

RESEARCH ARTICLE

Violations of International Humanitarian Law: Political Views on Law and Human Rights

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Abstract

The purpose of this study is to analyze the form of settlement of violations of International Humanitarian Law, as well as to analyze the Legal Politics of Human Rights in view of gross international human rights violations. The normative legal method used in this research. The results of recitations or trials in international humanitarian law and international human rights are good and very important in ensuring justice for victims of human rights violations, but in the human rights judicial process it should not take a long time to make decisions on victims and their families.

Keywords: Legal Politics; Humanitarian Law; Human Rights

Introduction

Attention to Human Rights is in line with the development of the era of globalization which requires recognition of universal values that are believed to be true. The universal value is the value of humanity that is carried by every human being in the world, with the recognition of these universal values, the rights of every human being must be respected. Besides being universal, human rights are also contextual, meaning that human rights appear in certain social contexts and face certain challenges. As a form of Indonesia's commitment to provide protection for human rights, in addition to the recognition in the constitution, Law No. 39 of 1999 concerning Human Rights was promulgated (Agustiartono 2006).

The roll out of reforms in Indonesia in 1998 was marked by the transfer of power from President Suharto to BJ Habibie, prompting the Indonesian people to demand an end to past human rights violations. The demand for disclosure of past human rights violations such as what happened in Indonesia by Jorge Correa is a political situation that must be faced in the transition period (Correa 2014). In addition, the demands for the settlement of human rights cases have also attracted international attention (Arinanto 2004). Related to this, the international community wonders whether international humanitarian law has been implemented or whether the law has been ignored by the authorities, as well as what about the perpetrators of this violation of international humanitarian law (AKBAR 2017). in Indonesia itself. Human rights violations are not new, such as the cases of students being killed during demonstrations due to clashes with security forces, such as the Trisakti cases (12 May 1998), Semanggi

I (13 November 1998), and Semanggi II (22-24 September 1999) International (Arinanto 2015).

Attention and pressure on the handling of gross human rights violations also occurred in the conflict in the former Yugoslavia. To try the perpetrators of war crimes and human rights violations in the former Yugoslavia, the United Nations Security Council (UNSC) through Resolution No. 827 of 1993 dated 25 May 2003 established the International Criminal Tribunal for the Former Yugoslavia (ICTY) based in The Hague, Dutch. ICTY was formed under the Statue of International Criminal Tribunal for the Former Yugoslavia. Similar to the Indonesian Ad Hoc Human Rights Court, the ICTY has been given jurisdiction to examine and prosecute war crimes and gross human rights violations that occurred in Bosnia Herzegovina and Kosovo since January 1, 1991 (Atmasasmita 2000).

“The problems examined in this research are first, What is the form of settlement of the ICTY for violations of International Humanitarian Law? And how does legal politics in human rights view gross international human rights violations?”.

Research Methods

“The approach used in this problem is to use normative research based on the main material by reviewing the theories, and concepts, as well as regulations on legislation related to this normative research, While the approach used is a conceptual approach and also uses document study techniques in tracking existing legal materials”.

Results and Discussion

International Tribunal Former Yugoslavia (ICTY)

A. Criminal Tribunal For Former Yugoslavia (ICTY)

The demands for the settlement of cases of gross human rights violations committed by the military who have committed war crimes and crimes against humanity against civilians in the Balkans are voiced by the victims and their families so that the perpetrators get punishment and the victims get justice they deserve, by "hearing" the demands, the International Criminal Tribunal for the Former Yugoslavia (ICTY) (Kittichaisaree 2021).

The International Criminal Court for the former Yugoslavia (ICTY) is the United Nations legal tribunal that deals with war crimes that occurred during the conflict in the Balkans in the 1990s. "Since its founding in 1993, ICTY has changed the landscape of international humanitarian law and provided opportunities for victims to voice the horrors they witnessed and experienced. In its precedent decisions on genocide, war crimes and crimes against humanity, the ICTY has shown that senior positions of individuals can no longer protect them from prosecution". It has now been shown that those suspected of having the greatest responsibility for the atrocities committed can be held to account, and also that the blame must be individual, protecting the entire community from being labeled "collectively responsible" (ICTY 2018).

