



## STRENGTHENING THE ROLE OF POLRI IN THE IMPLEMENTATION OF INTERNATIONAL CRIMINAL LAW

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### ABSTRACT

Changes and developments in the national, regional, and global environment have triggered the rapid development of transnational crime, in this context, the Indonesian National Police (Polri) with the authority to act as state apparatus and law enforcer is the spearhead and front guard of the criminal justice system in eradicating transnational crime. Related to the foregoing, the applicability of International Criminal Law and its application in Indonesia is still an unresolved problem. In connection with the above, in terms of reviewing and analyzing related to the prospects of international criminal law and challenges to the Indonesian National Police, the author use normative juridical research methods using library research. The Juridical-Normative research method is a research method that places legal principles and legal rules as a touchstone to assess whether there was actually a violation or not. So, it can be concluded that there is a need to strengthen and develop international criminal law which is supported by comparative studies and activities in the framework of comparative law or comparative study of international criminal law studies at S1 STIK-PTIK. In the Elucidation of Article 7 of the Human Rights Court Law, it is stated that “the crimes of genocide and crimes against humans in this provision are in accordance with the Rome Statute of the International Criminal Court (Article 6 and Article 7)”. This provision raises the consequence that the legal spirit, interpretation, elements, and application must follow and comply with the provisions contained in the ICC Statute. In the course of the following, several serious human rights violations have been examined and tried based on the Human Rights Court Law with the establishment of an Ad Hoc Human Rights Court, such as the East Timor Post-Ballot case and the Abepura case.

**Keywords: International Criminal Law, criminal justice system, duties and authorities of the Indonesian National Police**

### 1. INTRODUCTION

From various opinions regarding international criminal law (HPI), there are opinions that surface and are often used as references that HPI is a result of a meeting of two legal disciplines that have emerged and developed differently and complement each other. As stated by Cherif M. Bassiouni, as well as Ilias Bantekas and Susan Nash, the two legal disciplines are aspects of criminal law from international law which are also called substantive aspects of HPI, and international aspects of criminal law which are also called procedural aspects of HPI.<sup>1</sup> In short, it can be said that the substantive aspects of HPI are related to the criminalization of international criminal acts, while the procedural aspects of HPI are related to the enforcement of HPI itself.

International criminal law (HPI) is the result of a meeting of two legal disciplines that have emerged and developed differently and complement each other. As stated by Cherif M. Bassiouni, as well as Ilias Bantekas and Susan Nash, the two legal disciplines are aspects of criminal law from international law which are also called substantive aspects, and international aspects of criminal law which are also called procedural aspects.<sup>2</sup>

- 1 Cherif Bassiouni, *Introduction to International Criminal Law*, Transnational Publisher, 2003; dan Ilias Bantekas dan Susan Nash, *International Criminal Law*, Cavendish Publishing Limited, 2003, hal. 1. Ilias Bantekas dan Susan Nash mengawali tulisan dalam buku tersebut dengan pernyataan: *International criminal law (ICL) constitutes the fusion of two legal disciplines: international law and domestic criminal law.*
- 2 Ilias Bantekas and Susan Nash, *International Criminal Law* (Cavendish Publishing Limited, 2003).

In short, it can be said that the substantive aspects are related to the criminalization of international criminal acts, while the procedural aspects are related to the enforcement of the HPI itself.

In the current development of HPI, based on constructive elements, HPI is accepted as an independent legal discipline, in a substantive aspect, HPI refers to its object, namely international crimes.<sup>3</sup> According to Neil Boister, these international crimes can only be in the form of international crimes in a narrow sense (international crimes *stricto sensu*), which is international crimes that fulfill the characteristics of gross violations of human rights (HAM), based on international instruments referring to a number of criminal acts which are the jurisdiction of subject matters of the International Criminal Court (ICC) as stipulated in the 1998 ICC Statute, and have been examined and tried at several ICCs which are *ad hoc* in nature. In addition, international crimes can be in the form of international crimes in a broad sense (international crimes *largo sensu*), that is, in addition to international crimes in the narrow sense, they also include a number of other crimes that meet the characteristics of transnational crimes.<sup>4</sup>

As for HPI, in the procedural aspect, based on the elements that build HPI, it concerns HPI enforcement mechanisms that require international cooperation or law enforcement that respects and pays attention to HPI principles or rules. HPI enforcement mechanisms can take place directly (direct enforcement system) by the ICC which is *ad hoc* or permanent, indirect law enforcement (indirect enforcement system) by the national courts of each country, and mixed models (hybrid model/hybrid court).<sup>5</sup>

The purpose of this writing is to study and analyze related to the position of Polri in international criminal law, obstacles in enforcing international criminal law, and ideas for overcoming obstacles to international criminal law enforcement, while the benefits of this research are to provide a concept for the Unitary State of the Republic of Indonesia (Polri) in implementing HPI.

