

## CHAPTER I INTRODUCTION

### A. Background

According to J.L. Brierly, international law can be defined as a set of rules and principles of conduct that are binding on civilized states in their relations with one another<sup>1</sup>. In other hand, according to William R. Slomanson, international law is the body of rules by which nations are bound in their mutual relations.<sup>2</sup> Therefore, international law is a set of legal norms whose validity is upheld by the international community. As a body of law, international law is part of the legal system, and like any other branch of law, it fulfills the essential elements that define law: a collection of rules regulating the conduct of members within a community, the enforcement of which is maintained by an external authority of that community.<sup>3</sup> Cause basically, law essentially exists to maintain order, protect rights, and regulate social relations. Over time, law is not only seen as a set of written rules, but also as part of the values of humanity and justice that live within society. In the field of international law, its role becomes even more important when it comes to protecting human rights, especially in cases of serious violations that have a wide impact on humanity.

Human rights are basic rights inherent to every individual from beginning and cannot be taken away by anyone. The concept of "human rights" may be a relatively modern term, formally defined in the 18th century, but its roots go back as far as human civilization itself. What we now recognize as human rights has evolved through centuries, shaped by the contributions of many civilizations and religions. Ideas such as human equality and respect for property rights have long been reflected in religious texts like the Old Testament, the Qur'an, and other sacred writings.<sup>4</sup> Human rights are the rights that every person has simply because they are human. People have these rights not because they are given by society or based on positive law, but purely because of their dignity as human beings.<sup>5</sup> These rights are also inalienable. This means that no matter how badly a person has been treated or how cruel a person's actions may be, they never stop being human and therefore still possess these rights. In other words, these rights are inherent to them as human beings.

As previously said, while reality indicates that the state is the primary topic of international law, there are other subjects of international law in existence today. It makes perfect sense to assume that the state is the only entity covered by international law since state-to-state ties are the same as international relations. The fact that the phrase "inter-state law" is still occasionally used today is proof that this

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<sup>1</sup> J. L. Brierly, 1963, *The Law of Nations: An Introduction to the International Law of Peace*, 6th ed. Oxford: Clarendon Press, p. 27.

<sup>2</sup> William R Slomanson, *Fundamental Perspectives on International Law* (6th edn, Wadsworth Cengage Learning 2011) p. 4.

<sup>3</sup> Sugeng Istanto, 2006, *Hukum Internasional*, Universitas Atma Jaya, Yogyakarta, 1994, p. 2.

<sup>4</sup> Adnan Buyung Nasution and A Patra M. Zen, *Instrumen Internasional Pokok Hak Asasi Manusia* (Jakarta: Yayasan Pustaka Obor Indonesia, p.5.

<sup>5</sup> Jack Donnely, *Universal Human Rights in Theory and Practice*, Cornell University Press, Ithaca and London, 2003, p. 7-21. and Maurice Cranston, 1973, *What are Human Rights?* Taplinger, New York, p. 70.

belief is still held.<sup>6</sup> It is impossible to separate the growing emphasis on human rights protection from the rise of people as bearers of rights and duties at the international level. States are the sole subjects of international law, according to the positivist perspective. However, in the actual world of international relations, people are assigned responsibilities as holders of rights and duties under international law, as they are natural beings with rights and obligations. As a result, international law also applies to people. However, it is undeniable that state accountability, as opposed to individual responsibility, is the concept that is currently more widely accepted in international law.<sup>7</sup>

The International Criminal Court's (ICC) establishment is firmly rooted in past reactions to horrific violations of international law and human rights, especially in the years after World War II. The international community struggled to bring justice for heinous crimes through a number of historic ad hoc tribunals prior to the ICC's establishment as a permanent court tasked with prosecuting persons for the most serious crimes under international law. Individuals were first recognized as subjects of international criminal law during World War II, when the Nuremberg and Tokyo Tribunals established special tribunals that prosecute people for international crimes. During World War II, the Allies organized a number of conferences that served as the foundation for the Nuremberg procedure.<sup>8</sup> International justice entered a new era with the Nuremberg and Tokyo Tribunals. Top Nazi officials were among those first held legally accountable for war crimes, crimes against humanity, and acts of aggression at the 1945–1946 Nuremberg Trials. In a similar vein, Japanese officials were held accountable for wartime crimes at the Tokyo Trials. The revolutionary legal idea that people could not avoid responsibility for major international crimes, regardless of their position or status, was established by these tribunals. They disapproved of the idea that criminals might be absolved by superior authority or state sovereignty. This idea established the groundwork for contemporary international criminal law by acknowledging people as independent subjects of international law with the capacity to have legal obligations and rights.

Tokyo and Nuremberg were important, although they were unsuccessful and had a narrow focus. Addressing crimes in later conflicts remained a difficulty for the international community. In 1993 and 1994, respectively, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for

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<sup>6</sup> Mochtar Kusumaatmadja and Ety R. Agoes, 2003, *Pengantar Hukum Internasional*, PT. Alumni: Bandung, p. 95.

<sup>7</sup> Danel Aditia Situngkir, 2018, *Pertanggungjawaban Pidana Individu dalam Hukum Pidana Internasional, Litigasi*, p-ISSN 0853-7100, e-ISSN 2442-2274, p. 4.

<sup>8</sup> Daryl A. Mundis, 2004, *Completing the Mandates of the Ad Hoc International Criminal Tribunals: Lessons from the Nuremberg Process*, *Fordham International Law Journal* 3, citing the extensive literature, including Robert H. Jackson, *Report of Robert H. Jackson: United States Representative to the International Conference on Military Trials* (1945) (Dep't of State Publication No. 3080, 1949) [hereinafter Jackson Report]; Telford Taylor, *Final Report to the Secretary of the Army on the Nuremberg War Crimes Trials Under Control Council Law No. 10* (1949) [hereinafter Taylor Report]; Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (1992); Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (2000); Bradley F. Smith, *The Road to Nuremberg* (1981) [hereinafter Smith, Road to Nuremberg]; Bradley F. Smith, *The American Road to Nuremberg: The Documentary Record 1944–1945* (1982); Joseph E. Persico, *Nuremberg: Infamy on Trial*.

Rwanda (ICTR) were founded as ad hoc tribunals by the United Nations. The application of international criminal law was improved and broadened by these tribunals. They emphasized individual criminal culpability regardless of official capacity and established more lucid jurisprudence on crimes against humanity, war crimes, and genocide. In order to provide justice to the victims of mass atrocities brought about by their national authorities disastrous failure to protect them and the possibility that those states would not pursue national proceedings against the offenders. Genocidal crimes were a part of the tragedies in both instances. It was known as "ethnic cleansing" in the former Yugoslavia. In order to stop the atrocities from continuing, stop their effects from spreading to nearby nations, combat legal impunity by bringing those most responsible to justice, restore the authority of the law, and aid in fostering national reconciliation, the ICTY and ICTR were established as part of diplomatic and military interventions in Bosnia and Rwanda, respectively.<sup>9</sup> Crucially, by holding military and civilian leaders liable if they knew or should have known about crimes committed by subordinates and did nothing to stop or punish those crimes.

