

THE ACCURACY OF THE CRIME OF GENOCIDE IN THE BILL OF KUHP 2019 ACCORDING TO HUMAN RIGHTS REGULATIONS

Inez Devina Clarissa¹, Tomy Michael²

Abstract

Crime of genocide has been regulated in the International Human Rights Instrument since the Second World War ended. Through this arrangement, crime of genocide in Rome Statute is said to be the most serious crime related to cruel acts against humanity such as murder to kidnapping with an aim of exterminating a group. The Indonesian state has regulated the crime of genocide in Law no. 26/2000, but with the renewal of the criminal law regulated in the RKUHP 2019, the crime of genocide was then stated in Article 598 of the RKUHP 2019. This creates confusion because previously the crime of genocide regulated in Law no. 26/2000 has been unified and codified in order to be in line with the provisions of the Rome Statute. So this research will focus on whether the crime of genocide contained in Article 598 of the 2019 RKUHP 2019 can be said to be correct when viewed from the Fundamental Human Rights Instrument. The type of research that will be used in the following research is normative legal research that uses the law approach as its approach method. Based on laws and regulations, legal sources and materials used in this research will be obtained from the literature relevant to the research. Using technique of primary legal materials, this research will use an inventory method as well as categorization of laws according to the hierarchy.

Keywords: *Crime of Genocide, Fundamental Human Rights, RKUHP 2019*

Introduction

United Nations (UN) took an action after the Second World War happened with adopting two documents namely Universal Declaration of Human Rights (UDHR) also the 1948 Genocide Convention. Passing 70 years since norms, laws and structures adopting that made to protect of human rights violations, it has evolved and moved from signed papers of commitments that goes to regional also international policies, and practices also institutions. Nonetheless, signing of the 1948 Genocide Convention, at nearly every decade, has featured at least one conflict in which genocide occurred halfway around the world. Recently, there has been an increasing attacks on various international law also human rights, that've been following by such alarming increase in atrocities like example; Syria, South Sudan, the Central African Republic and a number of other countries. (Adams, 2019)

With regulations regarding human rights that have been regulated, norms and institutions should be able to protect humans and their rights to life so that they do not live under threat. Especially because the crime of genocide has been regulated on various international human rights instruments like the International Criminal Tribunal for Rwanda (ICTR), 1948 Genocide Convention, to 1988 Rome Statute on International Criminal Court. But facts shown that cases regarding the crime of genocide are still happening.

¹ Fakultas Hukum Universitas 17 Agustus 1945 Surabaya, Jl. Semolowaru 45, Surabaya, 60118 - Indonesia | inezdevina1@gmail.com | <https://orcid.org/0000-0002-1305-3801> | <https://www.researchgate.net/profile/Inez-Devina-Clarissa> | <https://publons.com/researcher/4522678/inez-devina-clarissa/>

² Fakultas Hukum Universitas 17 Agustus 1945 Surabaya, Jl. Semolowaru 45 Surabaya, 60118, Indonesia | tomy@untag-sby.ac.id |

One of the genocidal crimes that are still happening today is the case of Myanmar against the Rohingya ethnic group. Between August 25 and December 31, 2017, thousands of despairing Rohingya civilians crossing the frontier from Myanmar to Bangladesh, flooding refugee camps with 711,984 registered new arrivals. The Rohingya sweeping operations are being carried by Myanmar's protection forces in Rakhine State, and it includes such widespread killings, rape also systematic burning of more than 350 villages. Rohingya Muslims, Kaman and other minorities face severe restrictions on their freedom of movement. The majority of Rohingya Muslims living in northern Rakhine State require authorization from several government agencies to move between, and often within, the country. (Tomar & Pandey, 2018)

The Rohingya are a Muslim ethnic minority group in Myanmar that has been persecuted for decades by tensions and violence stemming from a dispute between Burmese nationalists likewise colonial loyalists over which side to support over Britain or Japan, when World War Two betided. Self-dependence from the British Empire in 1948 and the bunglesome post-colonial transition postdated by the relinquishment of military regulation in Burma in 1962. This split redounded in decades of armed conflict between the armed forces and various armed ethnical groups. Meanwhile, Myanmar's 1982 Citizenship Law doesn't recognize the roughly one million ethnic Rohingya, centered on Rakhine State and bordering Bangladesh, as one of the country's "national races", leaving unreliable citizenship to most of them. (Sultana, 2019)

Crimes against the Rohingya ethnic group can be said to be genocide because it is referred to on article 25 of Rome Statute, the definition that may be observed like follows: against acts of genocide, which is meant by one of the following acts with the aim of destroying all or part of a national, ethnic, racial, or religion is:

1. Murder of a group member;
2. Causes extensive damage to the mental and physical health of group members;
3. The intentional placing of a group in unfavorable living conditions causing physical damage to all or part of the group;
4. Take precautions to prevent births in groups; and
5. Forcible transfer of children from one group to another.

