



The Dangers of The Crime of Genocide: International Law Review

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Abstract

The crime of genocide in criminal law international law is an extraordinary crime and has become an prohibited which was later enshrined in the 1948 Genocide Convention, the statute International Criminal Tribunals for the Former Yugoslavia (ICTY), statute International Criminal Tribunals for Rwanda (ICTR) and the 1998 Rome Statute. This study aims to determine the crime of genocide that experienced when viewed in international law and dispute resolution methods genocide under international law. This research using normative doctrinal or juridical legal research. Research result states that the main cause of the crime of genocide is motivated by the struggle for the rights of ethnic minorities and the existence of fanatical and racial religions that are shown in discrimination cultural. Crimes committed by the Myanmar government by Ethnic Rohingya Muslims constitute an international crime of genocide, because has fulfilled several main elements, namely mass murder, discrimination against minority religions, is carried out systematically, and aims to eliminating certain ethnic groups and groups.

Abstrak

Kejahatan genosida dalam hukum pidana hukum internasional merupakan kejahatan luar biasa dan telah menjadi suatu larangan yang kemudian diabadikan dalam Konvensi Genosida 1948, Statuta International Criminal Tribunals for the Ex Yugoslavia (ICTY), Statuta International Criminal Tribunals for Rwanda (ICTR) dan Statuta Roma 1998. Penelitian ini bertujuan untuk mengetahui kejahatan genosida yang dialami jika dilihat dalam hukum internasional dan metode penyelesaian sengketa genosida menurut hukum internasional. Penelitian ini menggunakan penelitian normatif doctrinal atau penelitian hukum yuridis. Hasil penelitian menyebutkan bahwa penyebab utama kejahatan genosida dilatarbelakangi oleh perebutan hak-hak etnis minoritas dan adanya agama yang fanatik dan rasial yang ditunjukkan dalam diskriminasi budaya. Kejahatan yang dilakukan oleh pemerintah Myanmar oleh Etnis Muslim Rohingya merupakan kejahatan genosida internasional, karena telah memenuhi beberapa unsur utama yaitu pembunuhan massal, diskriminasi terhadap agama minoritas, dilakukan secara sistematis, dan bertujuan untuk menghilangkan kelompok dan etnis tertentu.



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A. INTRODUCTION

Right is entitlement. Rights are claims that can be made against others to the limits of the exercise of these rights. He does not prevent others from exercising his rights. Human rights are legal rights that everyone has as a human being (Widyawati, 2015). These rights are universal and absolutely owned by everyone, rich and poor, male and female. Because of its absolute nature, these rights may be violated but can never be abolished. Violations of Human Rights are divided into two, namely minor human rights violations that include beatings, persecution, defamation, blocking someone from being able to express their opinion and eliminating the lives of others. According to the Rome statute that has been adopted in Law No.26 of 2000 concerning the Court of Human Rights (HAM) gross human rights violations consist of crimes against humanity, genocide, war crimes, and crimes of aggression.

Since ancient times, violations of human rights both mild and severe seem to have never escaped from human life (Sujatmoko, 2015). World War II became the culmination of moral and humanist humanist disdants with many practices of gross human rights violations; crimes of humanity, genocide, war crimes, and crimes of aggression committed at that time. A crime committed by assault on another person as a result of ethnic or cultural strife is often referred to as a human crime under international law that leads to acts in the form of mass murder of the torture of human limbs. In this case the dispute will increase and lead to a more aggressive act and the person who does it will increasingly do it out of bounds even including heavy deeds (Siswanto, 2015). This class of actions or heavy acts is a massive disobedience to a particular ethnicity that results in many victims and material or immateriil losses. This is called a crime of genocide (Prasetyo, 2020; Yuliartini & Mangku, 2019).

The crime of genocide began to be known since 1944. The term genocide was first introduced by a Polish lawyer named Raphael Lemkin. Genocide is used to describe a systematic slaughter of an ethnic group or religion. Genocide comes from the Greek word Genos which in Greek means race and Cidium from the Latin language meaning to kill. Although the term genocide was only known in 1944, in practice, genocide has been committed since the beginning of World War II. Call it the Holocaust as a portrait of the brutality of the Nazi regime, the mass slaughter of the Ukrainian population under the leadership of the Stalin regime in the Soviet Union, and the Nanking Massacre tragedy that occurred in Nanking, China from December 1937 to March 1938 which later became a historical record of the slowness of nations around the world. The crime of genocide is related to ethnic or cultural annihilation and also includes crimes against political groups because such groups are difficult to identify that will cause international problems within a country. Genocide in the 1948 Genocide Convention is defined as an act with the intention of destroying or destroying all or part of a group of nations, tastes,

ethnicities or religions. The definition of genocide is then contained in the statute of the International Criminal Court (ICC) and Law No. 25 of 2000 concerning the Human Rights Court (Court of Human Rights Law).