The ICTY statute is a significant progress for the development of international humanitarian law and of course for crimes against humanity because this statute explicitly regulates the definition of crimes against humanity, although it is limited to conflicts that occur in the territory of the former Yugoslavia. The definition crimes against humanity according to Article 5 of the ICTY Statute is (United Nation 2009):

"The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population": Murder, Extermination, Enslavement, Deportation, Imprisonment, Torture, Rape, Persecutions on political, racial and religious grounds; Other inhumane acts."

B. International Crimes

Robert Cryer puts a limit on "international crimes" from these limits it can be drawn the idea that international crimes are crimes against international courts or tribunals by international law norms that are given jurisdiction to try. Robert Cryer also stated that international crimes include four types of core crimes: genocide, war crimes, crimes against humanity, and crimes of aggression/crimes

against peace, which if it is related to the case raised in this study, is the case one of the core crimes mentioned by Robert Cryer (Arie 2015).

M. Cherif Bassiouni, divides the level of international crime into three. First, international crimes referred to as international crimes are part of jus cogens. The typical and characteristic of international crimes is related to human peace and security as well as fundamental human values. There are eleven crimes that occupy the top hierarchy as international crimes, namely (Bassiouni 2006): "Aggression; Genocide; Crimes against humanity; War crimes; Unlawful possession or use or emplacement of weapons; Theft of nuclear materials; Mercenaries; Apartheid; Slavery and slave-related practices; Torture and other forms of cruel, inhuman, or degrading treatment; Unlawful human experimentation."

C. Crimes Against Humanity

"The definition Crimes Against Humanity can be found in the London Charter which gave birth to the Nuremberg Trial In Article 6 of the London Charter Of The International Military Tribunal it is fully stated" (A. R. Nasution 2012):

"Crimes Against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution or of in connection with any crime within the jurisdiction of the tribunal, whether or not in violation of the domestic law of the country where perpetrated".

The Rome Statute has determined that acts which constitute Crimes Against Humanity can occur if they fulfill the following two elements, namely:

1. These acts were carried out as part of a "widespread" or "systematic" attack directed against the civilian population. According to the ICTY, the systematic requirements must meet four elements, namely: '(1) the existence of a political goal (2) the execution of a criminal act on a very large scale against a group of civilians or the repeated execution of inhumane acts (3) preparation (or provision) and use of important public or private resources, whether military or otherwise; and (4) the involvement of high-level political and/or military authorities in the determination and formulation of the methodical plan."

2. "seizure that was carried out was part of or was intended to be part of a widespread and systematic attack against the civilian population" (Setiyono 2005).

The for committing serious violations, the military authorities who, when a conflict arises, commit or order their subordinates to commit violence or immoral acts against civilians shall be punished for the rest of their life

in order to account for the actions that have been taken during that time.

D. International Military Tribunal

World War II which lasted from 1939 to 1945 was the greatest war ever experienced by mankind, both from the scale of destruction and the scale of the weapons used. More than 50 to 70 million lives were lost in the most destructive war in the history of mankind, including millions of lives lost from the Holocaust perpetrated by Nazi Germany on Jews and minorities in Europe, making World War II the most violent conflict. deadliest ever recorded in history (Summerville 2008).

After the end of World War II, the victors of World War II felt the need to establish a military tribunal that would try violators of war and humanity from Nazi Germany for all their crimes committed during the war. Initially, the Allies issued a declaration in Moscow in 1943, which promised punishment for Axis war criminals, but stated that this declaration was "without prejudice to the large cases of war criminals whose crimes did not have a specific geographic location." and which will be punished by a joint declaration of allied governments (Cryer, Robinson, and Vasiliev 2019). Then International Military Tribunal (IMT) in Nuremberg which was established through the London Agreement, August 8, 1945, in this London Agreement, the allied countries agreed to establish a military tribunal that would try criminals against humanity from Nazi Germany (Encyclopedia 2020).

Legal Politics in Human Rights views gross violations of international human rights.

A. The concept of Human Rights

"The concept of Human Rights has two basic meanings, namely first, rights that cannot be separated and revoked are human rights, because they are human beings". "The second meaning of human rights is rights according to law, which are made according to the legal formation process of the community itself, both nationally and internationally". The basis of these rights is the consent of the governed, i.e. the consent of the citizens, who are subject to these rights and not only the natural order which is of the former meaning. So it is not appropriate if the abolition of citizenship status is carried out for any reason, because, a person or individual born in the territory of the Republic of Indonesia is entitled to his citizenship status, and in order to respect the human rights possessed by that individual so as to realize the protection provided by the UDHR and as well as protection from the State of Indonesia (Levin 2012).

