

THE ROLE OF INTERNATIONAL INSTITUTIONS IN IMPLEMENTATION OF THE LAW AGAINST GROSS HUMAN RIGHTS CRIMES IN THE CONTEXT OF GENOCIDE

Nopit Ernasari^{1*}, Devi Anggaeni²

^{1,2}Pamulang University, Indonesia

*Corresponding Author:

nopiternasari94@gmail.com

Abstract

Human rights are a basic concept that recognizes the rights inherent in all human beings based on their humanity. These rights are universal and apply to all individuals at all times and in all places. These rights are irrevocable and cannot be taken away. In addition, human rights are interconnected, interdependent, and inseparable. Gross human rights crimes, such as crimes against humanity, are committed systematically and on a widespread scale with the aim of using power. These crimes are categorized as extraordinary crimes, with special characteristics and defined in laws relating to human rights courts. These crimes include crimes such as genocide and crimes against humanity. The serious problem of human rights crimes has received international attention, with the Rome Statute on the International Criminal Court dealing with these crimes. International institutions, such as the United Nations, play an important role in protecting human rights, in line with their responsibility to uphold international security and peace.

Keywords: Institutional Role, International, Human Rights, Genocide

1. Introduction

Human rights basically exist since humans are born because these rights are inherent since the existence of humans themselves. However, human rights issues only receive attention when they are implemented in human life. It begins to become a concern when there is an attachment relationship between individuals and society (Kosasi, 2003). The first thought about the harmony of human life in society was put forward by Aristotle, a Greek thinker in the fourth century BC, who stated that to achieve the goal of human life requires another human being, so that the existence of society is absolute so that individual human beings can have meaning and develop (Reinhart, 1999). Fundamental rights mean rights that are grounded, principal or principled. Human rights state that human beings have fundamental rights. The existence of a right to a person means that he has a "right" that he has. On the other hand, the existence of an obligation on a person means that an attitude is required of him in accordance with the "privileges" that exist in others (Al-Barry, 1994).

Human rights are a legal and normative concept that states that human beings have rights inherent in them because they are human. Human rights apply anytime, anywhere, and to anyone, so they are universal. Human rights cannot be revoked in principle. Human rights are also indivisible, interrelated, and interdependent. Human rights are usually addressed to the state, or in other words, it is the state that bears the obligation to respect, protect, and fulfill human rights, including by preventing and following up on violations committed by the private sector. In modern terminology, human rights can be classified into political civil rights with respect to civil liberties (e.g., the right to life, the right not

to be tortured, and freedom of opinion), as well as economic, social and cultural rights related to access to public goods (such as the right to a proper education, the right to health, or the right to housing) (Laia, 2022).

Conceptually, human rights can be based on the belief that they are "naturally bestowed" by the universe, God, or reason. Meanwhile, those who reject the use of natural elements believe that human rights are the embodiment of values agreed upon by the community. There are also those who consider human rights to be representative of the claims of the oppressed, and at the same time there are groups that doubt the existence of human rights at all and state that human rights only exist because humans originated and talked about the concept. From the point of view of international law, human rights themselves can be limited or reduced under certain conditions. Restrictions usually have to be determined by law, have a legitimate purpose, and are necessary in a democratic society. Meanwhile, reductions can only be made in emergencies that threaten "life of war", and the outbreak of war does not meet these conditions. During the war, international human law prevailed as *lex specialis*. Nevertheless, a number of rights should not be waived under any circumstances, such as the right to freedom from slavery or torture. From the explanation above related to Human Rights, the author will discuss how the form of gross human rights crimes and the role of international institutions in applying the law to serious human rights violations.

2. Theoretical Background

2.1 Gross Human Rights Violations

Gross violations of human rights are considered extraordinary crimes due to their systematic and widespread nature, often motivated by power and executed with deliberate intent. These violations disrupt the social fabric and represent a profound betrayal of humanity, particularly when committed or condoned by state actors (Nurhidayat, 2011). The international community acknowledges these violations as crimes of the highest severity, necessitating exceptional measures for resolution, including international jurisdiction when national efforts prove inadequate.

2.2 Classification of Gross Human Rights Violations

The Rome Statute (1998) defines four primary categories of gross human rights violations under international jurisdiction: genocide, crimes against humanity, war crimes, and crimes of aggression. Indonesia, however, adopts only two of these categories—genocide and crimes against humanity—as regulated under Law No. 26 of 2000 concerning Human Rights Courts. These legal frameworks demonstrate a significant step in aligning national law with international human rights standards, albeit with notable limitations.