A historic step toward a permanent international criminal court was taken with the creation of the International Criminal Court (ICC), which built on these precedents. There was general agreement that impunity was intolerable in the 1990s following the end of the Cold War, which led to the creation of tribunals such as the International Criminal Tribunal for the former Yugoslavia and for Rwanda. It was widely acknowledged that an independent, permanent criminal court was required, nevertheless, because they were set up to try offenses committed only during a certain battle and within a certain time frame. A significant milestone was achieved by the international community on July 17, 1998, when 120 states ratified the Rome Statute, which served as the legal foundation for the creation of the permanent International Criminal Court. After 60 countries ratified the Rome Statute, it went into effect on July 1, 2002. The International Criminal Court has the power to handle the most serious crimes that affect the entire world, such as genocide, crimes against humanity, and war crimes, which were committed after July 1, 2002. It also has the power to deal with the crime of aggression, starting from July 17, 2018, but only under certain conditions and following specific rules. Each of these crimes is clearly described in the Rome Statute and other important legal documents. The Court can only take action if these crimes were committed in the country of a member state or by someone from that country. However, there are exceptions; if the United Nations Security Council refers a situation to the Prosecutor, or if a country agrees to let the Court handle cases involving its citizens. The Court is meant to work alongside, not take the place of, national courts. It can only step in when national courts are not doing their job or are pretending to do so but aren't actually able to. This important rule is called the principle of complementarity. Through international criminal justice, the

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<sup>9</sup> Michael Humphrey, 2003, *International intervention, justice and national reconciliation: the role of the ICTY and ICTR in Bosnia and Rwanda*, *Journal of Human Rights* 2(4), 495–505, ISSN: 1475-4835 (Print), p. 1475-4843.

Court seeks to hold those guilty of crimes accountable and to assist stop them from occurring in the future. It is also a part of the worldwide effort to eradicate impunity.<sup>10</sup>

Moreover, the International Criminal Court (ICC) was established as a global judicial body to prosecute those responsible for the most serious crimes, including crimes against humanity. Under the Rome Statute, the ICC's jurisdiction covers genocide, war crimes, the crime of aggression, and crimes against humanity. The Court was created out of the need of the international community for a legal mechanism to prosecute the most serious crimes that threaten peace, security, and human dignity. Despite its important role, the ICC faces several limitations that affect its effectiveness. One of the main challenges is its limited jurisdiction, since not all states are parties to the Rome Statute. Major powers such as the United States, Russia, and China have not ratified the Statute, making it difficult for the ICC to exercise authority over their citizens. In addition, the Court struggles with limited resources, both financial and human, to manage complex cases. Political obstacles also play a significant role. Many crimes against humanity are closely tied to internal conflicts and state interests, leading to resistance from national governments against ICC intervention. Some states refuse to cooperate, delay extraditions, or even withdraw from the Rome Statute. This shows that although the ICC has legal authority, its implementation depends heavily on the cooperation of member states and the support of the international community.

Basically, the International Criminal Court has the authority to prosecute crimes against humanity, which involve serious acts committed as part of a widespread or systematic attack directed at any civilian population. According to the Rome Statute, there are 15 categories of crimes against humanity, including murder, rape, unlawful imprisonment, enforced disappearances, slavery affecting especially women and children, sexual slavery, torture, apartheid, and forced deportation.<sup>11</sup> One case that has gained international attention is the alleged gross human rights violations during the anti-narcotics campaign in the Philippines under President Rodrigo Duterte. This campaign has been accused of involving extrajudicial killings and other inhumane acts, which may fall under crimes against humanity as defined in Article 7 of the Rome Statute "...“crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

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<sup>10</sup> International Criminal Court, About the Court, ICC Official Website, available at: <https://www.icc-cpi.int/about/the-court> (accessed on October 3, 2025)

<sup>11</sup> *Ibid.*, How the Court Works.

(i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”<sup>12</sup>

The International Criminal Court's (ICC) Office of the Prosecutor applauds the Republic of the Philippines' authorities' arrest and transfer of suspect Mr. Rodrigo Roa Duterte, the former president of the Philippines, on March 11, 2025. As part of the Office's ongoing investigation into the situation in the Republic of the Philippines, Mr. Duterte was arrested. As the founder and leader of the Davao Death Squad, the mayor of Davao City at the time, and now the president of the Philippines, Mr. Duterte is accused by the Office of the Prosecutor of committing the crime against humanity of murder (article 7(1)(a) of the Rome Statute) in the Philippines between November 1, 2011, and March 16, 2019, based on its independent and unbiased investigations. These atrocities are said to have been committed by Mr. Duterte as part of a broad and organized assault on the civilian populace. Pre-Trial Chamber I found that there are good reasons to suspect Mr. Duterte of committing the crime against humanity of murder, as stated in the arrest order it issued on March 7, 2025. The Chamber further pointed out that since the alleged crimes took place when the Philippines was a State Party to the Rome Statute, the ICC's founding treaty, the case against Mr. Duterte is within the Court's jurisdiction. The Office's efforts to hold the Republic of the Philippines accountable for alleged crimes related to the so-called "war on drugs" campaign have advanced significantly with Mr. Duterte's incarceration. The Philippines Unified Team, led by Deputy Prosecutor Mame Mandiaye Niang, the Office's recently formed Tracking and Information Fusion Section, and other pertinent Office components have all worked together to enable the Office to carry out this work.<sup>13</sup>

Despite certain complexities, the Philippines domestic legal system and its status as a State Party to the Rome Statute have an impact on the country's legal system concerning international criminal law and cooperation with the ICC. The International Criminal Court (ICC) investigated and accused former Philippine President Rodrigo Duterte mainly for an alleged "War on Drugs" campaign that involved extrajudicial killings. According to international law, these killings allegedly targeted civilian populations, were widespread, and were systematic, making them crimes against humanity. Article 7 of the Rome Statute is allegedly violated by Duterte because of his vigorous anti-drug campaign, which resulted in numerous executions without due process. Major attacks against civilians, including murder, that are carried out on a broad scale or as part of a government policy are defined as crimes against humanity in Article 7. Because they did not adhere to the proper legal procedures, the deaths that took place during Duterte's war on drugs are perceived as deliberate, widespread, and unjust. It is therefore thought that these acts satisfy the requirements of Article 7's definition of crimes against humanity.

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<sup>12</sup> Rome Statute of the International Criminal Court, Article 7, adopted 17 July 1998.

<sup>13</sup> International Criminal Court, Statement, 12 March 2025.

The Philippines' inefficient national judicial system has drawn a lot of criticism for its purported involvement in human rights abuses. The lack of independence and political meddling in investigations, especially those involving high-ranking officials, have drawn criticism. Whereas, a state that finds the perpetrator of a serious international crime within its borders must decide between two options, according to the international legal principle of *Aut Dedere Aut Punire*: extraditing the offender to a competent state or international tribunal, like the ICC, if it is unable or unwilling to conduct a fair trial (*aut dedere*), or prosecuting the offender domestically with an investigation and prosecution that is effective and goes beyond mere formality (*aut punire*). As stated in CAT (1984) "The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution".<sup>14</sup> Either a fair local trial or Duterte's surrender to the ICC are the Philippines' moral and legal obligations under international law. The Philippine government has, however, violated the concept of *aut dedere aut punire* by failing to successfully execute both obligations in practice. Another complex and controversial aspects involving state sovereignty, international law, and political considerations are highlighted by the Philippines' decision to withdraw from the Rome Statute of the International Criminal Court (ICC) and to deny the ICC jurisdiction in the investigation of former President Rodrigo Duterte's war on drugs. On the withdrawal notification letter, the Philippines provided further justification for its withdrawal, stating that it opposes parties that appear to be politicizing the ICC and uses human rights as a weapon against the country's independence jurisdiction as a sovereign nation that exercises its own jurisdiction over issues, problems, and concerns that come up in the Philippines' attempts to defend its own citizens.<sup>15</sup>

