

BAB V PENUTUP

Kendati telah terdapat beberapa peraturan dalam Hukum Humaniter Internasional dan Hukum Pidana Internasional yang tidak memperbolehkan untuk merekrut anak sebagai tentara, pada faktanya anak-anak tetap direkrut dan digunakan oleh aktor-aktor negara maupun non-negara, terutama dalam NIAC. Selain itu, pada umumnya, hukum yang ada dan mekanisme implementasinya masih secara dominan difokuskan pada negara-negara. Oleh karena itu, timbul kesulitan dalam menerapkan peraturan yang ada kepada Kelompok Bersenjata Non-Negara dan meminta pertanggung jawaban atas pelanggaran dari peraturan yang ada.

Rekrutmen berupa *enlistment* dan *conscripting* anak di bawah 15 tahun ke dalam kelompok bersenjata pada NIAC digolongkan sebagai kejahatan perang dalam *Rome Statute*. Adapun, *Rome Statute* sebagai statuta dari ICC hanya memiliki yurisdiksi terhadap *natural persons*. Oleh karena itu, terdapat kebutuhan untuk mencari individu yang dapat dimintakan pertanggungjawaban atas kejahatan tersebut. Berdasarkan kasus ICC yang berkaitan dengan rekrutmen Tentara Anak oleh Kelompok Bersenjata Non-Negara dalam NIAC yaitu kasus Lubanga, Ntaganda, dan Ongwen, masing-masing dari mereka sebagai pimpinan dari Kelompok Bersenjata Non-Negara menjadi pihak yang bertanggung jawab secara individu atas kejahatan rekrutmen Tentara Anak. Hal tersebut dikarenakan sebagai pimpinan, mereka memiliki otoritas, kontribusi yang esensial dalam pelaksanaannya, serta peran yang besar dalam perencanaan, pelaksanaan, serta pembuatan kebijakan yang berkaitan dengan rekrutmen tersebut. Terkait dengan peran tersebut juga Lubanga, Ntaganda, dan Ongwen dinyatakan telah melakukan *commission* berdasarkan Pasal 25 ayat (3) butir (a) *Rome Statute*.

Adapun, untuk sebuah kasus dapat diadili di ICC, maka terdapat prosedur-prosedur yang harus dipenuhi. Pertama, adanya *referral* mengenai situasi tersebut oleh Negara, *Security Council*, atau *Prosecutor* secara *proprio motu*. Kedua, adanya *preliminary examination* yang terdiri dari *initial assessment*,

jurisdiction (temporal, teritorial, subject matter, dan personal), admissibility, dan justice assessment. Dengan itu, maka dimungkinkan untuk pimpinan dari Kelompok Bersenjata Non-Negara untuk dimintakan pertanggungjawaban individu atas rekrutmen Tentara Anak dalam Konflik Bersenjata Non-Internasional.

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