2.3 Genocide

The term genocide, derived from the Greek word *genos* (race, tribe) and the Latin *caedere* (to kill), was first recognized as an international crime in the aftermath of World War II. Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) defines genocide as acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group. These acts include:

- 1) Killing members of the group;
- 2) Causing serious bodily or mental harm to members of the group;

- 3) Deliberately inflicting conditions of life calculated to bring about the group's destruction;
- 4) Imposing measures intended to prevent births within the group;
- 5) Forcibly transferring children of the group to another group (Adnan Buyung Nasution, 2006).

The Indonesian legal framework, through Law No. 26 of 2000, closely mirrors these provisions, emphasizing the intentionality and collective nature of genocide. Notably, genocide is considered a crime against *jus cogens*, obligating states to act against it universally (Ramadhan, 2018).

2.4 Crimes Against Humanity

Crimes against humanity involve widespread or systematic attacks directed against civilian populations, often as a consequence of state or organizational policy. Article 7 of the Rome Statute delineates these crimes, including murder, enslavement, torture, and persecution based on political, racial, ethnic, or religious grounds. Indonesia's Law No. 26 of 2000 similarly defines crimes against humanity, with some variances in translation and scope compared to the Rome Statute (Setiyono, 2020). These discrepancies have implications for the interpretation and prosecution of such crimes domestically.

2.5 International Jurisdiction and Institutional Frameworks

The enforcement of international human rights law is closely tied to the efforts of the United Nations (UN). The UN's authority, established under its Charter, aims to maintain international peace and security, particularly concerning genocide, war crimes, ethnic cleansing, and crimes against humanity (Prisilia Tutkey, 2021). The International Criminal Court (ICC), established under the Rome Statute, plays a pivotal role in prosecuting these crimes when national jurisdictions are unwilling or unable to act.

The ICC's principle of individual criminal responsibility, enshrined in Article 25(1) of the Rome Statute, underscores the accountability of individuals rather than states. This principle is critical for addressing crimes that involve state actors or policies, ensuring that no perpetrator escapes justice regardless of their position (Parthiana, 2015).

2.6 Challenges in Domestic and International Enforcement

While the international community has established robust frameworks for addressing gross human rights violations, challenges persist in implementation. In Indonesia, the limited adoption of the Rome Statute's provisions and inconsistencies in the interpretation of terms, such as "directed attacks" and "population," hinder comprehensive enforcement. Furthermore, the absence of certain crimes, such as war crimes and crimes of aggression, from Indonesia's legal framework limits its ability to address these violations comprehensively (QC, 2013).

On the global stage, the effectiveness of the ICC and the UN's Security Council remains contingent on political will and international cooperation. The ICC's reliance on state referrals and the Security Council's authority under Chapter VII of the UN Charter exemplify the interplay between legal mechanisms and political dynamics in addressing gross human rights violations (Damayant, 2020).

3. Methods

The research method used to write this study is the juridical-normative research method. Normative juridical research is legal research conducted by examining literature

and secondary materials through a review of laws and regulations as well as various literature related to the problem being studied (Mamuji, 2013).

The approach in question is carried out using literature research methods and comparative approaches. The conceptual method needed for this research is by using understanding through literature obtained from books, journals, and previous research results, so that the collection of data sources through books or print or online media is compiled to be able to provide an overview of the results that will later become a reference in this writing.

4. Results and Discussion

4.1 Forms of Gross Human Rights Crimes

Serious crimes against human rights are extraordinary crimes because they have specificities such as: First, serious human rights crimes are crimes against humanity against the background of power motives, are carried out systematically and widely. With characteristics like this, serious human rights crimes cannot be categorized as ordinary crimes, they must also be solved with extraordinary actions. Second, gross human rights crimes result in the tearing of human conscience, because the consequences are so devastating. Third, gross human rights crimes are the greatest human betrayal of humanity, and if the perpetrator is the state and its agents, then it is an extraordinary betrayal of the responsibility that should be fulfilled. Fourth, gross human rights crimes result in terror, worry and fear in the community, and can eliminate public trust in the state and its apparatus for the failures that occur. Fifth, gross human rights crimes are recognized by the world as the most serious crimes that must be solved by all countries and even international jurisdictions if they cannot be solved at the national level (Nurhidayat, 2011).

