

## **BAB V**

### **PENUTUP**

#### **5.1. Kesimpulan**

*Rome Statute of the International Criminal Court* tidak mengakui korporasi multinasional sebagai subyek dari yurisdiksinya sehingga sebagai sebuah entitas korporasi multinasional tidak dapat dimintakan pertanggungjawaban pidananya. Walaupun adanya sebuah proposal dari delegasi Prancis untuk mengakui korporasi sebagai subyek dalam rumusan statuta, draf tersebut gagal untuk disepakati secara konsensus oleh para negara anggota melihat tidak adanya kesamaan substansi pertanggungjawaban pidana korporasi secara universal maka hanya *individual criminal liability* yang menjadi yurisdiksi *International Criminal Court*. Kendati demikian penulis mencoba melihat kemungkinan bagaimana sebuah individu dibalik sebuah korporasi tetap dapat dipidana. Penulis menarik kesimpulan bahwa *identification doctrine* merupakan model pertanggungjawaban yang paling ideal dengan keterbatasan yurisdiksi mahkamah. *Identification doctrine* dapat menawarkan penerimaan dan stabilitas model pertanggungjawaban pidana menyeluruh yang diperlukan, yang dapat dimasukkan sebagai *individual criminal liability of corporate officials* baik sebagai pelaku utama maupun pelaku yang terlibat dalam sebuah kejahatan dari perspektif *Rome Statute of the International Criminal Court*. Dari empat kejahatan yang dapat dilakukan oleh individu dibalik korporasi hanya *war crimes* yang mengisyaratkan harus adanya keterlibatan kebijakan negara yang mendorong sebuah tindakan kejahatan perang oleh individu dibalik korporasi.

#### **5.2. Saran**

Penulis menyampaikan saran dengan berdasarkan pembahasan dan analisis dari penulisan hukum ini yang dapat menyatakan menyelesaikan masalah tersebut yaitu:

1. Dengan merefleksikan kepada sejarah kelam pelanggaran HAM berat pada Perang Dunia II, korporasi sebaiknya masuk dalam yurisdiksi *International Criminal Court* melalui amandemen dari *Rome Statute of the International Criminal Court*.

2. Setiap doktrin pertanggungjawaban pidana korporasi memiliki kelemahan masing- masing sehingga saran dari penulis, Negara-Negara yang telah mengadopsi *Rome Statute of the International Criminal Court* membuat *Rule of Procedure* dan *Elements of Crime* khusus bagi pertanggungjawaban pidana korporasi.dengan mengamandemen ketentuan-ketentuan *Rome Statute of the International Criminal Court*. Tidak hanya melalui sebuah amandemen dari *Rome Statute of the International Criminal Court*, opsi lain untuk menggulangi kejahatan HAM yang dapat dilakukan oleh korporasi dapat juga melalui sebuah *legally binding treaty* namun dalam hal ini penulis membuka ruang diskusi atau penelitian selanjutnya untuk dikembangkan dari penelitian hukum ini.

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