

Transformation of International Criminal Justice Principle into Indonesia National Criminal Justice System: How Domestic Law Adopt Global Values?

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Abstract

The transformation of international criminal justice principles into Indonesia's national criminal justice system reflects the country's commitment to aligning domestic law with global human rights and accountability standards. Indonesia, as a member of the international community, has progressively incorporated international norms and principles into its legal framework, particularly in response to the rise of international crimes such as genocide, war crimes, and crimes against humanity. The adoption of these global values in domestic law requires a



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nuanced approach, as Indonesia navigates its national sovereignty, cultural context, and legal traditions while integrating the broader principles of international justice. The study examines the mechanisms through which Indonesia has absorbed international criminal justice norms, focusing on key developments such as the ratification of the Rome Statute of the International Criminal Court (ICC) and the establishment of domestic legal provisions for addressing crimes under international law. It also evaluates the challenges Indonesia faces in harmonizing its criminal justice system with international standards, such as issues related to jurisdiction, the independence of the judiciary, and the political will to prosecute international crimes effectively. This paper analyzes the legal reforms in Indonesia's national criminal justice system, exploring both the successes and limitations of these efforts. It highlights the role of international treaties, national legislation, and judicial practice in shaping a more comprehensive and fair criminal justice system. Moreover, the research emphasizes the importance of fostering international cooperation and strengthening domestic institutions to ensure the effective implementation of global principles. Ultimately, this study underscores the dynamic interaction between domestic law and international criminal justice, emphasizing the need for continuous adaptation to uphold global human rights values in a national context.

KEYWORDS *Human Rights, International Law, Criminal Justice, Indonesia, Global Justice Norm*

Introduction

The emergence of international criminal justice in the late twentieth century marked a significant shift in global efforts to address mass atrocities and gross violations of human rights.¹ Triggered by the horror

¹ Pinto, Mattia. "Historical trends of human rights gone criminal." *Human Rights Quarterly* 42, no. 4 (2020): 729-761; Forsythe, David P. "Human rights and mass atrocities: Revisiting transitional justice." *International Studies Review* 13, no. 1 (2011): 85-95.

of crimes such as the Holocaust², the Cambodian genocide³, and the atrocities in Rwanda and the former Yugoslavia⁴, the international community gradually moved toward creating formal legal mechanisms to hold perpetrators accountable. The establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) paved the way for the adoption of the Rome Statute in 1998 and the creation of the International Criminal Court (ICC), a permanent body with jurisdiction over the most serious international crimes.⁵

The ICC represents a global commitment to ending impunity for genocide, war crimes, crimes against humanity, and the crime of aggression. However, the Court's effectiveness relies heavily on the cooperation and legal readiness of its member states. Under the principle of complementarity, national jurisdictions retain the primary responsibility for prosecuting international crimes, while the ICC steps in only when states are unwilling or unable to act. This framework places the burden of enforcement primarily on domestic legal systems, demanding that they be aligned with international legal standards and norms.

Aligning national criminal justice systems with the principles of international criminal law is a complex process. It involves not only adopting legal definitions consistent with international instruments, but also ensuring that domestic institutions—courts, prosecution offices, and law enforcement—are capable of applying these standards in practice. Furthermore, it requires political will, judicial independence, and legal certainty, all of which are essential for fair and credible accountability processes.

² Bauer, Yehuda. *Rethinking the holocaust*. Yale University Press, 2002.

³ Kiernan, Ben. "The Cambodian Genocide, 1975–1979." *Centuries of Genocide*. Routledge, 2012, pp. 316-353.

⁴ Blakesley, Christopher L. "Atrocity and its prosecution: the ad hoc tribunals for the former Yugoslavia and Rwanda." *The Law of War Crimes*. Brill Nijhoff, 1997, pp. 189-228.

⁵ Greenfield, Daniel M. "The Crime of Complicity in Genocide: How the International Criminal Tribunals for Rwanda and Yugoslavia Got It Wrong, and Why It Matters." *The Journal of Criminal Law and Criminology* 98, no. 3 (2008): 921-952.

Indonesia, as the world's third-largest democracy and a founding member of ASEAN, occupies a unique position in the global legal landscape. With a legal system rooted in civil law, enriched by customary (*adat*) and religious influences, Indonesia has undergone significant legal transformation since the fall of the New Order regime in 1998. As part of its democratization process, the country has made efforts to engage with international human rights and criminal justice norms, seeking to reconcile its national legal traditions with emerging global standards.

