



Extrajudicial Killing by the Rodrigo Duterte Regime in the Philippines from an International Law Perspective

Sarah Nabila Paputungan

Faculty of Law, Universitas Negeri Gorontalo, Indonesia.

Correspondence E-mail: sarahpaputungan0@gmail.com esia

Abstract: This study aims to determine the regulation of narcotics in the Philippines according to the National Police Commission, National headquarters Philippine National police Office of the Chief, PNP About Command Memorandum Circular No.16-2016, and analyze how Access to Justice in the perspective of international law against Crimes Against Humanity by President Rodrigo Duterte. The research method used is a normative legal research method with statutory approaches (Statute Approach) and case approaches (Case Approach). The results of the study show that the Extrajudicial Killing that occurred in the Philippines by the Rodrigo Duterte regime contradicts the provisions of Command Memorandum Circular No. 16-2016 concerning the PNP Anti Illegal Drugs Campaign Plan-Project "Double Barre" which regulates the procedures for implementing the War on Drugs agenda by Philippine President Rodrigo Duterte. Even though the Philippines' status in the 1998 Rome Statute became a non-state party, the ICC still has jurisdiction because this act of extrajudicial killing occurred before the Philippines withdrew from the 1998 Rome Statute, the court first issued a Preliminary Examination examination.

Keywords: Extrajudicial Killing; Philippines; ICC.

©2024, Sarah Nabila Paputungan

Under the license CC BY-SA 4.0

How to cite (Chicago Style):

Sarah Nabila Paputungan. "Extrajudicial Killing by the Rodrigo Duterte Regime in the Philippines from an International Law Perspective". *Estudiante Law Journal*, 6 (3), (Ocktober 2024): 785-803. <https://doi.org/10.33756/eslaj.v6i3.18393>.

1. Introduction

Contemporary, the development of the world from the stone era to the computer age in the second millennium really gave meaning to human life, including the order and legal phenomena that lived with it. In the specific scope of the portrait of the continuation of civilization, the international community is never empty of presentations of events that astonish and disturb one's conscience as a creature of God Almighty. In this condition, one of the most ideal hopes lies in international law which is required to act as an instrument that can always regulate it.¹

International law has developed amazingly, which in its existence, which includes all aspects, has become an absolute matter that is important to continue to discuss. International law had previously managed to regulate for the first time several major aspects and events that occurred. One example is the Genocide (Genocide) that graced the media of World War II, where the action was pioneered by the Nazis under the command of Adolf Hitler is certainly hard to forget. At that time, there was no single law governing genocide with the predicate as a crime that had occurred for the first time and without any regulation. International law then regulated it for the first time, through the formulation of the 8 August 1945 London Convention and the 1948 Convention on the Prevention and Suppression of the Crime of Genocide (1948 Genocide Convention).²Provisions which are then accepted and used by all sovereign countries.

Various focuses or branches of international law that are increasingly interesting are the realm of public international law, namely international criminal law. Therefore, international criminal law must be approached from the perspective of international law. So it is important to have adequate skills regarding international law, more specifically international treaty law.³International criminal law is mostly a collection of many international legal instruments (international treaties). This international treaty or convention regulates international crimes and transnational crimes. The term international crime reflects an international crime event. The definition of international in this case is in a broad sense, including general international or global, regional or bilateral or trilateral⁴meaning that it concerns the interests of two countries, most or even all countries in the world. For example, the provisions of the Rome Statute of the International Criminal Court 2002 (Rome Statute 2002) contain various types of international crimes such as Genocide (Article 6 of the Rome Statute), crimes against humanity (Article 7 of the Rome Statute), war crimes (Article 8 of the Rome Statute) and Aggression. (Article 8bis of the Rome Statute).⁵

¹ Fenty U Puluhulawa and Rusdiyanto Puluhulawa, "Plastic Waste: Environmental Legal Issues and Policy Law Enforcement for Environmental Sustainability," *E3S Wen Of Conferences* 259 (2021): 03006.

² I Wayan Parthiana, *Hukum Pidana Internasional* (Bandung: Yrama Widya, 2015). Hlm. 50.

³Ibid. p. 45.

⁴Ibid.p. 44.

⁵ Nur Safura AFIF, "Hubungan Amerika Serikat Dan Filipina Di Era Pemerintahan Donald Trump," accessed January 15, 2025, <https://repository.unej.ac.id/handle/123456789/88290>.

The term transnational crime is intended to indicate the existence of crimes that are actually national which contain transnational or cross-border aspects.⁶This transnational nature arises when the crime is national but related to the interests of the state and other countries, crimes that occur in more than one state jurisdiction, where there are many factors that influence the involvement of other countries in these intrastate crimes. Examples of crimes that are included in transnational crimes include drug crimes and psychotropic substances. According to the World Health Organization (WHO) what is meant by narcotics is a substance which, when introduced into the body, will affect physical and/or psychological functions (except food, water or oxygen).

