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Genocide And War Crimes From The Perspective Of International Human Rights Law

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Abstract

Genocide is one of four serious human rights violations within the jurisdiction of the International Criminal Court. Other serious human rights violations are crimes against humanity, war crimes and crimes of aggression. Genocide and war crimes relate to the International Law of War (Humanitarian). War crimes are defined as one of the serious human rights violations that occurred during armed conflict, which is an act that is contrary to the principle of balance between the principles of military interests and humanitarian principles which are recognized as the law of war. This research uses normative doctrinal or juridical legal research. Legal information sources use primary legal materials (regulations and related documents) for qualitative analysis. The research results explain that genocide and war crimes have been regulated in international law. Then regarding Genocide and War Crimes in the View of International Human Rights Law.

Keywords: Genocide, War Crimes, International Human Rights.

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A. Introduction

The crime of genocide is a crime related to ethnic cleansing. The crime of genocide includes a wide range of actions, not only killing but also preventing the existence of offspring (abortion, sterilization) and also means that are considered to endanger life and health. The definition of genocide in the 1948 Genocide Convention is defined as an action with the intention of destroying or exterminating all or part of a national, racial, ethnic or religious group.[1] The term genocide was first used to describe the Holocaust that killed six million Jews during World War II.[2] The Sixth Committee of the UN General Assembly concluded that the crime of genocide also includes crimes against political groups, because in the committee's view, these groups are groups that are not easily identifiable, including political groups that will cause international interference in a country's domestic political problems.

War crime is an act of violation, within the scope of international law, of the laws of war by one or several people, both military and civilian. Perpetrators of war crimes are called war criminals. War crimes include all violations specified in the laws of war and also include failure to comply with the norms and rules of combat. For example, carrying out an attack on a party that has raised a white flag which is a sign of peace.[3] Genocide and War Crimes are crimes of serious human rights violations (Grave Breaches). War crimes committed by countries in various forms are basically dangerous and have a negative impact on the international community. War crimes are also acts of serious violations of law, human rights and international humanitarian customs or what are also known as the laws of war. The prohibition of crimes of genocide is regulated, both through international law (treaties and decisions of the International Court), as well as by national legal provisions (Constitution, Laws and Presidential Decrees.

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[1] Hetty Hassanah, "Genosida Dalam Ketentuan Hukum Nasional Sebagai Kejahatan Tradisional", Maleo Law Jurnal, Volume 1, Nomor 2, 2017, hlm. 220.

[2] Contoh Genosida di Dunia dan Dugaan Kasusnya. https://internasional.kompas.com/read/2022/06/20/212800170/9-contoh-genosida-di-dunia-dan-dugaan-kasusnya.

[3] Anis Widyawati. 2014. Hukum Pidana Internasional, Sinar Grafika, Jakarta. Hal. 72.

B. Discussion

1. Genocide and War Crimes Under International Law

Linguistically, genocide comes from two words "geno" and "cidium". The word geno comes from Greek which means "race" while the word "cidium" comes from Latin which means "to kill".[4] Based on the Rome Statute and Article 7 Letter a of the Human Rights Court Law: "Genocide is an act committed with the intention of destroying or exterminating all or part of a national, racial, ethnic group or religious group by killing members of the group; causes serious physical or mental suffering to group members; creating conditions for the group's life that result in partial or total physical destruction; take action to prevent births within the group; forcibly moving children in a group to another group." Genocide is included in International Crimes

The elements of genocide include:[5]

1) By killing a certain group;
2) Causing serious physical and mental suffering to group members;
3) Presenting a situation that has the aim of actually destroying a particular group, either in part or in whole;
4) Enforced in various ways with the aim of preventing the birth of a particular group;
5) Forced transfer from one group to another group of children.

The crime of genocide is different from crimes against humanity. The difference is, first, victims of crimes of genocide are defined as belonging to one of four types of groups (national, ethnic, racial or religious), whereas victims of "crimes against humanity" are usually citizens, and civilians. Second, on the one hand, genocide requires "the intent to destroy, in whole or in part" one of the four types of crimes mentioned above, while on the other hand, there is no requirement for crimes against humanity. The crime of genocide in international law consists of:

1. Universal Declaration of Human Rights[6]

Legal provisions relating to race, ethnicity or religion are regulated in Article 2 of this Declaration, which states that everyone is entitled to all the rights and freedoms contained in this declaration without any exceptions, such as differences in race, color, gender, language, religion, political or other views, national or social origin, property rights, birth or other status.

