

Implementation of Criminal Sanctions for Violators of International Crimes by the International Criminal Court

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Abstract: *In enforcing International Humanitarian Law against violators of crimes that fall under the jurisdiction of the International Criminal Court (ICC) based on the 1998 Rome Statute and previous international crimes that were tried based on the Ad Hoc Court. Norms regarding enforcement mechanisms for International Humanitarian Law can be found in the Geneva Conventions of 1949 and two Additional Protocols I and II of 1977. Apart from that, they can also be found in provisions relating to ad hoc and permanent War Crimes Tribunals, such as the International Criminal Court (ICC). This International Court is a legal instrument that causes violations of international crimes to be said to be effective. To prove that in enforcing International Humanitarian Law, the International Court has tried and punished perpetrators of international crimes, for example, Herman Wihem Georing case through the Nurenburg court with sentenced to death, Matsue Iwane case that Tokyo Tribunal finished, Anto Furundzija case by Yugoslavia court (ICTY), Jean-Paul Akayesu by Ruwanda Tribunal (ICTR), Somalia and Sudan case in processing by ICC. Case of Israel committing war crimes in Gaza during the 2008-2009 period.*

Keywords: *International Court; Criminal Sanctions; cases of enforcement of Humanitarian Law/International Crime*

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INTRODUCTION

One aspect that is very important in enforcing cases of violations of international humanitarian law is the mechanism for enforcing international humanitarian law and the issue of the International Court of Justice in trying war criminals.

As is known, a legal instrument can only be said to be effective if it can be implemented, and sanctions can be enforced if someone violates it. To be enforceable, the legal instru-

ment needs to have a mechanism that regulates and determines how these norms can be executed.

Norms regarding international humanitarian law enforcement mechanisms can be found in the 1949 Geneva Conventions and the two 1977 Additional Protocols. Apart from that, they can also be found in provisions relating to ad hoc and permanent War Crimes Tribunals, such as the International Criminal Court. Court (ICC). Based on the background

described above, the problem that will be discussed in this article is how to implement criminal sanctions for violators/perpetrators of crimes in international humanitarian law.

METHOD

The method used in this research is a normative juridical approach. The normative juridical approach method, namely research, emphasizes research on library materials or secondary data, which includes primary legal materials, secondary legal materials, and tertiary legal materials¹. Judging from its nature, this research is categorized as descriptive-juridical-normative research and descriptive-juridical-explanatory research, namely a research method that aims to describe something in a particular area and at a specific time. In contrast, descriptive-juridical explanatory research is research to explain, strengthen, or test and even reject a theory or hypothesis as well as the results of existing research². Based on the nature of this research, it is related to the research object. The author wishes to describe and explain the enforcement mechanism of International Humanitarian Law and analysis of cases of violations of International Humanitarian Law.

ANYLISIS AND DISCUSSION

INTERNATIONAL HUMANITARIAN LAW ENFORCEMENT MECHANISMS

Humanitarian Law Enforcement Mechanism According to the 1949 Geneva Conventions and the 1977 Additional

Protocol.

In general, Humanitarian Law consists of two main rules, namely Hague Laws and Geneva Laws. The Hague Law is related to the law that regulates the methods and tools that may be used for war. In contrast, the Geneva Law is associated with the law that governs the protection of combatants and civilians from the consequences of war³. Geneva law, which regulates the protection of war victims, consists of several basic agreements. These agreements are the four Geneva Conventions of 1949, each of which is:

- I. Geneva Convention of 1949 concerning the Improvement of the Condition of Wounded and Sick Members of the Armed Forces in Land Battlefields;
- II. Geneva Convention of 1949 concerning the improvement of the situation of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea;
- III. Geneva Convention of 1949 concerning the Treatment of Prisoners of War;
- IV. The 1949 Geneva Convention concerning the Protection of Civilians in Time of War. Apart from these four Conventions, in 1977, Additional Protocols I and II were added. Protocol I relates to the Protection of Victims of International Armed Disputes, while Additional Protocol II relates to the Protection of Victims of Non-International Armed Disputes⁴.