A group of nations in the sense of genocide is a group that has a different identity but in one common homeland while a racial group is a group that has hereditary characteristics or traits (Parthiana, 2015). Ethnic groups are groups that have the same language, culture and traditions for generations and are a common heritage. Therefore by killing such groups is included in the elements of the crime of genocide (Wahyudi & Budiana, 2021). The crime of genocide is often associated with crimes against humans but when viewed in depth the crime of genocide is different from the crime against humans, where the crime of genocide is directed at groups such as nations, races, ethnicities or religions while crimes against humans are aimed at citizens and civilians. Then this crime of genocide can eliminate some or all of it while the crime against humans has no specifications or conditions in that regard (Ashar, 2014).

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. This does not happen on the African continent but in parts of the world. Other conflicts occur in Cambodia and Vietnam, where constitutionally both countries are socialist, communist countries but still state that the country's majority religion is Buddhist shingga with the first of the country has an impact on the country's religious minorities, especially the Rohingya who are adherents of islam get discrimination from the majority of the country.

B. RESEARCH METHOD

In discussing this issue, the author uses normative juridical approach methods by reviewing, testing and reviewing legal aspects, especially criminal law related to international criminal law and to see how the legal principles and synchronization of applicable laws against the resolution of disputes against genocide crimes in Indonesia.

C. RESULTS AND DISCUSSIONS

Crimes of Genocide Reviewed in International Law

The language of genocide comes from the two words “geno” and “cidium”. The word geno comes from the Greek meaning “race” while the word “cidium” comes from the Latin word meaning “to kill”. According to the Rome Statute and Article 7 Letter a of the Human Rights Tribunal Law: “Genocide is an act committed with the intent to destroy or annihilate all or part of a group of nations, races, ethnic groups, religious groups by killing members of a group; resulting in severe physical or mental suffering to group members; creating group living conditions that create partial or complete physical destruction; taking action to prevent birth in a group; Forcibly transferring children in groups to another group.” Elements of genocide include: 1) By killing a certain group; 2) Inflict suffering on members of the group both physically and mentally severely; 3) Presenting a situation that has the goal of destroying a particular group in real terms either in part or all of it; 4) Imposed in various ways with the aim of warding off the birth of a particular group; and 5) Forcible transfer from one group to another by force against children.

Genocide is an international crime, which is a gross violation of the law. This crime is the most serious crime because it involves the international community as a whole which has been regulated in the International Criminal Court (ICC):

“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 in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression”.

“The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations”.

In accordance with the jurisdiction, genocide is included in international crimes (Hassanah, 2017). Appropriate international crimes in this jurisdiction include: Crimes of genocide; Crimes against humanity; War crimes; Crime of aggression. Genocide is an act of international crimes that are included in 4 (four) international crimes namely genocide, crimes against humanity, war crimes, and crimes of aggression. The Genocide Arrangement has been set out within: the Charter of the Nurnberg International Military Court, the 1948 Genocide Convention, the ICTY Statute, the ICTR Statute, the 1998 Rome Statute on the International Criminal Court, and the National Legal Regulation. In the Charter of the Nurnberg International Military Court the substance of the genocide arrangement is already in it the Charter of the Nurnberg International Military

Court which is a description of “crimes against humanity”. Crimes against humanity can be interpreted as follows:

“murder, extermination, enslavement, deportatation, and other inhumane acts committed againts any civilian population, before during the war, or persecutions on political, racial or religious grounds in execution of or 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”.

Strictly speaking of genocide arrangements occurs when countries agree to the 1948 Genocide Convention. The 1948 Genocide Convention, the core of the genocide arrangements, is expressly regulated to include: 1) Affirmation of genocide as an international crime. This assertion is explicitly contained in Article II of the Convention, which states that genocide, whether committed in times of war or peace, is a crime governed by international law and states are obliged to prevent and punish the perpetrators; 2) Definition of genocide; and 3) The definition of genocide is accumulated in Article II of the Convention. The expansion of the deeds that can be punished;

In addition to genocide, the Convention also declares acts that can be punished, namely: (a) the association to commit genocide; (b) incitement to carry out genocide either directly or in general; (c) attempts to commit genocide; (d) participation in genocide.

- 1) Criminal liability individually. Criminal liability is either carried out individually means the principle desired that international criminals bear their criminal responsibilities individually, both their status and position regardless of government. That is, the status of the person as a public official or ruler, can not be peddled defending to avoid criminal responsibility. This principle can be seen in the Charter of the Nurnberg International Military Court reaffirmed in Article IV of the Convention.
- 2) The obligation to make national laws govern genocide. The 1948 Genocide Convention is a convention that relies heavily on the states to which it is. This Convention requires states that are members of the Convention to make national laws and regulations in order to establish the implementation of the provisions of the Convention on a national scope, especially genocide.
- 3) The Forum and jurisdiction, the convention affirms, that a court that has jurisdiction to try the perpetrators of genocide is the competent court of the state in which genocide took place. But the Convention also opens up opportunities for international courts to apply jurisdiction on the basis of the consent of states parties to the genocide convention.
- 4) The affirmation that genocide is not a political crime. Article VII of the Convention contains provisions affirming that genocide is not categorized as a political crime, especially in the context of extradition.ini is important,

because in the realm of international law concerning extradition there is a principle that a perpetrator of political crimes cannot be extradited (non-extradition of political offenders).