2. International Agreement on Civil and Political Rights[7]

There are a number of formulations that guarantee respect for rights, especially rights related to ethnicity, religion and race. There are a number of formulations that guarantee respect for rights, especially rights related to ethnicity, religion and race, namely:

A. Article 2 of this Agreement states as follows:

1) Each Contracting State to this Agreement undertakes to respect and guarantee (to respect and to ensure) the rights recognized in this Convention for all individuals within its territory and under its jurisdiction, without distinction of any kind. kind), such as race, color, gender, language, religion, political or other views, national or social origin, property rights, birth status or other status.
2) If not yet regulated by statutory provisions or other policies, each Contracting State of this Agreement undertakes to take the necessary steps, in accordance with its constitutional process, and in accordance with the provisions of this agreement, to take legislative or other measures that may be necessary for the exercise of the rights recognized in this Agreement.
3) Each State Party to this Agreement undertakes to: (a) Guarantee that every person whose rights and freedoms as recognized in this Agreement are violated, will obtain an effective remedy (shall have an effective remedy), even if the violation is committed by someone acting in capacity as a State official; (b) Ensure that every person who claims such remedies must have their rights determined by the competent judicial, administrative or legislative institutions, or

[4] Arief Siswanto, Hukum Pidana Internasional, CV. Andi Offset, Yogyakarta, 2015, hlm 27.

[5] Mujiono Hafidh Prasetyo. 2020. Kejahatan Genosida Dalam Perspektif Hukum Pidana Internasional. Jurnal Gema Keadilan. Volume 7 Edisi III, Oktober-November 2020.

[6] Deklarasi ini dikenal dengan "The Universal Declaration of Human Rights", tanggal 10 Desember tahun 1948.

[7] Perjanjian ini dikenal dengan "Internasional Covenant on Civil And Political Rights", tanggal 16 Desember 1966, dan berlaku (entry into force) pada bulan Maret tahun 1976.

by other competent institutions regulated by the legal system of the State, and to develop the possibility of legal remedies; and (c) Guarantee that the authorized institution will carry out the recovery efforts if granted.

B. Article 18 states the following:

1) Everyone has the ri[11] to freedom of thought, belief and religion. This includes the freedom to adhere to or accept a religion or belief of one's own choice, and the freedom, both in[11]ividually and collectively with others, and whether in public or private places to practice that religion or belief in worship, observance, experience and teaching. .
2) No one may be forced to interfere with his freedom to adhere to or accept a religion or belief of [8]s choice.
3) Freedom to practice one's religion or beliefs can only be limited by legal provisions necessary to protect public security, order, health or morals or the fundamental rights and freedoms of others.
4) States Parties to this Agreement undertake to respect the freedom of parents, and if applicable, legal guardians, to ensure that the religious and moral education of their children is in accordance with their respective beliefs.

C. Article 20 paragraph (2) which states that any action that promotes hatred on the basis of nationality, race or religion which constitutes incitement to discrimination, hostility or violence must be prohibited by law.

D. Article 24 paragraph (1) which states that every child, without discrimination with respect to race, skin color, sex, language, religion, national or social origin, property or birth, has the right to protection measures as provided required by his status as a minor, by his family, society and the State.

E. Article 26 which states that all people are equal before the law and have the right, without any discrimination, to the same protection of the law. In this case the law must prohibit any discrimination and guarantee equal and effective protection for all people against discrimination on any basis such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth status or other status.

F. Article 27 states that in countries where there are minority groups based on ethnicity, religi[5] or language, people who are members of these minority groups cannot be denied their rights in community with other members of their group to enjoy their own culture, to practice and practice their own religio[13]r to use their own language.

