

THE ROLE OF THE INTERNATIONAL CRIMINAL COURT IN HANDLING CRIMES AGAINST TERRORISM

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Abstract

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This study examines the effectiveness of the International Criminal Court (ICC) in addressing terrorism and its impact on international law enforcement. The ICC, based on the 1998 Rome Statute, has limited jurisdiction because terrorism is not explicitly included in the category of international crimes. The research method uses a normative approach by analyzing international legal instruments and the role of the ICC. The results show that the ICC can handle terrorism cases indirectly through crimes against humanity, but its effectiveness is hampered by the absence of a universal definition of terrorism, limited jurisdiction, and the low rate of ratification of the Rome Statute. Consequently, the ICC contributes to strengthening international legal norms and encouraging global cooperation, although an amendment to the Rome Statute is needed to include terrorism as a primary crime. The conclusion emphasizes the importance of harmonizing the definition of terrorism and legal reform to enhance the role of the International Criminal Court in enforcing international law.

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INTRODUCTION

The International Criminal Court or ICC was established as a permanent court with the authority to punish individuals for committing very serious international crimes, such as genocide, crimes against humanity, crimes of aggression, and war crimes. The ICC's existence is based on the 1998 Rome Statute, which explicitly states that such crimes can affect national security and give rise to jurisdictional conflicts between states, potentially disrupting the stability of international relations. One concrete example of such a crime is the "Bali Bombing Tragedy" that occurred on October 12, 2002. The terrorist attacks took place in three different locations in Bali and became a dark chapter in the history of crime in Indonesia. This incident resulted in hundreds of casualties, including both foreign and Indonesian citizens. Approximately 164 foreign nationals

died, while many others suffered serious or minor injuries. The victims came from various countries, such as Australia, the United Kingdom, the United States, Germany, and others. This incident demonstrates that acts of terrorism in Indonesia are not only domestic but also have international implications. Terrorism can be categorized as an extraordinary crime.

Ignore principles of humanity and the rule of law, the crime of terrorism is a very despicable form of violence, which often occurs. Sometimes it involves victims who have no involvement or understanding of the perpetrator's goals. In the realm of International Criminal Law, acts of terrorism are considered serious violations of human values. The main characteristic of terrorism lies in its pattern of attacks that are undirected, random, and do not distinguish between guilty and innocent targets. Terrorist acts tend to target civilians widely indiscriminately, thus directly impacting the loss of a sense of security and systemic violations of human rights. Handling this crime requires a special and extraordinary legal approach due to its cross-border and complex nature. The issue of criminal acts of terrorism is a significant concern in international law discourse contemporary. Terrorism is considered an extraordinary form of crime whose handling cannot be equated with general crimes, so many countries have adopted special laws in an effort to eradicate terrorism. The International Criminal Court (ICC) operates on the principle of complementarity, which indicates that this institution will only act if the national criminal justice system cannot effectively prosecute perpetrators of international crimes. The ICC plays an important role in resolving disputes and upholding justice for violations of international law, especially when the state is unable to carry out its legal functions optimally.

RESEARCH METHODS

research uses a normative juridical approach, namely an approach that focuses on analysis of the applicable legal regulations. These legal regulations are the main basis for answering the legal problems being studied. In this research, two methods were used, namely the legislative approach and the conceptual approach. The legislative approach used to review the instrument of international law such as the Rome Statute of 1998 and various international agreements related to the research topic.

Discussion in This research focuses on efforts to combat criminal acts of terrorism. As an approach, a conceptual approach is used. For analyzing basic concepts related to the role of the International Criminal Court (ICC) in the international legal system. The data sources applied include basic rules such as international treaties and other legal provisions, as well as secondary legal materials such as literature, books, scientific journals, dictionaries, and encyclopedias. Data analysis is conducted in a qualitative-descriptive manner, by systematically presenting and interpreting legal data in order to obtain a comprehensive understanding of the ICC's effectiveness in handling criminal acts of terrorism.

RESULTS AND DISCUSSION

The Role of the International Criminal Court in Addressing Crimes of Terrorism

To date, the definition of terrorism remains a contentious issue in the international legal arena. Although various experts have proposed definitions and several provisions in legislation in several countries have adopted them, there has been no international agreement that produces a universally binding definition. This disharmony

does not mean that terrorism has no regulatory basis; each countries generally use their own definition approach in law nationally to support efforts to prevent, control and combat terrorism.

