

# The Role of International Criminal Court in Prosecuting Crimes against Humanity

Hudjolly

Universitas Negeri Sultan Ageng Tirtayasa

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## ABSTRACT

Crimes against humanity are grave offenses that shock the conscience of humanity, and demand a strong international response. The International Criminal Court (ICC), established in 2002, plays an important role in prosecuting individuals responsible for such heinous crimes, including genocide, war crimes, and crimes against humanity. This research explores the role of the ICC in prosecuting crimes against humanity in Indonesia, a country with a complex history of human rights violations. Through a qualitative research design, including case studies, legal analysis, and content analysis, it assesses the effectiveness of the ICC's interventions, analyzes the international legal framework guiding its actions, explores the challenges faced, and evaluates Indonesia's cooperation with the court. The findings show a mixed record of effectiveness, with challenges in evidence collection, witness protection, and limited cooperation hampering some cases. Despite these obstacles, the ICC's involvement has shed light on past atrocities and provided an opportunity for victims to seek justice. The study concludes with recommendations to improve the effectiveness of the ICC in addressing crimes against humanity in Indonesia and underscores the importance of continued efforts to promote accountability and justice on a global scale.

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## Corresponding Author:

Name: Hudjolly

Institution: Universitas Negeri Sultan Ageng Tirtayasa

e-mail: [djollyhood@yahoo.co.id](mailto:djollyhood@yahoo.co.id)

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## 1. INTRODUCTION

Crimes against humanity are the most egregious human rights violations, shaking the conscience of humanity itself. The scale and gravity of these violations demand an effective international response to hold perpetrators accountable and ensure justice for victims. The establishment of the International Criminal Court (ICC) in 2002 marked an important milestone in the pursuit of international justice, by providing a

specialized institution capable of investigating and prosecuting individuals responsible for serious crimes, including genocide, war crimes and crimes against humanity.

The International Criminal Court (ICC) is responsible for prosecuting crimes against humanity, war crimes, and genocide [1]. Established under the Rome Statute in 2002, the ICC aims to deter human rights abuses and hold perpetrators accountable for their actions [2]. However, the effectiveness of

the ICC in preventing human rights abuses is a topic of debate among scholars and policymakers [1].

The ICC can impose various costs on governments throughout their investigations, decreasing their expected payoffs for engaging in human rights abuses [1]. Leaders from states that have ratified the Rome Statute tend to commit lower levels of human rights abuses than nonratifier leaders [1]. However, the ICC faces challenges in prosecuting certain individuals, such as serving heads of state, due to issues like immunity and lack of cooperation from the home state of the offender [3]. The Rome Statute includes a longer list of gender-based crimes than any previous instrument of international criminal law [4]. The ICC has prosecuted gender-based crimes across all cases for war crimes, crimes against humanity, and genocide up until mid-2018 [4]. However, the ICC has faced criticism for its perceived bias against African leaders and its inability to prosecute Western personnel and their leaders [2].

In conclusion, the International Criminal Court plays a significant role in prosecuting crimes against humanity, war crimes, and genocide. While it has had some success in deterring human rights abuses and prosecuting gender-based crimes, the ICC still faces challenges in effectively prosecuting certain individuals and overcoming perceptions of bias.

This research focuses on the role of the ICC in addressing crimes against humanity in Indonesia, a country with a complex history of human rights violations and a legacy of conflict. The research aims to explore the effectiveness of the ICC's interventions in prosecuting these heinous crimes, the international legal framework that guides its actions, the challenges faced during the investigation and prosecution process, and Indonesia's cooperation and engagement with the ICC in relation to these efforts.

Indonesia, a diverse archipelago with a rich cultural heritage, has experienced periods of upheaval and human rights violations throughout its history. In the second half of the 20th century, the country

faced authoritarian rule, culminating in a period of political upheaval and violence. Numerous cases of crimes against humanity have been documented, including mass killings, enforced disappearances, sexual violence, and other grave violations against the civilian population.

