

GENOCIDE AS AN INTERNATIONAL CRIME: A REVIEW OF THE INTERNATIONAL AD HOC COURT AND THE INDONESIAN AD HOC COURT

Desia Rakhma Banjarani

Faculty of Law Universitas Sriwijaya, Indonesia
desiabanmarani@fh.unsri.ac.id

Artha Febriansyah

Faculty of Law Universitas Sriwijaya, Indonesia
arthafebrian@unsri.ac.id

Frizky Hervando

Faculty of Law Universitas Sriwijaya, Indonesia
kikihervando@gmail.com

Botvinkin Valeriy Vladislavovic

Irkutsk State University, Russia
valeriy.botvinkin@gmail.com

Benny Irawan

Faculty of Law Universitas Sultan Ageng Tirtayasa, Indonesia
bennyirawan@untirta.ac.id

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ABSTRACT

Genocide is an extraordinary crime that has occurred since the era of world war. However, legal provisions related to the punishment of this crime have only been regulated since 1994, namely during the era of the ad hoc International Criminal Court for Rwanda (ICTR). Based on the description of this background, it is necessary to study related issues: How is genocide an international crime? and what about the legal arrangements regarding genocide in the International Criminal Tribunal Statute for Rwanda and the Human Rights Court Act? This study uses normative research methods with a statutory approach. Genocide is considered the most serious because it involves the international community, which the ICC has regulated. Genocide was first regulated in legal regulations, namely the Statute of the International Criminal Tribunal for Yugoslavia and the Statute of the International Criminal Tribunal for Rwanda. The regulation of legal protection for victims of genocide crimes in Indonesia is *expressis verbis* contained in the provisions of Article 34 paragraph (1) of Law Number 26 of 2000 concerning the Human Rights Court. However, even though it has been controlled, the author has not found a standard procedure for victims to obtain their rights.

This research gives contribution related to the differences in legal provisions between the genocide provisions in the Statute of the International Criminal Tribunal for Rwanda as an international ad hoc court with the Law on Human Rights Courts.

Keywords: *Genocide; International Criminal Tribunal for Rwanda; International Crimes.*

1. INTRODUCTION

Throughout the journey of human life, especially in several countries, there are often internal and external conflicts with other countries. Prayudi, in his research findings, stated that the root cause of ethnic conflict is closely related to cultural contradictions, structural violence, and regulatory actions from the state so a broad and massive approach is needed to elements such as socio-political, economic, cultural, and security fields.¹ There are at least 3 (three) tribes that inhabit the territory of Rwanda, namely the Hutu tribe, the Tutsi tribe, and the Twa tribe. The Hutu tribe is more dominant than other tribes in Rwanda. There are not many differences between these tribes. They use the same language and traditions and occupy the same area.² The occurrence of inter-tribal conflict before Belgium entered Rwanda was still within the realm of being controllable. After Belgium entered and began to group people's stratification based on tribe, it became a stimulus for inter-tribal conflict. Belgium assumed that the Tutsi tribe was far superior to other tribes, so the label became an advantage for the tribe, allowing them decent jobs and education.³

After Belgium relinquished power and granted independence to Rwanda in 1962 due to the spread of the conflict, it became a fireball for the Tutsi tribe, in particular, who were scapegoated by the Hutu tribe. April 1994 was the peak of the conflict between the two. There was a widespread genocide crime that resulted in the death of 800,000 (eight hundred thousand) people from the Tutsi and Moderate Hutu tribes.⁴ In practice, the exact meaning of the terminology of genocide is often found with the act of ethnic cleansing.⁵

¹ Prayudi., "Akar Masalah Penyebab Konflik Etnis dan Alternatif Penyelesaiannya (Studi Kasus Konflik Etnis di Kalbar dan Kalteng)", *Jurnal Ketahanan Nasional*, Vol. 9 No. 3, Desember 2004, p. 57. <https://doi.org/10.22146/jkn.22154>.

² Probo Darono Yakti, "The 1994 Hutu and Tutsi Ethnopolitics Conflict in Rwanda: Genocide Revenge Settlement Through the Gacaca Reconciliation System", *Jurnal Hubungan Internasional*, Vol. 15 No. 1, 2022, p. 42. DOI: 10.20473/jhi.v15i1.33787.