The above opinions clearly state that serious crimes against human rights fall under the category of extraordinary crimes. These crimes have special characteristics and contents, which are not the same and even more than the crime formulation in the Criminal Code. Therefore, extraordinary and special handling has become a logical consequence that must be done.

The international community recognizes the existence of four types of gross human rights violations, which are under international jurisdiction, so that all countries that respect human rights can prosecute through the International Criminal Court (ICC). The four crimes are regulated in the Rome Statute on the International Criminal Court in 1998 in Rome which includes the crime of genocide, crimes against humanity, war crimes, and crimes of aggression.

Indonesia did not adopt the four types of crimes to be regulated in the law, but only adopted two types of serious human rights crimes, namely genocide and human crimes, which are regulated in Law Number 26 of 2000 concerning Human Rights Courts. The arrangement of the two types of crimes is clearly as follows:

4.1.1 Genocide Crimes

Genocide consists of two words, namely geno and cide. Geno or genos comes from an ancient Greek word meaning race, nation, or ethnicity. While cide, caedere or cidium comes from the Latin word which means to kill (Eddy, 2010). The term genocide was later defined in the Convention on the Prevention and Punishment of the Crime of Genocide received by the UN General Assembly Resolution 260A (III), December 9, 1948.

In the Convention on the Prevention and Punishment of the Crime of Genocide Article 1 states that genocide committed in time of peace or in time of war, is a crime under international law. Meanwhile, the definition of genocide is formulated in Article 2 states:

"In this Convention, genocide means any of the following acts, which are committed with the aim of destroying, in whole or in part, a group of nations, ethnicities, races, or religions such as:

- 1) Kill a member of the group.
- 2) Resulting in severe physical or mental suffering to the members of the group.
- 3) Creating group living conditions that will result in physical destruction either in whole or in part.
- 4) Imposing measures aimed at preventing births within the group; or
- 5) Forcibly transferring children from one group to another." (Adnan Buyung Nasution, 2006)

The element of each person in Article 8 is not limited to individuals but also includes groups of people, both civilian, military, and police who are individually responsible, while the phrase with intent, means that the perpetrators have intentions that are consequently desired by the perpetrators (Ruslan, 2021).

The element of destroying or destroying means removing or eliminating, while all or part of it means quantitatively meaning as many physical victims as possible, so that if the victims are only few or individual, it cannot be called a genocide crime. Nation group means the population or citizens who have rights and obligations, racial group is a group of people who have physical similarities based on descent in a certain area, ethnic group means a group of people who have the same language and culture, while religious group means a group of people who adhere to a certain religion in a certain area. Thus, the crime of genocide is very difficult to realize if it is committed by an individual, but it requires perpetrators who are also groups, whether it is a community group, a civil bureaucracy, a political group, or a military group.

Genocide crime is a form of crime that aims at ethnic cleansing by attacking other groups. Genocide is a form of crime that is committed deliberately to consume part or all of race, ethnicity, ethnicity, and religious groups. The crime of genocide can be qualified as *delicta jure gentium*, as a form of violation of the provisions of International Law that can threaten international peace and security and is also considered to have reneged on *jus cogens*, as a legal imperative that compels the state to obey the applicable International Law (Ramadhan, 2018).

Based on Article 3 of the 1948 Genocide Convention, the perpetrators of genocide are not only direct perpetrators, but also those who commit neglect, including acts of attempted genocide can be punished. According to Law No. 26 of 2000 concerning Human Rights Courts, an act is categorized as genocide, if it is carried out with the intention of destroying or exterminating all or part of a nation, race, ethnicity, religion, by: killing members of the group; causing severe physical or mental suffering to the members of the group; creating conditions for group life that will result in physical or partial destruction; forcing measures aimed at preventing births in groups; and forcibly transferring children from one group to another. The definition of genocide refers to the provisions of Article 6 of the 1998 Rome Statute, which states: genocide means any of the following acts committed with intent to destroy, in whole or in part a national, ethnical, racial, or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group condition of life calculated to bring about its physical destruction in whole or in part;

imposing measures intended to prevent births within the group; Forcibly transferring children of the group to another group is defined as an act committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, by: killing a member of a group or groups; causing serious physical or mental damage to a group member; intentionally causing the physical or partial destruction of a group's living conditions; actions intended to prevent births within a group; forcibly moving children from group to group) (Setiyono, 2020).