Article 1 of the Geneva Convention provides an obligation for high parties to respect

¹ Sri Mamudji Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta : Rajawali Pers, 2015 © 1983, 2015), accessed February 20, 2024, <https://www.rajagrafindo.co.id/produk/penelitian-hukum-normatif/>.

² Soerjono Soekanto, *Pengantar Penelitian Hukum* (Penerbit Universitas Indonesia (UI-Press), 2006).

³ GPH.; Haryomataran, *Sekelumit Tentang Hukum Humaniter* (Sebelas Maret University Press, 1994), accessed February 20, 2024, http://library.uinmataram.ac.id/index.php?p=show_detail&id=2183&keywords=.

⁴ Jean S. Pictet, *The Geneva Conventions of 12 August 1949 Commentary - IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (International Committee of the Red Cross, 1995).

and guarantee respect for this Convention in all circumstances. Respect means that the country concerned must implement the provisions contained in the Convention, and ensuring respect means that the government must carry out the necessary actions if there is a violation of the requirements of the Convention, including imposing sanctions.

In connection with the regulation regarding law enforcement mechanisms according to the 1949 Geneva Convention, you can see the provisions of Article 49 paragraph (1) of the Geneva Convention, which states that the high participating parties undertake to establish the laws necessary to provide effective criminal sanctions against people who carry out or order to commit any of the severe violations of this Convention as specified in the following Article⁵.

Based on the provisions of Article 49 (1) of the Geneva Convention, countries that have ratified it are required to issue a national law that provides effective criminal sanctions to every person who commits or orders to commit serious violations of the Convention. The mechanism contained in this provision is a mechanism where enforcement of International Humanitarian Law is carried out based on a national judicial process. This means that if a case of violation of humanitarian law occurs, the perpetrator will be prosecuted and punished based on federal laws and regulations and using the relevant national justice mechanism.

Suppose there are indications of violations

of humanitarian law in an armed conflict. In that case, the Commander should take action to stop the violations and/or, if necessary, impose sanctions on the perpetrators of these crimes. This can be seen in Article 87 of Additional Protocol I, which states

1. The major contracting parties and parties to the conflict should request military commanders, with respect to members of the forces under their command and other persons under their supervision, to prevent and, where necessary, take action and report to the competent authority for violations of the Convention and this Protocol;
2. In order to prevent and act upon violations, significant parties and parties to the conflict must request that, in accordance with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations. Their obligations to the Convention and this protocol,
3. High Contracting Parties and parties to the conflict shall request any commander who becomes aware that his subordinates or other persons under his supervision are about to commit or have committed a violation of the Convention or this protocol to initiate such measures as are necessary to prevent violations of the Convention or this Protocol and where appropriate commence disciplinary or criminal action against such violations.

The implementation of Article 87 of this Additional Protocol has been carried out within the TNI, I, where if a soldier violates humanitarian law, the Commander or superior has the authority to punish (Ankum). If the Commander or direct superior of the guilty soldier does not take action, then the Commander above him is obliged to take pu-

⁵ *The Geneva Conventions of 1949 and Their Additional Protocols - ICRC (International Committee of the Red Cross, 1949), accessed February 20, 2024, Read Common Article, G. II 50, G III 129, G. IV 146*<https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>.

nitive action. And so on, up to the highest level. Apart from that, Military and Civil Courts can also carry out their functions to uphold respect for the provisions of humanitarian law. Suppose all the mechanisms mentioned above are not functioning. In that case, correct cases of violations of humanitarian law can be taken over by an international mechanism, namely an ad hoc Court or a permanent Court⁶.

In the Geneva Conventions, there are procedures for investigating violations of the provisions of the Geneva Conventions. This can be seen in Article 52 G.I., Article 53 G.II, Article 132 G.III, and Article 149 G.IV, which state:

“At the request of a party to the conflict, an investigation shall be carried out in a manner agreed upon by the parties regarding any alleged violation of the provisions of the Convention. If there is no agreement regarding the procedure for the investigation, the parties shall agree to elect a person the referee (umpire) will decide the procedure to be followed. Once a violation has been committed, the parties to the dispute must put an end to it and must eradicate it without further delay.”