Amnesty International, Human Rights Watch, and the UN Human Rights Commission have reported that this policy resulted in tens of thousands of deaths, many of which involved civilians who were not given a fair trial. From the perspective of international human rights law, the campaign violated several fundamental human rights principles. Civilians often lived in fear due to arbitrary actions by security forces, creating psychological terror and infringing on the right to personal security. Therefore, Rodrigo Duterte's anti-narcotics campaign breached key international human rights standards, including the right to life, the principles of due process and fair trial, the right to be free from torture or inhuman treatment, the principle of non-discrimination, and the right to personal safety.<sup>16</sup> These violations demonstrate, that the policy contravenes the human rights protections guaranteed under the UDHR and ICCPR,

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<sup>14</sup> United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 December 1984, General Assembly resolution 39/46, art. 7(1).

<sup>15</sup> Aisyah Jasmine Yogaswara, 2017, *Impact of Philippines' Withdrawal from International Criminal Court on Crime Against Humanity Investigation in Philippines*, *Padjadjaran Journal of International Law* 4, No. 2 (June 2020): 230, citing International Criminal Court Office of the Prosecutor, Report on Preliminary Examination, p. 64.

<sup>16</sup> Universal Declaration of Human Rights adopted on December 10, 1948.

providing a legal basis for the International Criminal Court (ICC) to investigate alleged crimes against humanity.

Moreover, International Criminal Court (ICC) encounters numerous difficulties when looking into former Philippine President Rodrigo Duterte regarding alleged offenses committed during his anti-narcotics campaign. A primary concern is jurisdiction. Another obstacle is the significant resistance from the Philippine government. Throughout Duterte's administration and under his successors, the government has dismissed the ICC's investigation, asserting that local courts can manage these cases. Nonetheless, according to the principle of complementarity laid out in the Rome Statute, the ICC is allowed to proceed if it is evident that the national judicial system is either unwilling or unable to perform fair and genuine trials.

Furthermore, the lack of support from Philippine officials complicates the procedure. Requests for evidence, arrest warrants, and cooperation from witnesses are frequently disregarded, hindering the progress of the investigation. Political pressures and issues related to national sovereignty add to the complexity, as many perceive the ICC's actions as external meddling. This viewpoint has been leveraged to undermine the Court's credibility and diminish public backing for its endeavors.

Security issues also pose a significant challenge. Witnesses often encounter intimidation and threats, while investigators may face dangers when gathering information in high risk areas. It is crucial to safeguard witnesses and ensure their security to build credible cases. The idea that the most heinous crimes should not go unpunished is becoming more and more popular around the world, as evidenced by the establishment of international criminal courts.<sup>17</sup>

Gathering dependable evidence proves to be exceptionally challenging. Numerous killings associated with the anti-narcotics initiative were extrajudicial, resulting in minimal official records. Consequently, investigators must depend on witness statements, media coverage, and documentation from civil society organizations, all of which necessitate thorough verification. To establish crimes against humanity, the ICC must demonstrate a clear and organized pattern of assaults against civilians, which requires robust and consistent evidence.

Moreover, time constraints and limited resources add additional barriers. International criminal investigations are often lengthy and expensive, and the ICC must juggle this case alongside several others ongoing. Enforcement is another significant concern, as the ICC relies on states to execute arrest warrants and rulings. Without the Philippine government's cooperation, enforcing any decision against Rodrigo Duterte or other alleged perpetrators becomes exceedingly challenging.

Based on the background of the issues, the author identifies a legal problem that requires further research, analysis, and examination. the ICC faces a complex set of challenges in investigating Duterte's anti-narcotics campaign. These challenges show both the importance of international justice and the serious obstacles in applying

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<sup>17</sup> Christian Maierhöfer, 2006, *Aut dedere – aut iudicare»: Herkunft, Rechtsgrundlagen und Inhalt des völkerrechtlichen Gebotes zur Strafverfolgung oder Auslieferung*, Schriften zum Völkerrecht, Vol. 162, p. 84.

it when national authorities are unwilling or unable to protect human rights. This consideration has led the author to conduct research and write a thesis entitled “**An International Human Rights Perspective on Prosecuting Rodrigo Duterte by ICC for Crimes Against Humanity in Philippines**”.

## **B. Research Question**

Based on the background that has been explained, the author considers it necessary to formulate the research problems that will serve as the main focus of this research. These research problems are expected to provide guidance in conducting further analysis and to make a meaningful academic contribution to the development of legal studies, particularly in the field of international human rights law. Therefore, the author formulates the following research questions:

1. Is the prosecution of Rodrigo Duterte for alleged crimes against humanity in line with the principles and rules of International Human Rights Law?
2. What obstacles does the International Criminal Court face in handling the case of Rodrigo Duterte?

## **C. Research Objective**

This research is conducted and intended with the purpose of achieving the following goals:

1. To analyze whether the prosecution of Rodrigo Duterte by the International Criminal Court (ICC) for alleged crimes against humanity is consistent with the principles and rules of International Human Rights Law.
2. To examine the obstacles faced by the International Criminal Court in handling the case of Rodrigo Duterte, particularly in relation to states international obligations and the protection of Human Rights under International Law.

This research is expected to provide benefits and to contribute as follows:

### **1. Academics**

This research is expected to contribute to the academic development of international law, particularly in the field of international human rights law and international criminal law. It may also serve as a useful reference for students, scholars, and researchers who are interested in studying the role of the International Criminal Court (ICC) in addressing crimes against humanity.

### **2. Theoretical**

From a theoretical perspective, this research aims to provide new insights into the relationship between the jurisdiction of the ICC and the principles of International Human Rights Law. It also seeks to enrich the academic debate on the effectiveness of international judicial institutions in enforcing the law and overcoming challenges, especially in the case of Rodrigo Duterte and the “war on drugs” policy in the Philippines.

### **3. Practical**

This research is expected to give understanding the challenges and opportunities of international human rights law and international criminal law enforcement so that it can be useful for parties such as society. Furthermore, it

may also help the wider public to gain a clearer understanding of the ICC's mechanisms, its role in upholding international justice, and the importance of protecting human rights at the global level.

