

BAB V

KESIMPULAN

Berdasarkan pernyataan penelitian yang dikaji dengan menggunakan kerangka konseptual serta teori yang telah dipaparkan pada bab 1, dengan memperhatikan kumpulan data yang tersusun di bab II, serta memanfaatkan analisa dalam bab III dan bab IV, penulis berhasil menjawab pernyataan penelitian mengenai, ***“Bagaimana posisi bargaining power Palestina (PA) menggunakan International Criminal Court sebagai instrumen hukum?”*** secara tersusun dan konseptual. Maka, penulis berhasil mendapat kesimpulan sebagai berikut: **Palestina masih memiliki posisi bargaining power yang lemah setelah menggunakan (instrumentalisasi) lembaga peradilan ICC sebagai instrumen hukum.**

Hal ini dapat dilihat dari analisa peneliti terkait posisi *bargaining power* Palestina sebelum melakukan instrumentalisasi terhadap ICC dan perbandingannya setelah melakukan instrumentalisasi dimana sebelumnya posisi *bargaining power* Palestina cukup lemah ditandai dengan ketidakmampuannya dalam memberikan ancaman yang kredibel dan memberikan janji maupun konsesi. Bentuk ancaman yang diberikan adalah ancaman *walk out* (negosiasi pasca Camp David Desember 2000 dan Negosiasi 14 April 2010) dan ancaman menolak bernegosiasi (negosiasi Januari 2011) dimana Palestina bersikap *“all or nothing”*. Tidak kredibelnya ancaman tersebut dapat dilihat melalui dua hal: 1)

Minimnya tindakan atau respon Israel terhadap ancaman Palestina, dan 2) penyebab dibalik tidak kredibelnya ancaman tersebut.

Secara keseluruhan, minimnya respon Israel terhadap ancaman Palestina saat itu terlihat dari tindakannya yang tetap melakukan hal yang bertentangan dengan *status quo* Palestina seperti melanjutkan pembangunan pemukiman ilegal serta tidak terburu-buru melakukan negosiasi maupun penawaran yang menguntungkan, dan pernyataan dari pihak Israel sendiri yang menjadi bahan analisa peneliti. Palestina untuk meredam ancaman tersebut. Peneliti mendapatkan bahwa penyebab dibalik tidak terancamnya Palestina dapat dilihat dari posisi Israel sebagai *occupied power* yang memiliki kontrol yang kuat terhadap Palestina sebagai *occupied territory* (wilayah yang diokupasi). Dengan kondisi demikian, Israel tidak merasa terancam karena memiliki kontrol yang kuat terhadap Palestina dan pada akhirnya Palestina harus menanggung kerugiannya sendiri.

Dengan keluarnya Palestina dari negosiasi maka Palestina sendiri yang harus menanggung kerugian potensi kesepakatan yang dapat muncul dari negosiasi tersebut karena dengan statusnya sebagai *occupied territory* Palestina dianggap lebih membutuhkan negosiasi tersebut dibanding Israel. Kuatnya kontrol Israel sebagai *occupied power* terhadap Palestina membuat Palestina tidak dapat menawarkan janji ataupun konsesi apapun kepada Israel. Dengan sikap “*all or nothing*” yang dimainkan oleh Palestina dalam negosiasi tersebut, maka Palestina pada dasarnya tidak menawarkan konsesi karena segala bentuk konsesi

merupakan bentuk kompromi dari kepentingan nasionalnya yang merupakan *status quo* negara itu sendiri.

Dengan posisi *bargaining power* Palestina yang lemah sebelumnya, maka Palestina mencoba menggunakan ICC untuk menaikkan posisi *bargaining power*nya dalam negosiasi. Dalam hal ini, Palestina menggunakan ICC sebagai ancaman pada Israel yaitu terkait rencana keanggotaannya (Cairo Talks 2014) dan status penyerahan kasusnya pada pengujian awal (Negosiasi Aqaba 2016). Peneliti menemukan bahwa Palestina tidak melakukan instrumentalisasi ICC sebagai bentuk janji kepada Israel namun disatu sisi juga tidak menawarkan janji atau konsesi apapun kepada Israel. Masih sama dengan sebelumnya, hal ini dikarenakan kuatnya kontrol Israel sebagai *occupied power* terhadap Palestina sebagai *occupied territories*.

Pertama, tidak kredibelnya ancaman Palestina setelah instrumentalisasi ICC dapat dilihat dari minimnya respon Israel. Pihak Israel justru mengeluarkan sejumlah pernyataan yang menjadi bahan analisa peneliti dibalik tidak kredibelnya ancaman tersebut. Israel tetap menjalankan kontrolnya terutama pada jalur Gaza yang menjadi fokus *status quo* Palestina saat itu dan tidak terburu-buru menggelar negosiasi untuk memberikan sejumlah penawaran yang berpihak pada Palestina untuk meredam keanggotaan dan aktifitasnya dalam ICC. Dalam hal ini, peneliti menyebabkan bahwa penyebab dari tidak terancamnya Israel adalah karena pihak Israel menganggap ICC merupakan instrumen hukum yang kurang tepat atau tidak bisa memenuhi kepentingan Palestina.

Hal ini dikarenakan sebagai instrumen hukum dalam lingkup politik, posisi yurisdiksi ICC lebih banyak menyulitkan dibanding menguntungkan Palestina. Pertama, secara teritorial, meskipun ICC memiliki yurisdiksi atas bentuk kejahatan yang terjadi di wilayah Palestina, yurisdiksi Israel secara normatif dalam Perjanjian Oslo II dapat menyulitkan Palestina. Selain itu, pihak Palestina sendiri dapat beresiko untuk diadili.

Disisi lain, proses pengujian awal yang dilakukan ICC terhadap Palestina dapat berlangsung lama karena adanya potensi minimnya kerjasama dari pihak yang bersangkutan dan friksi internal diantara Hamas dan Fatah. Secara garis besar, ICC tidak memiliki yurisdiksi terhadap Israel yang bukan merupakan negara anggota ICC dan negara yang menerima yurisdiksi ICC. Selain itu, perlu dipahami kembali bahwa yurisdiksi negara berdaulat berada dalam posisi yang lebih tinggi dibanding hukum internasional dan perangkatnya.

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