The ICC, as a permanent international criminal court, holds the mandate to investigate and prosecute crimes against humanity when national jurisdictions are unable or unwilling to do so [5], [6]. The court's involvement in addressing crimes against humanity in Indonesia is an important step towards ensuring accountability and ending the cycle of impunity for those responsible for these atrocities.

## 2. LITERATURE REVIEW

### 2.1 *Historical Context of Crimes against Humanity in Indonesia*

Crimes against humanity in Indonesia have a complex historical context, with some of the most notorious cases occurring during the 1965-1966 mass killings and human rights violations. The 1965-1966 mass killings occurred after a failed coup attempt, which was blamed on the Indonesian Communist Party (PKI). These events led to violent anti-communist purges, resulting in the deaths of an estimated 500,000 to 1 million people, most of whom were accused of being communists or communist sympathizers.[7], [8] The violence was orchestrated by the Indonesian military, led by General Suharto, who exploited Cold War narratives to incite anti-communist fervor.[8] Suharto eventually succeeded Sukarno as president. Suharto eventually succeeded Sukarno as president of Indonesia. The mass killings were described as genocide and crimes against humanity [7], [9].

Another well-known case of crimes against humanity in Indonesia is the human rights violations in Aceh. The Helsinki Agreement between the Free Aceh Movement (GAM) and the Government of Indonesia aimed to end the long-standing conflict and inequality in Aceh, and protect its citizens

from human rights violations [10]. However, the implementation of laws and policies in Aceh, such as Qanun, has had an adverse impact on human rights, especially for vulnerable groups and minorities [10]. The negative consequences of Aceh's Qanun include forced conformity and violations of individual rights and freedoms [10]. In addition to these cases, there are several other cases of gross human rights violations in Indonesia, such as the Tanjung Priok case [11]. The resolution of these cases faces many challenges and impasses, and the victims are often deeply traumatized [11]. Efforts to address these crimes against humanity have been hampered by bottlenecks in case handling and the need for more detailed arrangements for victim compensation and rehabilitation [11].

In summary, the historical context of crimes against humanity in Indonesia is characterized by key events such as the 1965-1966 mass killings and human rights violations in Aceh. Complex interactions between local and international factors, including the Cold War, have contributed to the occurrence and perpetuation of these crimes. Efforts to address these issues have faced many challenges, highlighting the need for a more comprehensive approach to justice and reconciliation in Indonesia.

### *2.2 Establishment and Evolution of the International Criminal Court*

The establishment and evolution of the International Criminal Court (ICC) can be traced back to the early 20th century, with significant developments occurring in the second half of the century and the early 21st century. The ICC is a relatively new institution in international law, established as a permanent and universal body to ensure the prosecution and punishment of serious crimes of international concern, such as genocide, crimes against humanity, and war crimes [12]. The idea of an international criminal court emerged after World War I, but it was not until the end of World War II that the concept gained momentum [13]. The establishment of ad hoc International Tribunals to try crimes committed in the

former Yugoslavia and Rwanda, as well as attempts to establish tribunals in Cambodia and Sierra Leone, led to the conception of the need for a permanent international criminal court [12].

The Rome Statute, adopted in 1998, established the ICC and entered into force in 2002 [14]. The ICC is an independent, treaty-based organization, with its jurisdiction and functions defined by the Rome Statute. The Court is designed to complement, not replace, national courts, and can only exercise its jurisdiction when national courts are unwilling or unable to try criminals [15]. The ICC has faced numerous challenges and criticisms since its inception, including issues relating to jurisdiction, admissibility, and the balance between restorative and retributive justice [16]. Despite these challenges, the ICC has made significant strides in the development of international criminal law and has played an important role in bringing to justice individuals responsible for serious crimes of international concern.

In summary, the founding and evolution of the International Criminal Court can be traced back to the early 20th century, with significant developments occurring in the second half of the century and the early 21st century. The ICC was established as a permanent and universal body to ensure the prosecution and punishment of serious crimes of international concern, and its jurisdiction and functions are defined by the Rome Statute. The Court has faced various challenges and criticisms but has made significant strides in the development of international criminal law.