³ Joko Setiyono., *Peradilan Internasional Atas Kejahatan HAM Berat.*, Cet. Pertama., PT. Pustaka Magister, Demak, 2020, p. 210.

⁴ Eka Rini Wardani, Lutfi Hardiyanto, Purwani Puji Utami, "Pelanggaran HAM: Genosida Rwanda 1994", *Jurnal of Citizenship Values*, Vol. 1 No. 1, 2023, p. 31. DOI: prefix 10.37640.

⁵ *Ibid.*, p. 211.

Goldstein in a relatively linear opinion, namely the act of ordering away or exterminating a religious group or a partial ethnic group.⁶ If observed, Goldstein, in his opinion, there is a fusion of the meanings of genocide and ethnic cleansing. Genocide is different from ethnic cleansing. The difference can be seen in how the perpetrators act against an ethnic group. Genocide emphasizes purification within a group by destroying a targeted group with the aim of extermination. In contrast, ethnic cleansing tends towards the act of forced displacement of a particular group that is not wanted by other groups or focuses more on geography or the emptying of an area. It means that genocide is one level higher than ethnic cleansing even though, in essence, both terminologies intend to carry out physical and psychological violence.⁷

The criminal justice system is too focused on the perpetrators of crimes. It is often considered to have failed to fulfill the rights of victims of criminal acts or crimes categorized as serious human rights violations.⁸ Lilik Mulyadi also expressed the same thing, that in Indonesia, the position of victims of criminal acts in the criminal justice system in judicial practice tends to be less noticed because legal provisions in Indonesia still focus on protection for perpetrators (offender-oriented).⁹

Regardless of the cause and effect, the state must fulfill its obligations to protect its citizens. As expressed by Muladi in the social contract argument and social solidarity argument, the state can take on the role of the overall social reaction to crime and provide prohibitions against actions that are of a personal interest nature and have negative connotations.¹⁰ Thus, if a crime occurs and results in victims, the state must show its responsibility to care about whatever the victim needs unless it must be deviated according to legal considerations.

So, to prevent what happened in Rwanda from happening in Indonesia, the Indonesian government has also provided legal regulations related to genocide as stated in Law Number

⁶ Arie Siswanto., *Yurisdiksi Material Mahkamah Kejahatan Internasional*, Cet. Pertama., Ghalia Indonesia, Bogor, 2005, p. 36.

⁷ Jaakko Heiskanen, "In the Shadow of Genocide: Ethnocide, Ethnic Cleansing, and International Order", *Global Studies Quarterly*, Vol. 1 No. 4, 2021, p. 6, ksab030, <https://doi.org/10.1093/isagsq/ksab0306>

⁸ Marcus A. Asner et.al., "Restitution From the Victim Perspective-Recent Development and Future Trends", *Federal Sentencing Reporter*, Vol. 26 No. 1, Oktober 2013, p. 59. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/fedsen26&div=13&id=&page=>

⁹ Lilik Mulyadi., "Upaya Hukum yang Dilakukan Korban Kejahatan Dikaji Dari Perspektif Sistem Peradilan Pidana Dalam Putusan Mahkamah Agung Republik Indonesia", *Jurnal Hukum dan Peradilan*, Vol. 1 No. 1, 2012, p. 2. <https://doi.org/10.25216/jhp.1.1.2012.1-34>.

¹⁰ Siswanto Sunarso, *Filsafat Hukum Pidana: Konsep, Dimensi, dan Aplikasi*., Cet. Pertama., Rajawali Pers, Jakarta, 2015, p. 247.

26 of 2000 concerning the Human Rights Court (hereinafter referred to as the Law. Human Rights Court).¹¹ The jurisdiction of the Human Rights Court is for crimes of genocide and crimes against humanity.¹² Genocide and crimes against humanity are some types of international crimes.¹³ In addition, international humanitarian law also stipulates that genocide and crimes against humanity are acts of violation in war that can be categorized as gross human rights violations. It is regulated based on of humanitarian law, namely the 1949 Geneva Convention.¹⁴

The genocide that occurred in Rwanda was the background to the establishment of the ad hoc International Criminal Tribunal for Rwanda or ICTR, one of the jurisdictions of which is the ICTR.¹⁵ In this case, the ICTR and the Human Rights Court in Indonesia have similarities regarding one of their material jurisdictions, genocide, and another similarity is that the court is ad hoc. However, when comparing the law enforcement process between the ICTR and the Human Rights Court in Indonesia, differences can be seen. In the settlement of cases in Rwanda through the ICTR, almost all defendants were officially sentenced, and the trial process was declared complete or finished.¹⁶ Different things can be seen in enforcing the Human Rights Court in Indonesia.