According to its article, crime of genocide can be said as the scope of a series of criminal acts that take place widely with aim of destroying all or part of the targeted group; and is not a concept tied to a particular crime. (Jamadi, 2018) This was later adopted by Indonesia into Article 7 of the Law on Human Rights Courts. Although Indonesia has not officially ratified the Rome Statute, Indonesia has carried out unification and codification of the Act. It can be seen from the formulation of Article 7 of Law Number 26 of 2000 with Article 25 of the Rome Statute which has similarities in the legal subjects listed therein.

However, the crime of genocide in its development in Indonesian law is not only stated in Law no. 26 of 2000 but also the 2019 Draft Criminal Code (RUU KUHP / RKUHP 2019). This raises a bit of a question mark, because the crime of genocide both internationally and

nationally is referred to as a special crime and the most serious crime, which is regulated in its own regulations.

Comparison with the first research is that this research produces answers regarding to gain an understanding of gross human rights violations that exist in 2019 RKUHP, it's necessary to have a thorough study from all parties, including academic groups in order to create an Indonesian criminal law instrument that can guarantee protection for all forms of criminal justice. serious human rights violations. (Sumigar, 2020) The difference with this research is that the research in this journal focuses more on the crime of genocide in the 2019 RKUHP by comparing it to International Human Rights Instruments, and does not discuss the article on crimes against humanity.

Furthermore, for the second research which is still relevant to the research, the research provides an answer that it is necessary to set a regulation regarding the criteria for genocide which can be classified as an extraordinary crime by utilizing information obtained from technological developments as well as communication. This was done so that the crime of genocide could not increase from time to time. (Marbun et al., 2020) Regarding the difference between this study and the second research, this journal focuses on the qualifications of criminal acts classified as extraordinary crimes which must then be included only in special legal arrangements so that Indonesian national law can provide a fair solution to criminal acts. for this extraordinary crime.

As well as in the third research, namely the last research, the research led to the answer that the dispute resolution of the crime of genocide as a serious violation human rights may be resolved by using mediation first. When the said method doesn't work, it was then the UN Council turn to submit the cases to the international courts like the International Criminal Court as regulate on Article 1 of Rome Statute. (Arianta et al., 2020) The difference between the studies in these journals is that they focus more on the problems experienced by the Rohingya and how the crime of genocide is resolved within the jurisdiction of International Criminal Court.

Based on relevant studies that researcher uses in this journal, the researchers formulate a problem formulation, namely if the 2019 RKUHP then regulates the crime of genocide, how is the accuracy of regulation of genocide in the 2019 RKUHP with other Human Rights Instruments, and whether the regulation of genocide crime in the 2019 RKUHP is appropriate and can be used if the 2019 RKUHP is legalized.

Research Methods

The study uses juridical normative legal research method that bases analysis on research on legislation using statutory approach also conceptual approach. (Soren & Saleh, 2022) This research will refer to the applicable laws and regulations and of course relevant to the literature in accordance with this research as a secondary material. Therefore, the results of this study can be more objective.

Discussion

The Importance of Human Rights

From perspective of international relations, human rights usually recognized rights as an embodied in the so-called International Bill of Rights. These include the rights articulated in the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (ICCPR) (1966) (and its two optional protocols), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966). The UDHR is a non-binding resolution of the United Nations General Assembly that represents the existing international consensus on the definition and importance of human rights in the post-World War II sequence. This regulations exist not to say as if other human rights do not exist, only that they have not achieved the wider international recognition that is required to be codified in international law.

