



**ANALYSIS OF INTERNATIONAL CRIMINAL LAW ENFORCEMENT AGAINST
WAR CRIMINALS THROUGH THE AUTHORITY OF THE INTERNATIONAL
CRIMINAL COURT TO REALIZE THE PROTECTION OF HUMAN RIGHTS**

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ABSTRACT

The high number of armed conflicts often ignores the applicable legal rules. War crimes are very serious violations of international humanitarian rules. This study aims to examine the authority of the International Criminal Court while analyzing the enforcement of criminal law against perpetrators of war crimes. This study uses a normative legal research method through a statutory regulatory approach along with a legal concept approach. The research results indicate two main conclusions. First, the International Criminal Court has full authority to adjudicate extraordinary crimes, which complements the national justice system. This authority ensures that no state official is immune from legal entanglements. Second, law enforcement against war crimes is carried out based on the Rome Statute along with the Geneva Conventions. The rule divides violations into several groups, ranging from the intentional killing of civilians, torture of prisoners, to the destruction of buildings that have no connection to military affairs. Through the application of the universal legal authority principle, every state is obliged to arrest along with hand over war crime perpetrators to the courts.

Keywords: War Crimes, International Criminal Court, International Criminal Law, Human Rights, Victim Protection.

I. INTRODUCTION

The number of wars, both at the world and domestic levels, currently seems to be indifferent to the applicable rules. Warring parties often ignore humanitarian protection rules and international rules. These rules were actually made appropriately to limit military actions during battles. The main goal is to reduce excessive casualties from civil society. Gross



violations of these protection rules are officially referred to as war crimes.¹

In the general provisions of international law, there are four main types of criminal acts. The four acts include the crime of genocide, crimes against humanity, war crimes, and the crime of state attack. Given the magnitude of the adverse impact, the world needs a court that has the authority to enforce the law fairly. The judicial institution that is given this task is the International Criminal Court.²

The concept of human rights protection based on the authority of the International Criminal Court is increasingly widespread in many countries. The existence of a permanent judiciary is very important to ensure that perpetrators of crimes against humanity cannot escape prison sentences. This court is a new hope for the wider community so that law enforcement is really implemented regardless of the position of the perpetrator.³

Based on an explanation of the importance of law enforcement during the war, this research was prepared to discuss in detail the role of the world's court institutions. This paper will focus on answering two main problem formulations, namely:

1. What is the authority of the International Criminal Court in the enforcement of international criminal law?
2. How is the enforcement of war crimes criminal law through the International Criminal Court?

II. RESEARCH METHODS

This research was prepared using normative legal research methods. The normative legal research method is the process of seeking clarity on a legal issue by reading, researching, and compiling the essence of various written documents without the need to go to the field to interview the public directly. This research focuses on the study of official rules, scientific theories, and legal historical records that are widely applicable around the world.

¹ Muklis Al'anam and Radian Salman, The Relevance of Jurgen Habermas's Theory of Communicative Action as the Philosophical Foundation of Rights Enforcement in Indonesia, *Mimbar Hukum FH UGM*, Vol.36, No.1 (June 2024), p.40.

² Desia Rakhma Banjarani et al., War Crimes In Humanitarian Law And International Criminal Law, *Fiat Justitia Journal of Legal Sciences*, Vol.17, No.2 (April 2023), p.110.

³ Benedetto Conforti, *Diritto Internazionale*, Editoriale Scientifica, Napoli, 1999, p.205.



The approach applied in this study includes two main things. The first approach is the legislative approach. Through this approach, the researcher directly examines the text of world legal documents that have been agreed upon by many countries, such as the Rome Statute and the London agreement. The second approach is the legal concept approach. This approach is used to decipher various special terms such as extraordinary crimes, court authority, and the definition of serious offenses.

The main legal material is obtained directly from the official treaty text published by the United Nations. Meanwhile, supporting legal materials were obtained through international criminal law textbooks, scientific articles, and various writings by legal experts. All of the reading materials are collected, sorted, and then explained in common, official, and easy-to-understand Indonesian to readers from various walks of life to provide a complete picture of the protection of humanity.

III. RESULTS AND DISCUSSION

3.1. The Authority of the International Criminal Court in the Enforcement of International Criminal Law

The development of world law has given birth to a special judicial system to prosecute extraordinary crimes. In the past, the world used temporary courts after the war was over. The formation of the international justice system continues to evolve from a temporary form to a permanent form. Its main objective is to solve various cases of very serious human rights violations and crimes against peace.⁴

The International Criminal Court was established under the agreement of the Rome Statute in 1998. This institution is the first world judiciary that is both permanent and independent. A total of one hundred and twenty member states of the United Nations participated in establishing the basic rules for the establishment of this institution. The existence of this institution is expected to be able to prevent large-scale crimes that threaten the welfare of the people of the earth.⁵

⁴ Heni Siswanto, *International Criminal Law and Human Rights*, Faculty of Law, University of Lampung, Bandar Lampung, 2016, p.11.