Based on data from the Institute for Policy Studies and Advocacy states that in 12 provinces in Indonesia in the first quarter of 1998, there were 1,629 fundamental human rights violations. These rights are the right to life, the right to be free from torture, the right to be free from arbitrary arrest, the right to be free from summary extermination, and the right to be free from enforced disappearance.¹⁷ Even law enforcement against several cases of human rights violations has not been completely resolved. The National Commission on Human Rights noted that 12 cases of human rights violations have not been resolved until

¹¹ Bagus Hermanto, "Rekonstruksi Penguatan Eksistensi Pengadilan Hak Asasi Manusia Di Indonesia Berlandaskan Pancasila Dan Statuta Roma Terhadap Pengaturan Undang-Undang Pengadilan Hak Asasi Manusia", *Jurnal Legislasi Indonesia* 16, no. 1 (2019): 89-106,

¹² Nurul Huda, "Status Penyelenggaraan Peradilan HAM di Indonesia Berbasis Hukum Internasional", *Masalah-Masalah Hukum* 44, no. 4 (2015): 473-483, 474, DOI: 10.14710/mmh.44.4.2015.473-483.

¹³ A. Irham, "Penegakkan Yurisdiksi International Criminal Court atas Kejahatan Agresi Pasca Kampala Amendments Diadopsi dalam Rome Statute", *SASI* 26, no. 4 (2020): 540-556, p. 545, DOI: <https://doi.org/10.47268/sasi.v26i4.272>.

¹⁴ Mumtaznur, "Kejahatan Terhadap Kemanusiaan dan Pelanggaran Hukum Humaniter Internasional (Konvensi Jenewa 1949) Studi Kasus : Pelanggaran HAM Berat untuk Bekas Negara Yugoslavia", *Jurnal Dusturiah* 8, no. 2. (2018): 116-128, p. 124.

¹⁵ Veronica Novinna, Gede Made Swardhana, "Yurisdiksi *International Criminal Tribunal For Rwanda* Dalam Mengadili Kejahatan Terhadapkemanusiaan Dan Genosida Yang Dilakukan Olehferdinand Nahimana", *Kertha Negara : Journal Ilmu Hukum*, Vol. 6 No. 2, 2018, p. 1.

¹⁶ <https://unict.irmct.org/en/cases>, diakses pada 24 Oktober 2022.

¹⁷ Zunnuraeni, "Politik Hukum Penegakan Hak Asasi Manusia Di Indonesia Dalam Kasus Pelanggaran Ham Berat", *Jurnal IUS Kajian Hukum dan Keadilan* 1, no. 3 (2013): 356-369, 357.

today.¹⁸ Including the resolution of the East Timor case, the resolution of which is still considered not wholly complete. The Human Rights Court has several weaknesses in its legal basis, thus causing difficulties in prosecuting perpetrators of crimes against East Timor. Until now, no single perpetrator of crimes against East Timor has been held accountable for his actions.¹⁹

The differences in the progressiveness of the law enforcement process of the ICTR and the Human Rights Court in Indonesia indicate that an analysis is needed regarding the provisions in the ICTR Statute as an international ad hoc court with the Human Rights Court Law. Based on the background description, a study is needed regarding the following issues: How is genocide as an international crime? And what are the legal provisions related to genocide in the ICTR Statute and the Human Rights Court Law? This study uses a normative research method with a legislative approach and a case approach that are analyzed descriptively and qualitatively.

2. Result and Discussion

a. Genocide as an International Crime

International crimes are often identified as crimes against humanity in the form of human rights violations is because if a crime against humanity is committed, it is certain that human rights have been violated. Acts that violate international law are considered crimes by a country or military condemned by the world as inhumane behavior.²⁰ International crimes against humanity are a term in international law that refers to acts of mass murder with torture against the bodies of people, as a crime of aggression against others. Crimes against humanity are often described as acts of the utmost cruelty, on a considerable scale, carried out to reduce the human race acts of the utmost cruelty on a considerable scale, carried out

¹⁸<https://www.cnnindonesia.com/nasional/20210909064450-12-691744/munir-dan-daftar-kasus-ham-yang-belum-tuntas-sampai-hari-ini>, diakses pada 11 Januari 2022.

