

Indonesia: The Lasting Legacy of Impunity

By Bhatara Ibnu Reza, Rully Sandra and Zainal Abidin
Policy Brief Series No. 163 (2025)

1. Introduction

Indonesia began its transition from an authoritarian regime in 1998, when it embarked on rebuilding its democratic system. This monumental shift, known as the *'reformasi'* era, promised a new dawn for South-East Asia's largest democracy. However, the path to a fully functioning democratic state has been fraught with obstacles, particularly in the realm of legal reform and accountability.

This brief portrays the dissonance between the appearance of legal progress and the reality, particularly how a culture of impunity remains deeply ingrained in the nation's collective memory, leaving visible scars on ongoing efforts to uphold the rule of law. Entrenched impunity is not a mere perception, but a stark reality reflected in hard data: (a) the World Justice Project's Rule of Law Index of 2023 placed Indonesia 68th out of 139 countries,¹ highlighting significant room for improvement in areas such as constraints on government powers, order and security; (b) gross human rights violations are still one out of nine strategic issues to be addressed by the National Human Rights Institution of Indonesia (Komnas HAM);² and (c) according to Transparency International's Corruption Perceptions Index, Indonesia ranked 115th out of 180 countries since 2022,³ with a score of 34 out of 100, indicating a serious corruption problem.

The persistence of impunity can be attributed to several interrelated factors, among others weak law enforcement, political interference, and a lack of judicial independence. These factors have continued to cast a long shadow on Indonesia, allowing perpetrators of serious crimes, including human rights abuses, corruption and past atrocities, to escape accountability. Indonesia is also grappling with rising intolerance and the growing influence of identity politics, which threaten its standing as a moderate nation and the world's largest Muslim-majority country.

To understand the development of international criminal law ('ICL') in Indonesia that will be elaborated below, it is important to be aware of the terms 'gross human rights violations', 'permanent and *ad hoc* human rights courts', and the distinction between 'gross' and 'ordinary' human rights violations. While these terms are not recognized in ICL, they have been incorporated into Indonesia's legal framework as part of its partial adoption⁴ of the Statute of the International Criminal Court ('ICC') in 2000.

Indonesia has made notable strides in aligning its legal framework with international standards in recent years: (a) the new penal code (fully operational only from January 2026), passed in December 2022 with Law

No. 1 of 2023,⁵ explicitly criminalizes torture in Articles 529–530, bringing Indonesia closer to compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('UNCAT'); (b) the same penal code introduces the principle of universal jurisdiction for certain international crimes in Articles 6 and 7, potentially expanding Indonesia's ability to prosecute ICL violations regardless of where they occur; and (c) the previous administration, led by President Joko Widodo, took creative steps to address the legacy of past human rights abuses. For instance, on 24 October 2016, Indonesia established the Truth and Reconciliation Commission for Aceh ('KKR Aceh') as mandated by Law No. 11 of 2006 on the Government of Aceh and a Local Regulation, Qanun No. 17 of 2003, to reveal the truth about past human rights violations during internal armed conflict in Aceh from 4 December 1976 to 15 August 2005 as well as to assist with reconciliation and reparation for victims.⁶

Less positively, the jurisdiction of Indonesia's Human Rights Court has been severely contested. As part of a political compromise, gross human rights violations cases can be adjudicated in the *ad hoc* court established based on recommendation and approval from the Parliament and the President. The *ad hoc* court was activated to hear the Paniai case in 2022.⁷

2. Historical Context

The culture of impunity in Indonesia can be attributed to support from its legal system, law enforcement agencies, bureaucracy, and the prevailing political narratives and justifications that sustain such a culture.⁸ The persistent influence of former military figures and New Order authoritarian regime actors in both past and present governments undermine meaningful efforts towards legal reform.

Following pressure from the international community after the 1999 Timor Leste referendum, Indonesia abruptly enacted Law No. 26 of 2000 on the Human Rights Court in order to be able to try the alleged perpetrators before a national court rather than an international tribunal. Interestingly, this law only partially adopts ICC Statute provisions by limiting its jurisdiction to genocide and crimes against humanity, leaving out war crimes. In a General Elucidation, the term "gross violations of human rights" is defined as "extraordinary crimes" that have a widespread impact both at the national and international levels and are not criminal acts regulated under the Criminal Code, as well as causing both material and immaterial loss leading to a sense of insecurity for both individuals and

¹ World Justice Project, "Rule of Law Index: Indonesia", 2024 (available on its web site).