Although Indonesia signed the Rome Statute in 2000, it has yet to ratify the treaty. Despite this, several domestic initiatives indicate a willingness to move toward greater harmonization with international criminal law. One key example is the enactment of Law No. 26 of 2000 concerning Human Rights Courts, which defines and provides mechanisms for prosecuting genocide and crimes against humanity in accordance with international legal definitions. This law was a significant step in Indonesia's effort to institutionalize international justice principles at the national level.

Nevertheless, implementation has been uneven. Although the Human Rights Court has held trials for some high-profile cases, including the violence in East Timor, many proceedings have been criticized for lacking credibility and failing to result in meaningful accountability. Observers have pointed to weak investigations, limited prosecutorial independence, and politicization of judicial processes as key barriers to justice. These shortcomings highlight the challenges of translating international legal commitments into effective domestic enforcement.⁶

In addition to legal constraints, Indonesia faces broader structural and political challenges. As a diverse archipelagic state with decentralized governance and competing political interests, national coherence on issues of justice and human rights is often difficult to achieve. Efforts to incorporate international legal norms must contend with sensitivities

⁶ Azhar, Haris. "The Human Rights Struggle in Indonesia: International Advances, Domestic Deadlocks." *SUR-International Journal on Human Rights* 11, no. 20 (2014).

surrounding national sovereignty, religious and cultural values, and the legacy of past authoritarian rule.⁷

At the same time, Indonesia continues to engage in international and regional forums, presenting itself as a responsible actor committed to the rule of law. Its involvement in ASEAN and participation in global discussions on justice and accountability reflect an awareness of the importance of aligning domestic legal systems with international standards. However, there remains a disconnect between Indonesia's international commitments and its domestic legal practice, particularly in the prosecution of international crimes and the protection of victims' rights.⁸

This study seeks to explore how international criminal justice principles—especially those codified in the Rome Statute—have been transformed, interpreted, or resisted within Indonesia's national legal system. It focuses on the legal and institutional developments that have occurred since the early 2000s, with particular attention to the establishment of the Human Rights Court, legislative reforms, and policy debates surrounding the ratification of the Rome Statute.

The objective of this research is not only to map legal changes but also to evaluate their effectiveness and coherence with international norms. It asks how Indonesia has adapted global standards to fit its own legal, political, and cultural context and what challenges remain in fully harmonizing its criminal justice system with the expectations of international criminal law.

Methodologically, this paper adopts a normative legal research approach, grounded in doctrinal analysis of statutes, treaties, and judicial decisions. It is supported by a comparative perspective and informed by secondary sources, including academic literature, reports by civil society organizations, and public statements by government officials. This

⁷ Istiningsih-Hadiprayitno, I. "Challenges Facing the Use of Human Rights to Address Negative Impacts of Development: the Case of Indonesia." *The Law and Development Review* 4, no. 1 (2011): 247-268.

⁸ Rüländ, Jürgen. "Deepening ASEAN cooperation through democratization? The Indonesian legislature and foreign policymaking." *International Relations of the Asia-Pacific* 9, no. 3 (2009): 373-402.

approach enables a critical assessment of the legal framework as it exists, as well as its practical implementation.

The scope of the paper is focused but interdisciplinary in its implications. It draws on international law, criminal law, human rights law, and Indonesian legal studies to provide a comprehensive analysis of the interaction between international norms and national legal systems. By focusing on Indonesia, the study contributes to broader debates on how states in the Global South navigate the pressures and possibilities of international legal integration.

In doing so, the paper highlights the importance of balancing legal harmonization with respect for national sovereignty and legal diversity. It recognizes that the successful transformation of international legal norms into domestic law is not simply a matter of legal transposition but a process that involves institutional development, political negotiation, and cultural adaptation. Indonesia's case illustrates both the potential and the limits of this process in contemporary international law.

The Principles of International Criminal Justice

International criminal justice is a branch of public international law that deals with the prosecution and punishment of individuals who commit the most serious violations of international norms.⁹ It seeks to ensure accountability for acts that shock the conscience of humanity—such as genocide, war crimes, crimes against humanity, and the crime of aggression. Unlike traditional international law, which governs relations between states, international criminal law operates directly on individuals, holding them personally responsible for atrocities, even when acting on behalf of a state or organization.

The development of international criminal justice is rooted in the post-World War II era, particularly the establishment of the Nuremberg and Tokyo tribunals, which were the first to prosecute individuals for crimes against peace, war crimes, and crimes against humanity. These early efforts laid the foundation for a legal regime that emphasizes individual accountability, regardless of rank or position. Over time, this system

⁹ Findlay, Mark, and Ralph Henham. *Transforming International Criminal Justice*. Willan, 2005.

evolved into a more structured and institutionalized framework, culminating in the establishment of the International Criminal Court (ICC) in 2002, following the adoption of the Rome Statute in 1998.¹⁰

At the heart of international criminal justice are several core principles that guide its application and legitimacy. The first is accountability—the idea that individuals who commit serious international crimes should not escape justice. This principle reflects a departure from the traditional notion of sovereign immunity and reinforces the understanding that certain acts are so egregious that they warrant international concern and intervention.