Both of the ICCPR also ICESCR appear as a binding for international law that codifies other human rights rules that been embodied inside UDHR. Its two treaties then join other international human rights treaties core just like: the International Convention on the Elimination of All Forms of Racial Discrimination in 1965; Convention on the Elimination of All Forms of Discrimination against Women in 1979; until the Convention on the Rights of Persons with Disabilities in 2006. Not only that, but there are also many other domestic, regional also international laws that've been inspired by the making of UDHR. Most of all the core instruments in their preambles call for human dignity, having to suggest that this overarching theme in human rights discourse. (Rahmawati et al., 2021)

With all the instruments and regulations within international and national for human rights, it signifies how important human rights are as fundamental rights that been owned from birth. UNDHR especially has emphasized to the world audience that a common will has been born in order to uplift human dignity and dignity. This has shown the international community's recognition of the universality of human rights values. From the point of view of international law, human rights themselves can be limited or reduced under certain conditions. Restrictions usually have to be prescribed by law, have a legitimate purpose, and are necessary in a democratic society. Meanwhile, reductions can only be made in an emergency that threatens "the life of the nation", and the outbreak of war is not sufficient for this requirement. Especially during war, there is an international humanitarian law that will acts as *lex specialis*. However, certain rights must not be waived under any circumstances, such as the right to be free from slavery or torture.

Since it is appropriate to examine such concept of human right, that's why it became a need to absorb impact that UDHR had on protection of human rights. Having the definition that a person acquires by giving birth or an embryo, and which are all-important for the individual to begin human existence, dignity and living conditions, human rights, which in principle embody the top conscionable values, are a unique category of equity. In such a way that human rights which must be enforced at all dates and everyplace, without exception under any casualties, can be considered as the top conscionable principle.

Clarification of the concept of "rights" may give much better comprehension of the nature that human rights have. Having the terms of compliance to reality, it can also be used

in many other terms like equity, justice, or any tradition that demands or admits the person. Rights when used in its legal terms can be seen as powers that are given to people as individuals by legal order. If it is seen in other words then rights are legal authorities. Departing from this, it can be stated that the conception of rights is nearly related to the conceptions of freedom and equality. Freedom means that a person's exertions to make his life fulfilling to his own advancements aren't arbitrarily hindered, particularly by political authorities. Therefore, the conception of rights implies that one's possibilities of action shouldn't be bounded by asserting this freedom. Freedom, on the other hand, recognizes everyone inversely, and everyone can profit from it equivalently. Because these three conceptions are nearly associated to each other, they're frequently cited when making the Universal Declaration. (Şener, 2021)

Eventually, human rights became a product of normative rules from an adjustment of the times and in order to better understand the nature of human rights and their scope and priorities, it is very important to look at the origins and initial thoughts that have been developed as well as the efforts made since the beginning of the Human Rights tradition alone. Conventionally, there are two conceptualizations of "rights", each of which places human rights at a different hierarchical level.

The first view, or often referred to as First Generation Human Rights, comes from the Western tradition that prioritizes civil and political rights, such as freedom of the press, freedom of association, freedom of religion and speech, and the right to participate in government. This first-generation concept is the hope of freedom, a safeguard that protects a person, either individually or in an association with others, against abuse of political authority. The second generation of human rights thought not only demands juridical rights but also social, economic, political and cultural rights. So the second generation of human rights thinking shows an expansion of the concept and scope of human rights. During the second generation, there was less emphasis on juridical rights, resulting in an imbalance with socio-cultural rights, economic rights and political rights. (Agussalim, 2018)

The third generation as a reply to another generation of human rights thinking, promises a coherence between economic, social, cultural, political and lawful rights in a handbasket conjectured the appanages to bear out elaboration. In its implementation, the results of the third invention of human rights exemplars likewise undergo an imbalance where there's an emphasis on economic rights in the logic that economic growth is a highest precedence, while different rights are overlooked, causing multitudinous casualties, because many different people's rights are assaulted. As for the fourth generation criticizes the truly dominant job of the state in the development course which focuses on economic development and causes negative effects such as bypassing aspects of people's welfare. In addition, the development course that's acquitted out isn't based on the demands of the people as a whole but meets the needs of a group of elites. The fourth generation of human rights thought was initiated by countries in the Asian region which in 1983 extended birth to a declaration of human rights called the Declaration of the fundamental assessments of Asian People and Government. (Saputri, 2021)

The Crime of Genocide in the Eye of Human Rights

Human rights are a freedom given by humans in showing that humans are perfect creatures from other creatures. So that in protecting all rights inherent in human beings, it is necessary to have a positive legal framework as a regulatory effort to provide legal certainty for human rights as universal rights. At the international level, the rules governing of human rights have mostly been formulated in an international agreement, while the national level on human rights is formulated in legislation that will fully regulate human rights. In practice, violations or crimes against human rights that commit them are people or individuals as legal subjects. Violations of human rights can be categorized as crimes or criminal acts, namely because they violate the provisions of human rights law by being subject to a criminal sanction in national and international scope. (Febriyani, 2021)

The act of torturing and treating humans very inhumanely is an act that is prohibited by both national and international law. One of the most prohibited acts is the crime of genocide. The crime of genocide itself is one of the most inhumane and very heinous acts which is an act of violation of human rights. This action is also usually carried out against several groups that are seen as minority and powerless groups. This act of genocide is considered an act that can threaten the integrity of a nation because it is cruelly carried out against certain groups such as certain ethnic, religious or racial groups.