The above investigative procedural provisions are refined in the Additional Protocol by naming a mechanism carried out through the International Fact-Finding Commission. The task of this Commission is to find facts to ensure the implementation of International Humanitarian Law if there are actions that constitute a violation of the Geneva Conventions and their Additional Protocols. This Commission calls itself the International Humanitarian Fact-Finding Commission (IHFCC). This Commission has also been

formed as a permanent investigative body⁷.

The Commission's competence is to find facts and conduct investigations. It has the authority to facilitate, through its good services, the improvement of a country's behavior and respect for the Convention and Protocol I. This Commission only acts as a Judicial body and Judicial Court. The Commission did not issue a decision regarding the law regarding the facts obtained⁸. So, the Commission does not have the authority to decide on a case when conducting an investigation; the main thing that must be there is a request from a country to do so. It is the country or party to the dispute that can express the request. Individuals, organizations, or other representative bodies need this capacity. The duties and authority of the Commission are only limited to international armed conflicts or disputes. In the case of non-international armed disputes, the Commission expresses its willingness, provided that the parties involved have expressed their willingness to accept the investigation. Returning to the issue of implementation, to ensure the implementation of Humanitarian Law, all countries must take an active stance by carrying out several implementation actions at the national level⁹.

The required implementation actions that participating countries must carry out at the national level can be divided into four categories.¹⁰:

1. National legislative acts. For example, issuing the necessary laws to provide effective criminal sanctions in the event of violations (Articles 48, 49, 128, and 145, respectively of the Convention and Article

⁷Ibid.

⁸Ibid.

⁹Ibid.

¹⁰Ibid.

⁶ Arlina Permanasari et al., *Pengantar Hukum Humaniter* (Jakarta: ICRC, 1999).

84 PT I);

2. Organizational measures to be taken in peacetime. For example, the National Red Cross Society must be officially recognized by the government (Article 26 of Convention T); at each stage of research, creation, or purchase of weapons, each country must determine whether the use of such weapons is not prohibited by the provisions of applicable Humanitarian Law (Article 36 PTI);
3. Organizational measures are taken during armed conflict but must be prepared in times of Peace. For example, ICRC activities (Article 9 Conventions I, II, III, Article 10 Convention IV, and Article 81 Protocol I);
4. Actions related to the instruction and dissemination of Humanitarian Law. For example, disseminating the text of the Convention as widely as possible and including its teaching both in military education programs and in civilian education programs (Articles 47, 48, 127, and 144, respectively of the Convention and Articles 83 and 19 of the respective protocols.

For national legislative action, each participating country must take an active stance to enact the necessary laws to provide effective criminal sanctions for acts that constitute violations of Humanitarian Law, such as intentional killing, torture, or inhumane treatment, including biological experiments, causing deliberate infliction of great suffering or serious injury to body or health, as well as extensive destruction and confiscation of property which is not justified by military interests and which is carried out unlawfully and arbitrarily¹¹.

¹¹*The Geneva Conventions of 1949 and Their Additional Protocols - ICRC. See Articles 50, 51, 130, and 147*

The violations mentioned above are serious violations that can become the forerunner to the competence of International Criminal Law by categorizing them as international crimes such as war crimes.

Apart from the Geneva Conventions and Additional Protocols, which provide a way to use national justice mechanisms, it can also be seen in the Genocide Convention of 1948, which, in essence, states are required to carry out prosecutions against perpetrators of crimes of genocide by (a) enacting legislation based on the constitution which contains the imposition of punishments for persons guilty of committing the crime of genocide or other acts, (b) administering national justice in the country in which the crime was committed, and (3) carrying out extradition for perpetrators of the crime of genocide by excluding the crime as a political crime¹². "The actions of these countries also include providing necessary information to other countries regarding perpetrators who have committed serious violations, providing mutual legal assistance, accepting extradition requests, and the obligation to try perpetrators before the country's national courts¹³.