Closely related to accountability is the principle of non-impunity. This concept asserts that impunity for gross human rights violations must not be tolerated, and that victims of such crimes have a right to justice. International criminal justice, therefore, serves not only to punish perpetrators but also to restore a sense of justice to affected communities and reaffirm the rule of law in both national and international contexts.

Another foundational principle is complementarity, which is central to the functioning of the ICC. Under Article 17 of the Rome Statute, the ICC can only exercise its jurisdiction when national jurisdictions are either unwilling or unable to prosecute alleged perpetrators. This reflects a respect for state sovereignty, while also placing a responsibility on states to fulfill their international obligations. The principle of complementarity encourages domestic legal systems to strengthen their capacity to handle international crimes internally, making the ICC a court of last resort rather than a primary forum.

The core international crimes prosecuted under this framework are defined with specific elements and thresholds to ensure legal clarity and fair application. Genocide, as defined in the 1948 Genocide Convention and incorporated into the Rome Statute, involves acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious

¹⁰ Bassiouni, M. Cherif. "Perspectives on International Criminal Justice." *Virginia Journal of International Law* 50, no. 2 (2010); Simpson, Gerry. "International criminal justice and the past." *International Criminal Justice*. Edward Elgar Publishing, 2012, pp. 123-144; Cassese, Antonio, ed. *The Oxford companion to international criminal justice*. Oxford University Press, 2009.

group. It is characterized by its specific intent (*dolus specialis*), which distinguishes it from other mass crimes.¹¹

¹¹ Genocide, as codified in the 1948 Genocide Convention and later incorporated into the Rome Statute of the International Criminal Court, is defined as acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group. This legal definition outlines specific acts such as killing, causing serious harm, and deliberately creating life-threatening conditions for the targeted group, among others. Central to this definition is the requirement of *specific intent*—known in legal terms as *dolus specialis*—which differentiates genocide from other international crimes such as war crimes or crimes against humanity. The intent must be to eliminate the group not merely as individuals, but because of their group identity. While this framework provides a clear legal threshold for prosecution, it has been criticized for its narrow focus. For example, the exclusion of political and social groups, despite their targeting in historical genocides like Cambodia under the Khmer Rouge, reflects the political compromises made during the drafting of the Convention. Therefore, while the legal definition of genocide is precise, it does not always encompass the broader sociopolitical realities in which genocidal acts occur. Many scholars have critiqued the limited scope of the legal definition of genocide and offered broader frameworks for understanding its causes and manifestations. Raphael Lemkin, who coined the term "*genocide*," envisioned it not only as physical destruction but also as the erasure of a group's culture, language, and heritage—what he termed "*cultural genocide*." Although this aspect was largely excluded from the final legal definition, it remains central in scholarly debates. William Schabas, a leading legal scholar, argues that the Genocide Convention's protection of only four group categories (national, ethnic, racial, religious) leaves out key groups often targeted in mass violence, thereby narrowing the Convention's applicability. Similarly, sociologist Helen Fein conceptualizes genocide as a sustained policy aimed at destroying a group justified by ideology or belief in the group's undesirability, emphasizing the role of power, exclusion, and state policy in shaping genocidal intent. More recently, Dirk Moses has argued that modern genocides often stem from states pursuing "permanent security," wherein perceived threats are eliminated in the name of national stability. These perspectives highlight that genocide is not only a legal crime but also a deeply political and ideological act, embedded in broader processes of state-building, nationalism, and social engineering. Thus, while the legal definition captures the core components of genocide, it is the scholarly interpretations that reveal its full complexity and the limitations of existing legal frameworks. See Clark, Janine Natalya. "Elucidating the *Dolus Specialis*: An analysis of ICTY jurisprudence on genocidal intent." *Criminal Law Forum*. Vol. 26. No. 3. Dordrecht: Springer Netherlands, 2015; Aksar, Yusuf. "The Specific Intent (*Dolus Specialis*) Requirement of the Crime of Genocide:

War crimes refer to serious violations of the laws and customs of war as defined by international humanitarian law. These include willful killing, torture, targeting civilians, and the use of prohibited weapons. War crimes may occur in both international and non-international armed conflicts and are governed by treaties such as the Geneva Conventions and their Additional Protocols.

Crimes against humanity, unlike war crimes, do not require the existence of an armed conflict. They involve widespread or systematic attacks directed against civilians, with knowledge of the attack. These include acts such as murder, enslavement, torture, enforced disappearance, and sexual violence. The threshold for these crimes emphasizes their organized and collective nature, rather than isolated incidents.