At the multinational convention degree, genocide was declared an international crime on 9 December 1948, after the United Nations General Assembly embraced the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter referred to as the 1948 Genocide Convention). Even before the Convention was espoused, the Nuremberg Trials, which took place on August 8, 1945, raised the question of criminalizing the martial felonious Hitler of committing the crime of genocide as a crime against humankind. After Nuremberg and the relinquishment of the 1948 Genocide Convention took place, activities connected to transnational law to battle the crime of genocide have accelerated rapidly. Significant multinational legal actions were embraced under the auspices of the United Nations, bespeaking the right of nonages to equal development, appreciating their rights and defining mechanisms for the safety of their rights. This can be seen in several configurations akin as the Universal Declaration of Human Rights in 1948, the International Covenant on Civil and Political Rights in 1966, the Convention on the Non-Application of Legal Restrictions on War Crimes and Crimes Against Humanity in 1968, the International Convention on the Elimination of All Forms of Racial Discrimination in 1965, until the Convention on the Elimination of All Forms of Discrimination against Women in 1979. (Voloshchuk et al., 2021)

The emergence of the concept of human rights has become an important issue to be regulated in the world considering that these rights must continue to be fulfilled and must not be violated. However, often violations of human rights, especially serious human rights violations, occur so that these violations are regulated in several international human rights arrangements. As in the Rome Statute on the International Criminal Court 1998 (Rome Statute) which states that there are four forms of human rights violations consisting of genocide, crimes against humanity, war crimes, and crimes of aggression. Regarding the regulation regarding the crime of genocide itself, the Rome Statute absorbs Article 2 of the

Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (the 1948 Genocide Convention which defines genocide as an act with the intention of destroying or destroying all or part of a group, whether a national, racial, or ethnic group) ethnicity, or religion (Tutkey et al., 2021)

In the 1948 Genocide Convention, an act is then referred to as a crime of genocide if the act is carried out and directed against a group, which includes murder, an act that causes bodily or mental harm, an intentional act that causes physical damage to occur in whole or in part, makes an effort to prevent births and forcibly transfer children to other groups. Genocide is referred to as the indiscriminate killing of a group of people at the expense of the life of the individual. The immediate effect was on death and dehumanization, especially since genocide had global repercussions. The crime of genocide ignores international law, creates instability and destroys and destroys morals. Therefore, when genocide is compared with war crimes and crimes against humanity, the crime of genocide can be considered the most heinous crime because its object is the total extermination of a group of people.

The depiction of the crime of genocide, as congeal out in the 1948 Genocide Convention, has been broadly adopted both at the civil and multinational situations, including in the Rome Statute. The word genocide itself is a fairly ultramodern invention chased towards the end of the Second World War by a Polish advocate named Raphael Lemkin. Since then, the word genocide has become broadly adopted. The word genocide is a neologism conforming of *genos* (Greek) for ethnicity or race, and *cide* (Latin) for killing, and the expression was edged in in the ninth chapter of Lemkin's *Axis Rules in Occupied Europe* in 1944. The description is expressed to denote not just against an action of mass murder, but also a destruction of social and cultural conformations. (Bunyard, 2021)

Apart from a definition that's further directed at destroying social and cultural conformations, the crime of genocide has material elements that don't require an existent's conduct to be part of a wide or methodical attack against a circumstantial group. Meanwhile, the internal element of genocide requires that the material crime element be confided with 'denotation and knowledge' as administrated in Article 30 of the Rome Statute. In addition, genocide requires a certain intention to destroy a nation, ethnicity, race, or religious group in whole or in part. Thus, the end of the perpetrators of genocide is to destroy a group, in whole or in part, isn't the main element. The intention to destroy in a simulated manner is a methodical element of the crime of genocide, so that the crime of genocide is one of the most serious multinational crimes. (Nasution, 2018)

Not only in the Rome Statute, but the definition of the crime of genocide has been adopted from the meaning of the 1948 Genocide Convention to International Human Rights Law Instruments such as the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda Statute (ICTR). This makes the crime of genocide which was previously treated as a sub-crime against humanity to become a crime itself after being adopted by the 1948 Genocide Convention.

