

# The Responsibility of the State in the Prevention and Suppression of Genocide: An Analysis from the Perspective of Constitutional Law

**Tomy Michael\***

Faculty of Law, Universitas 17 Agustus 1945 Surabaya  
(Jl. Semolowaru No.45, Menur Pumpungan, Kec. Sukolilo, Surabaya, Jawa Timur 60118, Indonesia)

\*Correspondence author: tomy@untag-sby.ac.id

**Abstract.** The state must demonstrate commitment to addressing genocide. From a state science perspective, a state is an entity capable of addressing and fighting for what its people desire. A state's capabilities extend beyond simply attempting to influence activities within its borders. One example is social responsibility, which is the duty of companies to formulate policies, make decisions, and take actions that benefit society. Corporate social responsibility is crucial in crisis situations such as genocide. This research prioritizes a statutory regulatory approach. A statutory regulatory approach is part of normative research. A statutory regulatory approach provides a snapshot of the research being conducted within the statutory regulations. This will yield concrete answers and rational recommendations. In this section, it is necessary to emphasize, both conceptually and normatively, that the state plays a fundamental and irreplaceable role in the prevention, reduction, and handling of genocide in order to achieve legal justice. Genocide cannot be understood merely as an individual criminal act or as an isolated episode of violence; rather, it constitutes an *extraordinary crime* that is structurally and systemically intertwined with state power, either through acts of commission or omission. Therefore, genocide is conceptually inseparable from the state, as it generally occurs within the context of power relations, public policy, and national legal and political structures. As the holder of the highest authority within the legal and governmental system, the state bears both international and domestic legal obligations to prevent the occurrence of genocide. These obligations are explicitly articulated in the *Convention on the Prevention and Punishment of the Crime of Genocide* of 1948, which positions the state not only as a subject required to punish perpetrators of genocide, but also as the primary actor responsible for undertaking preventive measures. Consequently, a state's failure to prevent genocide may be regarded as a violation of its international legal obligations, with direct implications for the erosion of legal justice and the protection of human rights.

**Keywords:** state; prevention; law

## Introduction

The state must demonstrate commitment to addressing genocide. From a state science perspective, a state is an entity capable of addressing and fighting for what its people desire. A state's capabilities extend beyond simply attempting to influence activities within its borders. One example is social responsibility, which is the duty of companies to formulate policies, make decisions, and take actions that benefit society. Corporate social responsibility is crucial in crisis situations such as genocide. McDonald's Indonesia, for example, has demonstrated its commitment to corporate social responsibility by implementing various initiatives to help end genocide..(Calista et al., 2024) The crime of genocide in international criminal law is an extraordinary crime and has become a prohibited act which was later established in the 1948

Genocide Convention, the statute of the International Criminal Tribunals for the Former Yugoslavia (ICTY), the statute of the International Criminal Tribunals for Rwanda (ICTR) and the 1998 Rome statute which states the crime of genocide as the most serious crimes of concern of international community as a whole. The above conflicts can be seen in the African continent, where there are conflicts in the 35 countries of the Organization of African Unity. The dominant of these conflicts includes rebellions against the state carried out by groups of nations, races, ethnicities or religions against the government/ state. (Sudika Mangku & Astiti Narayani, 2022)

To date, genocide in Indonesia remains an extraordinary crime, yet its existence has elicited a maximum public response. Normatively, the crime of genocide is often associated with crimes against humanity. However, upon closer examination, genocide differs from crimes against humanity. Genocide is directed at groups such as nations, races, ethnicities, or religions, while crimes against humanity are directed at citizens and civilians. Genocide can eliminate a group in whole or in part, while crimes against humanity have no specific requirements (Prasetyo, 2020). In Article 7 of the Republic of Indonesia Law Number 39 of 1999 concerning Human Rights, it is stated that the crime of genocide is a crime that violates human rights seriously because the act is carried out by killing, which causes severe suffering, extermination, coercion by groups and even the forced transfer of children from one group to another. The history of human rights can actually be said to be almost as old as the existence of humanity on earth. Human rights have an inherent nature that cannot be separated from the history of human life. Human rights are rights that are owned by humans solely because they are human, not because they are given to them by society or based on positive law but based on their dignity as human beings (Khairullah & Setiyono, 2023).

Thus, the Human Rights Court Law explicitly imposes penalties on perpetrators. The crime of genocide differs from crimes against humanity. The difference is that, first, victims of genocide are defined as belonging to one of four groups (national, ethnic, racial, or religious), while victims of "crimes against humanity" are typically citizens and civilians. Second, genocide requires "intent to destroy, in whole or in part," one of the four types of crimes mentioned above, while there is no such requirement for crimes against humanity.