All of the aspects and/or scope of the HPI above, are very relevant theoretically and practically, related to the duties and authorities of the Polri as state apparatus and law enforcer as a representative of power authorities that have the potential to cause human rights violations, including serious human rights violations. Likewise, changes and developments in the national, regional, and global environment have triggered the rapid development of transnational crime. In this context, the Polri, with the authority to act as state apparatus and law enforcer, is the spearhead and front guard of the criminal justice system in eradicating transnational crime. The understanding related to the strengthening and development of HPI should ideally receive support from various parties, in relation to increasing of such understanding is relevant to strengthening comparative studies and activities in the context of comparative law or comparative study of HPI study at S1 STIK-PTIK1. This study tries to see the importance of affirming the position of international criminal law in Indonesia, so the author raises issues in this research as follows: How is the current development of International Criminal Law, How is the implementation of International Criminal Law in Indonesia, What are the prospects for International Criminal Law and the challenges experienced by the Polri in its implementation.

## 2. METHOD

This research seeks to find solutions to overcome the existing problems. This type of research is descriptive and analytical. The nature of research is carried out by examining theories, concepts, and legal principles, studying the systematics of laws and regulations, researching the level of synchronization of laws and regulations, and studying comparative law and legal history.<sup>6</sup> A study cannot be said to be research if it does not have a research method.<sup>7</sup> The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Collection and analysis of data, both quantitative and qualitative, experimental and non-experimental, interactive and non-interactive.<sup>8</sup>

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3 Iza Fadri and Dkk, *Hukum Pidana Internasional* (Jakarta: STIK-PTIK, 2012).

4 Neil Boister, "Transnational Criminal Law," *European Journal of International Law*, 2003.

5 Fadri and Dkk, *Hukum Pidana Internasional*.

6 Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI-Press, 2014).

7 Ismail Koto, "Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme," *Proceeding Seminar Nasional Kewirausahaan 2*, no. 1 (2021): 1052.

8 Ismail Koto, "Kebijakan Hukum Terhadap Perbuatan Penggunaan Merek Yang Sama Pada Pokoknya," *SANKSI: Seminar Nasional Hukum, Sosial Dan Ekonomi*. 1, no. 1 (2022).

### 3. DISCUSSION

#### 3.1 Current Developments in International Criminal Law

Within the framework of international crimes *stricto sensu*, the development of HPI mainly began when the first International Court of Justice held against Peter von Hagenbach with the imposition of a death sentence in 1474, then the Westphalia Peace Agreement (Germany) in 1648 which ended the 30-year war and gave rise to pressure to prosecute international law against perpetrators of violations of humanitarian law. After World War II (WWII) there was the formation of an Ad Hoc MPI or ICC which was formed by victorious countries in World War II to try a number of cases of serious human rights violations committed by perpetrators from countries that lost in World War II (Germany and Japan) which embodies victory justice, namely: ICC Nuremberg or The International Military Tribunal based in Nuremberg-Germany in 1945; and ICC Tokyo or The International Military Tribunal for the Far East based in Tokyo-Japan in 1946.

After the end of the cold war in the 1990s, the United Nations (UN) Security Council formed an Ad Hoc MPI or ICC which examined and prosecuted the perpetrators of serious human rights violations, in connection with the most serious of crimes in the midst of strengthening respect for human rights, namely: the Yugoslav ICC or The International Criminal Tribunal for the Former Yugoslavia (ICTY) based in The Hague-Netherlands in 1993, and ICC Rwanda or The International Criminal Tribunal for Rwanda (ICTR) based in Arusha-Tanzania in 1994.

In addition to the two Ad Hoc ICCs after the end of the cold war above, at present there is also HPI enforcement of international crimes *stricto sensu* in the form of a mixed model, where the ICC collaborates with several countries to form the ICC so that there is also the collaboration between international law and national law. This can be seen in HPI's enforcement of the perpetrators of Cambodia's serious human rights violations which were examined and tried by the Extraordinary Chambers in the Court of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Cambodia (Extraordinary Chambers). This Extraordinary Panel consists of a mixture of Cambodian Judges and Judges from 7 (seven) other countries and examines and adjudicates based on a mixture of national law (Cambodia) and international law. The formation and operation of the last Ad Hoc ICC above is a mandate of the UN Security Council Resolution which is of course inseparable from the decisions of countries that have veto rights.