¹⁹ Lorraine Ranga Boro, "Jajak Pendapat Timor Timur Dalam Perspektif Perlindungan Hukum Masyarakat Sipil Pasca Konvensi Jenewa", *MMH*, Vol. 43, No. 3, 2014, p. 386. <https://doi.org/10.14710/mmh.43.3.2014.380-388>.

²⁰ Jawahir Thontowi dan Pronoto Iskandar., *Hukum Internasional Kontemporer*, Bandung: Refika Adiatama. 2006, p. 25

to reduce the human race as whole.²¹ So basically, international crimes have international elements. According to Bassiouni,²² international elements in international crimes include:

- 1) Actions that have an impact on more than one country.
- 2) Actions that involve or influence citizens of more than one country.
- 3) The means, infrastructure, and methods used have exceeded the territorial boundaries of a country.²³
- 4) Actions that disrupt international interests.
- 5) Actions that threaten countries' shared values in criminal events involving several countries.²⁴

Some experts have other thoughts when determining the scope of international crimes. However, the scope of international crimes was earlier agreed upon by the international community through the UN, which consists of crimes of aggression, war crimes, genocide, piracy at sea, kidnapping, and narcotics.²⁵ In addition, the scope of international crimes is contained in the third draft of the International Criminal Code of 1954, which has determined 13 crimes that can be punished under international law as crimes against the peace and security of all mankind. These thirteen crimes are as follows:

- 1) Preparatory acts for aggression and acts of aggression.
- 2) Preparation for the use of armed force against another country.
- 3) Organizing or providing support for arms intended to enter the territory of a country.
- 4) Providing support for acts of terrorism in a foreign country.
- 5) Any violation of an arms limitation agreement that has been agreed upon.
- 6) Annexation of foreign territory.
- 7) Genocide.
- 8) Violation of the customs and laws of war.
- 9) Any conspiracy, inducement, and attempt to commit the crime referred to in point 8 above.
- 10) Piracy.
- 11) Slavery.

²¹ Teguh Sulistia, Peran International Criminal Court dan Kejahatan Terhadap Kemanusiaan Oleh Militer, *Jurnal Fakultas Hukum Universitas Gajah Mada*, Volume 5, 2007, p.5. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/indjil5&div=6&id=&page=>.

²² Romli Atmasasmita, *Pengantar Hukum Pidana Internasional*, Bandung: Refika Aditama, 2006, p. 46.

²³ *Ibid.*

²⁴ Arie Siswanto, *Hukum Pidana Internasional*, Yogyakarta: Andi, 2015, p. 4.

²⁵ Heni Siswanto, *Hukum Pidana Internasional Teori dan Praktik*, Bandar Lampung: Aura, p. 21.

12) Apartheid.

13) Threat and use of force against internationally protected persons.²⁶

One of the experts who revealed the scope of transnational crime was *Dauttriccourt* in his written work, "The Concept of International Criminal Jurisdiction - Definition and Limitation of the Subject" (1973), which mentions several forms of international crime, namely terrorism, slavery, slave trade, trafficking in women and children, illegal narcotics trade, distribution of pornographic publications, piracy at sea, air piracy, counterfeiting of currency, and destruction of undersea cables.²⁷ However, Robert Cryer²⁸ provides a different definition of international crimes. International crimes include four types of core crimes, namely genocide, crimes against humanity²⁹, war crimes³⁰, and aggression³¹. It was also emphasized that, in essence, crimes that raise international concerns, such as piracy, slavery, torture, terrorism, and drug trafficking, are included in the category of international crimes, because they are not (yet) within the jurisdiction of an international court/tribunal.³²

The types of international crimes that Cryer has shown are following what is stated in several sources of international law on international crimes. These sources of international law provide essential contributions to the definition of international crimes, and they consist of the Nuremberg, Tokyo, ICTY, ICTR, and Rome Statutes. However, of the various laws of international courts, the first to mention genocide is the ICTY statute and the ICTR Statute.