4.1.2 Crimes against Humanity

Crimes against humanity or known as crimes against humanity or CAH, are acts that refer to mass murder by torture of people's bodies as a crime of assault on others.

Crimes against humanity are acts committed as part of widespread or systemic attacks that it knows are aimed directly at civilians, in the form of:

- 1) Murder;
- 2) Destruction;
- 3) Slavery;
- 4) Forced eviction or displacement of residents;
- 5) Arbitrary deprivation of independence or other deprivation of physical liberty that violates (principles) the fundamental provisions of international law;
- 6) Torture;
- 7) Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or stellation or other equivalent forms of sexual violence;
- 8) Persecution of a particular group or association based on the same political understanding, race, nationality, ethnicity, culture, religion, gender that has been universally recognized as prohibited under international law;
- 9) Apartheid crimes.

Law No. 26 of 2000 provides an explanation of a number of terms related to crimes against humanity, namely: attacks aimed directly at civilians are a series of acts committed against civilians as a continuation of the policies of the ruler or policies related to organizations. Murder is as stated in Article 340 of the Criminal Code (KUHP). Destruction includes acts that cause suffering that are carried out deliberately, including in the form of acts of inhibiting the supply of food and medicines that can cause destruction in some of the population. Slavery in this provision includes human trafficking, specifically the trafficking of women and children. Eviction or forced removal is the forcible removal of persons by means of eviction or other coercive action from the area where they are lawfully residing, without any reason permitted by international law. Torture in this provision is intentionally and unlawfully causing severe pain or suffering, both physical and mental, to a prisoner or a person under supervision. Enforced disappearance of a person means the arrest, detention or abduction of a person by or with the power, support or approval of the state or the policy of an organization, followed by a refusal to recognize the deprivation of such liberty or to provide information about the fate or whereabouts of the person, with a view to releasing the person from legal protection within a reasonable period of long time. The crime of apartheid is an inhuman act with the same characteristics mentioned in Article 8 (genocide crime) committed in the context of an institutional regime in the form of oppression and domination by a racial group over a group or other racial groups and committed with the intention of maintaining the regime.

In general, the formulation refers to the Rome Statute of 1998, as also stated in the explanation of Law No. 26 of 2000 that this crime is in accordance with the Rome Statute of The International Criminal Court. It should be noted that, as experts have analyzed, the formulation of crimes against humanity in Law No. 26 of 2000 has differences with the Rome Statute of 1998, including: first, related to improper translation. This is for example in the translation of the phrase directed against any civilian population, which should be interpreted as aimed at the civilian population, translated as directed against the civilian population. This direct word can imply that it is as if only the direct actors in the field can be subject to this article, while the actors above it who make policies will not be covered by this article. This direct word will also have an impact if it is associated with the word attack, which can be interpreted to mean that attacks against civilians, will only include attacks carried out directly against civilians. Second, the word population is translated as population, which would narrow the subject of law using territorial boundaries, and it also significantly narrows the potential targets of victims of crimes against humanity only to citizens of the country where the crime took place. Third, the word persecution is translated as persecution and not persecution, which has an impact on the construction of acts in the category of persecution will be proven by the elements of crime as in the crime of persecution in the Criminal Code Articles 351-358. Fourth, the elimination of the form of conduct regulated in the Rome Statute Article 7 letter (i), namely other inhuman acts of the same nature that deliberately cause severe suffering, or serious injury to the body or mental or physical health. The elimination of these forms of acts will make it difficult to punish acts of the same character and effect, and will only become ordinary crimes.

4.2 The Role of International Institutions in Serious Human Rights Crimes

At the international level, the issue of human rights law enforcement cannot be separated from the United Nations. The United Nations has a central role and a very important contribution to the protection and respect for human rights in the world. According to Thomas Buergenthal, this can be seen historically from the efforts that have been made by the United Nations related to the development of modern international human rights law such as: in the formation of normative foundationalist), in this first stage the process of enactment of the UN Charter began and continued at least until the ratification of the Universal Declaration of Human Rights in 1948 and two conventions (ICCPR and CESCR) in 1966; in the second stage, the establishment of institutions (institution building), at this stage the evolution of international human rights law began in the late 1960s and continued until the next 15-20 years. This period can be referred to as the era of institutional building. During this period, there have been developments within the framework of the United Nations; The third stage, the implementation and post-cold war world, at this stage the institutions created in the second stage were not fully functional until the mid to late 1980s, when they began to focus on effective measures to ensure the state's compliance with its international obligations. This process is still continuing until now (Buergenthal, 2000).