In other developments, there are various other International Courts, including in the form of an indirect enforcement system, where law enforcement according to HPI principles and principles for serious human rights violations is carried out by national courts from countries based on mandatory or non-mandatory criminal jurisdictions. This was, among others, seen in the trials of Adolf Eichmann, Sierra Leone, Iraq, Augusto Pinochet, and Darfur.

In current developments, since 1998, there has been an International Treaty which is important and fundamental to the development of HPI, namely the Rome Statute of the International Criminal Court (Rome Statute or ICC Statute). The ICC Statute was drawn up and discussed in various international meetings starting in 1974 and became effective (entered into force) on 17 July 2002, when I had the opportunity and trust several times as a delegate from Indonesia. The ICC Statute has given birth to the Establishment of a Permanent MPI or ICC in The Hague, and has criminal jurisdiction over serious human rights violations: Genocide (the Crimes of Genocide), Crimes against Humanity, War Crimes, and the Crimes of Aggression. The ICC carries out the judicial process from investigation to the conviction of perpetrators of serious human rights violations (individual criminal liability). The ICC Statute aims to uphold HPI principles or rules for serious human rights violations, so that cruelty and impunity can be prevented for perpetrators of serious human rights violations and victims of serious human rights violations can still receive full legal protection guarantees including obtaining compensation from the state or perpetrators.

#### 3.2 Implementation of International Criminal Law in Indonesia

The development of HPI in Indonesia received a seedbed since the reform era with Law Number 39 of 1999 concerning Human Rights (Human Rights Law) and Law Number 26 of 2000 concerning Human Rights Courts (Human Rights Court Law). The legal politics in the Human Rights Court Law is to adopt the two crimes contained in the ICC Statute, namely Genocide, and Crimes against Humanity and their elements. In the

Elucidation of Article 7 of the Law on Human Rights Courts, it is stated that “the crimes of genocide and crimes against humanity in this provision are in accordance with the Rome Statute of the International Criminal Court (Article 6 and Article 7)”. This provision raises the consequence that the legal spirit, interpretation, elements, and application must follow and comply with the provisions contained in the ICC Statute. The juridical consequence is that the understanding, interpretation, and application of the legal provisions on Genocide and Crimes against Humanity in the ICC Statutes appropriately and comprehensively must see and understand the various provisions/regulations contained in the statutes produced by the ICC Ad Hoc after World War II as stated in which is the main source for the preparation of the ICC Statute.<sup>9</sup>

In the process that followed, several serious human rights violations have been examined and tried based on the Human Rights Court Law with the establishment of an Ad Hoc Human Rights Court, such as the East Timor Post-Ballot case and the Abepura case. There is an assumption that the formation of an Ad Hoc Human Rights Court in Indonesia, particularly in the East Timor Post-Ballot case, is a reactive response to stem the initiative to form an Ad Hoc ICC.

At present, the main issue of the ICC Statute for Indonesia is whether or not Indonesia needs to ratify the ICC Statute. Even though no provision in the UN Charter obliges every UN member state to adopt and ratify an international treaty. Even Article 2 Paragraph 4 of the UN Charter states: “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purpose of the United Nations “. Furthermore, in Article 2 Paragraph 7 of the UN Charter it is reiterated: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII”. In various international meetings discussing the ICC Statute, it is also seen that concerning the aspect of existence or legality (legal status) of the ICC Statute, the issue that receives serious discussion is regarding the imposition or application of the ICC’s criminal jurisdiction to the criminal jurisdiction of national courts. As stated in the Preamble Statute of the ICC, it was finally decided that the ICC is a complement to the criminal jurisdiction of the national courts in accordance with the principle of complementarity.

Furthermore, it also stated that according to the provisions of Article 17 of the ICC Statute, the ICC will only take over the criminal jurisdiction of the national courts if the national courts are unwilling or lack political will or have no ability (unable or caused by totally collapsed government) to organize an independent and self-sufficient judiciary in examining and adjudicating serious human rights violations.