² Komnas Ham, *Annual Report of the National Human Rights Commission of Indonesia for the Year 2023*, Jakarta, 2024.

³ Transparency International, "Corruption Perceptions Index: Indonesia", 2023 (available on its web site).

⁴ Eva Achjani Zulfa (ed.), "Laporan Akhir Naskah Akademik Rancangan Undang-Undang Perubahan UU No. 26 Tahun 2000 Tentang Pengadilan Hak Asasi Manusia (HAM)", Ministry of Law, National Legal Development Agency, 2012, p. 3.

⁵ Law No. 1 of 2023 on the Criminal Code, 2 January 2023 (<https://www.legal-tools.org/doc/kn7gtjj2/>).

⁶ Law No. 11 of 2006 on the Government of Aceh, 1 August 2006, Article 229 (<https://www.legal-tools.org/doc/muqxbxck/>). See the report by KKR Aceh, "Peulara Damèe: Merawat Perdamaian" ["Nurturing Peace"], October 2003.

⁷ See the analysis on this case in "Analisis Hukum Kasus Pelanggaran HAM Berat Paniai (Bagian 1): Permasalahan Hukum dalam Dakwaan Kasus Paniai", Stanford Center for Human Rights and International Justice, 2023.

⁸ For extensive discussion on the culture of impunity in Indonesia, see Elizabeth F. Drexler, "Infrastructures of Impunity New Order Violence in Indonesia", Cornell University Press, 2024.

society.⁹

Some experts believe that Indonesia's Human Rights Court was established to shield military generals from possible prosecution.¹⁰ It is not a surprise that only one defendant, who was part of the civilian militia, has been found guilty to date by this Court.

At the time of writing, Indonesia is still not a party to the 1998 ICC Statute although it has twice expressed its ratification intention in the National Action Plan of Human Rights.¹¹ The biggest opponent is the military, fearing that the generals will be brought before the ICC. Despite numerous efforts by experts and civil society to clarify this misunderstanding, such fears persist. This underscores a significant lack of accountability for the most serious crimes in Indonesia, revealing an ongoing misalignment with international criminal justice standards.

3. War Crimes: A Thorny Problem

As noted earlier, war crimes are conspicuously absent from Indonesia's Law No. 26 of 2000. The Dutch introduced regulations on war crimes in the Netherlands-Indies in the aftermath of World War II.¹² Under the transitional provisions of Indonesia's original 1945 Constitution (prior to its two amendments after *reformasi*), existing state institutions and regulations remained valid unless replaced by new ones conforming to the Constitution. This implies that the war crimes provisions should still be applicable in Indonesia's legal system until superseded by a new law.

The late Professor Haryo Mataram, a prominent Indonesian expert in international humanitarian law ('IHL'), argued that these war crimes regulations remain valid in the absence of a specific law on grave breaches of the 1949 Geneva Conventions¹³ or other humanitarian law instruments.¹⁴ However, he observed that these regulations have rarely, if ever, been applied in court rulings or considered in legislation related to armed conflict. Consequently, they do not constitute 'living law' in Indonesia.¹⁵

In the 2010s, following a decade of discussion, the Indonesian parliament reviewed the draft of the New Criminal Code ('NCC'). The 2015 draft included a war crimes category modelled after the ICC Statute but limited its scope to international conflicts, excluding those internal. However, this provision on war crimes was ultimately removed when the NCC was enacted in 2023.¹⁶

This steadfast refusal to regulate war crimes will be relevant in analysing how the government of Indonesia will respond to the separatist

movement in Papua. Officially, the government frames the situation as a security issue caused by armed criminal groups, to be managed through police-led security operations. In practice, however, multiple military operations have been conducted under a combined police-military initiative known as the Cartenz Peace Operation.¹⁷

The government has sought to label these groups as violent armed groups ('KKB') or terrorist organizations,¹⁸ rather than separatists. There have also been attempts to bring these groups before the Human Rights Court for alleged crimes against humanity,¹⁹ while simultaneously avoiding the designation of the conflict in Papua as a non-international armed conflict ('NIAC'). In contrast, these groups have publicly declared war²⁰ and expressed their willingness to be recognized under IHL as parties to an armed conflict.²¹ They believe that a NIAC classification would lend legitimacy to their aspirations for self-determination. The complex situation in Papua has the potential to shape public perceptions of international crimes and impact the enforcement of ICL domestically.