#### D. Originality of Research

Particularly in academic research like theses and dissertations, holds significant importance. It is essential for avoiding plagiarism or the rehashing of concepts from earlier research. To determine which sections have been investigated or not, a comparison must be made to analyze whether there are similarities or differences in relation to the current research. The author also points out some commonalities among various prior research, as outlined below:

##### 1. Originality of the First Research

Author	: Utari Nur
Title	: A Political Discourse Analysis on Rodrigo Duterte's Drug War Policy
Category	: Skripsi
Year	: 2017
University	: Maulana Malik Ibrahim State Islamic University
Previous Research	Research Plan
<p>Issues and Problems:</p> <ol style="list-style-type: none"> <li>1. How is Rodrigo Duterte represented in BBC News coverage of war in drug?</li> <li>2. How does Duterte clarify his representation in society?</li> </ol>	<p>Issues and Problems:</p> <ol style="list-style-type: none"> <li>1. Is the prosecution of Rodrigo Duterte for alleged crimes gains humanity in line with the principles and rules of International Human Rights law?</li> <li>2. What obstacles does International Criminal Court face in handling the case of Rodrigo Duterte?</li> </ol>
<p>Research Method:</p> <p>Qualitative Empirical Research</p>	<p>Research Method:</p> <p>Normative Legal Research</p>
<p>Result:</p> <p>Based on the research results, it shows that:</p> <ol style="list-style-type: none"> <li>1. Rodrigo Duterte is predominantly portrayed negatively in BBC News coverage concerning the war on drugs. The international media, particularly the BBC, highlights the controversial</li> </ol>	<p>Result:</p> <p>Based on the research results, it shows that:</p> <ol style="list-style-type: none"> <li>1. Based on normative legal analysis, the prosecution of Duterte by the ICC is grounded in the Rome Statute's provisions granting the Court jurisdiction</li> </ol>

<p>aspects of Duterte's anti-drug campaign, focusing on the large number of deaths resulting from extrajudicial killings and alleged human rights violations. The choice of words and journalistic style frames Duterte as an authoritarian leader who ignores fundamental principles of humanity and justice. The reporting's emphasis on the death toll and human rights accusations creates a global public perception that strongly criticizes Duterte's policies, thereby reinforcing a dominant negative image of his leadership in the international discourse.</p> <p>2. In response to this negative portrayal, Duterte provided official clarifications through an interview with Aljazeera, which was transcribed by the researcher. He defended the anti-drug campaign as a firm and necessary measure to tackle the serious drug problem threatening the security and well-being of the Filipino people. Duterte asserted that his tough actions were intended to maintain order and protect the nation, motivated by genuine concerns for the public good. However, these clarifications received limited exposure and were not proportionally represented in the international media. Most coverage continued to focus on criticisms and allegations of human rights abuses, which allowed the negative image of Duterte to remain prevalent and largely uncontested by his official statements.</p>	<p>over crimes against humanity. The alleged killings and other inhumane acts conducted as part of a widespread or systematic attack against civilians fall within the ICC's substantive jurisdiction. Although the Philippines withdrew from the Rome Statute in 2019, the ICC retains jurisdiction over acts committed while the country was still a State Party. Therefore, the prosecution aligns with international human rights law principles that hold individuals accountable for serious human rights violations.</p> <p>2. The research identifies key challenges faced by the ICC as procedural and jurisdictional, including the lack of a direct enforcement mechanism and non-cooperation from the Philippine government following its withdrawal from the Rome Statute. Political resistance from the state also complicates the ICC's authority and enforcement. Practically, without the active cooperation of the state concerned, the ICC's ability to implement its decisions is limited, hampering effective international justice enforcement. This situation highlights the significant impact of political and sovereign factors on international legal processes.</p>
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## 2. Originality of the Second Research

Author	: Fivi Fajar Iryana
Title	: Analysis of President Duterte's Policy of Extrajudicial Killing in the War on Drugs in the Philippines Based on the 1998 Rome Statute

Category : Skripsi	
Year : 2018	
University : Sebelas Maret University	
Previous Research	Research Plan
<p>Issues and Problems:</p> <ol style="list-style-type: none"> <li>1. What is President Duterte's policy regarding extrajudicial killings in the war on drugs?</li> <li>2. Does the policy violate the provisions of the 1998 Rome Statute?</li> </ol>	<p>Issues and Problems:</p> <ol style="list-style-type: none"> <li>1. Is the prosecution of Rodrigo Duterte for alleged crimes gains humanity in line with the principles and rules of International Human Rights law?</li> <li>2. What obstacles does International Criminal Court face in handling the case of Rodrigo Duterte?</li> </ol>
<p>Research Method:</p> <p>Normative Legal Research</p>	<p>Research Method:</p> <p>Normative Legal Research</p>
<p>Result:</p> <p>Based on the research results, it shows that:</p> <ol style="list-style-type: none"> <li>1. President Duterte's policy in the war on drugs involves widespread extrajudicial killings used as a strict method to fight drug crimes. This approach focuses on achieving quick and effective results but often overlooks proper legal procedures, which has led to significant criticism from the international community for violating human rights standards.</li> <li>2. Duterte's approach evidently contravenes the guidelines set out in the 1998 Rome Statute. This statute forbids crimes against humanity, such as extrajudicial killings that occur without legal procedure. As a result, these actions can be regarded as significant violations of global law and are liable to scrutiny and legal action by the International Criminal Court.</li> </ol>	<p>Result:</p> <p>Based on the research results, it shows that:</p> <ol style="list-style-type: none"> <li>1. Based on normative legal analysis, the prosecution of Duterte by the ICC is grounded in the Rome Statute's provisions granting the Court jurisdiction over crimes against humanity. The alleged killings and other inhumane acts conducted as part of a widespread or systematic attack against civilians fall within the ICC's substantive jurisdiction. Although the Philippines withdrew from the Rome Statute in 2019, the ICC retains jurisdiction over acts committed while the country was still a State Party. Therefore, the prosecution aligns with international human rights law principles that hold individuals accountable for serious human rights violations.</li> <li>2. The research identifies key challenges faced by the ICC as</li> </ol>

	<p>procedural and jurisdictional, including the lack of a direct enforcement mechanism and non-cooperation from the Philippine government following its withdrawal from the Rome Statute. Political resistance from the state also complicates the ICC's authority and enforcement. Practically, without the active cooperation of the state concerned, the ICC's ability to implement its decisions is limited, hampering effective international justice enforcement. This situation highlights the significant impact of political and sovereign factors on international legal processes.</p>
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From this perspective, this thesis stands apart from previous research by providing a deeper and more focused analysis of justice and human dignity. This study directly addresses the prosecution of Rodrigo Duterte by the International Criminal Court (ICC) for alleged crimes against humanity during the anti-narcotics campaign in the Philippines, investigating these events through the lens of international human rights law.

While earlier research tends to discuss Duterte's war on drugs generally or explore the issue through media narratives or national legislation, this thesis courageously delves into the heart of what justice means for victims and for society. It critically examines not only the legal principles and procedures, but also the real difficulties encountered by the ICC in seeking accountability for those who have suffered violations of their fundamental rights.

In doing so, this research does more than fill a gap in legal literature it brings to light the urgent need for truth, justice, and international cooperation in the face of large-scale human rights abuses. The original value of this thesis lies in its integrity and commitment to champion legal standards and justice, striving to ensure that the voices of victims and the principles of human rights are never ignored. Through a careful normative legal approach, this research hopes to contribute meaningfully to the fight for accountability and protection of human dignity in the international legal community.

## **E. Theoretical Foundation**

### **1. The Theory of International Human Rights Law**

Human Rights are fundamental rights granted to every individual from birth, regardless of religion, ethnicity, race, gender, language, or any other status.

Human Rights cannot be revoked, reduced, or taken away by anyone. Human Duties are the logical consequence of Human Rights and must be carried out in order to create a just and peaceful life. Human Duties are obligations that every person must fulfill to respect and protect the Human Rights of others. Principles of Human Rights are universal and fundamental values that serve as the basis for the respect, protection, and fulfillment of Human Rights. These principles apply to everyone, without exception, everywhere and at all times.<sup>18</sup>

International human rights law is founded not just on essential ideas and themes but is also based on crucial principles that facilitate the safeguarding and advancement of human rights all over the world. These foundational principles offer explicit guidelines and limits for the global application of human rights standards.