Today the development of the use of narcotics is increasing and not for medicinal or scientific purposes. In the midst of technological developments in today's era, regardless of national boundaries, narcotics crime becomes an organized crime between one country and another. The Philippines is one of the countries that really seems to be trying to fight narcotics totally. After leading Davao as mayor, Rodrigo "Rody" Roa Duterte was elected as the 16th President of the Philippines on June 30, 2016 and instantly made the Philippines a battlefield against narcotics (*war on drugs*) blatantly. This is actually nothing new for Duterte. When he was Mayor of Davao City for about twenty years, the crackdown on hundreds of drug users, including children and other criminals, was carried out by a group called *Davao Death Squad*. Duterte is often seen as supporting or blessing these forces to act.⁷

At first glance it is understandable that the entire international community certainly agrees and considers that narcotics are an enemy of mankind that is difficult to conquer. Many countries have always declared war on this crime sector, both countries in South, Central and North America, Europe, Africa and Asia. However, of all the countries in the region, what is astonishing is the way or method used by the Philippines in the fight against narcotics. The Rodrigo Duterte regime has captured international attention with the actions of the Philippine government which seem to terrorize every individual and group involved in narcotics. Referring to the findings of Human Rights Watch in 2017, the death toll has reached 7,000 since the 2016 war against drugs began, a different figure in the official version, which is around 4,800 people.⁸On the agenda *war on drugs*In this case, Duterte is deploying all the necessary components to carry out his duties on behalf of the country and save people from the effects of drugs. The military and police were deployed by Duterte as executors for people involved in drugs. The legitimacy of this service is issued through the law

⁶Ibid. p. 46.

⁷Muhammad Arifal, "Rekonsiliasi Pemerintah Filipina Dengan Gerakan Pemeberontakan Bangsamoro Melalui Bangsamoro Organic Law/Bol (Kajian Atas Masalah Potensial Bol)" (B.S. thesis, Fakultas Syariah dan Hukum UIN Jakarta), accessed January 15, 2025, <https://repository.uinjkt.ac.id/dspace/handle/123456789/68162>.

⁸Budi Riza, "5 Poin Soal Perang Narkoba Brutal Di Filipina Ala Duterte," *tempo.co*, 2018, <https://dunia.tempo.co/read/1136853/5-poin-soal-perang-narkoba-brutal-di-filipina-ala-duterte>.

product Command Memorandum Circular No. 16 – 2016 concerning PNP Anti-Illegal Drugs Campaign Plan - Project: “Double Barrel”.

On the agenda for the campaign against narcotics, which cannot be predicted when it will end, there are lots of terrible notes and criticisms published by various media. The results of actions against colonialists and drug users often adorn the corners of cities in the Philippines. As usual, law enforcement and processes are considered impractical, one thing that Duterte likes and deserves is shooting on the spot. This is then known as extrajudicial killing.⁹

Extrajudicial killing or extrajudicial killings are acts of killing committed by the government without going through the legal process and court decisions beforehand. Based on this description, there are indications that this action is included in "International Crimes" which in order to be classified as a crime against humanity, the action must be carried out as part of a broad or systematic activity and carried out against the civilian population.¹⁰In line with the provisions stipulated in the 2002 Rome Statute that this act is classified as a “crime against humanity”.

This action was then reported to the International Criminal Court (ICC), Extrajudicial Killing could become the jurisdiction of the ICC but on March 17 2019 the status of the Philippines in the Rome Statute became Non-State-Party as the Philippines officially left the ICC.

2. Method

Method this research is a normative legal research. Because this research was carried out or aimed only at written regulations or other legal materials and more was done on secondary data in the library.¹¹As for this research, the statutory approach (statute approach) and case approach (case approach). This statutory approach is used to examine statutory regulations which in their normalization still lack or even foster deviant practices, both at the technical level and in their implementation in the field.¹²The case approach is a type of approach in normative legal research where prospective researchers try to build legal arguments in the perspective of concrete cases that occur in the field.¹³

3. Narcotics in the Philippine Legislation

The legal problem of narcotics abuse is the most important and serious problem. This problem is certainly not only a national problem and several other countries.

⁹ Al Asy'ari and Muhammad Hafizh Qhorieq, “Strategi Framing Duterte Terhadap Kebijakan War on Drugs Tahun 2016-2022” (PhD Thesis, Universitas Islam Indonesia, 2024), 2016-22, <https://dspace.uui.ac.id/handle/123456789/51014>.

¹⁰ Malcom N and Shaw QS, *Hukum Internasional* (Bandung: Nusa Media, 2013).

¹¹ Suratman and Philips Dillah, *Metode Penelitian Hukum* (Bandung: Penerbit ALfabeta, 2013).

¹² Irwansyah, *Penelitian Hukum* (Yogyakarta: Mirra Buana Media, 2020). Hlm. 133-134

¹³ Ibid. p. 138

However, the legal problems due to drug abuse have become a worldwide problem.¹⁴ About 270 million people (or about 5.5% of the global population aged 15-64) had used psychoactive drugs in the previous year and about 35 million people are estimated to be affected by drug use disorders (harmful patterns of drug use or drug dependence). It is estimated that approximately 0.5 million deaths annually are caused by drug use with approximately 350,000 male and 150,000 female deaths. Opioid-related deaths, mostly due to synthetic opioids, have recently changed mortality trends in several high-income countries. More than 42 million years of loss of healthy life were due to drug use in 2017; which is about 1.3% of the global disease burden. Estimated all over the world exist nearly 11 million people who inject drugs, of whom 1.4 million live with HIV and 5.6 million - with hepatitis C.¹⁵

Regarding narcotics, all countries in the world have tried to formulate regulations; type, use, prevention and law. For example, in Indonesia, in an effort to combat the circulation and abuse of narcotics, the government regulates this in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. Regarding the prevention and eradication of the abuse and illicit traffic of narcotics, this law establishes the National Narcotics Agency (BNN)¹⁶ which is a non-ministerial body under the president and responsible to the president. Regarding the implementation of the task of eradicating and abusing narcotics, BNN has the authority to carry out investigations and investigations of the abuse and illicit traffic of narcotics and narcotics precursors. This law also regulates the rehabilitation of narcotics abuse and contains criminal provisions, ranging from imprisonment to the death penalty and fines.¹⁷

All countries in the world make narcotics a collective enemy and it is difficult to let go of the focus on eradicating them. Apart from being a serious crime and classified as Extra Ordinary Crime, narcotics is a business that is always growing and threatening. As in the Philippines, war total resistance to narcotics occurred and became the spotlight in this decade.