4. The New Criminal Code of Indonesia

4.1. International Crimes

After nearly two decades of deliberation, the NCC was finally enacted as Law No. 1 of 2023 and will take effect in 2026. Its goals are to establish an Indonesian criminal code independent of the Dutch legacy and to consolidate various existing laws into a comprehensive framework. International crimes are addressed in the NCC under the chapter on Special Crimes (*Tindak Pidana Khusus*), which includes genocide, crimes against humanity, terrorism, narcotics, corruption, and money laundering. Torture, however, is categorized separately under the chapter on Crimes of Official Position (*Tindak Pidana Jabatan*).

According to General Elucidation No. 4 of the Second Book of the NCC, the rationale for establishing a separate chapter on 'Special Crimes' is based on their unique characteristics: (i) massive scale and severe impact on victims; (ii) transnational nature, often crossing national borders; (iii) the need for special criminal procedures to be effectively addressed; (iv) frequent deviation from general principles of substantive criminal law; (v) the existence of specialized institutions with unique authority, such as the Corruption Eradication Commission, the National Narcotics Agency, and the National Human Rights Commission; (vi) the alignment with various international conventions, whether ratified or not; and (vii) the perception of these crimes as inherently evil (*super mala per se*), reprehensible and strongly condemned by society.

The NCC incorporates international crimes previously defined in Law No. 26 of 2000, including genocide (Article 598) and crimes against humanity (Article 599), as well as crimes derived from international human rights law, such as torture (Articles 529–530), as explained below.

Genocide is defined in Article 598 with a formulation similar to Article 6 of the 1998 ICC Statute and Article 8 of Law No. 26 of 2000. The crime is punishable by death, life imprisonment, or imprisonment ranging from a minimum of 5 years to a maximum of 20 years. The NCC does not provide additional clarification on genocide, leaving its interpretation to the knowledge and discretion of law enforcement officials.²²

Crimes against humanity are defined in Article 599, with *chapeau* elements and underlying acts closely resembling those in Article 7 of the

⁹ See the General Elucidation of Law No. 26 of 2000 on Human Rights Court, 23 November 2000 (<https://www.legal-tools.org/doc/8d6ceb/>).

¹⁰ David Cohen, "Intended to Fail: The Trials Before the Ad Hoc Human Rights Court in Jakarta", Occasional Paper Series, International Center for Transitional Justice, August 2003.

¹¹ The National Human Rights Action Plan (RANHAM) is part of the government's decision to mainstream its human rights duties. It has been renewed four times, each for a period of five years, with Presidential Regulation Nos. 40 of 2004 (2004–2009), 23 of 2011 (2011–2014), 75 of 2015 (2015–2019) and 52 of 2021 (2021–2025). The ratification of the Rome Statute was stipulated in the first two Presidential Regulations but has never been executed.

¹² Five Government Gazettes were promulgated in the Netherlands-Indies (Staatsblad van Nederlandsch-Indië) 1946 such as Staatsblad Nos. 44 of 1946 on Definition of War Crimes [Ordonnantie Begripsomschrijving Oorlogsmisdrijven], 45 of 1946 on the Criminal Law of War Crimes [Ordonnantie Strafrecht Oorlogsmisdrijve], 46 of 1946 on the Authority of Criminal Justice for War [Ordonnantie Rechtsmacht Oorlogsmisdrijven], 47 of 1946 on the Jurisdiction of War Crimes Trial [Ordonnantie Rechtspleging Oorlogsmisdrijven] and 48 of 1946 on the Victims of War [Oorlogsslachtoffers]. See KGPH Haryo Mataram, "On 'War Crimes', 'War Criminals' and Handling of 'War Criminals'" ("Masalah 'Kejahatan Perang', 'Penjahat Perang', Penanganan 'Penjahat Perang'"), in *Jurnal Hukum Humaniter*, 2006, vol. 1, no. 2, pp. 212 and 215; see also Yustina Trihoni Nalesti Dewi, "National Legislation on War Crimes in Indonesia", in *International Journal of Humanities and Management Sciences*, 2015, vol. 3, no. 2, p. 103; and Lisette Schouten, "Netherlands East Indies' War Crimes Trials in the Face of Decolonization", in Kerstin von Lingen (ed.), *War Crimes Trials in the Wake of Decolonization and Cold War in Asia, 1945–1956: Justice in Time of Turmoil*, Palgrave Macmillan, Cham, 2016, pp. 195–220.