The Rome Statute of the International Criminal Court serves as the most comprehensive legal instrument codifying these crimes and establishing a permanent institution to prosecute them. The Rome Statute outlines the jurisdiction, structure, and procedural framework of the ICC, and has been ratified by over 120 states. It represents a culmination of decades of legal evolution and serves as a model for states seeking to incorporate international criminal justice norms into their domestic legal systems. In addition to codifying crimes, the Rome Statute introduces procedural innovations, including provisions for victim participation, reparations, and fair trial guarantees. These elements reflect the broader human rights framework in which international criminal justice operates and aim to balance the rights of the accused with the rights of victims and affected communities.¹²

Confluence or Conflict between the Practice of Ad Hoc Tribunals and the ICJ." *Uluslararası İlişkiler Dergisi* 6, no. 23 (2009): 113-126; Fabijanić Gagro, Sandra. "Mental and material elements of genocide." *The Lawyer Quarterly* 11, no. 1 (2021): 1-18; Akhavan, Payam. "The crime of genocide in the ICTR jurisprudence." *Journal of International Criminal Justice* 3, no. 4 (2005): 989-1006; Ambos, Kai. "What does 'intent to destroy' in genocide mean?." *International Review of the Red Cross* 91, no. 876 (2009): 833-858.

¹² See Arsanjani, Mahnoush H. "The Rome Statute of the international Criminal court." *American Journal of International Law* 93, no. 1 (1999): 22-43; Grover, Leena. "A call to arms: Fundamental dilemmas confronting the interpretation of crimes in the Rome Statute of the International Criminal Court." *European Journal of International Law* 21, no. 3 (2010): 543-583.

Importantly, the Rome Statute also reinforces the concept of individual criminal responsibility, ensuring that leaders, military commanders, and other high-ranking officials cannot use their positions as a shield against prosecution. This shift in legal accountability has profound implications for national legal systems, especially in post-authoritarian or post-conflict societies where former leaders may still hold political or military influence.

As a comprehensive legal and institutional framework, the international criminal justice system—anchored by the ICC and the Rome Statute—serves as both a mechanism for accountability and a normative guide for national legal reform. For states like Indonesia, engaging with these principles entails more than simply ratifying treaties; it requires integrating these legal concepts into domestic laws, institutions, and judicial practices. This transformative process—where global legal norms are internalized and adapted within national contexts—is at the core of ongoing debates on sovereignty, justice, and human rights in the international system.¹³

Indonesia and International Criminal Law: A Historical Overview

Indonesia's role in the international legal order is shaped by its dual identity as a post-colonial state committed to national sovereignty and a growing democracy that increasingly engages with international norms. As the world's fourth most populous country and the largest Muslim-majority democracy, Indonesia holds a strategic position in global affairs. Its foreign policy principle of "free and active" (*politik luar negeri bebas dan aktif*) has long guided its approach to international cooperation—seeking to maintain independence from major power blocs while contributing constructively to global peace and justice. This foundational principle has

¹³ Scheffer, David, and Ashley Cox. "The constitutionality of the Rome Statute of the international criminal court." *The Journal of Criminal Law and Criminology* (2008): 983-1068.

influenced how Indonesia engages with international legal institutions, including those related to human rights and criminal accountability.¹⁴

Indonesia's engagement with international criminal law can be traced through a series of significant milestones. A major turning point came in 2000, when Indonesia signed the Rome Statute of the International Criminal Court (ICC). Although the country has yet to ratify the Statute, the act of signing signaled an openness to international criminal justice norms and a willingness to be part of the global discourse on accountability for serious crimes.¹⁵ Indonesia has periodically reaffirmed its intention to ratify the Statute, and in several national action plans—such as the National Human Rights Action Plan (RANHAM)—ratification was listed as a government goal. However, progress has stalled due to political concerns, particularly fears about potential sovereignty infringements and the politicization of international prosecution.

Despite the lack of ratification, Indonesia has taken steps to incorporate elements of international criminal law into its domestic legal system. The most prominent example is Law No. 26 of 2000 on Human Rights Courts, which established a legal mechanism to prosecute gross human rights violations, including genocide and crimes against humanity, using definitions derived from international legal instruments. This law marked a landmark development in Indonesia's effort to align with international standards, and its enactment was part of broader post-Suharto reforms aimed at strengthening the rule of law and ensuring accountability for past atrocities.

