

BAB V

KESIMPULAN DAN SARAN

5.1. Kesimpulan

Keterlibatan aktor non-negara dalam konflik bersenjata adalah sesuatu yang tidak dapat dikesampingkan. Bahkan dalam pola konflik bersenjata ireguler kerap yang terjadi pada masa ini kehadiran aktor non-negara dalam konflik bersenjata nyaris tidak dapat dihindari. Perusakan terhadap benda cagar budaya dalam konflik bersenjata juga semakin sering terjadi dan menimbulkan permasalahan terkait penegakan hukum HHI dalam perkara-perkara semacam ini. Peraturan HHI yang menjadi perhatian utama dalam perkara perusakan benda cagar budaya ini adalah Konvensi Den Haag 1954 dan kedua protokolnya.

1. Berdasarkan penelitian yuridis normatif yang dilakukan oleh penulis, dapat disimpulkan bahwa baik Konvensi Den Haag 1954 maupun kedua protokolnya dapat diberlakukan kepada aktor non negara. Kesimpulan ini didasarkan pada ketentuan dalam Pasal 4 dan Pasal 19 dari Konvensi Den Haag 1954 dan Pasal 22 dari Protokol II 1999 yang telah diakui secara luas sebagai bagian dari Hukum Kebiasaan Internasional. Sehingga baik Konvensi Den Haag 1954 maupun kedua protokolnya dapat diberlakukan kepada aktor non negara meskipun aktor non-negara yang dimaksud tidak pernah menjadi peserta dari konvensi tersebut atau tidak pernah bersedia untuk tunduk pada konvensi tersebut. Adapun mekanisme penegakan konvensi tersebut terhadap aktor non-negara melibatkan sistem peradilan nasional negara-negara, ICC, bahkan dapat juga melibatkan Dewan Keamanan PBB. Di mana Konvensi Den Haag 1954 mengharuskan negara-negara pesertanya untuk menciptakan legislasi nasional untuk menegakan ketentuan-ketentuan dalam konvensi tersebut dan mengadili siapa pun yang melanggar ketentuan-ketentuan tersebut di bawah yurisdiksinya. Sementara ICC dalam hal ini baru dapat menjalankan fungsinya apabila negara tidak mampu atau tidak mau mengadili perkara perusakan benda cagar budaya oleh aktor non-negara tersebut dan negara yang bersangkutan menerima ICC untuk menjalankan fungsinya di dalam negaranya. Sedangkan intervensi PBB

dalam hal ini dapat dilakukan seandainya negara menolak untuk menerima yurisdiksi ICC di dalam negaranya. Intervensi ini dilakukan dengan tujuan untuk mencegah kerusakan yang semakin parah yang mungkin terjadi akibat tidak adanya penegakan hukum.

2. Dengan dapat diberlakukannya Konvensi Den Haag 1954 dan kedua protokolnya terhadap aktor non-negara, maka aktor non-negara itu juga dapat dimintai pertanggungjawabannya atas perusakan benda cagar budaya yang mereka lakukan dalam suatu konflik bersenjata. Adapun pertanggungjawaban ini bukannya tanpa batasan karena ada batasan-batasan tertentu sampai sejauh mana pertanggungjawaban ini dapat dimintakan terhadap aktor non-negara. Batasan yang dimaksud disini berkaitan dengan bentuk pertanggungjawaban itu sendiri yaitu terbatas pada pertanggungjawaban pidana individu dan aktor non-negara ini tidak dapat dimintai pertanggungjawaban sebagai sebuah kelompok karena Statuta Roma dalam hal ini tidak mengenal hukuman kolektif. Batasan lainnya berkaitan dengan yurisdiksi ICC itu sendiri yang terbatas pada negara-negara yang telah meratifikasi Statuta Roma. Dengan kata lain ICC tidak dapat mengadili perkara perusakan benda cagar budaya oleh aktor non-negara apabila seandainya negara tempat dilakukannya pelanggaran HHI itu bukan merupakan negara peserta dari Statuta Roma. Kecuali dalam hal ini terdapat Resolusi DK PBB untuk mengintervensi perkara tersebut di negara yang bersangkutan.

5.2. **Saran**

1. Ketentuan mengenai pemberlakuan HHI terhadap aktor non-negara yang melakukan perusakan terhadap benda cagar budaya dalam HHI pada umumnya dan Konvensi Den Haag 1954 berikut protokolnya pada khususnya perlu diperjelas dan diperlengkap agar dapat menciptakan kepastian hukum dan mencegah perusakan benda cagar budaya yang mungkin terjadi di kemudian hari.
2. Penegakan ketentuan dalam Konvensi Den Haag 1954 dan kedua protokolnya berikut dengan batasan-batasannya perlu diperkuat dan diperjelas agar menjamin kepastian hukum dan penegakan HHI yang lebih efektif.

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