There has been a development of mechanisms or procedures for handling cases, whereby based on the ICC Statute, the investigative and prosecution institutions are not separated and carried out by the prosecutor. The prosecutor (in pro prio motu) conducts investigations based on information from member countries, the UN Security Council, and on their own findings (ex officio). The UN Security Council can request the ICC to examine and adjudicate serious human rights violations that have occurred in a country, even though that country is not yet a state party, as was attempted in the cases of Omar Hassan al-Bashir (Sudan), Thomas Lubanga (Congo) or Muammar Qaddafi (Libya).<sup>10</sup>

Various provisions in the ICC Statute and the views that have developed also strengthen the opinion that the application of the ICC Statute is actually only relatively more effective against ratifying countries than non-ratifying countries of the ICC Statute.<sup>11</sup>

The ratification of an international treaty, such as the ICC Statute, actually still raises questions about its effectiveness within the framework of preventing and resolving cases of serious human rights violations in Indonesia. Indonesian statutory regulations, especially Law Number 24 of 2000 concerning International Agreements, have not explicitly regulated the legal status and application of international agreements in the

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9 Zulkarnein Koto, “Kejahatan Terhadap Kemanusiaan (Dari Keterbatasan Substansi Hukum Ke Kelemahan Penerapan Hukum?),” *Jurnal Studi Kepolisian*, 2005.

10 Iza Fadri, *Prospek Hukum Pidana Internasional: International Criminal Court (ICC)* (Jakarta: STIK-PTIK, 2013).

11 Romli Atmasasmita, “Apakah Indonesia Perlu Meratifikasi Statuta ICC?” (Jakarta, 2007).

national legal system. In addition, there is no firmness regarding the conception and legal meaning of ratification for Indonesia. Practices in other countries show that the clarity of the legal status of an international treaty is very important and has an effect on its implementation because there is clarity regarding its legal force or binding power in the national legal system.<sup>12</sup> Philip C. Jessup also said that ratification is not an important final step to enact an international agreement, a further step is still needed as the final step which is called balanced communication of the facts of ratification, in the form of an exchange of ratifications as occurs in multilateral instruments where there is placement of ratification on the party as agreed.<sup>13</sup> Thus, ratification is not merely a juridical issue (legally heavy) but also related to constitutional, social, and cultural issues, including political issues (politically heavy).

In Roberto Mangabeira Unger's view of the perspective of the Critical Legal Studies (CLS) movement, there is always a large gap between law in theory (law in books) and law in reality (law in action), and the failure of law (statutory regulations) in response to various problems (serious human rights violations) that occur. According to CLS, the law and the law enforcement are not neutral and the decisions taken even though they base their decisions on laws, jurisprudence, or the principles of justice, are actually always biased and always influenced by the ideology, legitimacy, and mystification it adheres to in order to strengthen the dominant group. CLS strives to prove that behind laws and social orders that appear on the surface as neutral, there are actually the interests of certain groups.<sup>14</sup>

In the theory of justice from John Rawls, namely justice as fairness, it is stated that: "...the main idea of justice as fairness, a theory of justice that generalizes and carries to a higher level of abstraction the traditional conception of the social contract". Furthermore, John Rawls emphasized that: "This way of regarding the principles of justice I shall call justice as fairness". In relation to the implications of the ICC Statute for the social sector above, John Rawls correctly argues that: "...the primary subject of justice is the basic structure of society, or more precisely, how the major social institutions distribute fundamental rights and duties and determine the division of advantages from social co-operation".<sup>15</sup>

### 3.3 Ideas to Overcome Obstacles to the Enforcement of International Criminal Law

#### Ideas to Overcome Obstacles to the Enforcement of International Criminal Law

Connected with the components of the legal system from Lawrence M. Friedman which affect the quality of law enforcement, namely legal substance, legal structure, and legal culture<sup>16</sup> which Muladi later put forward about the need for leadership too and there is a change in the attitude of the legal apparatus<sup>17</sup> and Romli Atmasasmita about the important role of the bureaucracy (bureaucratic engineering),<sup>18</sup> then the desire and demand for the achievement of the aims and objectives of HPI enforcement against serious human rights violations, the realization of justice not only for perpetrators (individual criminal liability) but also victims/families and criminal justice that is trusted and respected by society (to gain public trust and respect) both nationally and internationally, of course, requires a prerequisite, namely the renewal of the four components.

In relation to the above juridical and factual conditions, the solution policies that need to be pursued and developed by the Government of Indonesia are:

1. In the aspect of legal substance, through a formulating policy (penal policy) it is necessary to reform the criminal law (penal reform) against the provisions in the Human Rights Court Law. For example by including the provisions on War Crimes and Crimes of Aggression as well as other legal principles and rules contained in the ICC Statute. Jan Rummelink said that related to the difficulty in realizing the

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12 Eddy Pratomo, *Hukum Perjanjian Internasional: Pengertian, Status Hukum Dan Ratifikasi* (Bandung: PT. Alumni, 2011).

