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Expectations and Reality of International Dispute Resolution

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Abstract
If we look at the provisions contained in the United Nations (especially in its preamble), it will appear that the purpose of the establishment of the United Nations is international peace and security because the United Nations was indeed formed with the background of World War I and II. In contrast, if we pay attention to the provisions of the International Humanitarian Law, the war cannot be prevented. Instead, efforts are made to humanize war. Based on the research, it turns out that the United Nations is not a neutral organization. The United Nations is a political organization run by superpowers, especially The Big Five (United States, Soviet Union, England, France and China). These five countries have veto rights and other advantages so that in international dispute resolution, it often affects the final decisions. Some decisions from ad Hoc Courts, for example, are influenced by these big countries, such as the case of Saddam Hussein. Likewise, the US policy towards cases between Israel and Palestine and terrorism is also evident. Accordingly, this normative research with a case study approach was conducted by taking samples from popular cases in international political issues. The combination of analysis from international provisions with the facts should push the analysis to be more objective.

Keywords: International dispute resolution; law of war; humanitarian law; international criminal court.

Abstrak
Jika kita melihat ketentuan yang terkandung dalam Perserikatan Bangsa-Bangsa (terutama dalam pembukaannya), akan tampak bahwa tujuan berdirinya Perserikatan Bangsa-Bangsa adalah perdamaian dan keamanan internasional karena Perserikatan Bangsa-Bangsa memang dibentuk dengan latar belakang Perang Dunia I dan II. Sebaliknya, jika kita memperhatikan ketentuan Hukum Humaniter Internasional, perang tidak dapat dicegah. Sebaliknya, upaya dilakukan untuk memanusiakan perang. Berdasarkan penelitian tersebut, ternyata Perserikatan Bangsa-Bangsa bukanlah organisasi yang netral. Perserikatan Bangsa-Bangsa adalah organisasi politik yang dijalankan oleh negara adidaya, terutama The Big Five (Amerika Serikat, Uni Soviet, Inggris, Prancis, dan Cina). Kelima negara ini memiliki hak veto dan keuntungan lainnya sehingga dalam penyelesaian sengketa internasional seringkali mempengaruhi keputusan akhir. Beberapa keputusan dari Pengadilan ad Hoc, misalnya, dipengaruhi oleh negara-negara besar ini, seperti kasus Saddam Hussein. Demikian juga, kebijakan AS terhadap kasus-kasus antara Israel dan Palestina dan terorisme juga terbukti. Penelitian normatif dengan pendekatan studi kasus ini dilakukan dengan mengambil sampel dari kasus populer dalam isu-isu politik internasional. Kombinasi analisis dari ketentuan internasional dengan fakta harus mendorong analisis menjadi lebih objektif.

Kata kunci: *Penyelesaian Sengketa Internasional; hukum perang; hukum humaniter; pengadilan kejahatan internasional*

Introduction

When we talk about resolving international disputes, theoretically, there are two ways, by peaceful means or if forced to use violence. Peaceful methods are required by the

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United Nations Charter (especially in its preamble and Article 2 paragraph (4) and Article 51. The method of violence is regulated in the "Law of War," which is now more popularly known as International Humanitarian Law). At the end of World War II, long before the formation of the United Nations, violent methods had become a habit in resolving disputes. Napoleon Bonaparte used war to control Europe in the nineteenth century, while Robert Lansing in 1919 said: "To declare war is one of the highest acts of sovereignty", while the eminent Romanian scholar Ion Diocanu said: "...in many cases recourse to violence has been used and continues to be used in international relations, and the use of peaceful way and means is not yet the rule in international life" (Adolf, 2006). Such a condition, of course, applies to the law of the jungle that whoever is strong is in power, while the weak will be oppressed, enslaved, employed without getting enough payment, and so on. Thus, if a nation or state wants to be sovereign and powerful, the Law of "Survival at the fittest" applies (the strong party is the one who survives).

The jurists of war say that there is more time in this world for war than peace. War is something natural and cannot be prevented. Then the only way is to "humanize war". The term "Law of War" is no longer popular. This Law is better known as "International Humanitarian Law," which prioritizes protecting people who are victims of war, whether they are members of the armed forces or ordinary civilians. Humanitarian Law abandons old ideas, the principle of enemy relations (between parties to a dispute with one another) and accepts the principle of human rights that must protect all people in all circumstances, without discrimination (Islami, 2015).