The national judicial mechanism can also be found in the Statute of the Ad Hoc Court of the Hague and Rwanda. In the preamble to the two Statutes, it is stated that each country will cooperate fully with the Ad Hoc International Court and its organs in accordance with the resolution and the Statute. Therefore, based on Article 29 and Article 28 of the Statutes

¹²DIETRICH SCHINDLER and JIRI TOMAN, *THE LAWS OF ARMED CONFLICTS—A COLLECTION OF CONVENTIONS, RESOLUTIONS AND OTHER DOCUMENTS* (Sijhoff & Noordhoff, 1981).

¹³Jose Luis Fernandes Flotes, *Repression of Breaches of The Law of War Committed by Individuals* (International Review of the Red Cross, 1991).

of the Hague and Rwanda Ad Hoc Courts, respectively, all states will take necessary actions based on the domestic laws of the countries concerned to implement the provisions of the Statutes and resolutions of the Court, including state obligations to comply with requests. - requests for assistance or orders issued by the Tribunal based on the Statute of the Tribunal.

In the 1998 Statute of the International Criminal Court (ICC), there is a signal to use a national court which reads, "International Criminal Court established under this Statute shall be Complement to national criminal jurisdictions." The Court will only exercise its jurisdiction when the national Court does not prosecute perpetrators of war crimes¹⁴.

For example, Australia is a country that applies a national court to war crimes. Australia has a number of legal products relating to the regulation of war crimes, including (1) the War Crimes Act of 1945, (2) the War Crimes Act of 1988, and (3) the International War Crimes Act of 1995. This law implies that if a war criminal who is subject to the jurisdiction of the Ad Hoc Court of The Hague and Rwanda flees to Australia, then the authorities and Law enforcers are obliged to hand over the perpetrators to ad hoc tribunals for trial.

Cases of Humanitarian Law Enforcement Through Criminal Courts

Bassiouni¹⁵ put forward the following definition of international crimes:

"International crimes are any conduct which is designated as a crime in a multilat-

eral convention will a significant number of state parties to it, provided the instrument contains one of ten penal characteristics."

International crime is any act stipulated in multilateral conventions and followed by a certain number of participating countries, even if it contains one of the ten criminal characteristics.

The ten criminal characteristics consist of the following:

1. Explicit recognition of acts deemed to be crimes under international law;
2. implicit recognition of the criminal nature of specific actions by establishing an obligation to punish, prevent, and demand punishment or punishment;
3. crime for specific actions;
4. obligation or right to sue;
5. the obligation or right to punish particular acts;
6. obligation or right to extradite;
7. obligation or fitting to cooperate in prosecution, punishment
8. including judicial assistance in the criminal process;
9. determination basis of criminal jurisdiction;
10. reference to the establishment of an international criminal court; And
11. removal of reasons for orders from superiors.

Let's look at the criminal characteristics as stated by Bassioni above. It seems that the violations regulated in the Convention, especially those relating to grave offenses, fall into the category of criminal characteristics. It's just that there needs to be an international statement that confirms that this act is a transnational crime that can be punished with criminal penalties. The reason is that, in principle, criminal jurisdiction (national criminal

¹⁴Rome Statute of the International Criminal Court, 1998, 1998, accessed February 20, 2024, https://legal.un.org/icc/statute/99_corr/cstatute.htm. See Article 1

¹⁵Romli Atmasasmita, *Pengantar Hukum Pidana Internasional* (Bandung: Refika, 2000).

law) is limited by international law¹⁶.

Throughout history, there have been several known cases of enforcement of international humanitarian law, namely war crimes which were decided by the Nuremberg Tribunal in 1945, the Tokyo Tribunal in 1946, the Tribunal that tried War Criminals in Ex-Yugoslavia (ICTY), and the Rwanda Tribunal (ICTR) and the International Criminal Court (ICC). The Nuremberg Tribunal was formed based on the Nuremberg Charter, also known as the London Charter. This Court has sentenced twenty-four suspects¹⁷.