The important thing that needs to be noted from the start is the importance of article I of the 1948 Genocide Convention in terms of its content consisting of the words that

genocide can occur in the context of an armed conflict of an international or non-international nature, and that action can also occur in peacetime, this situation is said to be not common although there is still a possibility that could happen. Next is the obligation of the parties to prevent and punish the crime of genocide. However, an opinion was found that the definition of the crime of genocide according to article II of the 1948 Genocide Convention can be said to be a narrow definition because it contains two elements, namely a mental element (subjective) and a physical element (objective). Whereas the crime of genocide itself includes a tendency to have a broader understanding than the content of norms under international law. (Ifeakandu & Ochem, 2021)

Regulation of the 2019 RKUHP Regarding the Crime of Genocide

Regarding the implementation to maintain and protect human rights possessed by humans, it can be seen that there are many implementations that see the law as just a normative rule without any desire to examine more deeply the existing rules and decisions. There are various cases that cause friction between aspects of human rights and the understanding of human rights itself and other aspects of the legal system that appear quite often. One of them is how the crime of genocide is a gross violation of human rights regulated in the Draft Law on the 2019 Criminal Code (RKUHP 2019).

The crime of genocide, in its regulation, is a serious violation of human rights in Law Number 26 of 2000 concerning the Human Rights Court (State Gazette of the Republic of Indonesia of 2000 Number 208; Supplement to the State Gazette Number 4026) (Law No. 26 of 2000). Article 8 of Law no. 26 of 2000 states that the crime of genocide is any act carried out with the aim of destroying or destroying all or part of a group by killing, causing physical or mental suffering, creating living conditions that can result in physical destruction in whole or in part, coercive birth prevention, and the forcible transfer of children to other groups. This apprehension came as result of unification also codification that have been in line with a number of countries that already made amendments to their civil instruments, which have been also ratified by the Rome Statute.

Indonesia itself has not yet ratified the Rome Statute, but Law no. 26 of 2000 has the same relationship with the Rome Statute. The relationship is, both the Rome Statute and Law no. 26 of 2000, both have the same legal subject. It can be seen in the Rome Statute which stipulates that the crime of genocide itself is more directed against every act committed by everyone, and this is also seen in Law no. 26 of 2000. This is different when looking at the formulation of the crime of genocide in Article 598 of the 2019 RKUHP. In this article, the crime of genocide is hypothecated to be an action commended by anyone, which is carried out with the intention of destroying or carrying out complete or partial demolition of a group, be it a civil, racial, ethnical or religious group. In the 2019 RKUHP itself it's stated that the crime of genocide is carried out by the perpetrator by killing, causing severe physical or internal suffering, creating living conditions that can affect in physical destruction, either in whole or in part taking conduct that have the end of precluding births, and carrying out transfers, compulsion of children, all of which are directed at certain groups.

Even so, previously the crime of genocide had never been regulated in the Criminal Code (KUHP). Previously, the Criminal Code only regulated criminal acts of murder, torture, and kidnapping, and these articles only referred to criminal acts committed by a person, not with the aim of destroying a particular group. For every person who commits acts, attempts, or provides assistance to the crime of genocide, the 2019 RKUHP will provide a minimum imprisonment of 5 (five) years and a maximum of 20 (twenty) years, as well as a death sentence or a death penalty. life imprisonment. The formulation contained in the 2019 RKUHP can then be seen the difference between the formulation of the crime of genocide which has been regulated in Law No. 26 of 2000 and the Rome Statute.

Rome Statute	Law No. 26 Year 2000	Draft Criminal Code 2019
<p>For the purpose of this Statute, "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:</p> <p>(a) Killing members of the group;</p> <p>(b) Causing serious bodily or mental harm to members of the group;</p> <p>(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;</p> <p>(d) Imposing measures intended to prevent births within the group;</p> <p>(e) Forcibly transferring children of the group to another group.</p>	<p>The crime of genocide as referred to in Article 7 letter a is any act carried out with the intention of destroying or destroying all or part of a national, racial, ethnic or religious group by:</p> <p>a. killing group members;</p> <p>b. cause serious physical or mental harm to group members;</p> <p>c. create conditions of living for the group which will result in its physical destruction, in whole or in part;</p> <p>d. imposing measures aimed at preventing births within the group; or</p> <p>e. forcibly transferring children from one group to another.</p>	<p>Convicted of genocide Any person with intent to destroy or destroy all or part of a national, racial, ethnic or religious group, by:</p> <p>a. killing group members;</p> <p>b. cause serious physical or mental harm to group members;</p> <p>c. create living conditions for the group which are calculated to result in physical destruction, either in whole or in part;</p> <p>d. imposing measures aimed at preventing births within the group; or</p> <p>e. forcibly transferring children from one group to another, with a death penalty, life imprisonment, or a minimum imprisonment of 5 (five) years and a maximum of 20 (twenty) years.</p>

Table 1. The different formulations of the crime of genocide in the Rome Statute, Law no. 26 of 2000, and the 2019 RKUHP.