- 5) Possible involvement of the United Nations in prevention and enforcement. Article VIII provides that a state may request that a competent UN organ take action in accordance with the Charter of the United Nations within the framework of the prevention and suppression of genocide. Although not explicitly stated, this article is actually an entry point for the UN Security Council to play an active role in the prevention and suppression of genocide. This provision can be attributed to Chapter VII of the UN Charter which opens up opportunities for Security Council intervention when conditions are considered to endanger world peace and security.

Dispute Resolution of The Crime of Genocide by International Law

In general, there are two means of settlement of the first in litigation, namely the settlement of cases through judicial channels or in front of judges and also the second with non-litigation means that are interpreted as out-of-court settlements using the help of mediators, this is an effort that can be used to resolve cases internationally faced by countries experiencing disputes. The resolution of the case with non-litigation channels is:

- a) Negotiations, the most common settlement commonly used in society, are quite a lot of disputes that are resolved every day with the main reason procedure that with this process, all relevant parties can conduct a supervisory of the dispute resolution process and all such settlements are based on agreements of the parties to the dispute.
- b) Mediation, the use of a third-party intermediary or a mediator. Such mediators can come from countries, international organizations such as the United Nations, politicians, jurists, and a scientist. The mediator is actively participated in the mediation process, usually a mediator with his authority as an impartial party seeking peace of all parties by providing advice to resolve the dispute.
- c) Conciliation in a more formal dispute resolution procession. Conducted by third parties or also commissions deliberately formed by the parties to the dispute also referred to as conciliation commissions, which also have the function to establish the terms of dispute resolution, whose decisions are not binding on both parties.

Crimes committed in the international sphere must be solved through the judiciary if peace cannot be solved. Crimes such as those contained in the ICC relating to international matters as a whole are punishable (Rizki, 2006). Therefore the establishment of a permanent International Criminal Court is considered very important for the prosecution of international crimes in the future. The

arrangement of the International Criminal Court in the Rome Statute is contained in Article 125 paragraphs 2 and 3, Article 126 paragraph 1, Article 4 paragraph 1, Article 4 paragraph 2, Article 3 paragraph 2.14 of the Rome Statute 1998 is the basis for the establishment of an International Criminal Court which aims to be able to provide a certainty for victims of serious international crimes, that the perpetrators of criminal acts cannot be separated from criminal responsibility for their actions. Dispute resolution efforts are a way for a court in order to resolve a disputed dispute in a country. In this process is an effort to resolve the dispute that occurred in the State of Myanmar between the government of Myanmar and ethnic Muslims Rohingya. In order to resolve the dispute between the Myanmar government and the Muslim Rohingya, in accordance with Article 33 of the UN Charter should first use diplomacy, if it does not find a bright spot in this matter then it is only switched by using legal means through the judiciary.

The crimes of the Country of Myanmar against the Rohingya tribe are classified as genocide, because in accordance with the meaning of genocide Article 6 of the Rome Statute of genocide is a crime that aims to eliminate ethnicity, race, and religion either thoroughly or in part. In response to the case in Myanmar involving the Muslim Rohingya tribe, the United Nations has strongly admonished the myanmar state to be able to immediately end the violence that has been going on for a very long time. But then this was not welcomed by the Myanmar government and until now there has been no effort in resolving the dispute (Putra, Yuliantini & Mangku, 2020; Dewi & Najica, 2021).

Disputes that occur in Myanmar constitute an international crime of genocide, so the settlement efforts can be done in various ways in addition to international criminal law dispute resolution can also be carried out through out-of-court processes such as mediation and negotiation (Yuliantini & Mangku, 2019). But from the way of international criminal settlement of disputes, related to the dispute that occurs, the settlement can be handled by the International Criminal Court even though the disputed is not a state of the party but everyone is under the jurisdiction of the International Criminal Court. The entire population of a State is under the jurisdiction of the International Criminal Court because first, it ratifies the Statute of the International Criminal Court, second, it claims the jurisdiction of the International Criminal Court on an ad hoc basis, third, the UN Security Council declares this dispute to the International Criminal Court, so that this action can be judged using the International Criminal Court.

Causes of The Crime of Genocide. The greatest evil on earth has a background of greed. The desire to control an area or group with the aim of becoming a leader is a fundamental reason. Political reasons are the most widely used. Power and greed have blinded the hearts of these people. One of the crimes of genocide with a political background like this is the massacre that took place in Rwanda.

D. CONCLUSION

The main cause of the crime of genocide is motivated by the struggle for rights of minority tribes and the existence of fanatical and racially charged religions shown in cultural discrimination. Related to the resolution of the dispute that occurred, the researcher provided an analysis related to the resolution of disputes that occurred in Myanmar, the dispute can be resolved by means inside and outside the court. If outside the court the settlement of disputes can be done by means of mediation and negotiation, but if done in a court that in this case is an international court of justice then the dispute can be handled by the International Criminal Court. All citizens are under the jurisdiction of the International Criminal Court.

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