## Result and Discussion

International criminal law, in a practical sense, is a new branch of law that can provide appropriate legal solutions to the emergence of criminal jurisdictional disputes between two or more countries. Furthermore, the development of international criminal law has required criminal law experts to always be open, not conservative, and must be proactive in anticipating international developments in every crime involving the jurisdiction of two or more countries or involving two different nationalities. One of the objects regulated in international criminal law is international crimes. There are several international conventions that discuss international crimes, one of which is known as the Rome Statute. One of the crimes regulated in the Rome Statute is the crime of genocide (Hassanah, 2023).

Indonesia, as a state governed by law, has human rights instruments that support everyone's good behavior. The preamble to the Constitution actually reflects the teachings of Immanuel Kant. In his concept, peace would result in the rejection of evil. In Kant's view, the establishment of a republican form of government would mean not only the exclusion of the principle of resistance, but also the invalidation of any form of public opposition to state power. A republican form of government, therefore, assumes an educative role, encouraging the moral and civic development of citizens to the point where they no longer engage in opposition to the



state. At the same time, it guarantees individual liberty, a principle that extends beyond the boundaries of the nation-state. This transnational dimension acts as a deterrent against "aggressive behavior abroad," as Kant argued that a sovereign state that fails to consider its subjects as autonomous agents within its jurisdiction will repeat this neglect in its interactions with other states..(Engelking, 2025) In a state of law, everything, both actions and the administration of the state and its citizens must be based on and in accordance with the applicable laws. The state and citizens must obey and comply with the established laws, which are binding and coercive in nature, the creation of laws or the enactment of legislation is carried out to uphold the rights of citizens within them by making certain restrictions in order to create justice in the order of social and state life in accordance with the purpose of the law itself, namely to regulate order in social interaction in a peaceful and just manner. Therefore, it is obligatory for the state and every citizen to obey the applicable laws for the sake of creating shared prosperity, because basically rights and obligations are two things that cannot be separated, the existence of a right must fulfill an obligation first.

This interaction ultimately makes the state sensitive to matters that harm other countries. In the concept of a republic, everything exists for the public. Public means used for the benefit of the community. Generally, there are two means of resolution: the first is through litigation, which is settling cases through the courts or before a judge, and the second is through non-litigation, which is defined as settling outside the courts with the assistance of a mediator. This is an effort that can be used to resolve international disputes faced by countries experiencing disputes. However, one thing that must be considered is that there is no connection to events in Indonesia, where genocide is an inseparable part of global problems. The responsibility resulting from the crime of genocide is a dual responsibility that falls on the state and on the natural persons who committed the crime, as it is an international crime in nature. These crimes are compelling if they are committed because of, or related to, a crime against peace or a war crime (Al-Far, 1995, p. 308). Article 5/1 of the Criminal Court Statute considers genocide an international crime; it stipulates that "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction under this Statute concerning the following crimes:(a) The crime of genocide; (b) Crimes against humanity; (c) War crimes;(d) The crime of aggression." Genocide is one of the international crimes that considerably affect the human right to life. The international legal system's primary objective is to defend humankind against aggression, and all laws prioritize the lives of persons.(Bani-Meqdad, 2024)

Recognition of rights warrants which rights are considered as inalienable (uncreated, hence inviolable); which rights are considered as alienable (created, hence violable); which rights are considered as absolute (having no conditions); which rights are considered as prima facie (having conditions); which rights are considered as fundamental (not dependent on other rights); which rights are considered as derivative (dependent on other rights); which rights are considered as positive rights (the right to receive services); which rights are considered as negative rights (right to non-interference); which rights are considered as perfect rights (having legal recognition and are enforceable); which rights are considered as imperfect rights (having legal recognition but are not enforceable); which rights are liberty rights (freedom to do something) and which rights are claim rights (obligations of others to allow you to do something).(Samraj, 2024)

Ultimately, Indonesia must demonstrate its commitment by mobilizing the nation's core values, focusing on Pancasila, its values and ideology. For example, armed conflict, while having broad legal implications, requires support from all parties in its implementation. International armed conflict has widespread and profound impacts, including significant

civilian suffering, including deaths and human rights violations. Civilians are often the primary victims of armed conflict. Economic losses due to damage to civilian infrastructure and political instability, which impacts international relations, are also impacts of armed conflict. Efforts to resolve international armed conflict can be achieved through negotiation and dialogue. These negotiations can take the form of peace agreements. The involvement of international organizations such as the United Nations. (Pramudita & Yustitiantingtyas, 2025) The UN's role in cases of genocide violence is regulated in Article 8 of the Genocide Convention, which states that each participating country may request the competent UN organ in accordance with the UN Charter to take preventive and repressive measures against any act such as genocide, conspiracy to commit genocide, direct public incitement to commit genocide, attempted genocide, and assistance in genocide. In the UN Charter itself, which is contained in Chapter VII, Article 40, it states that in order to prevent the situation from worsening, the Security Council requests the parties concerned to accept such temporary measures as it deems necessary or appropriate. This UN action is realized in Article 8 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide through UNOCHA (United Nations Office for the Coordination of Humanitarian Affairs) or the Humanitarian Coordination Agency by forming a Joint Response Plan (JRP) from March to December 2018. (Prisilia, 2021)