13 Philip C. Jessup, *A Modern Law of Nations: Pengantar Hukum Modern Antarbangsa, Diterjemahkan Dari A Modern Law of Nations: An Introduction* (Bandung: Nuansa, 2012).

14 FX Adji Samekto, *Studi Hukum Kritis: Kritik Terhadap Hukum Modern* (Bandung: PT. Citra Aditya Bakti, 2005).

15 John Rawls, *A Theory of Justice, Edisi Revisi* (Massachusetts: The Belknap Press of Harvard University Press, 1999).

16 Lawrence M. Friedman, *Law and Society An Introduction* (New Jersey: Prentice Hall Inc, 1977).

17 Ahmad Gunawan and Mu'ammarr Ramadhan, *Menggagas Hukum Progresif Indonesia* (Semarang: Pustaka Pelajar-IAIN Walisongo-UNDIP, 2006).

18 Romli Atmasasmita, *Globalisasi & Kejahatan Bisnis* (Jakarta: Kencana, 2010).

idea or model of the direct enforcement system, the indirect law enforcement system can be relied upon by the incorporation of international crimes into the national criminal law and the judicial process in national courts.<sup>19</sup>

2. In the aspect of legal institutions, it is necessary to carry out a thorough evaluation related to the internal institutional structure of Komnas HAM with other related institutions such as the Attorney General of the Republic of Indonesia and the Human Rights Court related to law enforcement against serious human rights violations.
3. In the aspect of law enforcement in investigations of serious human rights violations, Komnas HAM is deemed to need strengthening from Polri personnel as has been done at the KPK, due to the many cases of protracted human rights violations and the process of law enforcement against perpetrators of human rights violations has not been completed, Komnas HAM certainly requires Polri's capabilities in terms of investigations related to cases of serious human rights violations, because Polri's investigations have been recognized as effective so that deficiencies or weaknesses in the results of Komnas HAM investigations can be eliminated or reduced to be followed up with investigations and/or prosecutions by the Attorney General's Office.
4. In the aspect of law enforcement, it is necessary and urgent to establish an ad hoc human rights court that is free and independent to examine and try various serious human rights violations which have recently strengthened demands for resolution, for example, the serious human rights violations case of 2014 Paniai bloody which tried in 2022. The law enforcement against serious human rights violations that have occurred, is not solely a matter of juridical and sufficiently treated as ordinary crimes but must consider non-juridical factors: social, economic, cultural, and political, and constitutes extraordinary crimes which require handling using extraordinary principles and standards (extraordinary measurement).
5. In the aspect of legal culture, it refers to the awakening of public and state administrators' legal awareness to morally, ethically, and rationally accept and place HPI principles and principles as guidance in acting acting in the field of protecting and respecting human rights. In addition, it is necessary to change attitudes and examples through strengthening awareness and understanding of demands to realize universal justice which is the basis for enforcing criminal law against serious human rights violations, in accordance with the *au dedere au judicare* principle introduced by Cherif M. Bassiouni.

In relation to the Polri, it can be stated that the boundary between the authority of the duties of a state apparatus/law enforcer as a representation of the state as the authorized holder of power and administrators of the state and violations of human rights is very thin. In this regard, it is necessary to have an in-depth understanding of each member of the Polri on the principles and rules of international human rights and HPI. Polri as a state apparatus in the field of law enforcement and Kamtibmas has a central position as a representation of power, and in carrying out this task the use of violence has been regulated both in national and international instruments. Abuse of authority or violation of these provisions has the potential to become a human rights violation which can be in the form of a serious human rights violation.<sup>20</sup>

In relation to the description above, Polri must permanently and continuously prepare itself to face increasingly complex task challenges and respond to changes in the national, regional, and global environment by taking anticipatory strategic steps. This, among other things, has been and can be done with the following policies or efforts:

1. In addition to the provisions in the law, Polri already has various legal provisions that are very progressive and must continue to be disseminated effectively, such as The regulation of the Chief of Indonesian National Police Number 10 of 2009 concerning the Implementation of Human Rights Principles and Standards in the Implementation of Polri Duties, as a guideline for implementing the principles and

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19 Jan Rummelink, *Hukum Pidana: Komentar Atas Pasal-Pasal Terpenting Dari Kitab Undang-Undang Hukum Pidana Belanda Dan Padanannya Dalam Kitab Undang-Undang Hukum Pidana Indonesia* (Jakarta: PT. Gramedia Pustaka Prima, 2003).