According to Dangerous statistics *Drugs Board* (DDB) shows that 1.8 million people are drug users out of the 100.98 million population of the Philippines based on data from the Philippine Drug Enforcement Agency (PDEA). However, Duterte stated that there were actually 4 million drug users in 2016. This number is believed to be based on the

¹⁴ Imam Abas, Fence M. Wantu, and Dian Ekawaty Ismail, "Problematika Pelaksanaan Asesmen Terpadu Dalam Proses Penegakan Hukum Penyalahgunaan Narkotika," *Philosophia Law Review* 2, no. 1 (2022): 30-49.

¹⁵ World Health Organization, "Drugs (Psychoactive)," WHO, n.d., https://www.who.int/health-topics/drugs-psychoactive#tab=tab_1.

¹⁶ Undang-undang Republik Indonesia Nomor 35 Tahun 2009 tentang Narkotika

¹⁷ Ahmad Rizqy Furkon, "Analisa Pengunduran Diri Filipina Dari Keanggotaan International Criminal Court Tahun 2019" (B.S. thesis, Fisip UIN Jakarta, 2020), <https://repository.uinjkt.ac.id/dspace/handle/123456789/55272>.

list of drug users owned by Duterte.¹⁸In 2016 Rodrigo Duterte was elected President of the Philippines who then carried out his campaign promises to eradicate narcotics circulation in the Philippines through the War on Drugs agenda. This policy is implemented based on official legitimacy Command Memorandum Circular No. 16 – 2016 concerning PNP Anti-Illegal Drugs Campaign Plan - Project: “Double Barrel”.¹⁹

The Chief of the Philippine National Police (PNP) Ronald M. Dela Rosa was appointed by Duterte as the person in charge of the Double Barrel Operation Plan (Oplan). 17 of 2016. Command Memorandum Circular No. 16 – 2016 concerning PNP Anti-Illegal Drugs Campaign Plan - Project: "Double Barrel" aims to establish general guidelines, procedures and duties of the Police in implementing the Double Barrel project in supporting the eradication of illegal drugs nationally. The concept of this operation is carried out using two approaches, namely the Tokhang Project and the HVT Project. The Tokhang project is carried out at the grassroots level in all barangays (at the sub-district level in Indonesia) that are affected by drugs. The concept of implementing the Tokhang Project is to conduct door-to-door visits to drug suspects with the aim of stopping their illegal drug activities. The Tokhang Project is carried out in 5 (five) stages, namely:²⁰

1. Information Collection and Validation Stage

The collection and validation of information is carried out in the first week of the first month of the president's term. All local police offices/units and anti-drug units must conduct validation to obtain specific information about suspected drug users and dealers in each affected sub-district.

The identity and criminal activity of each target must be properly documented and verified with all possible sources in order to equip the team with accurate and robust evidence when confronting suspects during door-to-door visits.²¹

2. Coordination Stage

¹⁸ Veniati Sarlina, “Respon Amnesty International Terhadap Pemberantasan Narkotika Dan Obat-Obatan Berbahaya (Narkoba) Di Filipina Pada Masa Rodrigo Duterte,” *Jurnal Universitas Mulawarman* 6, no. 3 (2018).

¹⁹ Kisno Hadi, “Perbandingan Penegakan Demokrasi Di Indonesia Pasca-Rezim Suharto Dan Filipina Pasca-Rezim Marcos,” *Insignia: Journal of International Relations* 6, no. 1 (2019): 13–29.

²⁰National Police Commission National Headquarters Philippine National Police Office of The Chief.PNP.

²¹ Hasan Amir Muchtar, “Analisis Kerjasama Keamanan Filipina Dengan Tiongkok Terkait Kebijakan War On Drugs Periode 2016-2022” (B.S. thesis, Program Studi Ilmu Hubungan Internasional Fakultas Ilmu Sosial Dan Ilmu ...), 2016–22, accessed January 15, 2025, <https://repository.uinjkt.ac.id/dspace/handle/123456789/71505>.

Coordination should be carried out with the following government agencies, stakeholders and non-governmental organizations prior to carrying out the door-to-door visits to ensure the success of the activity:

- a. All relevant local police offices/units should coordinate with local government units to provide support for activities and ensure sub-office compliance;
- b. All local police/units/posts must also coordinate with the anti-drug abuse council in the Barangay area to assist in carrying out house-to-house visits and referrals for drug users;
- c. The Philippine national police anti-illegal drug unit/office should coordinate with the Philippine drug enforcement agency to assist in the investigation of suspected drug offenders;
- d. The local police chief directs the public relations department to coordinate with local government units, the anti-drug abuse council and the dangerous drugs council for the rehabilitation of drug users;
- e. The local police chief should direct the information procurement/public relations section and the police to coordinate with the media for public information and media coverage of the activity;
- f. The local police chief directed the police to coordinate with other non-governmental organizations to obtain the necessary support for the activity.