3. International Agreement on Economic, Social and Cultural Rights[8]

There are a number of legal formulations that guarantee respect for rights, especially rights relating to ethnicity, religion and race, namely:

1) Article 2 paragraph (2) states that the Participating States of this agreement undertake to guarantee that the rights regulated in this agreement will be implemented without any discrimination such as race, color, gender, language, religion, politics or other opinions, origin nationality or social status, wealth or other.
2) Article 13 paragraph (1) states that the Participating States of this Agreement recognize everyone's right to education. In agreement, education must be directed at the development of the full human personality and awareness of his self-worth, as well as strengthening respect for human rights and fundamental human freedoms. Furthermore, agreeing that education should enable all people to participate effectively in a free society, promote understanding, tolerance and friendship among all peoples and all groups, races, ethnicities or religions, and further promote the activities of the United Nations to maintain peace .

4. Convention on the Non-Applicability of Expired Institutions to War Crimes and Crimes Against Humanity[9]

There are a number of legal formulations in this Convention, which guarantee respect for rights, especially rights relating to ethnicity, religion and race, namely:

[8] Konvensi ini dikenal *dengan "Convention on the Non-applicability of Statutory Limitations to War Crimes And Crimes Against Humanity",* tahun 1968.

[9] *Ibid*.

1) Article 1 of the Convention states that the statute of limitations cannot apply to the following crimes: (a) War crimes; (b) Crimes against humans.
2) Article 2 of the Convention states that in the event of crimes as referred to in Article 1, the provisions of this Convention shall apply to representatives of the authorities of Contracting States and ordinary individuals who, as perpetrators or accomplices, participate or who directly inciting other persons to commit any of these crimes, or abetting the commission of such crimes, without considering the extent of their resolution, and to the representatives of the authorities of the Contracting State concerned who permitted the commission of such crimes.
3) Article 3 of the Convention states that States Parties to this Convention undertake to take all necessary measures, both legislative and other measures, with the aim of realizing the extradition of the persons mentioned in Article 2 of this Convention in accordance with international law.
4) Article 4 states that the States Parties to this Convention, based on their respective Constitutions, take legislative or other measures necessary to ensure that the statute of limitations or other provisions does not apply to the prosecution and punishment of the crimes designated in Article 1 and 2 of this Convention, and that where applicable, such expired provisions shall be abolished.

5. International Convention on the Eradication and Punishment of Crimes of Discrimination (Apartheid), 1975[10]

Article 1 paragraph (1) of this Convention states that each State Party to this Convention declares that apartheid is a crime against humanity (is a crime against humanity) and that inhuman acts resulting from apartheid policies and practices (policies and practices of apartheid) and similar policies and practices regarding racial segregation and discrimination, as defined in Article 2 of the Convention, constitute crimes that violate the principles of international law, especially the objectives and principles contained in UN Charter, and constitutes a serious threat to international peace and security. Meanwhile, paragraph (2) states that each State Party to this Convention declares as criminals the organizations, institutions and individuals who committed the crime of apartheid.

2. Genocide and War Crimes in the View of International Human Rights Law

Definition of Human Rights according to the Universal Declaration of Human Rights formulated by the UN in 1948 which is the first written document of Human Rights (HAM) which formulates that Human Rights are the right to freedom and equality in degrees that are obtained from birth and cannot be taken away from a person . Human rights also show that humans are perfect creatures compared to other creatures. So, in protecting all rights inherent in humans, there must be a positive legal framework as a regulatory effort to provide legal certainty regarding human rights as universal rights. At the international level, the rules governing human rights have mostly been formulated in international agreements, while the national standards regarding human rights are formulated in legislation which will fully regulate human rights.[11]

Violations of human rights that can be categorized as crimes or criminal acts, namely because they violate the provisions of human rights law and are subject to criminal sanctions at national and international scope. Genocide is one of four serious human rights violations within the jurisdiction of the International Criminal Court. Other serious human rights violations are crimes against humanity, war crimes and crimes of aggression. Discussion of War Crimes is part of the Criminal Jurisdiction of the International Criminal Court (ICC) which is regulated in the 1998 Rome Statute. Where War Crimes

[10] Konvensi ini dinamakan "International Convention on the Suppression and Punishment og the Crime of Apartheid", diadopsi oleh Resolusi Majelis Umum (General Assembly) PBB, melalui resolusi nomor 3068, tanggal 30 November 1973.