According to Sri Soemantri, a legal state must fulfill several elements, namely

"The government in carrying out its duties and obligations must be based on laws or statutory regulations" (Soemantri 1992);

- There is a guarantee of human rights (citizens);
- There is a division of power within the state;
- There is supervision from judicial bodies.

In connection with the statement above, especially in point 2 regarding the existence of guarantees for human rights, it can be concluded that in every constitution of a legal state there must be found guarantees for human rights, especially for its own citizens. Human rights itself covers various aspects of human life, ranging from rights in the political field, the right to life, the right to freedom of speech, rights in the legal field.

B. Intermediary Concepts of International

"Law International law places institutions and processes beyond domestic law and politics. In a period of political change, international law offers an alternative construction of law which, although there is a substantial political change, is ongoing and eternal. Local courts trust these international understandings" (Arinanto 2015).

The potential of this understanding of international law found its strength in the post-war period. International law also acts as an intermediary concept to reduce the dilemma of the rule of law posed by substitute justice in transitional times and to justify the legality of the Nuremberg Trials relating to the debate over the retroactive principle of (Teitel 2015).

C. Right To Know

Right to Know dijabarkan secara komprehensif dalam Update Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity 2005 (Orentlicher 1990).

Right Toof Human Rights through Action to Combat Impunity of 1997. to Diance Orentlicher, the Set of Principles not intended to create new international legal norms, but reflects developments in international law. According isbinding law (biding effect), but the principles contained in it are practiced in various countries in the world so that it can be regarded as customary international law (Commission of Human Right (CHR) 2004) .

D. The Purpose of United Nation

To prevent war, try to re-create it by forming the United Nations (UN). Article 1 of the United Nations Charter states that:

The Purpose of the United Nations are:

1. "To **maintain international peace and security**, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and International law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace";

2. "To **develop friendly relations among nations** based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace";

3. "To **archive international cooperation in solving international problems** of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion"; and

4. "To be a **center for harmonizing the actions of nations** in the attainment of these common ends". The bottom line is that the goal of the United Nations is to maintain international peace and security and seek to take concerted action to prevent and eliminate threats to peace, acts of aggression and promote peaceful means.

E. Inherent Dignity

According to Tommy F. Awuy, basically what Human Rights want to demand itself is not a question of the West and East dichotomy, but a shared realization that every human being, whoever he is, wherever he is, whatever skin type he is, should be seen solely because he is human. However, this is where the problem lies, the question of who a human is is still important until now (Makoni 2012). In general, human rights can be formulated as these rights, it is impossible for us to live as humans (inherent dignity), as determined by the modern concept of human rights, namely: Human rights could generally be defined as those rights which are inherent in our nature and without which we cannot live as human beings" (Mutua 2001).

According to Baharuddin Lopa, the sentence "it is impossible to live as a human being" should mean "it is impossible to live as a responsible human being". The reason for adding the term responsibility is that besides humans have rights, they also have responsibility for everything they do (Pompe 1994).

F. The Vienna Declaration and Program of Action

"All human rights stem from human dignity and are inherent in human beings as central subjects of human rights and fundamental freedoms; consequently must be the most important inheritor and must participate actively in the realization of the rights and freedoms, as determined.

The Vienna Declaration and Program of Action states that: That all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedom, and consequently should be the principle beneficiary and should participate actively in the realization of these rights and freedom". (Sullivan 1994).

"Everyone is born free and has the same dignity and rights. Those who are endowed with reason and reason should associate with one another in brotherhood as stated in Article 1 of the Universal Declaration of Human Rights, namely: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood" (A. B. Nasution 1997).

Conclusion

That the practice of decisions or courts in international humanitarian law and international human rights is good and very helpful in upholding justice for the victims of gross human rights violations, with the presence of ICTY, IMT Nuremberg, the victims of this serious violation feel very helped and can find justice by giving sanctions to the perpetrators of Crimes Against Humanity. Therefore, the length of the process in imposing sanctions on violators is a concern for the international community, is there something that is holding back the punishment for the violators, the court should be able to quickly impose sanctions and also punish the perpetrators who cause "wounds" that may be incurable for the victims as well as the families.

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