⁵ Rahadian Diffaul Barraq Suwartono, *Regulation of War Crimes in Indonesia: The Legal Politics of*



The main purpose of the establishment of this institution was to act to prevent people who planned to commit serious crimes. This court gave a stern warning to every leader of state or military commander not to act arbitrarily. The real threat of a prison sentence is expected to make officials rethink before issuing the execution order. This prevention is essential to save the lives of innocent civilians.

The next goal is to urge the national courts to dare to hold the perpetrators accountable before the law. This world court gives a strong encouragement to law enforcement at home to work honestly. If a court in a country dares to try its own generals fairly, then the world judiciary will greatly appreciate such efforts. This fosters legal independence in each country.

This court also aims to strive for victims and their families to get proper justice. Victims of war often lose hope after seeing the perpetrators live freely. Through the trial process in this court, the victim was given the opportunity to express his suffering directly. The revelation of this truth is a way for the victim to heal the inner wounds that have been hidden for a long time.⁶

The authority of this judicial institution is complementary to the national legal system of a country. If the court in the perpetrator's home country is unable to adjudicate the case, this world court will immediately take over the judicial duties. This inability usually occurs because the country is in the throes of a civil war that destroys entire courthouses. The international court is here as a last resort to ensure justice remains upheld.

The limits of the authority of the world courts include several things, namely personal authority, criminal authority, territorial authority, and temporal authority. This authority is a definite guide to who can be arrested, what types of crimes can be tried, in which areas the crime occurred, and when it occurred. This limitation rule is very necessary so that the court does not act beyond the limits that have been agreed upon by the participating countries.⁷

The crime that is prosecuted is an extraordinary crime, so its handling requires very strict action. International criminal law acts as a safeguard that ensures that the perpetrators are

Law Number 26 of 2000, Lex Renaissance, Vol 6, no. 4 (2021), p.651.

⁶ Anis Widyawati, *International Criminal Law*, Sinar Grafika, Jakarta, 2014, p.150.

⁷ Aryuni Yuliantiningsih, *Israeli Aggression against Palestine International Humanitarian Law Perspective*, *Journal of Legal Dynamics*, Vol.9, No.2 (May 2009), p.113.



taken in accordance with humanitarian lines. This special handling is necessary because high-level criminals usually have very strong protective armed forces. Through international legal assistance, the perpetrator can still be arrested and then dragged to the green table.

The enforcement of this law is very attached to the principle of promises that must be kept by the participating countries. Every country that has signed an agreement on the establishment of this court is fully bound by the rules. Participating countries are obliged to provide legal assistance, such as granting permits to search for evidence in their territory, along with arresting fugitives who have fled to their countries. Compliance with this promise is key to the success of global law enforcement.⁸

Another important principle is the state's obligation to prosecute the perpetrator or hand him over to the requesting state. Every country is prohibited from protecting perpetrators of crimes against humanity hiding on its territory. If the country does not want to hold a trial process in the country, it is obliged to send the perpetrator to the headquarters of the international court. This rule ensures that there are no more safe hiding places for mass murderers.⁹

The law stipulates that there is no expiration date for the prosecution of these international crimes. This means that even though the war crimes have occurred decades ago, the perpetrators can still be arrested at any time. This indefinite rule is very fair to the victims who have been waiting for a long time. Justice should not be forfeited just because the perpetrator managed to hide for years.¹⁰

The strictest rule is that there is no immunity for anyone, including a head of state. High government positions can no longer be used as a shield to escape prison sentences. In addition, the perpetrator's defense that he was merely carrying out the orders of his superiors will not be accepted as a reason for exemption from guilt. The highest reason can only be used to slightly lighten the sentence, not to release it absolutely.

⁸ Arlina Permanasari et al., Introduction to Humanitarian Law, ICRC, Jakarta, 1999, p.11.

⁹ Joko Setiyono, International Court of Serious Human Rights Crimes, Pustaka Megister, Demak, 2020, p.81.

¹⁰ Boer Mauna, International Law: An Introduction to Roles and Functions in the Era of Global Dynamics, Alumni, Bandung, 2005, p. 32



3.2. Enforcement of War Crimes Criminal Law Through the International Criminal Court

War crimes are a form of gross violation of the rules of human protection during the occurrence of war. International law has given special authority to deal with these crimes. This crime originated from customary rules between countries which were then officially written into various mutual agreements. This arrangement aims to provide humane limits for any country involved in an arms dispute.¹¹

The International Criminal Court exercises its authority to prosecute perpetrators based on the guidelines of the Rome Statute and the Geneva Conventions. These two rules contribute to very clear guidelines regarding what acts are prohibited during war. The enforcement of this rule adheres firmly to the principle that no person can be punished without a written rule first. This ensures that the trial process runs honestly.¹²

The court divides these criminal acts into several groups, ranging from serious offenses to offenses in domestic disputes. This division is very important to make it easier for judges to assess the level of wrongdoing of the perpetrator. Each group has different characteristics of criminal acts, depending on who the target of the attack is and the atmosphere of the dispute. The court uses this grouping as the primary guide for sentencing a prison sentence.