The categories of crimes within the jurisdiction of the Nuremberg Court include three types, namely crimes against Peace, war crimes, and crimes against humanity. The legal regulation of the Court's jurisdiction can be seen in Article 6 of the Nuremberg Charter, which states as follows:

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

a. Crime Against Peace: namely, planning, preparation initiation to waging a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a standard plan or conspiracy for the accomplishment of any of the preceding;

b. War crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of the civilian population of or in occupied territory, murder or ill-

treatment of prisoner of war or persons on the seas, killing of hostage, plunder of public or private property, wanton destruction of cities, towns or villages, of devastation not justified by military necessity;

c. Crimes Against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the trial, or persecution on political, racial, or religious grounds in the 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.”

Article 6, apart from determining three categories of crimes that fall under the jurisdiction of the Court, also contains the meaning of individual responsibility of the perpetrators of these crimes. In this way, every perpetrator of this crime is not justified in arguing that what he has done is in the interests of the state so that it falls into the category of state responsibility. The principle of state responsibility vs. individual responsibility is regulated in Article 7 of the Court Charter, which states that the official position of the person, The perpetrator, whether as head of state or as a responsible official in a government institution, cannot be used as a reason to release the person concerned from his responsibility or to reduce the sentence imposed. The strengthening of this article is also regulated in Article 8, which states that the perpetrator committed the crime because of an order from his government or because of an order from his superiors and cannot be used as a reason to absolve the perpetrator of responsibility, but this can be used as a basis to reduce the sentence imposed by the Court.

The decision of the Nuremberg court re-

¹⁶Ibid.

¹⁷Timothy L. H. McCormack and Gerry J. Simpson, *The Law of War Crimes : National and International Approaches* (Kluwer Law International, 1997).

ally shocked the international community because it dismissed all notions that individuals could not be held responsible for the crimes they committed and also confirmed the meaning that in international law, there are not only moral sanctions but also criminal sanctions.

One example of the perpetrators of crimes at the Nuremberg trials was the Hermann Wilhelm Goering case¹⁸. In this case, Goering was charged with committing (1) joint planning or consensus (the standard plan or conspiracy), (2) crimes against Peace (crime against Peace), (3) war crimes (war crime), crimes against humanity (crime against humanity). The four crimes with which Goering was accused were all proven, and the Court found Goering guilty of all four crimes. Therefore, based on Article 27 of the IMT's Charter, the Court decided to sentence the defendant guilty of this charge. The defendant, Goering, was sentenced to death via the gallows¹⁹.

The second case for upholding IHL was the formation of the Tokyo Court on January 19, 1946. Known by its official name, the International Military Tribunal for the Far East. The Tokyo Tribunal was formed based on a statement or proclamation by the Supreme Commander of the Allied Forces in the Far East, General Douglas Mac Arthur; then, the United States drafted a Charter for this Tribunal, which basically refers to the Charter of the Nuremberg Tribunal. The Tokyo Court also has the same jurisdiction as the Nuremberg Court, namely, crimes against

Peace, war crimes, and crimes against humanity. The essence of the contents of this Charter is that it should not be used as an excuse to absolve the perpetrator of responsibility because of state actions and orders from superiors. However, this reason can be used as a basis for reducing the sentence²⁰.

The famous case that the Tokyo Court decided was the Matsui Iwane case²¹. In this case, two of the eighty defendants, namely Yosuke and Osami Nagano, died due to health problems during the trial. One defendant (Shumei Okawa) had a mental breakdown on the first day of the trial, so he was sent to a psychiatrist and was finally released in 1948.

Other defendants were found guilty, and many of them were found guilty of more than one charge. Seven people were sentenced to hang, sixteen people were sentenced to life imprisonment, and two others were given rather light sentences. Those convicted of hanging were found guilty, among other things, of inciting or being involved in committing wide-scale atrocities. Three of the sixteen people sentenced to life imprisonment died in prison between 1949 and 1950. Thirteen others were released on parole between 1954 and 1956. Two former Ambassadors were sentenced to seven and twenty years in prison. One died two years later, while the other, Shigemitsu, was released on parole in 1950 and appointed Minister of Foreign Affairs in 1954.