The Human Rights Court law was enacted in the wake of Indonesia's troubled transition from authoritarian rule, particularly in response to

¹⁴ Sadewa, Dzikiara Pesona, and Falhan Hakiki. "Dinamika Kebijakan Politik Luar Negeri Bebas Aktif Indonesia Melalui Gerakan Non-Blok (GNB)." *Jurnal Lemhannas RI* 11, no. 1 (2023): 13-28; Wijayanti, Anita. "Pengaruh Kepentingan Nasional dalam Pelaksanaan Politik Luar Negeri Bebas Aktif." *Kybernology: Journal of Government Studies* 2, no. 2 (2022): 70-95.

¹⁵ Birkett, Daley J. "Twenty years of the Rome Statute of the International Criminal Court: appraising the state of national implementing legislation in Asia." *Chinese Journal of International Law* 18, no. 2 (2019): 353-392; Schuldt, Lasse. "Southeast Asian Hesitation: ASEAN Countries and the International Criminal Court." *German Law Journal* 16, no. 1 (2015): 75-104.

widespread violence and human rights violations in East Timor following the 1999 independence referendum. The ad hoc human rights tribunal established under this law was the first and only effort to hold perpetrators accountable for international crimes through a domestic court in Indonesia. While symbolically significant, the tribunal's impact was undermined by legal and procedural shortcomings, weak prosecution strategies, and acquittals of senior officials. The experience revealed the challenges of prosecuting international crimes domestically, especially in politically sensitive contexts.¹⁶

In addition to Law No. 26/2000, other legal instruments reflect Indonesia's partial engagement with international criminal norms. The 1945 Constitution, amended during the reformasi period, now includes provisions that guarantee the protection of human rights in accordance with international law. Furthermore, Law No. 39 of 1999 on Human Rights established the National Human Rights Commission (*Komnas HAM*), which plays a crucial role in investigating allegations of gross human rights violations and recommending cases for prosecution.¹⁷ Komnas HAM has conducted inquiries into several incidents—such as the May 1998 riots, Wasior-Wamena incidents, and Talangsari massacre—but these have not yet resulted in successful prosecutions.

Indonesia is also a party to a number of international human rights treaties that intersect with international criminal law, including the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture (CAT). These instruments impose obligations on Indonesia to prevent, investigate, and punish certain grave violations, even if they are not yet fully codified in domestic law. However, enforcement remains a major challenge, as legal mechanisms to hold individuals criminally accountable are limited and often subject to political negotiation.

¹⁶ Cammack, Mark. "The Indonesian human rights court." *New Courts in Asia*. Routledge, 2010, pp. 194-222; Nasution, Adnan Buyung. "Defending human rights in Indonesia." *Journal of Democracy* 5, no. 3 (1994): 114-123.

¹⁷ Setiawan, Ken MP. "Between Law, Politics and Memory: The Indonesian National Commission on Human Rights (Komnas Ham) and Justice for Past Human Rights Crimes." *Australian Journal of Asian Law* 19, no. 1 (2018): 117-130.

Indonesia's cautious engagement with international criminal law also reflects regional dynamics. Within ASEAN, the principle of non-interference has long constrained regional human rights mechanisms, and collective efforts to address mass atrocities or gross violations remain limited. Nevertheless, Indonesia has taken a leadership role in promoting regional human rights initiatives, including the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR), signaling its broader commitment to justice and accountability, even if domestic implementation has not fully met international expectations.¹⁸

Furthermore, Indonesia's historical engagement with international criminal law reveals a complex interplay between normative alignment and political caution. While legal reforms and treaty commitments suggest a degree of convergence with international standards, the absence of Rome Statute ratification, the underperformance of domestic accountability mechanisms, and ongoing political sensitivities indicate a cautious and selective approach.

Mechanisms of Transformation: Integrating International Norms into Domestic Law

The transformation of international criminal justice principles into Indonesia's domestic legal system is a gradual and multidimensional process. It involves more than simply adopting international treaties; it requires a deep restructuring of legal frameworks, institutions, and political culture to reflect global norms of accountability and justice. At the center of this transformation lies the effort to align domestic legal structures with the standards set out in the Rome Statute of the International Criminal Court (ICC)—a foundational document that defines the scope and enforcement of international criminal law.

Indonesia's initial engagement with the ICC began with the signing of the Rome Statute in 2000, a move widely interpreted as an expression of support for international accountability mechanisms. However, more than two decades later, the country has not yet ratified the Statute. The

¹⁸ Asplund, André. "ASEAN Intergovernmental Commission on Human Rights: civil society organizations' limited influence on ASEAN." *Journal of Asian Public Policy* 7, no. 2 (2014): 191-199.