The authority of the United Nations (UN) as one of the international organizations that has a very important role in maintaining international peace and security. The crime of genocide has been regulated in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide 1948 which is defined as an act with the intention of destroying or destroying all or part of a nation, race, ethnicity, or religion. This convention was then included in Law No. 26 of 2000 concerning the Court of Human Rights. If national authorities clearly fail to protect their populations from four specific

crimes of mass atrocities, then the international community is ready to take collective action through the Security Council. According to the UN Charter, one of the main objectives of the UN is to maintain international peace and security. In this regard, the United Nations has made efforts to handle various cases of human rights violations that are considered to be disruptive to international peace and security. In chapters VI and VIII of the UN Charter, it is explained that the UN has the authority to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity (Selin Prisilia Tutkey, 2021).

The United Nations through the Security Council has the authority in terms of law enforcement against international criminal crimes. Under article 13(b) of the Rome Statute, the Security Council has referral jurisdiction to prosecute persons who commit international crimes. And there is also a deferral jurisdiction Article 16 of the Rome Statute that is granted authority to participate in enforcement based on Chapter VII of the UN Charter (Damayant, 2020).

5. Conclusion

Human rights exist since humans are born because these rights are inherent in the existence of humans themselves. Human rights fundamentally aim to protect the dignity and freedom of individuals, as well as provide a fair opportunity for everyone to develop personally and socially. A form of violation of human rights that aims to destroy or destroy all or part of a group, race, ethnicity, or religion is a serious crime or extraordinary crime and it is regulated in Law Number 26 of 2000.

International institutions have a very important role in resolving serious human rights crimes, one of which is the United Nations which has the goal of maintaining world peace and security. Under Article 13(b) of the Rome Statute, the United Nations has the authority to prosecute persons who commit international crimes, in this case the role of the United Nations is very important in this case to contribute to the protection and enforcement of human rights.

References

- Adnan Buyung Nasution, d. (2006). International Instruments of Human Rights. Jakarta: Indonesian Torch Foundation.
- Buergenthal, T. (2000). International Human Rights in an Historical Perspective, in Janusz Symonides, Human Rights: Concept and Standards. Burlington: Ashgate Publishing Company and UNESCO.
- Eddy. (2010). Courts for Several Serious Crimes Against Human Rights. Jakarta: Erlangga.
- Kosasi, A. (2003). Human Rights in Islamic Perspective; Revealing the Similarities and Differences between Islam and the West. Jakarta: Salemba Dinniyah.
- Laila, A. (2022). Theory of Settlement of Gross Human Rights Violations. Sukabumi: CV Jejak.
- Mahrus Ali, S. N. (2011). Heavy Human Rights Settlement (In court System and Out System). Depok: Gratama Publishing.
- Parthiana, I. W. (2015). International Criminal Law. Bandung: CV Yrama Widya.
- Pius A Pratanto, M. D.-B. (1994). Popular Scientific Dictionary. Surabaya: Arloka. QC, M. N. (2013). International Law. Bandung: Nusa Media.

- Ramadhan, F. (2018). *The Implementation of the Indirect Enforcement System for Genocide Crimes and Crimes Against Humanity in the Indonesian Legal System*. Yogyakarta: UGM.
- Reinhart. (1999). *Human Rights; Philosophical Studies and Their Implementation in Criminal Law in Indonesia*. Yogyakarta: Atma Jaya University Press.
- Ruslan Renggong, D. A. (2021). *Human Rights in the Perspective of National Law*. Jakarta: Kencana.
- Setiyono, J. (2020). *International Justice for Gross Human Rights Crimes*. Semarang: Pustaka Magister.
- Damayant, N. S. (2020). *The Role of the United Nations in Relation to Law Enforcement by the International Criminal Court*. Sasi, 254.
- Selin Prisilia Tutkey, d. (2021). *The role of the United Nations in handling cases of genocide crimes according to international law*. *Lex Administratum*, 26.
- Law Number 26 of 2000 concerning Human Rights Courts.
- Isabela, M. A. (2022, March 17). *Compass*. Retrieved from Kompas: https://nasional.kompas.com/read/2022/03/17/02000021/kejahatan-humanity-and-example#google_vignett