²⁶ Maskun, Klasifikasi Kejahatan Internasional, 2013, diakses pada <http://www.negarahukum.com/hukum/klasifikasi-kejahatan-internasional.html>.

²⁷ Romli Atmasasmita, Pengantar Hukum Pidana Internasional, *Op.Cit.*, p. 44

²⁸ Arie Siswanto, *Loc.Cit.*

²⁹ Crimes against humanity means murder, enslavement, torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence of a serious nature, deportation, apartheid when committed as part of a widespread or systematic attack directed against any civilian population. Article 7 of the Rome Statute 1998.

³⁰ War crimes are acts consisting of: Murder committed intentionally; Torture or inhumane treatment, including biological experiments; Knowingly causing great suffering, or serious injury to body or health; Widespread destruction and appropriation of property, not justified by military necessity and carried out unlawfully and without justification. Article 8 of the Rome Statute

³¹ The Crime of Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner contrary to the Charter of the United Nations. Thalís Noor, Agresi dan Kejahatan Terhadap Perdamaian, *Supremasi Hukum, Jurnal Supremasi Hukum*, Vol. 3, No. 1, Juni 2014, p. 39

³² Robert Cryer, Hakan Friman, Darryl Robinson dan Elizabeth Wilmschurst, *An Introduction to International Criminal Law and Procedure*, Cambridge: Cambridge University Press, 2010, p.4.

Statute of International Criminal Tribunal for the former Yugoslavia (ICTY) 1993.³³ The ICTY Statute made a significant contribution to the development of the concept of individual criminal responsibility and command responsibility, where those who are considered individually criminally responsible are those who commit and those who order the crime to be committed.³⁴ Unlike the Statute of the International Military Tribunal Nurnberg and the Statute of the International Military Tribunal Tokyo, the ICTY Statute provides additional scope in defining international crimes, where genocide is one form of international crime. In addition, other types of international crimes regulated in the ICTY Statute are war crimes and crimes against humanity.³⁵

International crimes are also defined in the Statute of the International Criminal Tribunal for Rwanda 1994³⁶. In its statutes, it states that the scope of the court's authority is to try those responsible for international crimes that fall within the jurisdiction of the ICTR, namely genocide (article 2), crimes against humanity (article 3) and violations of article 3 of all the 1949 Geneva Conventions and Additional Protocol II of 1977 (article 4).³⁷

Next, in 1994, the Rome Statute was born³⁸ as a milestone of the International Criminal Court (ICC)³⁹, which provides a broader scope in international crimes compared to previous statutes of international courts. The Rome Statute states that what is meant by international crimes and will be within the jurisdiction of the international criminal court are the crimes of genocide, crimes of aggression, war crimes, and crimes against humanity.⁴⁰

Genocide is an international crime which is a serious violation of the law. This crime is considered the most serious because it involves the international community which has been regulated by the ICC. The affirmation of genocide as an international crime is explicitly stated in Article 2 of the 1948 Genocide Convention, which states that genocide, whether

³³ The Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) 1993 is the legal basis for an ad hoc international criminal court specifically established by the UN to enforce the law against perpetrators of international crimes in the conflicts following the disintegration of Yugoslavia. Arie Siswanto, *Op.Cit.*, p.79.

³⁴ See articles 2, 3, 4 and 5 of the ICTY Statute.

³⁵ See articles 2, 3, 4, 5, and 6 of the ICTY Statute.

³⁶ The Statute of the International Criminal Tribunal for Rwanda (ICTR) is the legal basis for an ad hoc international criminal court established by the United Nations. The ICTR was established in response to the humanitarian tragedy in Rwanda. Arie Siswanto, *Op.Cit.*, p.81.

³⁷ Article 4 ICTR.

³⁸ The Rome Statute is an international agreement for the establishment of a permanent international criminal justice institution. Arie Siswanto, *Op.Cit.*, p.83.

³⁹ The International Criminal Court is a permanent institution and has the power to exercise jurisdiction over persons for the most serious crimes of international concern, and is complementary to national criminal jurisdictions.