¹³ Indonesia is a state party to the Geneva Conventions of 1949 with the Ratification Law No. 59 of 1958. However, Indonesia is not yet party to the Additional Protocols of 1977.

¹⁴ Mataram, 2006, p. 217, see *supra* note 12.

¹⁵ *Ibid.*

¹⁶ As of 31 December 2024, efforts to obtain the NCC's *travaux préparatoires* were not successful. According to the Secretary General of the Indonesian parliament, the document is not yet available.

¹⁷ Stefani Wijaya, "Polri Ganti Nama Operasi Pemburu KKB Papua menjadi Damai Cartenz", *Berita Satu*, 11 January 2022; Jhon Rico, "Operasi Damai Cartenz 2024 di Papua Fokus Penegakan Hukum ke KKB", *Info Publik*, 10 January 2024.

¹⁸ Komnas HAM, "Menyoal Penyematan Status Teroris untuk KKB di Papua", 17 May 2021; Dita Syavira Balqis Nur Rahma *et al.*, "Eunoia x Sekolah Advokasi: Menyingkap Problematika Labelisasi Terorisme KKB di Papua", *PSDK Updates*, 11 August 2021.

¹⁹ Tri Subarkah, "TNI Sebut OPM Melakukan Pelanggaran HAM Berat dalam Pembunuhan Danramil Aradide", *Metro TV News*, 12 April 2024.

²⁰ Ikhsan Reliubun, "TPNPB-OPM Umumkan Perang Akan Berlangsung di Tiga Wilayah", *Tempo*, 26 May 2024.

²¹ "Panglima OPM Menantang TNI Bertempur, Ini Aturan Perang Mereka", *Nusantara News*, 25 March 2018.

²² In 2006, the Supreme Court of Indonesia published guidelines on the elements of serious human rights violations (genocide and crimes against humanity) as a guide for judges to better understand genocide and crimes against humanity, as a response to the different views and interpretations of human rights court judges. See Supreme Court of the Republic of Indonesia, *Guidelines on the Elements of the Crime of Gross Human Rights Violations and Command Responsibility*, 2006.

ICC Statute and Article 9 of Law No. 26 of 2000. Punishments for crimes against humanity vary depending on the specific underlying acts, ranging from the death penalty and life imprisonment to prison sentences of 5 to 20 years. Similar to the provisions on genocide, the provisions on crimes against humanity in the NCC lack additional explanations. This leaves the interpretation of their elements to law enforcement officials and judges. However, unlike genocide, crimes against humanity have been applied in various cases before Indonesia's human rights courts. As a result, law enforcers and judges already have established precedents and references for interpreting the elements of crimes against humanity.

Notably, the NCC expands the scope of crimes against humanity by incorporating the provision from Article 7(k) of the ICC Statute: "Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health". This provision was absent from the list of underlying acts in Law No. 26 of 2000.

The elucidation of the NCC specifies that the law incorporates principles from international conventions, both ratified and not ratified by Indonesia, including Law No. 5 of 1998 on the Ratification of UNCAT. Article 530 of the NCC defines torture as:

Any official or other person acting in an official capacity, or a person acting under the mobilized authority or with the knowledge of a public official, commits acts which inflict physical or mental suffering on a person with the purpose of obtaining information or a confession from that person or a third person, punishing him or her for an act committed or alleged to have been committed by him/her or a third person, or intimidating or coercing that person or a third person on the grounds of discrimination in all its forms, shall be punished with a maximum imprisonment of seven (7) years.

This formulation is based on Article 1 of UNCAT but omits the exception for pain or suffering arising from lawful sanctions, as explicitly mentioned in UNCAT. Furthermore, like the provisions on genocide and crimes against humanity, Article 530 lacks additional explanation beyond its reference to UNCAT.

Law enforcement officials will require detailed guidance on interpreting the elements of torture. Past case law has often mischaracterized acts of torture as 'assault' (*penganiayaan*), which is distinct from torture under international law. This underscores the need for clear judicial interpretations and application of the law to align with the standards set by UNCAT.