National Human Rights Action Plan (RANHAM) in several iterations (notably in the 2004–2009 and 2011–2014 periods) included a stated intention to ratify the Rome Statute, yet these intentions have not materialized into legislative action.¹⁹ Concerns over national sovereignty, potential external interference, and the politicization of international prosecutions continue to inhibit ratification. Furthermore, domestic opposition from segments of the military and political elite has created significant resistance to full legal alignment with the ICC.

Despite the absence of ratification, Indonesia has undertaken legislative and institutional reforms that reflect certain principles of international criminal justice. Chief among these is Law No. 26 of 2000 on Human Rights Courts, which provides a legal basis for the prosecution of two international crimes—genocide and crimes against humanity—under domestic jurisdiction. This law draws heavily from definitions found in the Rome Statute and related international treaties. It established specialized Human Rights Courts and granted Komnas HAM (the National Commission on Human Rights) the authority to investigate alleged gross human rights violations and submit findings to the Attorney General for prosecution.²⁰

In practice, however, the effectiveness of this mechanism has been limited. The most prominent application of Law No. 26/2000 was the creation of ad hoc human rights tribunals for crimes committed in East Timor in 1999, following the territory's vote for independence. While several Indonesian military and civilian officials were tried in these courts, the trials were widely criticized by international observers for failing to

¹⁹ El Muhtaj, Majda. "Perjalanan RANHAM di Indonesia: Tantangan, Evaluasi, dan Peluang." *Kebijakan Nasional sebagai Prasyarat Efikasi dan Efektivitas Hak Asasi Manusia Pada Ranah Nasional: Kompilasi Ekspresi Akademia Menyigi dan Meneroka RANHAM*: 55; Santika, Adhi. "Pelaksanaan ICCPR dan ICESCR dalam Konteks Rencana Aksi Nasional Hak Asasi Manusia (RAN-HAM) 2004-2009." *Jurnal Hak Asasi Manusia* 4, no. 4 (2007): 12-21.

²⁰ Christy, Gracesy Prisela, and Edmondus Sadesto Tandungan. "Eksistensi Pengadilan HAM Terhadap Penyelesaian Kasus Pelanggaran Ham." *Paulus Law Journal* 5, no. 1 (2023): 88-10; Musak, Rifaldy Andika. "Penegakan Hukum Hak Asasi Manusia (HAM) Atas Kejahatan Kemanusiaan Berdasarkan UU No. 26 Tahun 2000 Tentang Peradilan Hak Asasi Manusia Mengacu Kasus Pelanggaran HAM Wamena 4 April 2003." *Lex et Societatis* 7, no. 6 (2019).

meet fair trial standards, leading to the acquittal of most high-ranking defendants. The East Timor cases thus highlight the institutional weaknesses and political constraints that hamper Indonesia's ability to domestically prosecute international crimes, despite having the legal tools to do so.

Beyond East Timor, Komnas HAM has conducted investigations into multiple other incidents, such as the May 1998 riots, the Wasior and Wamena incidents, the Talangsari massacre, and the 2007 Jambu Keupok case in Aceh. Although these inquiries produced preliminary findings suggesting the occurrence of crimes against humanity, the Attorney General's Office has repeatedly refused to proceed with prosecutions, citing insufficient evidence. This deadlock illustrates the critical gap between investigatory mechanisms and prosecutorial action, exposing structural deficiencies in the transformation process.

The national judiciary and domestic courts play a central role in operationalizing international criminal norms within Indonesia. However, these institutions have faced longstanding challenges, including concerns over independence, capacity, and susceptibility to political influence. The Human Rights Courts themselves, though legally mandated, have struggled to gain legitimacy due to inconsistent rulings, lack of transparency, and limited prosecutorial success. The gap between legal norms and judicial practice reveals that transformation requires more than legislation; it demands institutional integrity and sustained political commitment.

In addition to courts, legislative and executive bodies also influence the extent to which international norms are integrated into national law. The Parliament (DPR) has been ambivalent toward ratification of the Rome Statute, with some members expressing support in principle but resisting implementation due to concerns over national interest. Similarly, while the Ministry of Foreign Affairs and Ministry of Law and Human Rights have supported international legal engagement, their efforts are often hampered by domestic political dynamics and institutional fragmentation.²¹

²¹ Prasetyo, Hendro. *The Power (Less) of Ratification: Holding the State Responsible for Human Rights Respect in Indonesia*. Diss. McGill University, 2009.