Principle in this context is that of non-derogable rights, indicating that certain rights must not be suspended, reduced, or ignored in any situation, even during crises or conflicts. These rights are unconditional and must be upheld by all nations and individuals. The most notable non-derogable rights encompass the ban on torture, cruel, inhuman, or degrading treatment or punishment, as well as the right to life. The recognition of these rights within international law signifies a profound reverence for human dignity that cannot be compromised, and breaches of these rights are viewed as grave offenses against humanity.

There is also concept of universality, and it claims that human rights are applicable everywhere and should not be disregarded by any nation due to sovereignty or national priorities. In addition, the idea of indivisibility emphasizes that all human rights civil, political, economic, social, and cultural are interconnected and should be safeguarded uniformly. Finally, equality mandates that each person receives the same legal protection without any form of discrimination.

The primary tools that act as global benchmarks for safeguarding human rights include the following:

- a. Universal Declaration of Human Rights (UDHR) 1948: This document is a key foundation of global human rights legislation that outlines the essential rights that every nation is obligated to uphold.
- b. International Covenant on Civil and Political Rights (ICCPR) 1966: This treaty requires the member states to safeguard civil and political rights, which encompass the right to live and protection against torture.
- c. Convention Against Torture (CAT) 1984: This agreement clearly bans all types of torture as well as inhumane or degrading treatment and punishment.

The principle of *jus cogens* refers to peremptory norms of international law from which no derogation is permitted. In the human rights context, this includes the absolute prohibition of torture and the right to life. These norms hold the

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<sup>18</sup> Analysis of the Role of International Law and National Law in Protecting Human Rights and Human Duties, 2024, *INNOVATIVE: Journal of Social Science Research*, Vol. 4, No. 3, available at <https://j-innovative.org/index.php/Innovative>, p. 18222–18230.

highest status in international law and form the basis for international criminal accountability for serious human rights violations such as crimes against humanity and genocide. *Jus cogens* principles serve as the foundation for the jurisdiction and authority of international courts, including the International Criminal Court (ICC).

In this thesis titled “An International Human Rights Law Perspective on the Prosecution of Rodrigo Duterte by the International Criminal Court for Alleged Crimes Against Humanity in Connection with the Anti-Narcotics Campaign in the Philippines,” the mentioned human rights concepts are notably significant. The suspected violations of human rights within the anti-narcotics initiative encompass rights that cannot be violated, particularly the right to life and the ban on torture or cruel treatment, which are safeguarded under essential treaties like the ICCPR and CAT. The principle of universality indicates that human rights apply worldwide, and any breaches by a nation may face international examination and legal consequences.

The *jus cogens* standards that forbid torture and protect the right to life strengthen the justification for prosecuting serious alleged human rights abuses, even those carried out by a nation's leader. This perspective of international human rights law offers the legal foundation necessary to evaluate the legitimacy and grounds for the ICC's inquiry and prosecution of Rodrigo Duterte, using universally acknowledged human rights criteria.

## 2. The Theory of International Criminal Law

International Criminal Law is a unique and complex branch of law that specifically regulates individual accountability for serious crimes considered threats to peace and security of humanity as a whole.<sup>19</sup> International Criminal Law is a sector of global law that addresses severe crimes viewed as violations against the entire international community, including war crimes, genocide, and crimes against humanity. The purpose of this legal area is to ensure that persons are held responsible for significant violations that go beyond national legal frameworks and impact worldwide peace and safety. This area of law focuses on ensuring that people are responsible for serious crimes that go beyond national borders and have an impact on global peace and safety. Concepts of universality and the supremacy of the law support organizations such as the International Criminal Court (ICC) in pursuing justice for these offenses.

Article 7 of the Rome Statute outlines that crimes against humanity are actions carried out as part of a large scale or organized assault aimed at any civilian group, with awareness of the ongoing assault.<sup>20</sup> These actions encompass numerous grave offenses including homicide, forced disappearance, enslavement, torture, and other brutal acts. The key feature of crimes against

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<sup>19</sup> Abdul Malik Mufty and Nur Sri Maryam, *Hukum Pidana Internasional*, Jakarta: Tahta Media Group, 2025), p. 1.

<sup>20</sup> Rome Statute, Art. 7.

humanity is that they are not standalone events but take place within a larger framework of policies or practices. This sets them apart from typical individual offenses because of the scale and methodical nature of their execution. Apart from that, it is necessary to understand several principles in this case as follows:

a. Principle of Individual Criminal Responsibility<sup>21</sup>

The principle of individual criminal responsibility is a fundamental rule in international criminal law, stating that any person regardless of rank or official position can be held criminally liable for committing international crimes. No status or office exempts a person from responsibility under international law.

b. Principle of Command Responsibility

This principle holds that military commanders or civilian superiors can be held criminally responsible for crimes committed by their subordinates if they knew, or should have known, about the crimes and failed to take necessary and reasonable measures to prevent or punish the perpetrators.<sup>22</sup> This ensures that those in positions of authority cannot avoid liability for crimes committed under their command.

c. Principle of Non-Immunity under Article 27 of the Rome Statute

Article 27 of the Rome Statute establishes the principle of non-immunity, which means that official status, including that of heads of state, government officials, or military leaders, does not exempt a person from criminal responsibility before the ICC.<sup>23</sup> Immunity or official capacity cannot be used as a shield against prosecution for crimes within the Court's jurisdiction. This principle is vital to ensure that no one is above the law in matters of international criminal justice.

This thesis entitled "An International Human Rights Law Perspective on the Prosecution of Rodrigo Duterte by the International Criminal Court for Alleged Crimes Against Humanity in Connection with the Anti-Narcotics Campaign in the Philippines" is closely connected to these theories because:

- a. The alleged violations in the anti-narcotics campaign under Rodrigo Duterte can be classified as crimes against humanity under Article 7 of the Rome Statute, given the systematic and widespread nature of the attacks against the civilian population.
- b. The principle of individual criminal responsibility<sup>24</sup> explains that Duterte, as an individual, may be held criminally liable regardless of his status as head of state.
- c. The command responsibility principle allows for examination of Duterte's role as a leader in ordering, knowing, or failing to prevent human rights violations carried out by security forces or agents under his control.

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<sup>21</sup> Rome Statute, Art. 25<sup>10</sup>.

<sup>22</sup> Rome Statute, Art. 28.

<sup>23</sup> Rome Statute, Art. 27(1).

<sup>24</sup> Rome Statute, Art. 25.

- d. Through the non-immunity rule in Article 27 of the Rome Statute, Duterte has no legal immunity to block investigation or prosecution by the ICC, supporting the international mechanism of accountability.

Consequently, utilizing these principles of international criminal law forms a solid basis for examining and comprehending the legal proceedings related to the prosecution of supposed crimes against humanity associated with Rodrigo Duterte.

### 3. International Criminal Court

The International Criminal Court (ICC) examines and, when appropriate, prosecutes individuals accused of the most serious crimes that concern the global community: genocide, war crimes, crimes against humanity, and aggression.<sup>25</sup>

The Court plays a vital role in the worldwide effort to eliminate impunity and aims to ensure that those culpable for these crimes are held responsible, as well as to deter future occurrences through international criminal justice.