It is important to highlight, in this context, that the NCC does not clarify Indonesia's stance on international crimes or explain the exclusion of war crimes and crimes of aggression. Additionally, it lacks any explicit reference to the principle of non-applicability of statutory limitations to international crimes.²³

4.2. Universal Jurisdiction

The NCC includes ambiguous provisions on universal jurisdiction, extending the applicability of NCC provisions to "every person outside the territory of [...] Indonesia" for criminal offences under both international law and the NCC (Article 6), and when the prosecution of offences committed outside of Indonesia are taken over by the government due to authorization "on the basis of an international treaty" (Article 7).

These articles suggest that Indonesia may recognize universal jurisdiction, including potentially for crimes like genocide and crimes against humanity. However, this interpretation conflicts with Article 5 of Law No. 26 of 2000, which grants jurisdiction to Indonesia's Human Rights Court for gross human rights violations committed abroad only if the perpetrators are Indonesian citizens. This has generally been interpreted to exclude foreign nationals.

The limitation was challenged in the Constitutional Court, with petitioners arguing that Indonesia, as part of the international community, has a duty to prosecute perpetrators of the most serious crimes regardless of their nationality. The Court ruled that Law No. 26 of 2000 does not accommodate the principle of universal jurisdiction, affirming that this limitation is not unconstitutional. The Court clarified that the universal principle in NCC Article 6 refers to the applicability of general criminal law and cannot be used to expand the jurisdiction of human rights

²³ The statute of limitations is stipulated in Article 137 of the NCC. However, Professor Eddy OS Hiarij, Deputy Minister of Law of Indonesia, stated that there is no statute of limitations for gross human rights violations, as the NCC will still refer to Law No. 26 of 2000, see *supra* note 9 (communication on 31 December 2024).

courts to prosecute gross human rights violations committed by foreign nationals. The Court emphasized the contextual difference between the universal principle in the NCC and the broader application of universal jurisdiction under international law.²⁴

5. (Lack of) Special Criminal Procedures

General Elucidation No. 4 of the Second Book of the NCC states that the special procedures for gross human rights violations are governed by Law No. 26 of 2000. However, this law does not include specific rules for court procedures or rules of evidence, relying instead on the provisions of Law No. 8 of 1981 on the Criminal Procedural Code ('KUHAP'). This reliance has been criticized as inadequate by international standards, as the restrictive evidentiary approach under KUHAP hampers the effectiveness of human rights courts.²⁵

A key issue is the requirement under KUHAP that evidence, including documents, must be presented in their original form. This contrasts with international tribunals, which routinely admit various forms of evidence, such as copies of documents, audio and video recordings, press releases, victims' and accused persons' interviews, crime scene assessments, newspaper clippings, and expert reports. KUHAP significantly impedes the prosecution of gross human rights violations, limiting the ability of courts to consider evidence that is critical for such cases.²⁶

The parliament recently agreed to include a draft Criminal Procedural Code in its 2025 national legislation programme,²⁷ but it remains unclear whether the draft will adopt the NCC's approach of unifying all criminal procedures into a single code.

6. Non-Judicial Mechanisms

Even though one national truth and reconciliation commission ('TRC') and two regional TRCs in Aceh²⁸ and Papua²⁹ were planned, ultimately only the Aceh TRC was established, enjoying strong backing from the Aceh parliament and civil society. While the central government does not oppose it, it has not provided significant support either.

In December 2023, the Aceh TRC published its report,³⁰ concluding that Indonesian security forces committed systematic, widespread human rights violations against civilians in Aceh between 4 December 1976 and 15 August 2005. According to the findings, members of the military, the police, and those under their command were responsible for crimes against humanity or war crimes – ranging from murder and enforced disappearance to torture and sexual violence – aimed at instilling fear and subjugating the Acehnese population.³¹ The national government has yet to respond to the report.³²

Another non-judicial initiative was launched in August 2022 with the establishment of the Team for the Non-Judicial Settlement of Past Gross Human Rights Violations (Tim PPHAM) under Presidential Decree No. 17 of 2022. The team has three main objectives: (a) disclosing and implementing non-judicial efforts to resolve serious past human rights violations, based on data and recommendations from the national human rights institutions up to 2020; (b) recommending reparations for victims or their

²⁴ Constitutional Court of Indonesia, Decision, 24 April 2023, No. 89/PUU-XX/2022, pp. 168–169 (<https://www.legal-tools.org/doc/nmlwp8/>). Yet, Deputy Minister of Law, Professor Hiarij, stated that universal jurisdiction applicable to both citizens and non-citizens (communication on 31 December 2024).