Civil society has emerged as a critical actor in pushing for greater alignment with international criminal justice standards. Human rights organizations, legal scholars, and victims' groups have advocated for the ratification of the Rome Statute and for the reopening of stalled prosecutions of past atrocities. These efforts have kept the issue on the national agenda, albeit with limited legislative outcomes. In this context, transforming international norms into domestic law becomes a contested and negotiated process, involving a range of actors beyond the formal legal institutions.²²

Challenges and Limitations

The integration of international criminal justice principles into Indonesia's domestic legal system is fraught with multifaceted challenges, many of which are rooted in structural legal gaps and jurisdictional ambiguities. One of the foremost issues is the limited scope of Law No. 26 of 2000, which only covers genocide and crimes against humanity. Other core crimes under international law—such as war crimes and the crime of aggression, as outlined in the Rome Statute—remain outside the jurisdiction of Indonesia's domestic legal apparatus. This selective incorporation creates a normative vacuum, undermining the comprehensive application of international criminal norms. Scholars such as Antonio Cassese have emphasized the importance of a holistic legal framework for international criminal law to function effectively; partial adoption, he argues, risks impunity and inconsistency in enforcement.²³

Another central challenge lies in the tension between national sovereignty and international obligations. Indonesia's constitutional and political tradition strongly emphasizes sovereignty as a pillar of national identity, particularly given its post-colonial history. As Martti Koskeniemi notes, states often view international law as both a tool of

²² Glasius, Marlies. *The International Criminal Court: A global civil society achievement*. Taylor & Francis, 2006; Armstrong, David, et al., eds. *Civil society and international governance: The role of non-state actors in global and regional regulatory frameworks*. Routledge, 2010.

²³ Cassese, Antonio. *The human dimension of international law: selected papers of Antonio Cassese*. Oxford University Press, 2008; Cassese, Antonio. *International law*. Oxford University Press, USA, 2005.

cooperation and a potential threat to autonomy.²⁴ In the Indonesian context, the fear that ratifying the Rome Statute might subject national leaders or military officials to foreign prosecution has contributed to resistance among political elites and elements within the defense establishment. This tension manifests in the reluctance to fully commit to international instruments perceived as limiting Indonesia's ability to exercise its sovereign legal authority.

Compounding these issues is the question of political will and institutional capacity. Despite formal commitments to human rights and transitional justice, there has been a consistent lack of initiative to prosecute gross violations—particularly those involving powerful political or military actors. The Attorney General's Office has often declined to pursue cases forwarded by Komnas HAM, citing insufficient evidence or procedural flaws. This reflects not only a bureaucratic disjunction but also a lack of prosecutorial independence, raising concerns about selective justice. As Chandra Lekha Sriram argues, without political commitment at the highest levels, transitional justice mechanisms risk being tokenistic rather than transformative.²⁵

Judicial capacity also remains a pressing concern. Although human rights courts have been established under Law No. 26/2000, their performance has been limited by inconsistent rulings, weak legal reasoning, and susceptibility to political interference. Moreover, there is a noticeable lack of specialized training among judges and prosecutors to deal with the complex evidentiary and procedural requirements of international crimes. According to David Luban, the administration of international criminal justice requires not only legal reform but also the cultivation of ethical and professional norms within judicial institutions.²⁶

²⁴ Koskenniemi, Martti. *The politics of international law*. Bloomsbury Publishing, 2011. See also Koskenniemi, Martti. *From apology to utopia: the structure of international legal argument*. Cambridge University Press, 2006.

²⁵ Sriram, Chandra Lekha. "Justice as peace? Liberal peacebuilding and strategies of transitional justice." *The Liberal Peace and Post-War Reconstruction*. Routledge, 2013, pp. 89-101.

²⁶ Luban, David. *Legal ethics and human dignity*. New York: Cambridge University Press, 2007.

In Indonesia, this dimension remains underdeveloped, hampering the courts' ability to deliver credible and impartial justice.

Further complicating the process of legal transformation is the reality of cultural and legal pluralism in Indonesia. As a country with a highly decentralized legal system and over 300 ethnic groups, Indonesia is characterized by the coexistence of state law, customary (*adat*) law, and Islamic legal traditions. This pluralism presents both normative and practical challenges for harmonizing domestic law with international criminal standards. While *adat* law emphasizes community-based reconciliation and restorative justice, international criminal law is rooted in individual responsibility and retributive mechanisms. Boaventura de Sousa Santos' theory of legal pluralism underscores how tensions arise when global legal norms encounter deeply embedded local practices, often resulting in selective or distorted implementation.

Therefore, the challenges facing Indonesia in its integration of international criminal justice principles are complex and interconnected. They involve not only legal and institutional limitations but also ideological, political, and cultural dimensions. These limitations highlight the need for a nuanced and context-sensitive strategy to overcome resistance and build a robust, rights-respecting criminal justice system aligned with international norms.