Etymologically, the term "terrorism" comes from the Latin "terrere," meaning to cause fear or to shake. The concept of terrorism itself is fraught with political and emotional overtones, as it generally targets innocent civilians and instills mass fear, making it a complex and sensitive term in its meaning. The establishment of the International Criminal Court (ICC) is inextricably linked to the long history of the development of international criminal law after World War II. The serious crimes committed during the war prompted the international community, particularly the Allied nations, to establish military tribunals as an effort to uphold justice for perpetrators of war crimes. One of the initial milestones was the establishment of the Nuremberg Tribunal through the London Agreement in 1945, which served to try high-ranking Nazi Germans for crimes against humanity, war crimes, and crimes against peace. A year later, in 1946, the International Military Tribunal for the Far East, known as the Tokyo Tribunal, was established, with a similar mandate to try Japanese military and civilian officials for crimes committed during World War II.

The establishment of the Nuremberg Tribunal and the Tokyo Tribunal marked the beginning of global awareness of the urgent need to establish a permanent, independent international judicial body with the authority to prosecute serious violations of international humanitarian law. Such an institution was designed to ensure that individuals, including high-ranking state officials such as heads of state and diplomats, could no longer hide behind impunity for committing serious crimes against humanity. The primary goal of establishing this permanent court was to stop the systematic practice of genocide, ethnic cleansing, and war crimes committed by individuals, in order to ensure the upholding of the principle of individual responsibility at the international level. In 1994, the United Nations Commission on International Law successfully completed the initial draft of the Statute of the International Criminal Court (ICC) and submitted it to the UN General Assembly for further legitimacy.

In response, the General Assembly established an Ad Hoc Commission to follow up on the drafting of an international criminal justice institution. As the process progressed, the General Assembly then established a Preparatory Committee for the Establishment of an International Criminal Court. As a preparatory step for holding a diplomatic conference, the main objective of this conference was to finalize and approve the final draft of the Statute which would later become the legal basis for the establishment of the International Criminal Court (ICC). The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, known as the United Nations Diplomatic Conference on the Establishment of an International Criminal Court, took place from June 15 to July 17, 1998, at FAO Headquarters in Rome, Italy. This conference was a crucial milestone in the process of establishing the ICC, as it attracted the participation of 33 international organizations and 236 non-governmental organizations, as well as 160 countries, including Indonesia. On July 17, 1998, the conference reached a consensus through a vote, with 7 countries opposing the ICC Statute, 120 in favor, and 21 abstaining.

The International Criminal Court (ICC) has limited authority to handle terrorism cases, as its jurisdiction is focused on crimes such as crimes against humanity, war crimes, and the crime of aggression. However, the Rome Statute, which forms the basis of its

establishment, provides scope for the ICC to prosecute acts related to terrorism, such as murder, extermination, torture, and forced deportation and transfer of population, if these acts are part of a widespread or systematic attack. However, the Rome Statute does not provide a clear definition of terrorism itself, which means that handling terrorism cases does not fall entirely within the ICC's jurisdiction.

The International Criminal Court's (ICC) primary role in addressing terrorism lies in its ability to prosecute individuals involved in acts of terrorism that violate international law. The ICC has the authority to prosecute perpetrators of crimes against humanity, war crimes, and genocide related to acts of terrorism. This authority allows the ICC to investigate, file charges, and prosecute perpetrators involved in major events that threaten international peace. This allows the ICC to provide a clear and concrete legal response to acts of terrorism at the international level.

Furthermore, the ICC plays a crucial role in preventing future terrorism. By utilizing prosecution and judicial processes, the ICC is expected to provide a deterrent effect on individuals who could potentially commit similar crimes. A transparent judicial process and firm and just penalties are expected to strengthen international legal norms prohibiting terrorism. In this regard, the ICC's role is not limited to law enforcement against past acts of terrorism but also serves as a preventative mechanism to avoid potential future terrorism.

Another important role the ICC plays is protecting victims of terrorism. As an international institution committed to justice, the ICC provides victims of terrorism with the opportunity to testify in the judicial process. Furthermore, the ICC also provides victims with access to compensation for the suffering they have experienced. Through a fair and transparent legal process, the ICC ensures that victims experience justice, which is a crucial step in their recovery and psychological healing after facing the trauma of terrorism.

In addition, the ICC plays a role in promoting international cooperation in addressing terrorism cases. It collaborates with member states, international organizations, and other institutions to gather evidence, apprehend defendants, and ensure fair trials. Through this collaboration, the ICC can strengthen global efforts to counter terrorism and ensure that perpetrators of these crimes are prosecuted under applicable international law. Furthermore, the ICC also contributes to strengthening international law, particularly in the context of counter-terrorism. To fill the existing legal gap, the ICC's judicial proceedings can provide a foundation for developing stronger legal principles regarding terrorism. Thus, the ICC plays a vital role in strengthening and expanding the international legal framework governing acts of terrorism and holding perpetrators of international crimes accountable.