²⁵ Law No. 8 of 1981 on the Criminal Procedural Code (<https://www.legal-tools.org/doc/920cff/>). See Agung Yudhawirana and David Cohen, "Indonesian Human Rights Court Procedures and Practices", Paper presented at the Colloquium on Indonesia Legal System, organized by Center of Asian Legal Studies, University of Washington, Seattle, 22–23 April 2004.

²⁶ *Ibid.*

²⁷ See Fransiskus Adryanto Pratama, "Paripurna DPR Sahkan 41 RUU Prolegnas Prioritas 2025" ["Parliament Plenary Session Adopted 41 Bills in Their National Legislation Program"], *Tirto*, 19 November 2024.

²⁸ Law No. 11 of 2006, see *supra* note 6.

²⁹ Law No. 21 of 2001 on Papua Special Autonomy, 21 November 2001, Article 45(2) (<https://www.legal-tools.org/doc/ktllwlzz/>).

³⁰ Asia Justice and Rights, "Indonesia: Aceh TRC Findings Report 'Peulara Damèe' Reveals the Truth and Acknowledges Crimes Against Humanity, Calls to the Government to Implement Recommendations", Press Release, 21 December 2023.

³¹ Stanford Center for Human Rights and International Justice, 2023, pp. 22–23, see *supra* note 7.

³² "Kemendagri pertanyakan KKR Aceh", *BBC News Indonesia*, 27 December 2023.

families; and (c) proposing measures to prevent the recurrence of serious human rights violations in the future.³³

By December 2022, the team had submitted its report to the President who, the following month, accepted the findings, acknowledged serious human rights violations, and expressed regret for the various cases that occurred. He also pledged to fulfill victims' rights through support programmes. However, with the recent change in national leadership, it remains unclear how the government will proceed with reparations for the victims.

7. International Relations

Indonesia's foreign policy is founded on the principle of 'Free and Active Policy' (*Politik Bebas Aktif*) as stated in the Preamble to the 1945 Constitution, which emphasizes Indonesia's role in "participating in implementing world order based on freedom, eternal peace, and social justice".³⁴ In November 2022, during the fourth Universal Periodic Review cycle, Indonesia reaffirmed its dedication to investigating allegations of past human rights abuses. This commitment extends to both judicial and non-judicial mechanisms, demonstrating Indonesia's evolving stance on human rights issues.³⁵ Indonesia has shown support for recommendations from various nations, including Argentina, Eswatini and Slovenia, to focus on combating impunity and addressing past human rights violations, signalling willingness to engage with the international community on sensitive issues. Actual implementation of accepted recommendations remains to be seen.

In Southeast Asia, Indonesia as one of the founders of the Association of Southeast Asian Nations ('ASEAN'), always states the importance of adherence to ASEAN's non-interference policy, a principle that emphasizes respect for the sovereignty of member states and non-intervention in their domestic affairs, as stipulated in the ASEAN Charter's Article 2(2). It reflects ASEAN's commitment to regional stability and unity, avoiding external pressures that might strain diplomatic relations. However, such a principle also poses challenges to advance accountability for core international crimes³⁶ when such crimes occur in the region, as seen in the ICC's announcement of an arrest warrant against Min Aung Hlaing in relation to alleged crimes against Rohingyas. Indonesia is very cautious to react.

In contrast to ASEAN, Indonesia has consistently condemned Israel's actions against Palestinians on various international platforms, describing them as acts of genocide. The country has actively supported international legal measures to address these issues, including explicitly backing South Africa's case at the International Court of Justice,³⁷ which alleges that Israel has committed genocidal acts against Palestinians in Gaza. In November 2024, Indonesian officials went further by calling for Israel's expulsion from the United Nations, claiming ongoing genocide and blatant violations of international peace and human rights standards.³⁸

³³ See Presidential Decree No. 17/2022 on the Establishment of the Team for the Non-Judicial Resolution and Settlement of Past Gross Human Rights Violations, 26 August 2022, SK No. 155044 A (<https://www.legal-tools.org/doc/tz2e-zldm/>).

³⁴ Constitution of Indonesia, 18 August 1945 (<https://www.legal-tools.org/doc/aec471/>).

