Articles 6 and 7 concerning Genocide and Crimes Against Humanity in Act Number 26 Year 2000 on Human Rights Courts.*

The relations of the Indonesian people with other nations, as members of the international community are not limited to relations in the economic, political and technological fields, but also include the relationship between national law and international law. Access to international law in the country, in the national interest, varies[1]. The diversity is tried to be resolved through several theories.

*First*, the theory of transformation, which emphasizes aspects of change and adaptation (both form and content) of international law to the legal conditions of a nation's municipal law. In this way, new international law can be effective and effective in a country. *Second*, delegation theory, emphasizes the right of each national country to accept the existence and entry into force of international law

in their country. The national state is given a delegation / authority to accept and reject it. The transfer of authority is the right of every country. *Third*, the harmonization theory, emphasizing aspects of balance / harmony between international law and national / municipal law of a country. Through a harmonious approach, the "position / authority" of international law and national law is maintained. *Fourth*, the incorporation theory developed by Blackstone, emphasizes that international law or international customs can only be part of municipal law if it has been decided and accepted by the highest court of a country. *Fifth*, the authors add the theory of filtering, a theory / approach that still recognizes the existence of international law, but in its application to the national state adapted to the general interests of national states.

In addition, the State can also adopt the principles of international law into national law, which are adjusted to the ideological values of the Indonesian nation, Pancasila, as explained by Muladi [9] as follows:

"Adoption of positive things that occur in the international environment is not done immediately, but it is always adapted to values that are based on the ideology of the nation, namely Pancasila."

In terms of national and international interests, in accordance with the development of the law, to resolve the problem of gross human rights violations and restore security and peace in Indonesia, a Human Rights Court should be established which is a special court for gross violations of human rights and to be enacted Act Number 26 Year 2000 on Human Rights Courts. In the elucidation of Act Number 26 Year 2000 it is stated that gross violations of human rights are "extra ordinary crimes" which have wide-ranging impacts both at national and international levels and are not criminal acts regulated in the Criminal Code and cause material and immaterial damages which result in feelings not safe both for individuals and the community.

Article 7 of Act Number 26 Year 2000 on Human Rights Court states that gross violations of human rights include crimes of genocide and crimes against humanity. The two types of crimes mentioned above were adopted from Article 6 and Article 7 of the 1998 Rome Statute. This means that the Rome Statute was partially enforced in national law by being adopted in national legal provisions, namely through Act Number 26 Year 2000 on the Human Rights Courts.

As stated in the previous article, an international agreement can be adopted by national law and become part of national law and be enforced in the country which must therefore be enforced. Likewise, Article 6 of the 1998 Rome Statute concerning Genocide and Article 7 concerning Crimes Against Humanity adopted in Articles 8 and 9 of Act Number 26 Year 2000 on Human Rights Courts, which is confirmed in Article 7 that both types of crimes are listed in article 8 (crimes of genocide) and article 9 (crimes against humanity) are included in the group of gross human rights violations.

Article 8 of Act Number 26 Year 2000 on Human Rights Courts: The crime of genocide as referred to in Article 7 letter a is any act committed with the intent to destroy or destroy all or part of a nation, race, ethnic group, religious group, by:

- a. kill group members;
- b. causing severe physical or mental suffering to group members;
- c. creating group living conditions that will result in physical destruction in whole or in part;
- d. impose actions aimed at preventing birth in groups; or
- e. forcibly transferring children from one group to another

Article 9 of Act Number 26 Year 2000 on Human Rights Courts:

The crime against humanity as referred to in Article 7 letter b is one of the acts carried out as part of a widespread or systematic attack which he knows is that the attack was directed directly against the civilian population, in the form of:

- a. murder;
- b. annihilation;
- c. slavery;
- d. forced eviction or resettlement of residents;
- e. arbitrary deprivation of liberty or other physical freedom that violates the basic principles of international law;
- f. torture;
- g. rape, sexual slavery, forced prostitution, forced pregnancy, infertility or forced sterilization or other forms of equal sexual violence;
- h. the persecution of a certain group or association based on equality of political understanding, race, nationality, ethnicity, culture, religion, gender, or other reasons that have been universally recognized as prohibited under international law;
- i. enforced disappearance; or
- j. apartheid crime.

Act Number 26 Year 2000 does not adopt all types of human rights violations contained in the 1998 Rome Statute, due to several considerations, namely [6]:

- 1) Two other types of violations of human rights (war crimes and aggression) are still being debated by the UN member states and Indonesia has not yet determined its stance on both.
- 2) The 1998 Rome Statute was adopted at the Diplomatic Conference in Rome but Indonesia has not ratified the 1998 Rome Statute so that there is no obligation of the Indonesian government to fulfill all the provisions in the Rome Statute. If Act Number 26 Year 2000 adopts some of the provisions in the Rome Statute it is against the interests of Indonesia as a sovereign state.
- 3) The government's interest in enacting Act Number 26 Year 2000 is driven by the desire to fulfill the

complementarity principles (complementarity principles) adhered to by the 1998 Rome Statute so that in this way Act Number 26 Year 2000 regarding justice for cases of gross violations of human rights has fulfilled minimum standards of international law.B

- 4) Because the 1998 Rome Statute is an international agreement that must not be reserved at all, the ratification of the Rome Statute is fully binding on the state of ratification so that the Indonesian government must be careful to ratify it. For the benefit of Indonesia, the government policy which has adopted several principles and provisions in the Rome Statute is a policy that is considered appropriate for now and does not endanger the sovereignty of the Republic of Indonesia.

#### IV. CONCLUSION

From the whole description in the previous chapter, the writer can draw the following conclusions:

Indonesia as a democratic country based on law, accommodates the needs of the community for the protection of human rights since the inception of the Unitary Republic of Indonesia through the Constitution of the 1945 Constitution of the Republic of Indonesia, and continues to make improvements in accordance with the development of international law. Making MPR Decree Number XVII / MPR / 1998 concerning Human Rights in which there is a Charter of Human Rights, the issuance of Act of the Republic of Indonesia Number 39 Year 1999 concerning Human Rights which mandates the Indonesian nation as a member of the United Nations to assume responsibility morals and law to uphold and implement the Universal Declaration on Human Rights, and the issuance of the Act of the Republic of Indonesia Number 26 Year 2000 on Human Rights Courts, becomes a legal effort to achieve the highest respect and respect for human rights. As a member of the international community, Indonesia needs to establish cooperation and international relations, which are not limited to relations in the economic, political and technological fields, but also includes relations in the legal field. Indonesia can adopt international treaties that are needed for the life process of the nation and the state into national law, particularly in connection with this paper international agreements relating to human rights, but the adoption is still being adjusted to the ideological values of the Indonesian people, namely Pancasila. In this connection, Indonesia has adopted Article 6 and Article 7 of the 1998 Rome Statute concerning genocida crimes and crimes against humanity in Act Number 26 Year 2000 concerning Human Rights Courts, as a type of crime that falls within the jurisdiction of the Human Rights Court , although in its implementation there are still decisions of the ad hoc Human Rights Court that are still far from expectations, such as the decision on the 1999 East Timor case and the Tanjung Priok case in 1984.

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