Serious violations include the deliberate killing of civilians who did not participate in the war. Military forces are strictly prohibited from shooting villagers who do not hold weapons. The act of taking the life of a weak person is considered a very cowardly and cruel act. Prosecutors of the international court will immediately ensnare the soldier who perpetrated the shooting with the longest prison sentence.

Serious violations also include torture, inhuman treatment, and biological experiments on prisoners' bodies. Soldiers captured by the opposing party should be treated with dignity as human beings. The law strictly prohibits the act of physically harming prisoners to extort confidential information. Using the human body as a guinea pig for poisonous drugs is also a

¹¹ Didi Prasatya, The Existence of the International Criminal Court in the Settlement of Terrorism Cases, *Journal of Legal Opinion*, Vol.1, No.2 (2013).

¹² Amnesty International, *International Criminal Court*, Magazine, January 26, 2004, p.1.



crime that is strongly condemned by civilized society.¹³

Acts of destruction and large-scale confiscation of property without a legitimate military reason are also classified as serious offenses. The occupying forces must not arbitrarily burn agricultural fields owned by residents, destroy food factories, or rob valuables in residents' homes. The forced displacement of residents out of their areas of origin is also on the list of absolute prohibitions. The act of taking civilians hostage to demand ransom will be dealt with very harshly.

The next group is serious violations in armed disputes between states, such as deliberately directing attacks on civilians. Armed forces are prohibited from bombarding cities, villages, residences, and buildings that are not defended by the enemy. Military commanders are also prohibited from launching missile strikes if he knows that the explosion will inevitably cause widespread loss of civilian life. The gains of war tactics should not come at the expense of the security of the masses.

Attacking humanitarian workers, medical workers, and peacekeepers is a crime that is strongly condemned by law. People in charge of bringing food, medicine, and evacuation tents must be given safe passages. Shooting at ambulances and health posts is a serious offense. They are present in the midst of a pure battle to save lives, so hurting them is a very despicable act.¹⁴

Military forces are also strictly prohibited from attacking school buildings, places of worship, historical monuments, and hospitals. Places where the sick gather and cultural education centers should not be used as targets for weapon explosions. The law also prohibits the act of killing an enemy soldier who has laid down his weapon and surrendered. The use of white flags, a sign of surrender in a pretense to trap the opponent, is also categorized as a very cunning way of warfare.

The next group regulates serious violations that occur in armed disputes within the country, such as civil wars. This rule of protection proves that human values must still be upheld even if wars occur within the borders of the same country. Armed rebellions that occur

¹³ Lilik Mulyadi, *The Function of International Criminal Law Linked to Transnational Crimes, Especially for Corruption Crimes*, Article, Lhoksukon District Court, North Aceh, 2008, p.8.

¹⁴ Kurniadi Prasetyo, *The Application of International Criminal Law Principles in the International Community*, *Justice Pro: Journal of Legal Sciences*, Vol.4, No.1 (June 2020), p.63.



in remote areas should not be used as an excuse by any party to act arbitrarily against fellow citizens.¹⁵

All forms of violence against personal life, mutilation, cruel treatment, and degrading acts of dignity are absolutely prohibited. The law also prohibits the imposition of the death penalty in the absence of a verdict from a valid court. This rule is very important to prevent vigilante actions by warring groups. Prisoners from the enemy side must be given basic treatment that is appropriate as a free human being.¹⁶

All of these prohibition rules give rise to the principle of universal jurisdiction, where each state is obliged to prosecute and investigate the perpetrators of war crimes. This means that all countries on this earth have an equally strong right to arrest a war criminal general, even if the arresting country does not intervene in the battle. The cooperation of all law enforcement agencies in the world is needed to ensure that the perpetrators of crimes cannot escape anywhere.

IV. CONCLUSION

A. Conclusion

First, the International Criminal Court has very important authority to prosecute extraordinary crimes on a global scale. These permanent judicial institutions work independently to complement the court system in the country. The existence of this court aims to prevent war, provide justice for victims, and ensure that high state positions can no longer be used as protection from prison sentences.

Second, law enforcement against war crimes is carried out by referring to the guidelines of the Rome Statute and the Geneva Conventions. International law divides these crimes into very clear groups, ranging from the killing of civilians, the torture of prisoners, the destruction of historic buildings, to violations in civil war. All of these acts are categorized as enemies of humanity that must be strictly prosecuted by every country through the application of the

¹⁵ Atikah Nuraini et al., *International Criminal Law and Women*, Komnas Perempuan, Jakarta, 2009, p.2.

¹⁶ Annalisa Ciampi, *Current and Future Scenarios for Arrest and Surrender to the ICC*, *Harvard Law Journal*, Vol.66 (2006), p.720.



principle of comprehensive legal authority.

B. Suggestions

As a measure of future goodness, it is strongly recommended to the governments of the countries of the world to continue to teach their military members about the limits of humane rules of war. Domestic lawmakers are also advised to draft strong national criminal laws to align with world rules. Law enforcers are advised not to hesitate to use their broad legal authority to arrest war crimes fugitives who have fled to their countries. The full cooperation of the entire world community is the key to ensuring that human justice can be perfectly upheld for future generations.

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