If the formulation of the crime of genocide in the three Human Rights Regulations is reviewed, it can be seen that the regulation regarding the crime of genocide in the 2019 RKUHP still has several weaknesses in some of its arrangements. This can be seen because even though the 2019 RKUHP has been equipped with elements of crimes in its articles, the elements of these crimes are still incomplete because there is no explanation regarding these elements. The Working Committee (commonly called Panja) of the House of Representatives (DPR) itself includes an explanation of the article that the crime of genocide has a special characteristic, namely the intentional act of destroying a national, racial, ethnic or religious group. (Abidin & Eddyono, 2017) However, this improvement is still insufficient to describe

the elements of the crime of genocide because there is no explanation regarding the element of intention or intention to destroy a group.

As Raphael Lemkin in his book, *Axis Rule in Occupied Europe*, conceptualizes, the crime of genocide as the imposition of the national pattern of the perpetrator group on the national pattern of the oppressed target group. Lemkin provides a definition that to commit the crime of genocide, not only physical extermination takes place but also by biological means that suppresses the fundamental and economic basis for the existence of a group, and for the survival of the group that was sacrificed. Whereas in the 1948 Genocide Convention, the crime of genocide is conceptualized as the "intentional" destruction in whole or in part, of a human group, for reasons related to the nationality, religion, ethnicity, or even race of the victimized group. This concept was reaffirmed by the 1998 Rome Statute, which in article 6 stipulates that one of these acts is the crime of genocide. The Rome Statute does not provide the factual context that should apply to the configuration of the crime of genocide but only the motivations and intentions of the perpetrators (intentions to destroy).

Objectives of genocide would be disintegration of the political and social associations, of culture, language, civil passions, religion, and the economic existence of civil groups, and the destruction of the individual protection, liberty, health, dignity, and even the lives of the individualities belonging to similar groups. Genocide is conducted against the civil group as an being, and the actions involved are guided against individualities, not in their characteristic ability, but as members of the civil group. Genocide itself has two phases; one that's destruction and other is duty. This assessment may be made upon the downtrodden population which is allowed or remain, or upon the habitat alone, after discarding of the population and the colonization of the area by the oppressor's own citizens.

In the case of genocide, there is an additional requirement of *dolus specialis* which refers to the specific intent 'to destroy in whole or in part a national, ethnic, racial or religious group. The objective shall be to destroy one of the listed groups in whole or in part. For the intent to destroy, the self-destructed group must be an important part of the group (substantial part of the group). Lemkin himself in his book states that genocide refers to the destruction of a coordinated plan that has the aim of destroying the important foundations of group life, the purpose of which destruction itself is to destroy these groups. So if the Rome Statute is viewed from the meaning of genocide according to Raphael Lemkin himself, it can still be said to be inappropriate. Even so, according to what Lemkin has stated, it can be seen that the formulation of the 2019 RKUHP which adds the words destroy and destroy is relevant, because the purpose of the destruction itself is the extermination of a group, even though Lemkin's definition of genocide leads to destruction rather than the substantial members belonging to the group.

Different characteristics then can be seen in the crime of genocide with the general crimes contained in the 2019 RKUHP. This is because the crime of genocide has special principles such as the retroactive principle that does not recognize an expiration date, also the crime of genocide is not a common criminal act. As a special crime, the crime of genocide has different characteristics from general crimes because in its regulation, special crimes

refer to the *lex specialis* which makes the types of acts committed have special characteristics as well as the concept of proof and material punishments which are specific in nature and adapted to the individual. existing forms of crime. (Afifah, 2019)

Furthermore, in terms of international law, granting amnesty for criminal acts is very contrary to a principle of justice which can lead to impunity. Various International Human Rights Instruments provide conditions for states to enforce the law on crimes that are considered to disturb the sovereignty and stability of the state. The Office of the High Commissioner for Human Rights in the Rule of Law Tools for Post Conflict States states that international human rights law prohibits granting amnesty for international crimes such as the crime of genocide.