3. Home Visit Phase

- a. House-to-house visits from drug suspects should be the focus of the Tokhang project. The implementation was carried out simultaneously nationally on the first day of the office of the Chief of the Philippine National Police. The following things must be done in carrying out home visits:
- b. The head of the police unit/station concerned must form a team led by a police control officer to carry out house-to-house visits and must ensure their safety and security;
- c. The designated team leader must ensure the presence of members of the Provincial Anti-Drug Abuse Council/Municipal Anti-Drug Council/Municipal Anti-Drug Council/Anti-Drug Abuse Council and Barangay Police to assist them and witness them during door-to-door visits;
- d. House-to-house visits must be carried out in a way that does not violate the subject's rights;
- e. Anyone who is willing to undergo voluntary rehabilitation must be processed accordingly.²²

²² Valery Fathur Rabbani, "Kerjasama Indonesia Dan Filipina Dalam Menghadapi Kasus Pembajakan Kapal Di Wilayah Perbatasan Pada Tahun 2016-2018" (PhD Thesis, Universitas Islam Indonesia, 2019), 2016-18, <https://dspace.uui.ac.id/handle/123456789/18432>.

4. Processing and documentation stage

- a. All drug suspects who are about to voluntarily surrender must fill out a voluntary surrender form;
- b. A person who surrenders voluntarily must be urged to promise under the contract before a notary, assisted by an adviser and discussed by parents/guardians/officials in the Barangay area;
- c. All narcotics suspects who voluntarily surrender to the visitation team must be referred/invited to the local police station for interviews, documentation and other alternative actions as long as they make cooperative efforts by voluntarily providing information about illegal drug activities;
- d. All narcotics suspects who will hand over dangerous drugs or their derivatives and drug delivery devices must be properly processed provided they carry out efforts to voluntarily provide information about any violations of the special provisions of Republic Law 9165 as stated in section 33 thereof;
- e. Any person suspected of being involved in the drug trade who denies or refuses door-to-door visits should be referred to the anti-drug unit for action;
- f. If no one is suspected of being a drug dealer, the parent, guardian or adult in charge of the home should be informed of the purpose of the visit and advised to convey the same to the subject;
- g. All police officers assigned to make door-to-door visits must be vigilant at all times. They will wear the proper uniform and perform their duties with authority, assertiveness, and conviction;
- h. The Head of Police/Polres concerned must submit a report on the results of the activity after the activity to the regional director of the regional police office through the regional anti-narcotics special operations task group no later than 24 hours after each activity.

5. Monitoring and Evaluation Stage

- a. When reports of illicit drug activity persist despite door-to-door visits, the head of the local police unit/office and anti-drug unit in the area should immediately initiate police action in coordination with the Anti-Drug Abuse Council for arrests and the filing of valid criminal charges appropriate to the people who are the target of house-to-house visits;
- b. Weekly monitoring of drug lords to determine their status and whereabouts should be carried out by all relevant local police units/stations and anti-drug units in affected Barangays in coordination with the Barangay Anti-Drug Abuse Council. Likewise, they have to go through the regional anti-drug special operations task group;
- c. The regional director of the regional police station through the regional anti-drug special operations task force must also submit weekly project updates to

the Directorate of Operations, a copy of which is provided to the Philippine National Police's anti-drug group.²³

The HVT project was carried out by a special team from the anti-drug group, regional police station, district police station, national capital area, provincial police station and municipal police station. This approach is used at the national, regional, district, provincial and city levels to avoid overlapping operational functions such as:²⁴

The Anti-Drug Group will conduct anti-drug operations focusing on national and regional levels of trafficking and international trade.

The Regional Anti-Drug Special Operations Task Group led by the Regional Director, the Regional Police Office should focus on the illicit trafficking of narcotics across districts/provinces.

The Provincial Anti-Drug Special Operations Task Group is chaired by the Provincial Director, Provincial Police Office, the District Narcotics Special Operations Task Group is chaired by the director, the district head, the National Police Office for the Capital Region, and the City Narcotics Special Operations Task Force will be led by the city director, Police Office Community Oriented City/Police Force, CPScarry out operations to eradicate the illicit traffic of illegal drugs across city/city boundaries.²⁵

The Station Special Operations Task Group for Anti-Illegal Drugs led by station commanders/community-oriented police officers is responsible for eradicating street level distribution through Barangay drug clearance operations in accordance with Dangerous Drugs Council Regulation No. 2 of 2007.²⁶

Regarding carrying out their duties, the Philippine National Police (PNP) is bound by various procedures and codes of ethics to uphold and respect the human rights of suspects during operations which are contained in Command Memorandum Circular No. 16 - 2016, in the Coordination Stage Section number 3 point C states "House to house visits must be carried out in a way that does not violate the subject's rights". The Philippine National Police (PNP) is also bound by the provisions of the Code of Conduct and Ethical Standards, namely that PNP must maintain and uphold human rights in every task they carry out (Chapter 3 section 3.2 No 3.9 Philippine National Police Ethical Doctrine 1992).²⁷In addition, referring to the 1987 Constitution of the Republic of the Philippines Article III regarding the Bill of Rights in Chapter III Article

²³ Ibid.

²⁴ Ibid

²⁵ Dhea Revina Shabila, "Analisis Keputusan Presiden Rodrigo Duterte Melakukan Larangan Pengiriman Tenaga Kerja Migran Filipina Ke Kuwait Tahun 2018" (PhD Thesis, Universitas Brawijaya, 2018), <http://repository.ub.ac.id/163821/1/Dhea%20Revina%20Shabila.pdf>.

²⁶ Parsit SUSENO, "Kepentingan India Dalam Konflik Perbatasan Tiongkok-Bhutan Di Doklam," accessed January 15, 2025, <https://repository.unej.ac.id/handle/123456789/98250>.