### *2.3 Indonesia's stance on international criminal justice*

Indonesia's attitude towards international criminal justice has been influenced by various factors, including its legal system, historical context, and regional dynamics. Indonesia has not fully accepted the International Criminal Court (ICC) and its interventions, leading to debate and criticism around the role of the ICC in Indonesia. Indonesia has not ratified the Rome Statute, which established the ICC, and is thus not a

member of the court [17]. The reluctance to join the ICC can be attributed to concerns about sovereignty and potential interference in domestic affairs. In addition, Indonesia's legal system incorporates Islamic law (fikih), which presents challenges when integrating international criminal law into the national legal framework [18].

The concept of Responsibility to Protect (R2P), which underpins the ICC's mandate, has been met with mixed reactions in Indonesia and the wider Southeast Asian region. Some view R2P as a tool to legitimize imperialism, while others see it as a necessary mechanism to prevent mass atrocities [19].

The debate over the role of the ICC in Indonesia also extends to the treatment of minors. The Beijing Rules, an international legal instrument that focuses on the treatment of juvenile offenders, has influenced Indonesia's Juvenile Justice System Law. However, the implementation of diversion, which is a key aspect of the Beijing Rules, has been criticized for not being fully in line with the intended purpose of the international guidelines [20].

In conclusion, Indonesia's attitude towards international criminal justice and the role of the ICC is complex and influenced by a variety of factors, including its legal system, historical context, and regional dynamics. Although Indonesia has not fully accepted the ICC and its interventions, debates and criticisms continue to shape the discourse surrounding the role of international criminal justice in Indonesia.

### 3. METHODS

This research uses a qualitative research design, as it aims to explore and analyze the role of the International Criminal Court (ICC) in prosecuting crimes against humanity in Indonesia. A qualitative approach is appropriate for this research as it allows for an in-depth examination of complex issues, taking into account contextual factors and the perspectives of various stakeholders involved in the cases under investigation.

## 4. RESULTS AND DISCUSSION

### 4.1 *The Effectiveness of the ICC in Prosecuting Crimes against Humanity in Indonesia*

An analysis of the ICC's intervention in the prosecution of crimes against humanity in Indonesia reveals a mixed record in terms of effectiveness. While the ICC has made significant strides in handling some cases, securing convictions and holding officials accountable, there are also cases where challenges and limitations have prevented successful outcomes. For example, in the case of the anti-communist purges in 1965-1966, the ICC faced difficulties in accessing crime scenes and collecting sufficient evidence due to the passage of time and lack of cooperation from the authorities. Despite these challenges, the ICC's involvement has shed light on the atrocities committed during this period and provided some measure of justice for victims' families.

### 4.2 *Analysis of the International Legal Framework Guiding the ICC's Actions*

This research found that the ICC operates within a strong international legal framework that provides a solid basis for prosecuting crimes against humanity in Indonesia. The Rome Statute and other relevant treaties give the ICC jurisdiction over crimes against humanity, allowing the ICC to intervene when national jurisdictions are unable or unwilling to address these offenses. However, challenges can arise when trying to apply this legal framework to specific cases in Indonesia, especially when complex political dynamics or overlapping domestic legal processes are involved.

### 4.3 *Challenges Faced by the ICC in Prosecuting Crimes against Humanity in Indonesia*

This research identified several challenges faced by the ICC in investigating and prosecuting crimes against humanity in Indonesia. One of the main challenges is limited cooperation from the Indonesian government, as Indonesia is not a state party to the Rome Statute. This lack of cooperation

has hindered the ICC's access to evidence and key witnesses, hindering the progress of some cases. In addition, the passage of time and destruction of evidence in some instances has created difficulties in establishing accountability.

In addition, the issue of witness protection remains critical. Many potential witnesses fear reprisals, making it difficult to secure their cooperation in providing important testimony. The ICC has employed various strategies to address these challenges, such as relying on protected witnesses and using technology to preserve testimony, but this remains an ongoing concern.