One of the international crimes classified as crimes against humanity occurred in Cambodia between 1975 and 1979. This was also the origin of terrorism in Cambodia (Beny Abukhaer Tatara et al., 2023), with the emergence of the Khmer Rouge group and the spread of terrorist tactics against the Cambodian army. The case in Cambodia was one of the greatest humanitarian tragedies in the modern era since the end of World War II, claiming the lives of nearly two million people (International Committee of the Red Cross, 2009). In Cambodia, a genocide was carried out by the Khmer Rouge Communist regime led by Pol Pot between 1975 and 1979. (Tunas & Tambunan, 2023) Margarete Flöter-Durr [19] in her paper titled *Le discours de l'authenticité: de l'ensauvagement de la langue à l'anéantissement d'autrui*, focuses on the linguistic aspect of genocide. The political and intellectual movement of the radical right that developed at the beginning of the twentieth century in the Weimar Republic was the "conservative revolution". The main inspiration was Artur Moeller van den Bruck (the creator of the term "Third Reich"), but also writers Thomas Mann and Ernst Jünger, a historian Oswald Spengler, a philosopher Martin Heidegger and a lawyer Carl Schmitt were also active. The intellectuals of this movement were characterized by a cultural pessimism condemning all forms of modernity, which was manifested, among others, by liberalism, pluralism, individualism and parliamentary democracy, that is, concepts disseminated in Europe since the French Revolution. Although some representatives of the "conservative revolution" did not identify themselves with the National Socialism, others, such as Heidegger and Schmitt, actively participated in its implementation and thus legitimized the racial community or the call to search for the enemy, both intellectual and political. (Matulewska & Gwiazdowicz, 2022) konsep negara yang ditawarkan oleh Indonesia menunjukkan adanya kesamaan dalam penyelesaian genosida namun dalam perspektif berbeda dengan penciri khas yang tidak dimiliki negara lain.

## Conclusion

In this section, it is necessary to emphasize, both conceptually and normatively, that the state plays a fundamental and irreplaceable role in the prevention, reduction, and handling of genocide in order to achieve legal justice. Genocide cannot be understood merely as an



individual criminal act or as an isolated episode of violence; rather, it constitutes an *extraordinary crime* that is structurally and systemically intertwined with state power, either through acts of commission or omission. Therefore, genocide is conceptually inseparable from the state, as it generally occurs within the context of power relations, public policy, and national legal and political structures.

As the holder of the highest authority within the legal and governmental system, the state bears both international and domestic legal obligations to prevent the occurrence of genocide. These obligations are explicitly articulated in the *Convention on the Prevention and Punishment of the Crime of Genocide* of 1948, which positions the state not only as a subject required to punish perpetrators of genocide, but also as the primary actor responsible for undertaking preventive measures. Consequently, a state's failure to prevent genocide may be regarded as a violation of its international legal obligations, with direct implications for the erosion of legal justice and the protection of human rights.

Furthermore, the role of the state in reducing genocide extends beyond repressive measures through criminal law enforcement and encompasses structural and institutional dimensions. The state is obliged to establish an effective, independent, and justice-oriented legal system, including ensuring that law enforcement institutions operate free from political and ideological interests that may obstruct accountability processes. Without a clear commitment by the state to the rule of law, efforts to reduce genocide risk becoming merely symbolic and incapable of addressing the root causes of the crime.

In the context of legal justice, the state also plays a crucial role in ensuring the restoration of the rights of genocide victims. Justice is not realized solely through the punishment of perpetrators, but also through truth recognition, reparations, and guarantees of non-repetition. This underscores that the state must not adopt a neutral or passive stance; rather, it must actively function as a guarantor of justice for groups that have been subjected to genocide.

Accordingly, it can be concluded that genocide, as an international crime, cannot be detached from the role of the state as a central actor within the legal system. The state is not merely the territorial space in which genocide occurs, but also the principal determinant of whether such crimes can be prevented, reduced, and held accountable in a fair manner. Without a strong state commitment to the enforcement of law and the protection of human rights, legal justice in cases of genocide will remain difficult to achieve in a substantive and sustainable way.

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