²⁷ Willy Innocenti, Hananto Widodo, and Elisabeth Septin Puspoayu, "Perlindungan Hukum Internasional Terhadap Korban Extrajudicial Killing," *Novum: Jurnal Hukum* 9, no. 2 (2022): 181-90.

14 paragraph (1) states that no person can be deprived of the right to life, freedom or property without a legal process, and no one can refuse equal protection from the law.²⁸ However, in practice this rule was ignored, this project caught the attention of the domestic and international community, in its implementation, especially the Tokhang Project, an Extrajudicial killing occurred which resulted in the death of a suspected narcotics user and trafficker. The act of extrajudicial killing is defined as any form of action that causes a person suspected of committing a crime to die without being tried by a court. As for the characteristics of extrajudicial killing, namely causing death, it is carried out without a legal process where the perpetrator is an apparatus who is given certain authority, this situation is not carried out in a state of self-defense or carrying out statutory orders.²⁹

The results of Amnesty International's investigation into the "war on drugs" concluded that it had found strong evidence of links between state authorities and several gunmen who carried out drug-related killings. Two individuals who were paid to kill drug offenders told Amnesty International that their supervisor was an active duty police officer, reporting receiving around 10,000 Pesos (US 201) per murder. Victims of drug-related homicides tend to have two things in common. First, many of them are urban residents who are poor, unemployed and live in informal settlements or illegal settlements. Second, it has something to do with the "drug watch list" prepared by local government officials and distributed to the police. The drug watch list concept itself is sometimes based solely on hearsay and community rumors or competition, with little or no verification. Apart from those on the list, someone's friend or neighbor on the drug watch list can become a victim of Extrajudicial Killing.³⁰

Since President Duterte was installed, thousands of deaths have occurred in less than a year. Recorded in the PNP report, around 4,998 deaths of narcotics suspects in the range 1 July 2016 to 30 June 2017. This number consists of 3,151 deaths in police operations and 1,847 deaths in vigilante style killings or vigilante groups. However, reports from various international human rights organizations, Human Rights Watch (HRW) and Amnesty International state that the number is higher than the report by the Philippine Police. Around 7,080 deaths were recorded by Human Rights Watch which occurred within a span of 6 months after President Duterte's inauguration. Amnesty International also stated that there were 7,025 deaths between 1 July 2016 and 21 January 2018. Reports in the international media also recorded reports with a larger number than police reports. Reports with the same death rate as human rights

²⁸ Fivi Fajar Iryana and Handojo Leksono, "Analisis Kebijakan Presiden Duterte Melakukan Extrajudicial Killing Dalam Memberantas Narkoba Di Filipina Berdasarkan Statuta Roma 1998," *Belli AC Pacis* 4, no. 1 (2018): 44-56.

²⁹ I Ketut Astawa and Daud Munasto, "Tindakan Extrajudicial Killing Terhadap Terduga Pelaku Tindak Pidana Terorisme Dalam Perspektif Asas Presumption Of Innocent Dan HAM," *Jurnal Living Law* 14, no. 1 (2022): 1-10.

³⁰ Iryana and Leksono, "Analisis Kebijakan Presiden Duterte Melakukan Extrajudicial Killing Dalam Memberantas Narkoba Di Filipina Berdasarkan Statuta Roma 1998."

watch reports were also mentioned by the Rappler media in the period 1 July 2016 to 2 April 2018).

In addition, ABS-CBN, New York Times, Blomberg and ABC News revealed different figures. ABS-CBN media said that around 9,432 deaths in the period 1 July 2016 to 31 March 2017 with a total of 2,692 deaths occurred in police operations. The New York Times recorded 9,400 deaths related to drug-related crimes during the period after President Duterte's inauguration until April 25, 2017. Meanwhile, Bloomberg revealed that there were around 3,151 deaths in police operations and 1,847 deaths that were orchestrated by other parties with a total of 5,000 deaths in the span of nearly a year under President Duterte. ABC News also recorded 5,200 deaths over a span of nearly a year during President Duterte's administration with details of 3.³¹

4. Law Enforcement of Extrajudicial Killing Actions

OnThis extrajudicial killing incident was then reported to the International Court of Justice (ICC). The ICC is an institution that has the function of adjudicating international crimes that cannot be handled by a country when that country does not have the authority or jurisdiction to deal with these crimes, and eliminates impunity (impunity from a crime).³²In article 5 (1) of the Rome Statute crimes that fall under the jurisdiction of the court include:

- a. genocide crime
- b. crimes against humanity
- c. war crimes
- d. aggression crime

It is further explained in Article 7 crimes against humanity namely:

- 1 For the purposes of this Statute, "crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against a group of the civilian population, with knowledge of the attack:
 - a. Murder;
 - b. extermination;
 - c. Slavery;
 - d. Deportation or forced transfer of residents;

³¹ Innocenti, Widodo, and Puspoayu, "Perlindungan Hukum Internasional Terhadap Korban Extrajudicial Killing."

³² Ahmad Rizqy Furkon, "Analisa Pengunduran Diri Filipina Dari International Criminal Court Tahun 2019" (UIN Syarif Hidayatullah, 2020).