20 Iza Fadri, "Strategi Polri Menghadapi Kejahatan Internasional Dalam Perspektif Hukum HAM Internasional (International Human Right Law) Guna Mengantisipasi Terbentuknya Mahkamah Pidana Internasional (International Criminal Court)," 1999.

human rights standards so that all levels of the Polri can respect, protect and uphold human rights in carrying out their duties and functions. The Perkap has adopted many human rights principles and legal norms as contained in various international treaties.

2. Strengthening the independence of the Polri organization against political intervention from the authorities (Government) in order to increase Polri's professionalism in carrying out the duties and functions of the police in the field of law enforcement and maintenance of Kamtibmas.<sup>21</sup>
3. Establishing a reciprocal balance (a balance between rights and obligations in carrying out police duties) in socializing and elaborating human rights principles and standards in carrying out police duties and functions for every member of the Polri.
4. Increased understanding and ability to implement human rights principles and standards in national and international instruments for Polri members, especially in the implementation of law enforcement and Kamtibmas duties related to forced efforts and police repressive actions that have the potential for human rights violations.
5. Improving coordination between police operational functions and related agencies, to create police synergy in order to avoid the possibility of human rights violations, especially serious human rights, and to anticipate the formation of an Ad Hoc Human Rights Court.
6. Supervision and control over the respect and protection of human rights are implemented permanently and continuously.
7. Analyzing and evaluating the implementation of human rights principles and standards in national and international instruments in every implementation of police duties and functions.
8. Study of various international agreements related to the enforcement of HPI and the possibility of their implementation within the Polri institution.

In the framework of transnational crimes (TNC), the characteristics of a crime as a transnational crime (transnational in nature) are first stated, as contained in the 2000 UN Convention against Transnational Organized Crime (TOC) (Millennium Meeting) known as the Palermo Convention. In Article 3 (2) it is stated that a crime is categorized as transnational in nature, if:

1. *It is committed in more than one State;*
2. *It is committed in one State but a substantial part of its preparation, planning, direction, or control takes place in another State;*
3. *It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or*
4. *It is committed in one State but has substantial effects in another State.*

Furthermore, in Article 2 (a) of the Palermo Convention, organized crime (Organized Criminal Group) is formulated as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes of offenses established in accordance with this Convention, in order to obtain, directly or indirectly, financial or other material benefits.

In the context of law enforcement effectiveness, efforts have emerged to simplify the definition of organized crime, so that law enforcers are more flexible, bearing in mind that the existing definitions are too criminological, apply complex, and are often too narrow. This can be seen in Canada which is making changes, including:

- a. Reducing the number of people required for a criminal organization from five to three;
- b. Prosecutors are no longer required to show that the criminal organization was involved in carrying out a series of crimes on behalf of the organization during the last five years;
- c. Broadening the scope of crimes defined in the organization of crimes and including all serious crimes. Previously it only covered "indictable offenses" which were sentenced to a maximum of five years or more.

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21 Iza Fadri, "Strategi Menata Organisasi Polri Guna Menghadapi Perkembangan Tugas Pada Renstra 2010-2014 Dalam Rangka Mewujudkan Kamdagri," 2009.

In the Report of the High-Level Panel on Threats, Challenges and Change, the Secretary General of the United Nations in 2004 stated that the development of world challenges in the 21st century shows a paradigm shift in maintaining international security and peace including challenges and threats from transnational crimes. Romli Atmasasmita emphasized that the era of the 21st century has entered a development towards the era of transnational crime.<sup>22</sup> Jan Rummelink has also reminded us that the internationalization of economy and technology has increased the quantity and quality of crimes followed by an increase in the role and function of international criminal law.<sup>23</sup>

### **3. Prospects of International Criminal Law and challenges to the Polri in its implementation**

For Indonesia, in the midst of globalization with open trade, finance, transportation, and communication between countries, as well as many countries experiencing internal conflicts, the development of transnational crime is very concerning and worrying. Moreover, Indonesia's position or existence as the largest archipelagic country in the world has received official international recognition after the ratification of the UN Convention on Law of the Sea (UNCLOS) in 1982. Indonesia's geographical conditions share land and sea borders with eleven countries: Australia, India, Palau Islands, Malaysia, Brunei, Papua New Guinea, Philippines, Singapore, Thailand, Timor Leste, and Vietnam. These multiple accesses can facilitate entry into the negative side of globalization or the Globalization of Crime, and difficulties in controlling access to Indonesian territory.