However, in Article 140 of the 2019 RKUHP, it can be seen that the fall of authority over the implementation of a crime is regulated into four, namely if the convict dies, the case has expired, the convict gets a pardon or amnesty, and the execution of the crime is handed over to another country. Amnesty can be granted by the President with the consideration of the House of Representatives (DPR). This means that if the crime of genocide is still included in the 2019 RKUHP, the granting of the amnesty can abort the execution of the crime against the perpetrators of the crime of genocide, even though in the perspective of international human law, amnesty is said to be very contrast to the principles of justice. The inclusion of granting amnesty in Article 140 of the 2019 RKUHP can provide criminals with an opportunity regarding not being prosecuted for crimes of genocide because of the granting of amnesty.

Judging from this, it can be said that the crime of genocide is still not in accordance with human rights legal arrangements, and cannot be used because if the formulation that is still listed in the 2019 RKUHP regarding the crime of genocide is still running as stated in the article, there will be difficulties when the prosecution of these crimes will be carried out. This is due to differences in the weak formulation in the 2019 RKUHP so that these weaknesses have an impact on providing protection for human rights. Although the formulation of Law no. 26 of 2000 itself can still be said to be far from perfect and there are still different formulations from the Rome Statute, but crime of genocide's more appropriate to be placed in a special law than the 2019 RKUHP because Law no. 26 of 2000 has a retroactive principle that cannot make the case expire. The 2019 RKUHP focuses more on the existence of a non-retroactive principle, and not only that, but the 2019 RKUHP stipulates the abortion of criminal acts due to expiration reasons and the granting of amnesty makes the formulation of the crime of genocide weaker.

If the 2019 RKUHP continues to adopt the crime of genocide into its formulation, then this article can weaken the gravity of the crimes. This is because the types of crimes that the crime of genocide has are classified as extraordinary crimes which in international human rights are also classified as a violation of *Jus cogens* and *Erga Omnes*, which are said to be the highest norm in international law that can defeat other norms. This norm itself is also an obligation for all countries to prosecute perpetrators of criminal acts. When this norm applies to serious crimes, then all legal principles and doctrines can indicate the

application of different general principles to guarantee a criminal sentence that is considered the most effective for the crime.

The enactment of the crime of genocide in the 2019 RKUHP can make these principles unable to apply effectively and will cause conflict with general principles of criminal law so that the formulation will be weakened. Although Law no. 26 of 2000 still cannot be said to be perfect, but by having its own forum that can exclude general principles of criminal law, prosecution for the crime of genocide will be more effectively carried out. If the crime of genocide will still be included in the 2019 RKUHP, a revision must be made by reviewing the Rome Statute so that there is no expansion of the meaning in the article regarding the crime of genocide. Not only that, there is a need for a thorough study of the elements of the crime of genocide contained in the 2019 RKUHP, and narrowing the meanings of the actions contained in the regulation of the crime of genocide so that there is no weakening of the regulations. This is an urgency for Indonesia to immediately ratify the Rome Statute so that the laws used can all adopt the same legal subjects and so that the International Court of Justice can have jurisdiction over Indonesia if it is needed in cases of serious human rights crimes, including crimes against humanity genocide and crimes against humanity.

Conclusion

The Criminal Code as a law adopted from the Dutch-herited Criminal Code requires an appropriate codification between the awareness and legal needs of the Indonesian nation, thus requiring a new criminal arrangement to replace the old regulation. The 2019 RKUHP then emerged as a solution, but there are still many ambiguous article formulations that make the 2019 RKUHP still have to be reviewed. An example is the article regarding the crime of genocide in Article 598 of the 2019 RKUHP. Some of the weaknesses of the article are in things such as the fall of authority over the implementation of a crime that one of its regulation is that the convict gets a pardon or amnesty that written in the Article 140.

If the crime of genocide remains in the 2019 RKUHP, then a number of revisions must be made by reviewing the Rome Statute so that there is no expansion of the meaning in the article regarding the crime of genocide. Not only that, there is a need for a thorough study of the elements of the crime of genocide contained in the 2019 RKUHP so that there is no weakening of the regulations when the 2019 RKUHP was legalized in Indonesia and began to run as an official law to replace the old Criminal Code.