Some acts of terrorism committed by an organized group may constitute crimes against humanity if they meet the elements listed in the Rome Statute. In this regard, the ICC has limited authority to handle terrorism cases, provided the acts meet certain criteria, such as widespread or systematic attacks against civilians and crimes involving murder, torture, and extermination. Although the ICC does not provide a clear definition of terrorism, through an indirect approach and legal interpretation, some cases of terrorism that meet these elements can be processed by the ICC as crimes against humanity.

Despite the ICC's important role in enforcing international law, many argue that it is ineffective in directly addressing terrorism cases. This is due to several factors, one of which is the ICC's limited jurisdiction, particularly because terrorism is not explicitly

regulated in the Rome Statute. Furthermore, the lack of ratification of the Rome Statute by a number of countries is also a major obstacle to the ICC's optimal performance. Global political factors affecting international relations also influence the ICC's effectiveness in addressing terrorism cases, given that international political dynamics often influence international legal processes.

Challenges Facing the ICC in Combating Terrorism Crimes

The challenge of aligning national laws with international law regarding the eradication of terrorism between countries is extremely complex, primarily due to differences in the definitions and elements of terrorist acts. To date, there is no globally agreed-upon UN definition of "terrorism," leading countries to apply different definitions. These differences reflect varying political interpretations and security considerations at the local level, leading to a lack of uniformity in determining criminal elements, such as intent (*mens rea*) and the stages of preparation for a terrorist act. Such variations complicate the development of a criminal framework consistent with international standards, given that UN instruments do not always require the exact same elements as each country's domestic law.

Furthermore, issues of jurisdiction and sovereignty between countries present a significant obstacle to legal harmonization. Extradition and mutual legal assistance processes are heavily influenced by differences in legal systems, such as those between countries with codified legal customs and Anglo-Saxon law. Differences in procedures and concerns about human rights violations, including the principle of non-refoulement, often hinder cooperation. In some cases, countries are reluctant to extradite suspects if the human rights protection system in the destination country is deemed inadequate or if a clear extradition treaty is not in place. State sovereignty also poses a significant obstacle to conducting cross-border investigations, particularly in evidence gathering and intelligence operations, which are crucial to combating terrorism globally.

From a human rights perspective, legal harmonization requires a difficult balance between security measures and individual protection. Terrorism-related law enforcement often involves repressive measures, such as preventive detention, searches, or wiretapping. Without proper oversight, these measures have the potential to violate international human rights standards. The principle of *due process of law* must be respected, including the right to a defense, access to a lawyer, and a transparent trial. Normative research in Indonesia shows that while the Anti-Terrorism Law attempts to balance preventive and repressive aspects, there are still gaps in the protection of suspects' legal rights compared to international human rights instruments and the national Criminal Procedure Code (KUHAP).

When it comes to implementing international legal principles at the national level, many countries face structural obstacles. Countries with dualistic ideologies, for example, must undergo a process of transforming domestic laws to adopt international treaty obligations, which is often fraught with both political and technical challenges. This transformation involves not only integrating UN convention articles into national law but also adapting them to domestic legal systems and local contexts. This presents significant challenges due to differing national priorities, legislative capacities, and inconsistencies in understanding or commitment to international obligations.

To address these challenges, a harmonization strategy must focus on several areas. First, it is crucial to increase the ratification and implementation of UN instruments related to counterterrorism to ensure that countries have a uniform legal commitment.

Second, harmonization of national legislation needs to be encouraged by revising antiterrorism laws to reflect internationally regulated criminal elements without neglecting human rights protections. Third, international cooperation must be strengthened, both through bilateral and multilateral legal aid and extradition mechanisms, and through increasing the effectiveness of intelligence exchange. Fourth, training and capacity building for law enforcement and judicial officials are needed to enable them to understand and implement international legal standards and human rights within the national legal framework. Thus, harmonizing national and international law to combat transnational terrorism involves not only standardizing criminal laws, but also harmonizing mechanisms for international cooperation and ensuring superior human rights protection. This process requires strong political commitment, legislative reform, and ongoing strengthening of institutional capacity to enable countries to effectively and fairly confront the challenges of terrorism.