- e. Imprisonment or severe deprivation of physical liberty in violation of the basic rules of international law;
 - f. Torture;
 - g. Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or other serious forms of sexual violence;
 - h. Persecution against an identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender grounds as defined in paragraph 3, or on any other basis universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime that is within the jurisdiction of the Court;
 - i. enforced disappearance;
 - j. Apartheid crimes;
 - k. Other inhumane acts of a similar nature intentionally causing great suffering, or serious injury to body or to mental or physical health.
- 2 For the purposes of paragraph 1:
- a. "Attacks directed against a group of civilians" means a series of acts which includes the multiple execution of the acts referred to in paragraph 1 against a group of civilians, in accordance with or as a continuation of the State's or organization's policy of carrying out the attack;
 - b. "Elimination" includes the intentional infliction of living conditions, including deprivation of access to food and medicine, which is calculated to bring about the devastation of parts of the population.
 - c. "Slavery" means the exercise of any or all of the powers attached to the right of ownership over a person and includes the exercise of that power in trafficking in persons, in particular women and children;
 - d. "Deportation or forcible transfer of population" means the forcible transfer of persons concerned by expulsion or other coercive measures from the area in which they live legally, without any reason permitted under international law;
 - e. "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, on a person who is detained or under the control of the accused; unless the torture does not include pain or suffering arising solely from, attached to or as a result of, a lawful sanction;

- f. "Forced pregnancy" means the unlawful detention of a woman who is forcibly made pregnant, with the intention of affecting the ethnic composition of a population group or carrying out a serious violation of international law. This definition cannot in any way be construed as affecting national laws relating to pregnancy;
 - g. "Persecution" means the intentional and cruel deprivation of basic rights contrary to international law on the grounds of the identity of the group or collectivity;
 - h. "The crime of apartheid" means an inhuman act of a nature similar to that described in paragraph 1, committed in the context of an institutional regime of systematic oppression and domination by one racial group over another racial group or groups and committed with intent to maintain the regime.
 - i. "Enforced disappearance" means the arrest, detention or imprisonment of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge the deprivation of liberty or to provide information about the fate or whereabouts of such persons. such persons, with the intention of removing them from the protection of the law for a prolonged period of time.
- 3 For the purposes of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, in the context of society. The term "gender" does not convey a different meaning from the above.³³

The Philippines then left the ICC, meaning that the Philippines is no longer a member of the party (Non-State Party). By changing its status to a non-state party, the Philippines assumes that the ICC cannot touch perpetrators who commit international crime violations that occur in its territory. For the international community, the presence of the ICC is an International Order which was formed with the aim of being a means of upholding international law and respect for human rights.³⁴

In article 17 of the Rome Statute 1998 the court determined that a case cannot be accepted if:

1. The case is being investigated or prosecuted by a State which has jurisdiction over the case, unless that State is unwilling (unwilling) or truly unable to carry out an investigation or prosecution (unable).
2. The case has been investigated by a State which has jurisdiction over the case and that State has decided not to prosecute the person concerned,

³³Statute Roma 1998.

³⁴Sefriani Sefriani, "Yurisdiksi ICC Terhadap Negara Non Anggota Status Roma 1998," *Jurnal Hukum Ius Quia Iustum* 14, no. 2 (2007).

unless the decision arises from the unwillingness or inability of that State to actually carry out the prosecution;

3. The person concerned has been tried for the act which is the subject of the complaint, and a trial by the Court is not permitted based on Article 20, paragraph 3;
4. The case is not serious enough to justify further action by the Court.

In the case of extrajudicial killing in the Philippines, none of the above elements have been fulfilled, this action is not currently under investigation or prosecution by the state that has jurisdiction, in this case the Philippines. The Philippine government submitted a request for an adjournment of investigations to the ICC on November 10, 2021 claiming that the Philippine government had started its own investigation into this case. On November 23 the prosecutor's office asked the Duterte government to provide information to support its investigation but the Duterte government has not publicly responded to the request and reiterated its argument that the ICC has no jurisdiction over the Philippines. The ICC retains its jurisdiction with respect to alleged crimes and state withdrawal cannot be applied to retroactively deny the court's jurisdiction.

1. The application of the principle of non-retroactivity (legality) only applies to ordinary crimes as ordinary crimes that occur in the jurisdiction of a country. So that for serious human rights crimes that are classified as extraordinary crimes, the retroactive principle can be applied.
2. The principle of retroactivity does not apply to perpetrators of gross human rights violations as extra ordinary crimes, if international humanitarian law regulations have been established and are accepted by the laws of a country. This means that there is already a law that regulates before the act is committed.
3. Jurisprudence has occurred in IMTN (International Military Tribunal Nurembreg 1946), ICTR (International Criminal Tribunal For Rwanda 1994) and ICTY (International Criminal Tribunal For Former Yugoslavia 1993).

Based on the 1998 Rome Statute, the ICC's jurisdiction over non-state parties continues to apply in several conditions, firstly in cases submitted by the UN Security Council to the ICC, secondly in the case of citizens of non-state parties committing crimes in the territory or territory of a Rome Statute member country or other countries. which have accepted ICC jurisdiction in relation to these crimes and in the case of non-state parties have agreed to exercise jurisdiction in relation to certain crimes, states party to the 1998 Rome Statute have territorial jurisdiction over all crimes that occur in their territory or territory. This applies to criminals from any country, whether party to the Rome Statute or not (non-state parties).As a country

that adheres to constitutional democracy, it has a logical consequence that the constitution is placed as the basic law.³⁵

Even though the Philippines has withdrawn from court membership, the court still has jurisdiction in prosecuting criminals before the court. The Court has the Temporal jurisdiction that it does not impose an expiration (lapse of time) on the four crimes that are subject to the jurisdiction of the court as stated in the 1998 Rome Statute which is also in accordance with article 29 of the 1998 Rome Statute which states that no one or more crimes within the jurisdiction of the court are subject to time restrictions to prosecute the perpetrators of these crimes. In addition, the court also has territorial jurisdiction, which means that the court has jurisdiction over crimes committed in the territories of member countries regardless of the nationality of the perpetrators.