References

- Abidin, Z., & Eddyono, S. W. (2017). *Degradasi Extraordinary Crimes*.
- Adams, S. (2019). "If Not Now, When?": The Responsibility to Protect, the Fate of the Rohingya, and the Future of Human Rights. In *SSRN Electronic Journal*.
<https://doi.org/10.2139/ssrn.3319491>
- Afifah, W. (2019). Karakteristik Tindak Pidana Terorisme di Indonesia. *Jurnal Akrab Juara*, 4, 1-9.

- Agussalim. (2018). Memahami Kesulitan Implementasi Nilai-Nilai Universal Hak-Hak Asasi Manusia. *Paradigma: Jurnal Masalah Sosial*, 16(1).
- Arianta, K., Mangku, D. G. S., & Ni Putu Rai Yuliartini. (2020). Perlindungan Hukum Bagi Kaum Etnis Rohingya Dalam Perspektif Hak Asasi Manusia Internasional. *Journal Komunitas Yustitia*, 3(2).
- Bunyard, T. (2021). Spirit and Social Death: Hegel, Historical Life and Genocide. *Ethics and Social Welfare*, 15(4). <https://doi.org/10.1080/17496535.2021.1970789>
- Febriyani, K. A. D. (2021). Pelanggaran HAM Dalam Tindak Kejahatan Genosida Etnis Rohingya di Myanmar Dari Perspektif Hukum Pidana Internasional. *Jurnal Komunitas Yustitia*, 4(3). <https://doi.org/http://dx.doi.org/10.23887/jatayu.v4i3.43100>
- Ifeakandu, I. O., & Ochem, C. E. (2021). Examination of the Crime of Genocide Under the Rome Statute of the International Criminal Court. *Journal of Law, Policy and Globalization*. <https://doi.org/10.7176/jlpg/105-05>
- Jamadi, M. (2018). The identification of religious genocide with emphasis on genocide of Shiites. *Revista Quaestio Iuris*, 11(04). <https://doi.org/10.12957/rqi.2018.37139>
- Marbun, R. G., Sitompul, I. L., Halawa, M., Pasa, I. P. M., & Purba, G. P. (2020). Tinjauan Yuridis Tindak Pidana Korupsi Sebagai Extra Ordinary Crime. *Jurnal Ilmiah Simantek*, 4(3), 1-23.
- Nasution, A. R. (2018). The Crime of Genocide on the Rohingya Ethnic in Myanmar from the Perspective of International Law and Human Rights. *Padjajaran Jurnal Ilmu Hukum (Journal of Law)*, 5(1). <https://doi.org/10.22304/pjih.v5n1.a10>
- Rahmawati, R., F. P. N. A., Maulana, M. I., Heriansyah, H., & Andrianto, I. (2021). Hak Asasi Manusia dan Diplomasi Kemanusiaan. *Global Mind*, 3(1).
- Saputri, N. (2021). Perkembangan dan Pelanggaran Hak Asasi Manusia. *Jurnal Pusdansi*, 2(2).
- Şener, M. B. (2021). A Review Of The Meaning And Importance Of The Universal Declaration Of Human Rights. *International Journal of Political Studies*, 7(3).
- Soren, S. M., & Saleh, M. (2022). *Kajian Normatif Penerapan Pidana Mati Bagi Koruptor Dana Penanggulangan Covid-19*. 15, 93-108.
- Sultana, I. (2019). Myanmar's Enemy Within: Buddhist Violence and the Making of a Muslim "Other" by Francis Ware. *Refuge*, 35(1), 90-91. <https://doi.org/10.7202/1060682ar>
- Sumigar, B. R. F. (2020). Pelanggaran Berat HAM dalam RUU KUHP: Tinjauan dari Hukum Internasional (Gross Violations of Human Rights in the Criminal Code Bill: an Overview from International Law). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 11(2), 125-144. <https://doi.org/10.22212/jnh.v11i2.1639>
- Tomar, P., & Pandey, A. (2018). Rohingya's Genocide: Human Rights and Politics. *Kathmandu School of Law Review*. <https://doi.org/10.46985/jms.v6i1.956>
- Tutkey, S. P., Lengkong, N. L., & Kasenda, V. D. D. (2021). Peran Perserikatan Bangsa-Bangsa Dalam Penanganan Kasus Kejahatan Genosida Menurut Hukum Internasional. *Lex Administratum*, IX.

Voloshchuk, O., Kolesnyk, V., & Hetmantsev, M. (2021). Human rights violations and genocide: Lessons of Rwanda. *Revista Amazonia Investiga*, 10(40).
<https://doi.org/10.34069/ai/2021.40.04.13>