[11] Komang Ayu Dita Febriyan, *PELANGGARAN HAM DALAM TINDAK KEJAHATAN GENOSIDA ETNIS ROHINGNYA DI MYANMAR DARI PERSPEKTIF HUKUM PIDANA INTERNASIONAL*. e-Journal Komunitas Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum (Volume 4 Nomor 3 November 2021). Hal 885.

are one of the crimes of serious human rights violations (Grave Breachers) which regulated in Article 5 of the 1998 Rome Statute, namely:[12]

The Court's jurisdiction is limited to the most serious crimes that concern the international community as a whole. The Court has jurisdiction in accordance with the Statute with respect to the following crimes:[13]

a. Crime of genocide;
b. Crimes against humanity;
c. War crimes;
d. Crime of aggression.

Each of these crimes (except the crime of aggression) is detailed in Article 6 of the 1998 Rome Statute (genocide), Article 7 (crimes against humanity), Article 8 (war crimes). Furthermore, in article 9 it is emphasized that it is necessary to formulate in more detail the elements of each crime (elements of crimes) in order to assist the International Criminal Court (ICC) in interpreting and applying the provisions in Articles 6, 7 and 8 Rome Statute 1998.[14]

International law has provided a basis for punishment for perpetrators of gross violations of human rights which are categorized into criminal and civil liability. Criminal law regulates what actions constitute a crime or violation and determines what type of punishment can be imposed on the party who commits the crime or violation.[15] Those who commit crimes can be held accountable. Criminal responsibility in foreign languages is referred to as "toereken-baarheid," "criminal responsibility," "criminal liability," criminal responsibility is intended to determine whether a person can be held responsible for a criminal act or not for the action he or she has committed, or whether the responsibility committed is not only regarding problems law alone, but it also concerns issues of moral values or decency that exist in a society.[16]

The state's obligation to punish perpetrators of human rights violations has been developed in international human rights legal instruments. International law strictly prohibits all forms of impunity for gross human rights violations that are committed systematically. Article 4 of the Convention Against Torture (Convention Against Torture and Other Cruel; In Human or Degrading Treatment or Punishment (CAT)) states:

1) Each State Party shall ensure that all acts of torture are offenses under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complexity or participation in torture;
2) Each State Party shall make these offenses punishable by appropriate penalties which take into account their grave nature.

The obligation to punish perpetrators is also contained in the Genocide Convention, namely in Articles IV and VI, as follows:

> Persons committing genocide or any of the other acts enumerated in article III shall be punished, wherever they are constitutionally responsible rulers, public officials, or private individuals; Persons charged with genocide or any of the other acts enumerated in article II shall be tried to bvy a competent tribunal of the state in the territory of which that act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted jurisdiction.

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[12] ELSAM.,2000, Statuta Roma 1998 Mahkamah Pidana Internasional Mengadili Kejahatan Genosida, Kejahatan Terhadap Kemanusiaan,

[13] Indah Sari. TINJAUAN YURIDIS HUBUNGAN KEJAHATAN PERANG DAN HUKUM HUMANITER INTERNASIONAL. Jurnal Ilmiah Hukum Dirgantara–Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma | Volume 11 No. 2, Maret 2021. Hal 27.

[14] I Wayan Parthiana, 2015, Hukum Pidana Internasional, Bandung, YramaWidya, hal.361 dan juga lihat lebih lanjut Pasal 6, 7, 8 dan 9 Statuta Roma 1998.

[15] Faisal Riza, Erwin Asmadi.2023. Hukum Pidana Indonesia. UMSU Press. Medan. Hal 1.

[16] Ismail Koto, Erwin Asmadi. Juli- Desember 2021. Pertanggungjawaban Hukum Terhadap Tindakan Malpraktik Tenaga Medis di Rumah Sakit. Vol. 4 No. 2. Hal 189.

C. Conclusion

The crime of genocide is: any act with the intention of destroying or exterminating all or part of a national, racial, ethnic, religious group, by killing members of the group, causing serious physical or mental suffering to members of the group, creating conditions of life in the group that will result in physical destruction in whole or in part, imposing measures aimed at preventing births within the group, or forcibly transferring children from a certain group to another group. Several international conventions regulate genocide

War crimes are included in serious crimes against human rights (grave breaches) although there are still many definitions regarding war crimes because until now there has not been a single definition of war crime that can be accepted unanimously by the international community. Some experts can only state that war crimes are crimes against the laws and customs of war which can be categorized as grave breaches.

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