

## BAB V

### KESIMPULAN

Statuta Roma 1998 memberikan kewenangan Jaksa Penuntut *International Criminal Court* (ICC) untuk memulai *proporio motu investigations* namun atas izin dari sidang pra-peradilan, Dalam kasus ini Jaksa penuntut telah diberikan kewenangan untuk melakukan *proporio motu investigations* terhadap dugaan kejahatan yang terjadi di Afghanistan, termasuk dugaan kejahatan perang yang dilakukan oleh Angkatan Bersenjata Amerika Serikat dan *Central Intelligence Agency* (CIA) di Afghanistan dalam periode sejak 1 Mei 2003.

Amerika Serikat disisi lain telah lama menempatkan dirinya sebagai negara oposisi dari lembaga peradilan tersebut, hal tersebut tercermin dari langkahnya untuk tidak meratifikasi Statuta Roma 1998, seakan tidak cukup maka untuk menegaskan penolakannya terhadap ICC Amerika Serikat juga menerbitkan beberapa kebijakan seperti *American Service-Members Protection Act* 2002 (ASPA) yang memberikan kewenangan bagi Pemerintah Amerika Serikat untuk menolak kerjasama dengan ICC bahkan Amerika Serikat membuat Perjanjian Bilateral Kekebalan (*Immunity*) bersama negara-negara pihak statuta Roma 1998 untuk mencegah ekstradisi warga negaranya ke ICC. Namun dalam kasus serius tertentu yang melibatkan warga asing Amerika Serikat menunjukkan komitmennya untuk bekerjasama dengan ICC. Dari uraian tersebut terlihat bahwa Amerika Serikat dan ICC telah membentuk hubungan yang rumit sejak lama.

Dari berbagai polemik antara Amerika Serikat dan ICC nampaknya kewenangan *proporio motu investigations* jaksa terhadap kejahatan serius di Afghanistan ini telah menempatkan hubungan keduanya ke dalam titik terendah. Amerika Serikat merasa bahwa ICC tidak memiliki kewenangan terhadap warga negara Amerika Serikat karena Amerika Serikat bukanlah pihak dalam Statuta Roma 1998, namun demikian Afghanistan adalah negara pihak Statuta Roma 1998 yang tunduk pada kewenangan ICC. Maka sebagai bentuk penolakan tersebut Amerika Serikat telah mengancam dan mengintimidasi Jaksa dan orang-orang yang terlibat dalam proses penegakan hukum, sebagai bentuk nyata dari ancaman tersebut Amerika Serikat telah menerbitkan kebijakan untuk membatasi visa dan

menerapkan sanksi ekonomi kepada pejabat ICC dan seluruh orang terlibat bahkan keluarga dari pejabat ICC.

Dari kebijakan-kebijakan yang pernah ada, tampaknya kebijakan Amerika Serikat kali ini telah melewati batas. Kebijakan aktif Amerika Serikat tersebut merupakan bentuk *offences against the administration of justice* suatu pelanggaran yang menunjukkan campur tangan terhadap proses peradilan yang menghambat proses penegakan hukum, Tindakan ini di kriminalisasi oleh *Article 70* Statuta Roma 1998. Amerika Serikat telah dengan sengaja mengancam dan menerbitkan kebijakan sebagai bentuk pembalasan yang membuat terintimidasi dan terhalanginya Pejabat ICC dalam melaksanakan tugasnya, yang akhirnya membuat mandat peradilan tidak dapat terlaksana sebagaimana mestinya hal tersebut memenuhi unsur dalam *offences against the administration of justice*.

Secara materil tindakan ini dilarang, namun penulis menyadari akan kompleksitas pertanggungjawabannya, dimana Amerika Serikat tentu saja akan berdalih bahwa negaranya bukanlah negara pihak dalam Statuta Roma 1998 dan ICC mungkin akan menegaskan kewenangannya dengan regulasi yang ada, yang disusul dengan gejolak politik antara keduanya yang nampaknya akan membatasi perkara ini untuk dapat dibawa ke proses persidangan yang bahkan perkara kejahatan perang pun belum sanggup dibawa ke persidangan. Perdebatan tersebut tidaklah ada habisnya jika hukum yang ada masih dibatasi dengan berbagai perselisihan politik. Hal terpenting disini adalah penegakan hukum sebagai bentuk pertanggungjawaban setiap warga negara Amerika Serikat yang diduga melakukan kejahatan, maka jika Amerika Serikat enggan menerima yurisdiksi ICC, haruslah mengadili warga negaranya sendiri dengan mekanisme hukum domestiknya, sesuai Prinsip *Complementarity* maka ICC tidak akan mencampuri lagi kasus tersebut apabila telah dilakukan penegakan hukum yang memadai.

Fenomena ini menunjukkan bagaimana ICC sebagai lembaga peradilan independen dan terlihat kuat ternyata memiliki banyak kendala dalam prakteknya, nyatanya kerjasama suatu negara sangat mempengaruhi efektivitas lembaga tersebut. ICC merupakan harapan terakhir dari korban dan setiap orang yang berharap akan keadilan, ICC hadir untuk memerangi impunitas, negara-negara di

seluruh dunia seharusnya dapat menghormati ICC sebagai bentuk penghormatan kepada setiap korban dan juga penghormatan terhadap perdamaian dan keadilan internasional.

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