The Court cannot achieve these objectives independently. As a last resort, it intends to support rather than replace local judicial systems. Established by the Rome Statute, an international agreement, the ICC is recognized as the first permanent international criminal court in the world. The ICC's founding document, known as the Rome Statute, provides the court with authority over four principal crimes.

The first of these is genocide,<sup>26</sup> which involves the intent to fully or partially eliminate a national, ethnic, racial, or religious group through acts that include killing its members, inflicting severe physical or mental harm, deliberately creating life conditions that threaten the group's survival, implementing measures to restrict births within the group, or forcibly relocating children from the group to another group.

Next, the ICC is empowered to pursue crimes against humanity, which are serious offenses carried out during a wide-scale assault on any civilian population. The Rome Statute outlines 15 different types of crimes against humanity, such as murder, sexual violence, illegal detention, forced disappearances, enslavement especially of women and minors sexual slavery, torture, apartheid, and deportation.

The third category is war crimes, which are serious violations of the Geneva Conventions during armed conflicts and include actions like the recruitment of child soldiers, killing or torturing individuals including civilians or prisoners of war, and intentionally targeting hospitals, historic sites, or institutions dedicated to religion, education, art, science, or philanthropy.

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<sup>25</sup> Rome Statute, Art. 5.

<sup>26</sup> Rome Statute, Art. 6.

Lastly, the fourth type of crime under the ICC's authority is aggression.<sup>27</sup> This involves a state deploying military force against the sovereignty, integrity, or independence of another state. This definition was established through an amendment to the Rome Statute at the first Review Conference held in Kampala, Uganda, in 2010. On December 15, 2017, the Assembly of States Parties unanimously passed a resolution to activate the Court's jurisdiction over the crime of aggression, effective July 17, 2018.<sup>28</sup>

The International Criminal Court (ICC) was formed as a lasting global court to hold individuals accountable for the gravest offenses that affect the international community. The ICC was founded under the Rome Statute, which was approved in 1998, and it officially began operating on July 1, 2002. The creation of the ICC represented a significant achievement in the realm of international criminal justice, following many years of attempts to establish a permanent court, building on the experiences of previous temporary tribunals like those in Nuremberg and Tokyo, as well as the International Criminal Tribunal for the former Yugoslavia and Rwanda.

The ICC is responsible for addressing four primary types of offenses as defined in Articles 5 through 8 of the Rome Statute: genocide, crimes against humanity, war crimes, and the crime of aggression.

- a. Genocide refers to actions aimed at completely or partially eliminating a national, ethnic, racial, or religious group.
- b. Crimes Against Humanity involve large-scale or systematic assaults on civilians, which can include acts like murder, slavery, torture, and other brutal actions.
- c. War Crimes pertain to serious violations of international humanitarian law carried out during conflicts.
- d. Aggression signifies the employment of military force by one state against another state's sovereignty, territorial integrity, or political independence, in contravention of the UN Charter.<sup>29</sup>

Furthermore, ICC working under the principle of complementarity is considered the cornerstone of the ICC statute, and based on it, the priority for prosecuting Article 17 of the Rome Statute assigns the responsibility for prosecuting individuals who are accused of the most severe international crimes to the domestic legal system within the international community.<sup>30</sup>

The ICC functions based on the idea of complementarity, indicating that the Court will intervene only when local courts are either unwilling or unable to effectively conduct investigations or prosecutions. This concept emphasizes the main responsibility of nations in handling international offenses, with the ICC

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<sup>27</sup> Rome Statute, Art. 8.

<sup>28</sup> ICC, *How the Court Works*, <https://www.icc-cpi.int/about/how-the-court-works>.

<sup>29</sup> Rome Statute of the International Criminal Court, Art. 5–8.

<sup>30</sup> Adam Oler, 2017, *The Looming Demise of the ICC's Complementarity Principle: Israel, US Interests, and the Court's Future*, *Emory International Law Review Recent Development*, cited in *Law Journal of Universitas Brawijaya*, accessed at <https://lawjournal.ub.ac.id/index.php/law/article/view/1262/161>. p. 1001.

serving as a final option to guarantee accountability and avoid a lack of punishment.

The Office of the Prosecutor at the ICC is tasked with overseeing both investigations and prosecutions. Investigations may be started through a referral from a state party, from the United Nations Security Council, or by the Prosecutor acting on their own accord. The prosecutorial process entails methodical gathering of evidence, issuing arrest warrants or notifications for individuals to appear, and holding trials in front of the judges of the Court. The ICC adheres to rigorous standards for fair trials and ensures the protection of the rights of those accused.

The ICC plays a crucial role in the enforcement and protection of international human rights by holding perpetrators of serious human rights violations accountable. It complements international human rights law by addressing crimes that constitute severe breaches of fundamental human rights. The ICC's activities support justice, deterrence, and the restoration of victims' rights. It serves as a legal mechanism to reinforce global human rights norms, particularly when domestic legal systems fail to act.

#### **4. The relationship between International Human Rights Law and the International Criminal Court (ICC)**

The relationship between international human rights law and the International Criminal Court (ICC) in looking into and charging people for possible human rights violations during the Duterte government in the Philippines shows how international legal systems step in when national systems do not take action against those who commit serious rights abuses. On June 30, 2016, Rodrigo Duterte became the president of the Philippines after running for office in part due to the apparent rise in illegal drug use in the country.<sup>31</sup> Since 2016, President Rodrigo Duterte's campaign against illegal drugs, known as the "War on Drugs," has been linked to thousands of killings that happened without proper legal process, supposedly done by government security forces and others. These killings have caused major worry around the world about human rights violations, especially the right to life, and have led to the ICC getting involved. The ICC uses international human rights treaties as the main guide when deciding if crimes fall under its authority.

The International Covenant on Civil and Political Rights (ICCPR) is important because it protects important rights like the right to life, freedom, and safety, and includes rules about fair trials that are necessary for a fair legal process.<sup>32</sup> The Convention Against Torture (CAT) also bans all forms of torture and cruel, inhuman, or degrading treatment or punishment, which is especially

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<sup>31</sup> Brenda Jacobs, Lucia Charlota Octovina Tahamata, and Dyah Ridhul Airin Daties, *Kebijakan Negara Filipina Tentang Penembakan Mati Pelaku Kejahatan Narkoba Dalam Perspektif Hukum Hak Asasi Manusia Internasional*, Faculty of Law, Pattimura University, Ambon, Indonesia, p. 12.

<sup>32</sup> International Covenant on Civil and Political Rights, adopted 16 December 1966, General Assembly resolution 2200A (XXI), 999 U.N.T.S. p. 171.

relevant because of reports of abuse during police actions under Duterte's policies. Besides these treaties, the Rome Statute is also very important as it defines international crimes, including crimes against humanity, which can include large-scale or organized attacks on civilians, such as those that have been claimed in the Philippines.

The ICC's main focus is on the idea that countries are responsible for protecting human rights. Every country has a duty to make sure people's rights are respected, kept safe, and fully met. This means stopping illegal killings and making sure any claims of rights violations are properly looked into and punished. When a country doesn't do this because it's not trying, doesn't want to, or can't, the ICC, as the last option for justice, can step in based on the principle of complementarity. Before the Philippines left the Rome Statute in 2019, the ICC looked into possible cases because there were worries that the country's courts weren't handling the many killings linked to the drug war properly. The way the ICC acts in this situation shows the struggle between a country's independence and international law.

