

BAB V

PENUTUP

5.1. Kesimpulan

Terdapat kekurangan atensi hukum terhadap status dari Private Military Companies sebagaimana PMC dapat bergerak dan melaksanakan tugas layaknya mercenaries, dalam berbagai konflik bersenjata internasional maupun non-internasional layanan PMC sering dipakai dalam melaksanakan tugas militernya suatu negara tanpa suatu dampak buruk yang dapat disangkutkan terhadap negara penyewa. Penggunaan PMC oleh negara seperti Rusia menimbulkan tantangan dalam penegakan IHL, karena PMC sering beroperasi di zona abu-abu hukum.

Secara organisasi, Wagner Group merupakan Kelompok ‘tentara bayaran’ Rusia yang melakukan operasi militer di seluruh dunia atas nama pemerintah Rusia. personel Wagner terdiri dari veteran militer Rusia hingga narapidana yang direkrut untuk bertempur di Ukraina. Mereka beroperasi dalam unit yang menyerupai struktur militer NATO, terbagi menjadi unit tempur, unit logistik, dan unit intelijen. Wagner berperan penting dalam konflik bersenjata global, sering mendukung rezim-rezim otoriter atau kelompok milisi tertentu. Pengaruh Wagner di konflik Rusia Ukraina, terutama di wilayah Luhansk dan Bucha dimana Wagner diindikasikan melakukan berbagai kejahatan perang. Meski secara resmi ilegal menurut hukum Rusia, Wagner tetap menerima dukungan dan pendanaan dari pemerintah Rusia untuk menjalankan operasinya. Integrasi Wagner ke dalam struktur militer formal Rusia masih terus berkembang setelah kematian pemimpin mereka, Yevgeny Prigozhin, pada Agustus 2023.

Kasus Wagner Group menunjukkan kompleksitas ini, di mana PMC tersebut menerima pendanaan publik tetapi tetap berada di luar kerangka hukum yang jelas. Dalam konflik bersenjata Rusia-Ukraina, Wagner Group berperan signifikan dengan melaksanakan operasi yang mendukung kepentingan Rusia. Situasi ini menimbulkan pertanyaan tentang bagaimana meminta pertanggungjawaban Wagner Group atas pelanggaran hukum humaniter

internasional, terutama ketika PMC tersebut secara teknis dilarang oleh hukum nasional tetapi dioperasikan dengan dukungan negara.

Dalam konflik russia ukraine, Wagner Group telah diduga melaksanakan banyak kejahatan perang dimanapun mereka ditempatkan. Kejahatan perang tersebut salah satunya merupakan tindakan *wilfull killing* atau pembunuhan warga sipil secara disengaja, *wilfull killing* dilarang sebagaimana tindakan ini merupakan suatu grave breaches Dalam Konvensi Jenewa I, II,III,IV dan juga additional protocol. Sebagaimana telah disebutkan bahwa wagner group bergerak dalam zona abu-abu hukum dengan minimnya hukum yang dapat dikaitkan terhadap PMC tersebut, penulis mencari bagaimana pertanggungjawaban dari individu wagner group tersebut atas pelaksanaan kejahatan an perang *wilfull killing* dalam konflik russia ukraina.

Selain pertanggungjawaban individu, karena rusia sebagai negara yang mendukung dari wagner group sendiri. Terdapat pertanyaan bagaimana pertanggungjawaban dari negara sebagai pihak yang mendukung dan melibatkan wagner group dalam konflik bersenjata internasionalnya bertanggungjawab atas tindakan kejahatan perang yang mereka lakukan, hal ini sebagaimana seperti kasus yang telah terjadi sebelumnya yaitu Nicaragua Case. Nicaragua Case menjelaskan mengenai Pasukan Contras dengan hubungannya terhadap pemerintahan amerika serikat yang membantu dan memberikan arahan kepada pasukan Contras dalam konflik bersenjata. Dimana disebutkan bahwa dalam membuktikan keterkaitan antara negara dan tindakan dari bawahannya harus melalui beberapa rangkaian test tersendiri, test tersebut merupakan test *Strict Control test* dan *Effective Control test*. Pada aplikasi pertanggungjawaban dari rusia sebagai state controller pihak Wagner harus menggunakan *Strict Control Test* dimana pada test tersebut harus melalui

Dari pertanggungjawaban tersebut, untuk proses selanjutnya terkait proses pertanggungjawaban individu dapat diadili berdasarkan prosedural negara ukraina pada ICC, dan Pertanggungjawaban negara dapat diadili berdasarkan hak klaim dari *Injured State* yang diberikan kepada negara yang melakukan kerugian terhadap *Injured state* dan kemudian melakukan reparasi yang patut.

5.2 Saran

Berdasarkan Kesimpulan tersebut terdapat beberapa saran yang dapat dikemukakan oleh penulis. Pertama, diperlukan penguatan kerangka hukum internasional yang spesifik dan rinci untuk mengatur operasional PMC, termasuk pembeda utama status hukum mereka dalam konflik bersenjata. Langkah ini harus disertai dengan peningkatan mekanisme pengawasan melalui pembentukan badan pengawas internasional yang independen dan memiliki kewenangan untuk melakukan investigasi serta memberikan rekomendasi tindakan hukum yang diperlukan. Selain itu, kolaborasi internasional antara negara-negara dan organisasi internasional harus ditingkatkan untuk memastikan bahwa PMC yang terlibat dalam kejahatan perang diadili secara adil dan efektif.

Kedua, kurangnya fokus pada pertanggungjawaban penggunaan dan tindakan PMC perlu diatasi melalui program pendidikan dan pelatihan wajib bagi personel PMC tentang hukum humaniter internasional dan hak asasi manusia. Negara-negara pengguna jasa PMC juga perlu mengembangkan kebijakan nasional yang komprehensif yang mengatur kontrak, tanggung jawab, dan batasan operasional PMC, serta menjamin transparansi dalam pembiayaan PMC untuk mencegah penyalahgunaan dan korupsi. Selain itu, penting untuk membentuk mekanisme yang jelas dan efektif untuk memberikan kompensasi dan dukungan kepada korban pelanggaran yang dilakukan oleh PMC, termasuk pembentukan dana kompensasi internasional yang dapat diakses oleh korban. Dengan langkah-langkah ini, diharapkan dapat tercipta kerangka hukum dan mekanisme pengawasan yang lebih efektif untuk mengatur operasional PMC dan memastikan adanya pertanggungjawaban yang jelas atas pelanggaran hukum yang mereka lakukan.

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