Threats and challenges to shared security multilaterally have been regulated in the Palermo Convention which has been ratified by Law Number 5 of 2009. In the Palermo Convention, five types of transnational crimes have been determined which are considered serious: corruption, money laundering, trafficking in persons (women and children), people smuggling, and weapons smuggling. The TOC which received special serious attention from the UN through the UNODC (United Nations Office on Drugs and Crime) in 2010, is as stated in the Globalization of Crime - A TOC Threat Assessment, namely: human trafficking, migrant smuggling, illicit trafficking of narcotics for cocaine and heroin (Narcotics Group 1), arms trafficking, product counterfeiting, environmental crime, cybercrime, and piracy at sea.

As stated by Ilias Bantekas and Susan Nash, the determination of an international crime arising from the development of international customary law in an international agreement (international convention), is the main requirement for the criminalization of international crimes or transnational crimes,<sup>24</sup> according to the substantive aspects of HPI. Based on the results of research conducted by Cherif M. Bassiouni, the United Nations has produced 281 international conventions, of which there are 28 categories of international conventions related to international crimes and transnational crimes. Several important international conventions related to transnational crime are on terrorism, illicit trafficking of narcotics, corruption, human trafficking, money laundering, and others.

In the procedural aspects of HPI against transnational (TNC) and transnational organized crime (TOC), the Government of Indonesia, especially the Polri, also has an active role in accordance with the *au dedere au punere* principle. Several forms of cooperation in handling TNC carried out by the Police include Exchange of Criminal Information and Intelligence, Training and Technical Assistance, Extradition, Mutual Legal Assistance in Criminal Matters/MLA, Transfer of Criminal Proceeding, Transfer of Sentenced Person, Joint Investigation, Joint Operation, Joint Task Force, and Cooperative Security.

Based on data from the National Police International Relations Division, international police cooperation in the form of a memorandum of understanding (MoU) carried out by the National Police bilaterally is with 21 police from other countries: New Zealand, the United States (FBI), Vietnam, Australia, the Netherlands, China, England, Malaysia, Poland, Russia, Philippines, Romania, Vanuatu, Timor Leste, South Korea, Pakistan, Libya, Namibia, Mozambique, Qatar, and the Fiji Islands. The substance of the MoU concerns

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22 Romli Atmasasmita, "Kejahatan Transnasional Dan Internasional Serta Implikasinya Terhadap Pendidikan Hukum Pidana Serta Kebijakan Hukum Pidana Di Indonesia" (Bandung, 2008).

23 Rummelink, *Hukum Pidana: Komentar Atas Pasal-Pasal Terpenting Dari Kitab Undang-Undang Hukum Pidana Belanda Dan Padanannya Dalam Kitab Undang-Undang Hukum Pidana Indonesia*.

24 Bantekas and Nash, *International Criminal Law*.



cooperation in the fields of prevention and eradication of transnational crime and/or organized crime with a transnational dimension (TOC), eradication of terrorism, eradication of illicit narcotics trade, improvement/development of police capacity or institutions, development of police cooperation, as well as education and training. The existing regional collaborations are ASEAN Senior Meeting on Transnational Crime (SOMTC), ASEAN Ministerial Meeting on Transnational Crime (AMMTC), ASEAN-CHINA Cooperatives Operations in Response on Dangerous Drugs (ACCORD), ASEAN Senior Official on Drugs (ASOD), ASEAN Wild Life and Environmental Crime (ASEAN WEN), and ASEANAPOL. Meanwhile, international cooperation is carried out through the International Criminal Police Organization-INTERPOL (ICPO-INTERPOL).

From 2008 to 2010, the National Police arrested 16 foreign nationals who were fugitives, 14 people were sent back by extradition, one person was sent back by handing over, and one person was released. There were 13 requests for extradition to Indonesia which included: 13 criminal offenders, 10 nationalities (New Zealand, Australia, Iran, Switzerland, Korea, Afghanistan, Pakistan, England, Romania, Hungary), seven requesting countries (Australia, France, Korea, Afghanistan, Pakistan, Romania, Hungary), five cases (fraud, pedophilia, people smuggling, and narcotics), with status: seven have been extradited and six are still in process. There were 16 requests for extradition from Indonesia which included: 16 criminal offenders, five nationalities (Indonesia, Australia, Netherlands, England and Saudi Arabia), six countries were requested (Australia, Hong Kong, the Netherlands, the United States and Canada), six cases ( falsification of documents, pedophilia, fraud, embezzlement, narcotics, and corruption), with the status: one SP3 by Bareskrim, two have not been arrested, two have been detained, and 11 are still in the process of being handled.