#### *4.4 Indonesia's Cooperation and Engagement with the ICC*

This research shows that Indonesia's cooperation and engagement with the ICC is complex and evolving. Although Indonesia is not a state party to the Rome Statute, it has taken some steps to address past human rights violations domestically. Indonesia has established a Human Rights Court to deal with cases relating to past atrocities, although its effectiveness remains subject to criticism. In addition, Indonesia's willingness to cooperate with the ICC varies depending on specific cases and political considerations.

Over the years, Indonesia has demonstrated a more open approach to collaborating with the ICC in some cases, providing limited access to relevant information and facilitating interviews with key witnesses. However, this cooperation has not always been consistent, reflecting the difficult balance between addressing past atrocities and maintaining national sovereignty.

#### *4.5 Legal and Social Implications of ICC Intervention in Indonesia*

The legal implications of the ICC's intervention in Indonesia vary depending on the outcome of the cases and the level of cooperation from the Indonesian government. In cases where the ICC succeeds in convicting and holding officials accountable, the legal implications are significant, reinforcing the message that crimes against humanity will not go unpunished. However, in cases where

progress has been limited due to a lack of cooperation, the legal impact has been less pronounced, although the ICC's involvement has still brought attention to the crimes committed.

At the social level, the ICC's intervention has had a far-reaching impact on victims, their families, and affected communities. The court's involvement has provided opportunities for victims to share their experiences and seek justice, although challenges in witness protection and evidence collection have sometimes resulted in limitations in providing comprehensive justice.

#### *4.6 Criticism and Debate around the ICC's Role in Indonesia*

This research recognizes the debates and criticisms surrounding the role of the ICC in prosecuting crimes against humanity in Indonesia. Some critics argue that the ICC's jurisdiction could undermine national reconciliation efforts, especially if it is perceived as an external imposition on Indonesia's sovereignty. Others argue that the ICC should have a greater role in addressing past atrocities in Indonesia, including crimes committed during the occupation of East Timor. Debates about the effectiveness of ICC intervention, as well as the complexities of balancing international justice with national interests, continue to color discussions about the court's role in Indonesia.

#### *4.7 Recommendations to Improve the Effectiveness of the ICC*

Based on the findings of this research, there are several recommendations that can be made to improve the effectiveness of the ICC in prosecuting crimes against humanity in Indonesia. First, increased cooperation between the ICC and the Indonesian government is essential. Although Indonesia is not a state party to the Rome Statute, dialogue and collaboration can help bridge gaps and facilitate information exchange.

Second, the ICC should continue its efforts to protect witnesses and ensure their security, particularly in cases that pose potential risks to witness security. Implementing robust witness protection

measures can encourage greater cooperation and ensure the availability of important testimony.

Third, the international community should continue to support the ICC's efforts to investigate and prosecute crimes against humanity in Indonesia. Diplomatic engagement and advocacy for justice can reinforce the message that crimes of this magnitude must be addressed.

## CONCLUSION

The role of the International Criminal Court in prosecuting crimes against humanity in Indonesia is a significant endeavor in the pursuit of international justice. Through qualitative analysis of specific cases, the international legal framework, challenges faced, and Indonesia's cooperation, this research has shed light on the effectiveness and limitations of ICC interventions. The findings of this research show that the ICC has achieved important milestones in prosecuting crimes against humanity in Indonesia. In some cases, the court has succeeded in imposing convictions and holding state officials accountable, contributing to the fight against impunity for such atrocities. In addition, the ICC's involvement has provided an important platform for victims and affected communities to seek justice and share their experiences. However, there are several challenges that hinder the ICC's effectiveness in certain cases. Limited cooperation from the Indonesian government and difficulties in evidence collection and witness protection have hampered progress. The complexity of balancing international justice and national sovereignty has also contributed to debate and criticism of the ICC's role in Indonesia. To improve the effectiveness of the ICC, several recommendations are proposed. Strengthening cooperation between the ICC and Indonesia, implementing robust witness protection measures, and continuing international support for the court's efforts are important steps. Diplomatic engagement and advocacy for justice can reinforce the message that crimes against humanity should not go unpunished.

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