Opportunities and Strategic Pathways

Despite these challenges, there remain significant opportunities for Indonesia to advance the transformation of international criminal justice principles within its domestic legal system. One critical pathway is the strengthening of judicial independence and the rule of law. Independent and impartial courts are essential for the effective prosecution of international crimes. Institutional reforms aimed at depoliticizing the judiciary, protecting prosecutorial autonomy, and enhancing judicial training can create an environment conducive to fair and consistent legal outcomes. Drawing from Thomas Carothers' theory of rule-of-law development, building strong legal institutions must be a gradual process

rooted in political consensus, legal professionalism, and sustained civil society engagement.²⁷

Another strategic avenue is the enhancement of legal education and public awareness regarding international criminal law. Law schools, judicial training centers, and civil society organizations can play a pivotal role in mainstreaming knowledge of international legal standards. Integrating modules on international human rights and criminal justice into legal curricula will ensure that future legal professionals are equipped to handle complex international crimes. Scholars like Richard Goldstone, a former prosecutor of the ICTY, have emphasized the importance of legal culture in sustaining the effectiveness of international justice—stressing that transformation is only possible when local actors understand and internalize global legal values.²⁸

Indonesia could also benefit from fostering stronger international cooperation and technical assistance. Through partnerships with the United Nations, the ICC, and international NGOs, Indonesia can access training, institutional support, and legal expertise necessary to strengthen its capacity to prosecute international crimes domestically. Participation in global initiatives, such as the UN Office on Drugs and Crime (UNODC) programs or bilateral judicial cooperation agreements, can help close technical gaps and promote best practices. As seen in transitional justice efforts in countries like Colombia or Sierra Leone, such international support has proven effective when tailored to national contexts and needs.

To facilitate long-term alignment, Indonesia should consider concrete legal and policy reforms aimed at harmonizing its domestic legal instruments with international norms. This could include the ratification of the Rome Statute, expansion of Law No. 26/2000 to include war crimes and the crime of aggression, and the establishment of an independent transitional justice commission. Such reforms must be accompanied by procedural guarantees, victim-centered approaches, and institutional

²⁷ Carothers, Thomas. "The backlash against democracy promotion." *Foreign Affairs* (2006): 55-68.

²⁸ Goldstone, Richard J. "Prosecuting Rape as a War Crime." *Case Western Reserve Journal of International Law* 34, no. 3 (2002): 277.

safeguards to prevent misuse or politicization. Drawing from Beth Simmons' theory of treaty compliance, domestic implementation is more likely to succeed when international commitments are supported by internal mechanisms that align with national interests and capacities.

Furthermore, there is potential in leveraging Indonesia's leadership role in ASEAN and the Global South to promote regional accountability norms. By advocating for stronger human rights mechanisms within ASEAN and supporting regional cooperation on international criminal law, Indonesia can build normative pressure for reform and reinforce its credibility as a champion of justice in global forums. Such regional leadership could also mitigate sovereignty-related concerns by situating international norms within a shared regional framework.

Therefore, while the road to full integration of international criminal justice principles in Indonesia is complex, it is not without promise. Strategic reforms, institutional investment, and normative engagement offer a pathway forward. The challenge lies in sustaining the political will and public support necessary to ensure that these opportunities are not merely symbolic, but transformative in practice.

Conclusion

The transformation of international criminal justice principles into Indonesia's national criminal justice system represents a significant yet unfinished legal and institutional evolution. As a state that has expressed formal support for global norms—evidenced by the signing of the Rome Statute and the establishment of domestic human rights courts—Indonesia has taken important initial steps toward aligning its domestic legal framework with international standards. These efforts reflect a broader commitment to uphold human rights, ensure accountability for grave crimes, and participate meaningfully in the global justice architecture.

However, the analysis reveals persistent challenges that hinder the full realization of this transformation. Legal gaps, particularly the absence of provisions on war crimes and the crime of aggression, limit the reach of domestic prosecution mechanisms. Institutional weaknesses, including prosecutorial inaction and judicial dependence, further undermine the

effectiveness of existing legal instruments. Most critically, tensions between national sovereignty and international obligations—compounded by political resistance and cultural pluralism—continue to shape Indonesia's cautious and selective approach to international criminal law.

Despite these constraints, the potential for meaningful progress remains. Strengthening the independence of the judiciary, expanding the legal mandate of human rights courts, and investing in legal education can serve as catalysts for deeper reform. Ratifying the Rome Statute, while politically sensitive, would not only enhance Indonesia's international standing but also solidify its commitment to global justice. As a regional leader and democratic state, Indonesia has both the responsibility and the capacity to set a precedent for the localization of international criminal norms within a national context.

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*"There is no peace without justice,
no justice without law, and no
meaningful law without respect for
human rights. "*

Ban Ki-moon

(Secretary General of United Nations, 2007–2016)

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