Apart from the Nuremberg Court and the Tokyo Court, as stated above, also after the Second World War, there were judicial courts that were formed before the ICC, namely the Yugoslav Court and the Rwandan Court.' This Court was established to try war criminals

¹⁸Devy K Sondakh, *Kejahatan Perang Dan Pengadilan Internasional* (Surabaya: Erlangga, 2000).

¹⁹*Charter of the International Military Tribunal - Annex to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis*, 1945, accessed February 20, 2024, <https://www.refworld.org/legal/constinstr/un/1945/en/21123>.

²⁰Permanasari et al., *Pengantar Hukum Humaniter*.

²¹Sondakh, *Kejahatan Perang Dan Pengadilan Internasional*.

in the former Yugoslavia and Rwanda. This Court is *ad hoc*, meaning that the Court is formed for a certain period and in a particular area only. This Court is also different from the Nuremberg and Tokyo tribunals, which were created by the victorious parties in the war. In contrast, the Yugoslav and Rwanda tribunals were created based on U.N. Security Council resolutions²².

The Court of the Ex-Yugoslavia was established based on PBE Security Council Resolutions Number 808 (February 22, 1993) and 872 (May 25, 1993). Then, based on U.N. Security Council Resolution No. 827 of 1993, it was amended by the U.N. Security Council No. 1166 of 1998.

The competence or jurisdiction of the Former Yugoslav Court is regulated in Articles 1-5, namely:

1. Serious violation of international humanitarian law;
2. Violationweight as intended in the 1949 Geneva Conventions;
3. Violation of the laws and customs of war
4. Genocide;
5. Crimes against humanity.

Another case is Anto Furundzija²³, Furundzija is accused of committing 14 crimes which fall into; unlawful detention of civilians, cruel treatment, torture, torture/rape, and murder. This charge was proven and sentenced to 18 years in prison.

The war crimes tribunal in Rwanda, commonly called the International Criminal Tribunal for Rwanda (ICTR), was established based on U.N. Security Council Resolution No. 955 dated November 8, 1994. The purpose of establishing this Court was to try people who committed genocide and other similar vio-

lations in the territory of neighboring countries and in Rwanda, which were committed between January 1, 1994, and December 31, 1994.

The competencies of the Rwandan Court are:

1. Genocide;
2. Crimes Against Humanity;
3. Violation of Article 3 common to Geneva Conventions and Additional Protocol II 1977 (violations of Article 3 common to Geneva Conventions and Additional Protocol II).

The case that supports the competence of this Court is the Jean Paul Akayesu case²⁴. Akeyesu has been proven to have committed crimes of genocide, crimes against humanity, and violations of Article 3 of the Geneva Conventions for which he was sentenced.

The last two Supreme Courts mentioned above each applied the principle of individual criminal responsibility towards those who commit crimes according to the Statute. It should also be noted that the ICTY procedural law system is common law, and the ICTR uses a mixture of civil law and standard law systems. As a comparison, it should also be pointed out that Australia has also tried war criminals. A famous case is the Polyukhovich case. Polyukhovich, who was 72 years old, was accused in January 1990 of 19 offenses (later amended to 18 charges) of murdering 24 men, women, and children and of being involved in the murder of 850 Jews in Ukraine between 1941 and 1943. The day before he appeared before the Adelaide court for the trial, Polyukhovich was shot in the chest and injured, but this did not cause the trial to be stopped.

After the High Court of Australia determined that the War Crimes Act was consti-

²²Ibid.

²³Ibid.

²⁴Ibid.

tutionally valid, the trial process began in October 1991. He was then tried before the Supreme Court of South Australia on two charges relating to the murder of 6 people. Five of the initial charges were dropped because several witnesses died after the trial process had begun; several of them were sick due to traveling from Europe to Australia, while one witness gave changing evidence before the Chief Federal Prosecutor.

He then filed a lawsuit based on five charges, including the two charges mentioned above, including his involvement in the murder of Jews in Serniki. After these accusations, on July 27, 1992, the Supreme Court declared that Polyukhovich was not guilty of all charges because the Court could not prove the testimony of witnesses, consisting of Eastern Europeans, that Polyukhovich had committed the massacre.