The Philippines' choice to leave the ICC after the early look into the case, and later refusing to accept the ICC's authority, showed big political difficulties for international justice. However, the ICC can still handle cases that happened while the country was still part of the Rome Statute. This idea shows that international laws can act as protection when domestic courts aren't working or are blocked on purpose.

The ICC's use of international human rights rules helps create global standards that fight against getting away with serious crimes. The case against Duterte's policies acts as a test to see how human rights agreements work with criminal justice systems to protect people's rights. By clearly mentioning the ICCPR and CAT along with the Rome Statute, the court can look at the claims in a complete way. This ensures that problems like killing without a fair trial, torture, and not following proper legal steps are not just seen as crimes, but also as serious violations of human dignity and international law. The idea that countries have to follow these rules also creates a way to hold governments accountable.

For the Philippines, this means carrying out real investigations into all suspected unlawful killings, making sure there are proper legal actions, and putting in place protections to stop more rights violations. However, many reports showing that justice isn't done and that politics interfere have made people question if the country is really committed to these responsibilities. Because of this, the ICC steps in to protect victims' rights and make sure international law is respected.

## **5. The relationship between International Human Rights Law and the International Criminal Court (ICC)**

The tension between a nation's sovereignty and the authority of international courts is one of the numerous obstacles to upholding international law. Each nation has the complete right to rule itself free from external intervention when it is sovereign. This concept is essential to both law and international affairs. However, when people within a nation commit grave crimes like genocide, war crimes, or crimes against humanity, international courts like the International Criminal Court (ICC) may be required to take action against them, including government officials. Tension arises because some nations perceive this as a challenge to their sovereignty and power.

Because they wish to shield their own governments and legal systems from outside influence, several nations oppose the ICC's jurisdiction. They contend that foreign courts meddle in their domestic legal and governance systems. This opposition can manifest itself in a variety of ways, including a complete rejection of the court's jurisdiction or a refusal to assist with inquiries. The ICC finds it challenging to fulfill its mandate to hold people accountable for serious crimes as a result of these activities.

The Philippines 2019 departure from the Rome Statute serves as an illustration of this issue. One of the nations that consented to the ICC's authority was the Philippines, but it chose to withdraw after the Court started looking into the government's contentious "War on Drugs." Numerous legal questions were raised by this withdrawal. The ICC declared that it still had jurisdiction over crimes committed when the Philippines was a member, notwithstanding the country's withdrawal. This case demonstrates unequivocally how governments may utilize their sovereignty to evade accountability and how political objectives might impact the application of international law.

International justice enforcement is significantly hampered by political considerations. Leaders of the government frequently do not want to be looked into or charged, particularly if they or close friends have committed severe crimes. Investigations and trials may be impeded by this lack of political will. To avoid being prosecuted, governments may seize evidence, threaten witnesses, or meddle in judicial proceedings. Enforcing fair and effective justice on a global scale is extremely difficult due to these political obstacles.

There are practical issues with prosecuting state officials abroad in addition to political ones. By supplying evidence, apprehending suspects, and safeguarding witnesses, nations assist the ICC in its investigations. Countries that refuse to participate may cause investigations to be postponed or fail completely. Since the ICC lacks an enforcement agency or police force of its own, it is dependent on state cooperation. Additionally, because officials frequently have legal protections or immunities, the legal procedure is complex. It takes meticulous legal work and a solid body of evidence for prosecutors to demonstrate that these authorities control crimes and were accountable for them.

The foundation of international criminal law is the idea of international collaboration, notwithstanding these challenges. Countries that join the ICC pledge to support it wholeheartedly under the Rome Statute. They are required to help with trials, provide evidence, and make arrests of those who are charged. Through this collaboration, justice is made possible and the ICC is equipped with the resources it needs to function efficiently.

In order to cooperate, nations must strike a balance between their sovereign rights and the need to combat impunity on a global scale. Many nations uphold these duties and assist the ICC by enacting legislation that promotes international justice and cooperating on investigations. This collaboration helps the ICC hold offenders accountable and enhances its legitimacy.

When nations decline to cooperate or withdraw from the ICC, the Court uses the complementarity principle. This implies that the ICC only steps in when a nation is incapable or unwilling to bring its own criminal charges. By providing nations with the initial opportunity to manage justice within their borders, complementarity upholds national sovereignty. However, if nations don't take actual action, their persistent failure to work together creates a significant obstacle to justice, enabling impunity to persist.

## **F. Conceptual Framework**

Based on the description of theoretical foundation, this research is based on the international human rights law enforcement, which recognizes the importance of serious human rights abuses on a global scale rather than only addressing them as local issues. A permanent legal system with the authority to bring charges against state leaders and other persons for major international crimes such as crimes against humanity. International human rights legislation must be interpreted and assessed in light of a larger collection of connected, rights-protecting procedures in order to provide answers to these queries. In this sense, and considering its relatively recent historical history, international human rights legislation has shown to be a valuable instrument for safeguarding human rights. Its indirect effects are the most significant. The way rights standards are articulated internationally has changed domestic discussions in the fields of law, politics, academia, public awareness, civil society, and the media. Additionally, international and transnational mechanisms that support, encourage, and keep an eye on these domestic discussions are made possible by international human rights legislation. International human rights law has provided immeasurable, indirect advantages for rights protection by bolstering domestic rights institutions, even if accurate quantitative evaluation is most likely unachievable.<sup>33</sup>