⁴⁰ Article 5 Rome Statute.

committed in times of war or peace, is a crime regulated by international law, and countries are obliged to prevent and punish the perpetrators.⁴¹

b. Legal Protection for Victims of Genocide Crimes Based on Positive Law in Indonesia with the International Criminal Tribunal for Rwanda (ICTR)

The crime of genocide is a crime that includes crimes against political groups, because, in the committee's view, these groups are groups that are not readily identifiable, including political groups that will cause international interference in the domestic political problems of a country.⁴² In essence, when talking about legal protection, a study will lead to administrative law, which guarantees that citizens' rights must be respected and upheld as a manifestation of public service relating to government actions based on the rule of law.⁴³ If adopted in the context of criminal law in Indonesia, it will refer to the role of the state, in this case, the criminal justice system and affiliated institutions such as the Witness and Victim Protection Agency, to guarantee the protection of the rights of the disputing parties in a criminal justice system based on the provisions of applicable laws and regulations. Meanwhile, victims of genocide crimes that occurred in Rwanda it will rely on the provisions contained in the Statute of The International Tribunal for Rwanda.

According to Barda Nawawi Arief, legal protection for victims of criminal acts can be viewed from 2 (two) aspects. First, there is legal protection for every person who does not become a victim of a criminal act. Second, legal protection is to obtain legal guarantees or compensation for the victim's losses caused by a criminal act. The legal compensation includes rehabilitation, restoration of the victim's mental balance (forgiveness), and provision of restitution or compensation.⁴⁴

Victims have a vital role in the law enforcement process, so they have various vulnerabilities when conveying information about the truth. Therefore, victims should need assistance before, during, and after they participate in a trial.⁴⁵ Based on the provisions of

⁴¹ Mujiono Hafidh Prasetyo, "Kejahatan Genosida Dalam Perspektif Hukum Pidana Internasional", *Jurnal Gema Keadilan*, Vol. 7 No. 3, 2020, p. 122. <https://doi.org/10.14710/gk.2020.9075>.

⁴² Doortje d Turangan, "Tindakan Kejahatan Genosida dalam Ketentuan Hukum Internasional dan Hukum Nasional", *Karya Ilmiah, Universitas Sam Ratulangi*, 2011, p. 5.

⁴³ I Dewa Gede Atmadja dan I Nyoman Putu Budiarta, *Teori-Teori Hukum*, Cet. Pertama, Setara Press, Malang, 2018, p. 165.

⁴⁴ Mahrus Ali, *Viktimologi*, Cet. Pertama, PT. Rajagrafindo Persada, Depok, 2021, p. 166.

⁴⁵ United Nations Office on Drugs and Crime, *Praktek Terbaik Perlindungan Saksi Dalam Proses Pidana yang Melibatkan Kejahatan Terorganisir*, (Austria: United Nations Office on Drugs and Crime, 1997), p. 19

Article 19 paragraph (1) of the ICTR, "the court must ensure that a trial is conducted fairly and quickly and following the rules of procedure and evidence, fully respecting the rights of the accused and paying attention to the protection of victims and witnesses."⁴⁶ Meanwhile, in Indonesia, legal protection for victims and witnesses is regulated based on the provisions of Article 34 paragraph (1) of Law No. 26 of 2000 concerning Human Rights Courts, which states that "every victim and witness in serious human rights violations has the right to physical and mental protection from all forms of threats, harassment, terror and violence from any party."⁴⁷

Victims of genocide crimes also have rights based on Article 3 of PP. No. 3 of 2002 concerning Compensation, Restitution, and Rehabilitation of Victims of Human Rights Violations to obtain compensation rights from the state, restitution from perpetrators of crimes, and rehabilitation as a form of material and immaterial compensation. It is also the state's role to protect the interests of victims who have suffered due to massive crime.⁴⁸

The formal legal process, based on the Criminal Procedure Code, starts from determining whether a legal event is a crime, investigation by determining the suspect based on minimum evidence and examination in court. In proving the crime, the victim is treated or given the role of a witness whose statement will be sought to reveal material facts. The Criminal Procedure Code, in its general provisions, does not explicitly state what is referred to as a victim. Still, it is implicitly contained in the excerpt of Article 1 number (26) of the Criminal Procedure Code, which reads: "... he experienced it himself".⁴⁹

If interpreted grammatically, it will refer to the direct victim of a crime. Thus, based on the quality of knowledge that is appropriate from the witness, it is the basis for him to provide information before the actor of the criminal justice system about the material truth of a criminal event. The qualification of witnesses has now been expanded in meaning based on the Decision of the Constitutional Court Number 65/PUU-VIII/2010⁵⁰, referred to as a *testimonium de auditu* witness to clarify whether a crime occurred. Based on this, it is common to consider Eddy O.S. Hiarij's opinion regarding the definition of criminal law. He said, "Criminal Law is a legal regulation of a sovereign country, the substance of which contains prohibited acts, which are ordered, accompanied by criminal sanctions for those

⁴⁶ Article 19 paragraph (1) of the Statute of the International Tribunal for Rwanda.