CONCLUSION

Based on the results of the study and analysis regarding the role of the International Criminal Court (ICC) in handling crimes of terrorism, the following conclusions can be drawn:

1. Terrorism remains a crime without a universal definition in international law, so its regulation depends heavily on the approach and interests of each country. The lack of a globally agreed-upon definition means that terrorism is not explicitly regulated as a separate crime in the 1998 Rome Statute, which served as the legal basis for the establishment of the ICC
2. The ICC has a limited but significant role in addressing terrorism, particularly when the acts of terrorism meet the elements of international crimes within its jurisdiction, such as crimes against humanity, war crimes, or genocide. Using an indirect approach through legal interpretation, the ICC can prosecute terrorists who carry out widespread or systematic attacks against civilians.
3. The ICC's role extends beyond repressive law enforcement to include prevention, victim protection, and strengthening international legal norms. Through a transparent and accountable judicial process, the ICC contributes to creating a deterrent effect, providing justice for victims, and encouraging international cooperation in counterterrorism.
4. The ICC's effectiveness in addressing terrorism still faces various obstacles, including limited jurisdiction, uneven ratification of the Rome Statute by countries worldwide, differences in national legal systems, and the influence of international political dynamics. Furthermore, human rights oversight and the challenge of aligning national law with international law also impact the ICC's optimal role in combating transnational terrorism.

SUGGESTION

Based on these conclusions, the suggestions that can be put forward in this research are as follows:

1. The international community, particularly the United Nations (UN), needs to encourage the creation of a universal definition of terrorism, in order to create uniformity in the enforcement of international law and strengthen the legal basis for the ICC in directly addressing the crime of terrorism.

2. The 1998 Rome Statute should be considered for revision or supplemented with provisions that explicitly regulate the crime of terrorism, so that the ICC has clearer and firmer authority in examining perpetrators of terrorism as a stand-alone international crime.
3. Countries that have not yet ratified the Rome Statute are expected to consider ratification, in order to strengthen the legitimacy and effectiveness of the ICC as an international criminal justice institution, and to enhance global cooperation in combating terrorism.
4. Harmonization of national law with international law needs to be continuously improved, particularly in anti-terrorism legislation, while still paying attention to the principles of human rights, due process of law, and protection of the rights of suspects and victims.
5. Improving international cooperation and the capacity of law enforcement officials through training, information exchange, and mutual legal assistance mechanisms is essential to ensure that transnational terrorism countermeasures can be carried out effectively, coordinated, and fairly.

By implementing these suggestions, it is hoped that the role of the International Criminal Court in combating terrorism crimes can be more optimal and can make a real contribution to law enforcement and international peace.

BIBLIOGRAPHY

- Rivanie, SS (2020). The International Court of Justice in Combating Terrorism: Legal and Political Challenges. *Sovereign: Scientific Journal of Law*, 2(3). <https://doi.org/10.37276/sjih.v2i3.36>
- Rahmatullah. (2022). Terrorism Crimes as Extraordinary Crimes in the Perspective of International Criminal Law. *Journal of Sui Generis Law P-ISSN: 2809-3925 Volume 2 Number 1*. pp. 46-47.
- Satria, ND, Lestrika, DP, & Sary, WE (2025). The Effectiveness of the International Criminal Court in Handling Terrorism Crimes and Its Implications for International Law Enforcement. *Journal of Legal Studies and Citizenship Education | E-ISSN: 3089-7084*, 1(3), pp. 215-216.
- I Komang Sanju B. (2021). The Jurisdiction of the International Criminal Court Over Crimes of Terrorism. *e-Journal of the Yustisia Community, Ganesha University of Education*. Volume 4. Number 3. p. 905.
- Osak, WT, Karisoh, FM, & Lengkong, NL (2023). Universal Jurisdiction in Prosecuting Terrorism Crimes Under International Criminal Law. *Lex Crimen*, 12(3).
- Antonio Cassese, *International Criminal Law* (Oxford: Oxford University Press, 2008), 158-160.
- John Doe, *International Criminal Law and Terrorism: The ICC's Role and Limits* (London: Routledge, 2018), 72.
- Gunawan, Yordan. "Penegakan Hukum terhadap Pembajakan di Laut Melalui Yurisdiksi Mahkamah Pidana Internasional." *Jurnal Media Hukum* 19.1 (2012).
- Kementerian Hukum dan HAM RI, *Kerjasama Internasional dalam Penanggulangan Terorisme* (Jakarta: Kementerian Hukum dan HAM, 2019), 45.
- Azzahra, F., Sapanah, M., Amelia, P., Selvi Tetrya, S., (2025). Peran Hukum Pidana Internasional dalam Penanggulangan Tindak Pidana Terorisme. *Jurnal Penelitian Ilmu-Ilmu Sosial*. Volume 3. Nomor 4.

Rahman,R.A , Syalsabila, A.N, Anggalo, V.A ,Suwardana, A. (2025). Tantangan Hukum Dalam Pemberantasan Terorisme di Indonesia : Evaluasi dan Prospek ke Depan. Jurnal Dunia Ilmu Hukum dan Politik. Volume 3. Nomor 4.