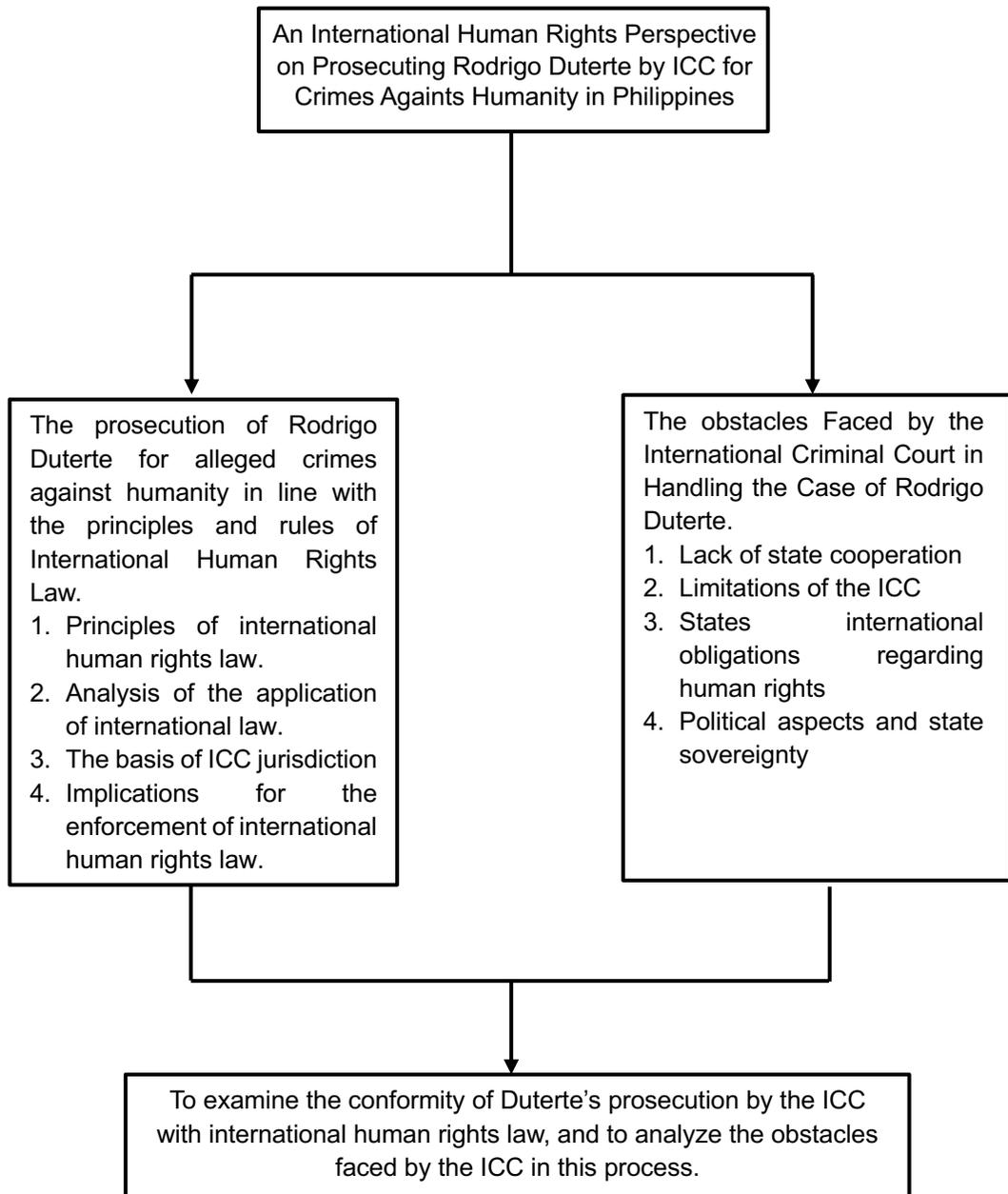
Prosecution of former Philippine President Rodrigo Duterte for alleged crimes against humanity related to his administration's contentious "war on drugs" an anti-drug policy linked to numerous extrajudicial killings and other violations of human

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<sup>33</sup> Douglass Cassel, 2001, *Does International Human Rights Law Make a Difference*, *Chicago Journal of International Law* 2, no. 1, p. 121-122.

rights is the main topic of discussion. Important concepts of international human rights law are highlighted by the ICC's examination into this case, especially in light of the jurisdictional rules of the Rome Statute.

In particular, the Rome Statute's provisions regarding crimes against humanity, temporal jurisdiction over acts committed while the Philippines was a State Party, and the legal ramifications of state withdrawal align with the ICC's prosecution of Rodrigo Duterte. However, procedural and political barriers like the Philippine government's lack of cooperation after the withdrawal, questions of state sovereignty, with the analysis based on normative legal research of positive international law, treaties, and doctrine, the ICC's jurisdictional capacity and limitations are clarified, and the lack of enforcement mechanisms seriously hinders the ICC's ability to prosecute. It also emphasizes the urgent need to fortify international enforcement frameworks in order to hold senior state officials accountable for upholding human rights.



## CHAPTER II RESEARCH METHODOLOGY

### A. Type of Research

In conducting research, it is important to consider the objectives and the level of the study being undertaken.<sup>34</sup> Normative legal research, which examines and interprets current laws, rules, and legal doctrines by examining primary and secondary legal documents, is the research methodology employed in this thesis. Because the topic under investigation is directly tied to the application of international legal principles specifically, international human rights law and the International Criminal Court's (ICC) jurisdiction to bring charges of crimes against humanity, this approach was chosen.

### B. Type and Sources

By analyzing pertinent legal ideas and looking at main legal documents, this research is a normative legal research. Legislation, official documents, treaties, and court rulings pertaining to the jurisdiction of the International Criminal Court (ICC) and the prosecution of suspected crimes against humanity are the main legal elements employed. For further analysis, the research also consults secondary legal sources, including academic papers, legal concepts, and other works of literature. In light of the Philippines' departure and concerns about state sovereignty, the research problem is designed to determine if the prosecution complies with international human rights norms and the Rome Statute. It also aims to pinpoint the challenges the ICC has in carrying out its mandate. In this research, the author classifies the data sources into three categories:

1. Legal sources are those that have authoritative and binding power in regulating and governing legal relations:
  - a. International instruments:
    - 1) Rome Statute of the International Criminal Court (1998);
    - 2) Universal Declaration of Human Rights (UDHR, 1948);
    - 3) International Covenant on Civil and Political Rights (ICCPR, 1966);
    - 4) Convention Against Torture (CAT, 1984);
    - 5) Relevant United Nations Security Council Resolutions.
  - b. ICC Documents:
    - 1) Pre-Trial Chamber decisions related to the investigation in the Philippines;
    - 2) Official statements by the ICC Prosecutor regarding the Duterte case;
    - 3) The 1987 Constitution of the Philippines and national laws related to the war on drugs.
2. Secondary legal materials are sources that provide explanations and interpretations of primary legal materials to support a more thorough and comprehensive analysis. These include:
  - a. Academic literature:

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<sup>34</sup> Zulfadli Barus, *Philosophical Analysis of the Conceptual Map of Normative Legal Research and Sociological Legal Research*, Faculty of Law, UPN Veteran Jakarta, Pondok Labu, South Jakarta, p.50.

- 1) International law books covering human rights law, international criminal law, and international organization law
- 2) Articles from international law journals about crimes against humanity, command responsibility, and the ICC
- b. Previous scholarly research:
  - 1) The ICC and associated cases are the subject of undergraduate theses, master's theses, and doctorate dissertations.
- c. Expert (doctrinal) writings:
  - 1) Experts in international law's views on state sovereignty and ICC jurisdiction.
- d. Articles
3. Supporting sources to facilitate the understanding of primary and secondary materials include:
  - a. Legal dictionaries;
  - b. International law encyclopedias;
  - c. Legal indexes, bibliographies, or legal databases;
  - d. Official websites of international organizations.

### **C. Legal Material Collection Techniques**

The data collection in this research is performed through a literature review method, which entails the systematic search and critical analysis of various sources such as statute, declaration, international covenant, international documents, books, previous research findings, academic magazines, scientific, and scholarly journals relevant to the research topic. This approach is applied to thoroughly examine the research problem. Legal materials are gathered by conducting data collection and identification of legal provisions, followed by categorizing and methodically organizing the legal materials according to the research issues. The process involves reading, analyzing, taking notes, and compiling reviews of the materials that are pertinent to the research questions. This method emphasizes a structured and logical approach to legal study, aiming to deliver an in depth and accurate analysis supporting well founded conclusions. The literature review method is especially appropriate for normative legal research that concentrates on the evaluation of legal regulations, doctrines, and related literature to produce valid and credible academic work.

### **D. Analysis of Legal Materials**

The author uses a qualitative technique to arrange and use legal information in the preparation of this thesis. In particular, the researcher uses a qualitative descriptive approach, which entails presenting the information and legal documents before analyzing them to draw a number of study results. To make the facts from the study and analysis easier for readers to grasp, these results are then summarized in a descriptive way. A thorough grasp of the study findings is also made possible by this method's ability to clearly illustrate the legal concerns under investigation. Thus, the qualitative descriptive approach guarantees that the study findings are not only produced systematically but also presented in an understandable and consistent manner.