Another case in Australia is the Heinrich Wagner case²⁵. Wagner was prosecuted under the War Crimes Act of 1945 and accused of the murder of 19 Jewish children and railroad construction workers, as well as the murder of 104 Jews near the village of Ustinovka in Ukraine in 1942 and 1943. Wagner's trial involved 29 state witnesses foreign. However, the charges against Wagner could not proceed because the defendant suffered a heart attack before the trial. Therefore, the prosecution against Wagner was discontinued.

International Criminal Court (ICC) Mechanism

A spectacular development regarding the enforcement of international humanitarian law was the establishment of the International Criminal Court in July 1998, which is permanent. This Court was established to try people

who committed crimes that the international community categorized as severe crimes.

This Court was also formed as a complement to the National Criminal Court. This means that the ICC will only carry out its functions if the national Court cannot carry out its functions properly. This is emphasized in the Statute, which states that the ICC will work if the federal Court is unwilling (unwilling) and unable (unable) to try crimes within the ICC's competence. Thus, if a crime occurs that falls within the jurisdiction of the ICC, the perpetrator must first be tried by his national Court.

If the national Court is unwilling and unable to prosecute the perpetrator, then the ICC can carry out its function of trying the perpetrator of the crime. The types of crimes that fall under the jurisdiction of the ICC are:

- 1.Genocide;
- 2.Crimes against humanity;
- 3.War crimes;
- 4.Crime of aggression

Article 6 of the ICC Statute defines the crime of genocide as an act aimed at destroying in whole or in part a particular nation, ethnic, racial, or religious group. The crime in question is

1. Killing members of the group;
2. Causing serious bodily and mental harm to members of the group;
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
4. Imposing measures intended to prevent births within the group;
5. Forcibly transfer the children of the group to another group.

Article 7 of the ICC Statute mentions crimes that can be categorized as crimes against humanity. Article 8 of the ICC Statute

²⁵ Ibid.

explains what is meant by war crimes, which includes severe violations of the Geneva Conventions and other severe violations of the laws and customs of war that apply to armed disputes of an international and non-international nature.

Regarding crimes of aggression, it has yet to be formulated entirely in the Statute. Still, Article 5 paragraph (2) explains that the implementation of the Court's jurisdiction over crimes of aggression will be carried out after the receipt of a provision in the Article that determines what is meant by this crime and the conditions what is necessary for the Court to exercise its jurisdiction over the crime of aggression in question.

In connection with the implementation of the Court's jurisdiction, countries that ratify the ICC Statute are required to declare that they accept the Court's jurisdiction. This means that the act of confirming the ICC Statute by a country still needs to suggest that the Court can exercise its authority in that country. However, an action is still required from the country concerned, stating that the government accepts the Court's jurisdiction.

In the ICC Statute, several principles of criminal law are known, including *ne bis in idem*, *nullum crimen sine lege*, *nulla poene sine lege*, and non-retroactive. Apart from that, individual criminal responsibility is also known. Then, what is most important is that Article 28 regulates the duties of Commanders and superiors for actions carried out by their subordinates or subordinates.

In reality, the provisions in the 1949 Geneva Conventions and international agreements and other international customs relating to humanitarian law are not adhered to by parties involved in armed conflict, both in international and non-international armed con-

flicts. On the other hand, it turns out that the parties who committed the violations were not subject to effective criminal sanctions. Hence, the provisions in humanitarian law still need to be improved in their implementation.

For example, war crimes were committed by Israel against Palestinians in Gaza in the form of genocide, torture, and murder in the period from December 2008 to January 2009. More than 1000 civilians were killed, including women and children. Israel previously carried out collective punishment against Gaza residents by stopping the supply of water, electricity, and fuel for five days in January 2008%. The actions of Israel or the individuals who ordered and/or carried them out have clearly violated the provisions of humanitarian law. Still, in reality, there has been no effort to impose sanctions on the countries or individuals involved in these actions²⁶.

CONCLUSION

In the Implementation of Enforcement of International Humanitarian Law Cases, many effective criminal sanctions were found, and there were cases where criminal sanctions were not optimal and were not effective in punishing perpetrators of international crimes.

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