Extrajudicial killing in the Philippines occurs before withdrawal, especially when the court has issued a Preliminary Examination or preliminary examination so that the court still has jurisdiction. This departs from the Precedent that the court still has authority over Burundi even though Burundi has withdrawn from the court.³⁶ Besides that, in international law it is known as the Universal principle. According to this principle, every state has jurisdiction over crimes that threaten the international community.³⁷ This jurisdiction was born regardless of where the crime was committed or the citizen who committed the crime. The birth of the principle of universal jurisdiction over types of crimes that damage the international community is actually also caused by the absence of an international judicial body that specifically tries crimes committed by individuals (individuals). International law recognizes the existence of jurisdiction based on the principle of universal (universal jurisdiction). All countries without exception can claim and declare their jurisdiction based on universal principles.³⁸ Based on this principle, the ICC and all countries have Judicial Jurisdiction when the crimes committed fall into the category of International Crimes. Immunity is irrelevant for anyone, from any country, including from non-state party countries and in any capacity or position.³⁹

5. Conclusion

Effort The extrajudicial killings that occurred in the Philippines by the Rodrigo Duterte regime contradicted various provisions in the Philippines, including

³⁵ Novendri M Nggilu, "Menggagas Sanksi Atas Tindakan Constitution Disobedience Terhadap Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 16, no. 1 (2019): 43–60.

³⁶ Sefriani Sefriani, "Kewenangan Dewan Keamanan Menghentikan Yurisdiksi ICC : Studi Kasus Resolusi Dewan Keamanan Nomor 1497 Tahun 2003," *Jurnal Hukum Ius Quia Iustum* 16, no. 1 (2009): 34–59

³⁷ Chayenne Rosele Yohana Toisuta, Johanis Steny Franco Peilouw, and Dyah Ridhul Airin Daties, "Pertanggungjawaban Extrajudicial Killing Dalam Hak Asasi Manusia," *PATTIMURA Law Study Review* 2, no. 1 (2024): 1–23.

³⁸ Leonard Marpaung, "Yurisdiksi Negara Menurut Hukum Internasional," 2017.

³⁹ Sefriani, "Yurisdiksi ICC Terhadap Negara Non Anggota Status Roma 1998."

Command Memorandum Circular No. 16 – 2016 concerning the PNP Anti-Illegal Drugs Campaign Plan - Project: "Double Barrel" regulates the procedures for implementing the War on Drugs agenda by the President of the Philippines Rodrigo Duterte, namely that in its implementation it may not violate the rights of the subject, the provisions of the Code of Conduct and Ethical Standards of the State Police The Philippines (PNP) mentions to maintain and uphold human rights in every task implementation. This act of extrajudicial killing is also contrary to the Constitution of the Republic of the Philippines 1987 Article III regarding the Bill of Rights in Chapter III Article 14 paragraph (1) states that no person can be deprived of the right to life, liberty, or his property without due process of law, and no one refuses equal protection from the law. Based on the 1998 Rome Statute, the ICC's jurisdiction over non-state parties still applies when the case is submitted by the UN Security Council to the ICC. In addition, even though the Philippines' status in the 1998 Rome Statute became a non-state party, the ICC still has jurisdiction because this act of extrajudicial killing occurred before the Philippines withdrew from Rome Statute 1998 the court first issued a Preliminary Examination or preliminary examination. Based on the international principles of the ICC and all countries have jurisdiction when the crimes committed are included in the category of international crimes. Based on the 1998 Rome Statute, the ICC's jurisdiction over non-state parties still applies when the case is submitted by the UN Security Council to the ICC. In addition, even though the Philippines' status in the 1998 Rome Statute became a non-state party, the ICC still has jurisdiction because this act of extrajudicial killing occurred before the Philippines withdrew from Rome Statute 1998 the court first issued a Preliminary Examination or preliminary examination. Based on the international principles of the ICC and all countries have jurisdiction when the crimes committed are included in the category of international crimes. Based on the 1998 Rome Statute, the ICC's jurisdiction over non-state parties still applies when the case is submitted by the UN Security Council to the ICC. In addition, even though the Philippines' status in the 1998 Rome Statute became a non-state party, the ICC still has jurisdiction because this act of extrajudicial killing occurred before the Philippines withdrew from Rome Statute 1998 the court first issued a Preliminary Examination or preliminary examination. Based on the international principles of the ICC and all countries have jurisdiction when the crimes committed are included in the category of international crimes.

References

- [Abas, Imam, Fence M. Wantu, and Dian Ekawaty Ismail. "Problematika Pelaksanaan Asesmen Terpadu Dalam Proses Penegakan Hukum Penyalahgunaan Narkotika." *Philosophia Law Review* 2, no. 1 \(2022\): 30–49.](#)
- [AFIF, Nur Safura. "Hubungan Amerika Serikat Dan Filipina Di Era Pemerintahan Donald Trump." Accessed January 15, 2025. <https://repository.unej.ac.id/handle/123456789/88290>.](#)