Regarding other forms of international police cooperation carried out by the National Police in the prevention and eradication of TNC or TOC, it can be stated: data on MLA requests from Indonesia to other countries (outgoing) until September 2011 were 64 requests, in criminal acts: corruption, banking, murder, money laundering, crimes against honor, forgery, fraud, and embezzlement. The MLA request was made to 23 countries. Meanwhile, data on MLA requests from other countries to Indonesia (ongoing) are related to narcotics crimes, terrorism, illegal arms trade, fraud, forgery and money laundering, pedophilia, gambling, and falsification of documents (passport and LC). The MLA request was made by 9 (nine) countries. Apart from that, Polri has also issued INTERPOL Notices (Individual Notices, Special UNSC Notices, and Stolen Property Notices), as well as various investigation assistance and/or investigations of criminal acts with the police of other countries.

In relation to Polri, it can be stated that with respect to mandatory and non-mandatory jurisdictions, TNC and TOC are solely within the criminal jurisdiction of the Indonesian national criminal law and national judiciary, not within the criminal jurisdiction of the ICC or ICC Statutes. Based on this concept of criminal jurisdiction, the National Police, with the authority to serve as a state apparatus/law enforcer as a representative of the state, is the spearhead or front guard in the criminal justice system (SPP) in the context of eradicating TNC and TOC.

In connection with the above, the National Police must continuously and continuously prepare itself to face developments in the quality and quantity of TNC and TOC which are increasingly complex and increasing and respond to changes in the national, regional, and global environment by taking anticipatory strategic steps, as well as in the context of overcoming it (prevention and eradication).

#### **4. CONCLUSION**

In current developments, since 1998, there has been an International Treaty which is important and fundamental to the development of HPI, namely the Rome Statute of the International Criminal Court (Rome Statute or ICC Statute). The ICC Statute was drawn up and discussed in various international meetings starting in 1974 and became effective (entered into force) on 17 July 2002, when I had the opportunity and trust several times as a delegate from Indonesia. The ICC Statute has given birth to the Establishment of a Permanent MPI or ICC in The Hague, and has criminal jurisdiction over serious human rights violations: Genocide (the Crimes of Genocide), Crimes against Humanity, War Crimes, and Aggression (the Crimes of Aggression). The ICC carries out the judicial process from investigation to the conviction of perpetrators of serious human rights violations (individual criminal liability). The ICC Statute aims to uphold HPI principles or procedures

for serious human rights violations, so that cruelty and impunity can be prevented for perpetrators of serious human rights violations and victims of serious human rights violations can still receive full legal protection guarantees including obtaining compensation from the state or perpetrators.

Law Number 39 of 1999 concerning Human Rights (Human Rights Law) and Law Number 26 of 2000 concerning Human Rights Courts (Human Rights Court Law). The legal politics in the Human Rights Court Act is to adopt the two crimes contained in the ICC Statute, namely Crimes of Genocide and Crimes against Humanity and their elements. In the Elucidation of Article 7 of the Human Rights Court Law, it is stated that “the crimes of genocide and crimes against humans in this provision are in accordance with the Rome Statute of the International Criminal Court (Article 6 and Article 7)”. This provision raises the consequence that the legal spirit, interpretation, elements, and application must follow and comply with the provisions contained in the ICC Statute. In the process that followed, several serious human rights violations have been examined and tried based on the Human Rights Court Law with the establishment of an Ad Hoc Human Rights Court, such as the East Timor Post-Ballot case and the Abepura case. There is an assumption that the formation of an Ad Hoc Human Rights Court in Indonesia, particularly in the East Timor Post-Ballot case, is a reactive response to stem the initiative to form an Ad Hoc ICC.

It is hoped that the development or renewal of criminal law (penal reform), including HPI, is actually an ongoing activity and should be carried out continuously (permanently) in line with the increase in international crimes; development of international agreements; the effectiveness of international cooperation in overcoming international crimes; and the strengthening of international demands to respect, adopt and implement HPI principles, methods and enforcement mechanisms.

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*Rome Statute of the International Criminal Court*, 1998.