⁴⁷ Law Number 26 of 2000 concerning the Human Rights Court.

⁴⁸ Government Regulation Number 3 of 2002 concerning Compensation, Restitution and Rehabilitation for Victims of Human Rights Violations.

⁴⁹ Law Number 8 of 1981 concerning Criminal Procedure Law Regulations, Article 1 number (26).

⁵⁰ Constitutional Court, Decision No. 65/PUU-VIII/2010., p. 92.

who violate, those who do not comply, when and in what cases the criminal sanctions are imposed and how the state enforces the implementation of the criminal law.”⁵¹ Thus, the state and the perpetrator have a close relationship.

To emphasize this argument, Pompe previously said that the emergence of a legal relationship due to a crime that ends in the imposition of a criminal sentence does not necessarily constitute coordination. In this case, an agreement is born to seek alternative dispute resolution between the perpetrator and the victim like a private understanding, if so then the relationship between the two is equal (coordinative). Exceptions occur in criminal law, which takes over the victim's interests in the form of the state to guarantee the public interest so that the relationship is subordinate or not of the same degree.⁵²

The validity of the principle of *ultimum remedium* also has validity in international criminal law, especially in the case of efforts to resolve disputes outside the court before a mediator. The settlement includes Negotiation, Mediation, and Conciliation.⁵³ However, the validity is dependent on the case because the role of the international court of law does not have a preventive nuance as desired in the settlement of genocide disputes, the reason being that several countries reject the amnesty granted by the court to perpetrators of gross human rights violations, because there is no guarantee that the crime will not be repeated. The basis is Article 27 of the Vienna Convention that the right of a state to grant amnesty can be deviated from by an agreement signed by the state.⁵⁴

3. CONCLUSIONS

Genocide is an international crime which is a serious violation of the law. This crime is considered the most serious because it involves the international community, which the ICC has regulated. Genocide is one type of international crime that various legal experts have described since the era of world war. However, genocide was first regulated in legal regulations, namely the ICTY Statute and the ICTR Statute. The regulation of legal protection for victims of genocide crimes in Indonesia is expressly expressis verbis contained in the provisions of Article 34 paragraph (1) of Law—no—26 of 2000 concerning

⁵¹ Eddy O.S. Hiarij, *Prinsip-Prinsip Hukum Pidana*, PT. RajaGrafindo Persada, Depok, 2019, p. 23.

⁵² Andi Zainal Abidin Farid, *Hukum Pidana I*, Cet. Keempat., Sinar Grafika, Jakarta, 2014, p. 4-5.

⁵³ Anak Agung Ngurah Riski Wahyudi dan I Nyoman Budiana., “Komparasi Penyelesaian Perkara Pidana Kejahatan Genosida yang Terjadi di Rwanda dan Myanmar Ditinjau Dari Perspektif Hukum Pidana Internasional”, *Jurnal Komunikasi Hukum*, Vol. 7 No. 1, Februari 2021, p. 162.

⁵⁴ Ledy Pasinaung., “Perlindungan Hukum Korban Kejahatan Genosida Dalam Hubungan Dengan Hak Asasi Manusia”, *Lex et Societatis*, Vol. 5 No. 6, Agustus 2017, p. 54.

the Human Rights Court. Victims of genocide crimes also have rights based on Article 3 of PP. No. 3 of 2002 concerning Compensation, Restitution, and Rehabilitation of Victims of Human Rights Violations to obtain compensation rights from the state, restitution from perpetrators of crimes, and rehabilitation as a form of material and immaterial compensation. It is also the state's role to protect the interests of victims who have suffered due to massive crime. Further provisions are regulated in Article 19, paragraph (1) of the International Criminal Tribunal for Rwanda. However, even though it has been controlled, the author has not found a standard procedure for victims to obtain their rights.

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