- Arifal, Muhammad. "Rekonsiliasi Pemerintah Filipina Dengan Gerakan Pemeberontakan Bangsamoro Melalui Bangsamoro Organic Law/Bol (Kajian Atas Masalah Potensial Bol)." B.S. thesis, Fakultas Syariah dan Hukum UIN Jakarta. Accessed January 15, 2025. <https://repository.uinjkt.ac.id/dspace/handle/123456789/68162>.
- Astawa, I Ketut, and Daud Munasto. "Tindakan Extrajudicial Killing Terhadap Terduga Pelaku Tindak Pidana Terorisme Dalam Perspektif Asas Presumption Of Innocent Dan HAM." *Jurnal Living Law* 14, no. 1 (2022): 1-10.
- Asy'ari, Al, and Muhammad Hafizh Qhorieq. "Strategi Framing Duterte Terhadap Kebijakan War on Drugs Tahun 2016-2022." PhD Thesis, Universitas Islam Indonesia, 2024. <https://dspace.uui.ac.id/handle/123456789/51014>.
- Furkon, Ahmad Rizqy. "Analisa Pengunduran Diri Filipina Dari International Criminal Court Tahun 2019." UIN Syarif Hidayatullah, 2020.
- — —. "Analisa Pengunduran Diri Filipina Dari Keanggotaan International Criminal Court Tahun 2019." B.S. thesis, Fisip UIN Jakarta, 2020. <https://repository.uinjkt.ac.id/dspace/handle/123456789/55272>.
- Hadi, Kisno. "Perbandingan Penegakan Demokrasi Di Indonesia Pasca-Rezim Suharto Dan Filipina Pasca-Rezim Marcos." *Insignia: Journal of International Relations* 6, no. 1 (2019): 13-29.
- Innocenti, Willy, Hananto Widodo, and Elisabeth Septin Puspoayu. "Perlindungan Hukum Internasional Terhadap Korban Extrajudicial Killing." *Novum: Jurnal Hukum* 9, no. 2 (2022): 181-90.
- Irwansyah. *Penelitian Hukum*. Yogyakarta: Mirra Buana Media, 2020.
- Iryana, Fivi Fajar, and Handoyo Leksono. "Analisis Kebijakan Presiden Duterte Melakukan Extrajudicial Killing Dalam Memberantas Narkoba Di Filipina Berdasarkan Statuta Roma 1998." *Belli AC Pacis* 4, no. 1 (2018): 44-56.
- Marpaung, Leonard. "Yurisdiksi Negara Menurut Hukum Internasional," 2017.
- Muchtar, Hasan Amir. "Analisis Kerjasama Keamanan Filipina Dengan Tiongkok Terkait Kebijakan War On Drugs Periode 2016-2022." B.S. thesis, Program Studi Ilmu Hubungan Internasional Fakultas Ilmu Sosial Dan Ilmu Accessed January 15, 2025. <https://repository.uinjkt.ac.id/dspace/handle/123456789/71505>.
- N, Malcom, and Shaw QS. *Hukum Internasional*. Bandung: Nusa Media, 2013.
- Nggilu, Novendri M. "Menggagas Sanksi Atas Tindakan Constitution Disobedience Terhadap Putusan Mahkamah Konstitusi." *Jurnal Konstitusi* 16, no. 1 (2019): 43-60.
- Parthiana, I Wayan. *Hukum Pidana Internasional*. Bandung: Yrama Widya, 2015.
- Puluhulawa, Fenty U, and Rusdiyanto Puluhulawa. "Plastic Waste: Environmental Legal Issues and Policy Law Enforcement for Environmental Sustainability." *E3S Wen Of Conferences* 259 (2021): 03006.
- Rabbani, Valery Fathur. "Kerjasama Indonesia Dan Filipina Dalam Menghadapi Kasus Pembajakan Kapal Di Wilayah Perbatasan Pada Tahun 2016-2018." PhD Thesis, Universitas Islam Indonesia, 2019. <https://dspace.uui.ac.id/handle/123456789/18432>.

- Riza, Budi. "5 Poin Soal Perang Narkoba Brutal Di Filipina Ala Duterte." tempo.co, 2018. <https://dunia.tempo.co/read/1136853/5-poin-soal-perang-narkoba-brutal-di-filipina-ala-duterte>.
- Sarlina, Veniati. "Respon Amnesty International Terhadap Pemberantasan Narkotika Dan Obat-Obatan Berbahaya (Narkoba) Di Filipina Pada Masa Rodrigo Duterte." *Jurnal Universitas Mulawarman* 6, no. 3 (2018).
- Sefriani, Sefriani. "Yurisdiksi ICC Terhadap Negara Non Anggota Status Roma 1998." *Jurnal Hukum Ius Quia Iustum* 14, no. 2 (2007).
- Shabila, Dhea Revina. "Analisis Keputusan Presiden Rodrigo Duterte Melakukan Larangan Pengiriman Tenaga Kerja Migran Filipina Ke Kuwait Tahun 2018." PhD Thesis, Universitas Brawijaya, 2018. <http://repository.ub.ac.id/163821/1/Dhea%20Revina%20Shabila.pdf>.
- Suratman, and Philips Dillah. *Metode Penelitian Hukum*. Bandung: Penerbit ALfabeta, 2013.
- SUSENO, Parsit. "Kepentingan India Dalam Konflik Perbatasan Tiongkok-Bhutan Di Doklam." Accessed January 15, 2025. <https://repository.unej.ac.id/handle/123456789/98250>.
- Toisuta, Chayenne Rosele Yohana, Johanis Steny Franco Peilouw, and Dyah Ridhul Airin Daties. "Pertanggungjawaban Extrajudicial Killing Dalam Hak Asasi Manusia." *PATTIMURA Law Study Review* 2, no. 1 (2024): 1-23.
- World Health Organization. "Drugs (Psychoactive)." WHO, n.d. https://www.who.int/health-topics/drugs-psychoactive#tab=tab_1.