³⁵ National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21, UN Doc. A/HRC/WG.6/41/IDN/1, 1 September 2022, para. 126 (<https://www.legal-tools.org/doc/cx3vn78g/>).

³⁶ There are three international instruments ratified by all 10 ASEAN Member States: the 1949 Geneva Conventions, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child. However, adherence to these international instruments should be balanced with the ASEAN non-interference policy.

³⁷ Al Jazeera English, "Indonesia expresses support South Africa's case at the ICJ", *YouTube*, 16 January 2024.

³⁸ "Indonesian parliament asks UN to revoke Israel membership", *Antara News*, 14 November 2024.

While issues such as ISIS and the growing influence of more intolerant interpretations of religion elicit negative responses from Indonesia's predominantly moderate Islamic community, the plight of Palestinians has consistently served as a unifying cause for the country's Muslim population. Moreover, there is widespread acceptance of IHL as *ius in bello*, which is aligned with Islamic teachings.³⁹ Together, these factors seem to strengthen Indonesia's commitment to advocating for Palestinian rights and pursuing accountability for some actions it perceives as violations of international law.

8. Conclusion

At the domestic level, the entrenched culture of impunity and the persistent weakness of the rule of law continue to undermine the nation's progress toward justice and accountability. While the NCC's recognition of universal jurisdiction and some international crimes represent positive steps, the lack of a complementary procedural code limits its effectiveness.

The development of ICL in Indonesia remains stagnant due to concerns that future enforcement could implicate powerful figures suspected of core international crimes. Additionally, the potential prosecution of atrocities in Papua, particularly war crimes, further discourages meaningful progress in advancing ICL.

Indonesia should, first, fully integrate *internationally acceptable* ICL concepts; this includes amending the deliberate and indeliberate errors that can be found in the domestic legislation. This would ensure a modern and cohesive approach to addressing international crimes within the domestic legal framework.

Secondly, to enhance clarity and consistency in the application of ICL, supporting tools should be created. These could take the form of Supreme Court circular letters or complementary handbooks tailored for judges, prosecutors, police officers, national human rights institutions, and military personnel. Such tools would provide clear guidance on the elements of international crimes and promote uniform understanding and enforcement. However, publications alone are not enough; there must be concerted efforts (by the judiciary, law schools and civil society) to improve and sustain this knowledge among existing and future legal professionals.

Thirdly, the government no longer sees ratification of the ICC Statute as a priority. The persistent resistance – largely unfounded – against ratification undermines its feasibility. Moreover, ratification alone will not improve accountability if domestic implementation continues to dilute the principles and spirit of ICL enforcement. However, advocacy for ratification remains an important catalyst for spreading correct awareness of ICL.

Continuous support to the regional non-interference policy further restricts Indonesia's capacity to advance ICL development. Looking ahead, the implications of these challenges are significant, potentially eroding the foundations of justice and human rights. It is crucial for both policy-makers and citizens to advocate for meaningful legal reforms, strengthen international co-operation, and push for systematic changes that prioritize accountability and the rule of law. Otherwise, how long can a society thrive when impunity prevails?

Bhatara Ibnu Reza, Rully Sandra and Zainal Abidin were members of the Civil Society Coalition of Indonesia for the ICC, which advocated the ratification of the Rome Statute by Indonesia up to 2015.

ISBN: 978-82-8348-251-5.

TOAEP-PURL: <https://www.toaep.org/pbs-pdf/163-indonesia/>.

LTD-PURL: <https://www.legal-tools.org/doc/btcsqmw/>.

Date of Publication: 30 January 2025.

³⁹ Interview with an expert on IHL and Islamic circles in Indonesia (the respondent requested to remain anonymous), conducted on 3 December 2024.



Torkel Opsahl Academic EPublisher (TOAEP)

Via San Gallo 135r, 50129 Florence, Italy

URL: www.toaep.org



TOAEP reserves all rights to this publication in accordance with its copyright and licence policy at <https://toaep.org/copyright/>. Inquiries may be addressed to info@toaep.org. TOAEP's responsible Editor-in-Chief is Morten Bergsmo. You find all published issues in the Policy Brief Series at <https://www.toaep.org/pbs>. TOAEP (with its entire catalogue of publications) is a digital public good, as also certified by the Digital Public Goods Alliance.