In the Middle Ages, quite a number of famous writers poured their thoughts on the Laws of War. For example, Linagno (1360) wrote "De Bello", Francisco Victoria (1514) wrote "De Jure Belli," and Grotius (Hugo de Groot) wrote, "De Jure Belli ac Pacis" (1625). The 30 Years' War in Europe ended with the signing of a peace treaty in the city of Munster (Peace of Westphalia) in 1648, which was followed later by World War I and World War II is one example of a dispute that formed international Law known today.

In "non-violent" inter-state disputes, it is hoped that in resolving disputes, the parties do not directly submit them to court bodies but should be resolved through political channels. If the political settlement is a "dead end," a legal settlement will be taken. For example, the dispute between Malaysia and Indonesia regarding the islands of Sipadan and Ligitan was finally resolved through the Inter-national Court of justice/ICJ/International Court because negotiation, mediation, and other methods are difficult to achieve the target. The legal basis for the Court to exercise its jurisdiction is the agreement of the disputing parties. So it is often said that the International Court of Justice is "Complementary." If you do not agree to take the matter to the International Court of Justice, then the International Court of Justice does not have jurisdiction over it.

Theoretically, Legal or judicial disputes - Political or nonjusticiable disputes can always be resolved by the International Court of Justice, no matter how difficult a dispute is, even if there are no arrangements because courts can resolve them based on the principle of "Property and Feasibility" (*Ex Aequo et Bono*) (Adolf, 2006). Legal disputes are disputes that affect the vital interests of the state, such as territorial integrity and honor or other interests. Some argue that legal disputes are disputes where the application of existing laws is sufficient to produce a decision in accordance with justice between countries with the progressive development of international relations. It can also be said that a legal dispute is a dispute related to a dispute over legal rights, which is carried out through a claim that requires a change to existing law. This last opinion was followed by the International Court of Justice.

According to Waldock, the determination of a dispute as a legal or political dispute depends entirely on the parties concerned. Meanwhile, according to Oppenheim and Hans Kelsen, there is no scientific justification and no basic objective criteria that underlie the distinction between political disputes and legal disputes. However, every dispute has a political aspect and a legal aspect. These disputes are usually related to sovereign states. It is possible that a dispute that is considered a legal dispute contains high political interests from the country concerned or vice versa.

Here's Oppenheim and Kelsen's opinion

> All disputes have their political aspects by the very fact that they concern relations between sovereign states. Disputes which, according to the distinction, are said to be of a legal nature might involve highly important political interests of the concerned states. Conversely, disputes reputed according to that distinction to be of a political character more often than not concern the application of a principle or a norm of International Law.

In addition to using the term "dispute", the UN Charter uses the term "situation." Article 34 of the UN Charter: The Security Council may investigate any dispute or any "situation" which may lead to international friction or give rise to a dispute.

The term situation is interpreted broadly as a situation that can endanger peace or cause friction in international disputes or disputes that are not actually ongoing disputes between countries. The word Situation is contained in relation to the functions of the United Nations and/or the duties of the Security Council. It is not placed under an organization or body that has legal competence (Court). Therefore the situation indicates a situation that can give birth to war or dispute. The situation is in the form of relations between countries that are in tension or "hot."

Research Problems

This article discusses two issues. *First*, how the role of international law in peaceful settlement? and *second*, how war in the United Nations and the International Court of justice perspectives?

Research Methods

This normative research with a case study approach was conducted by taking samples from popular cases in international political issues. The combination of analysis from international provisions with the facts should push the analysis to be more objective.

Discussion

The Role of International Law in Peaceful Settlement

In principle, International Law strives for relations between countries to be established through friendly relations among states and does not expect disputes. International Law provides basic rules for disputing countries to resolve their disputes. International Law also provides free choice to the parties regarding the method, procedure or effort that should be taken to resolve the dispute. Modern international Law merely advocates a peaceful settlement, whether the dispute is between countries or between countries and other subjects of International Law. In fact, International Law does not advocate any means of violence at all. Therefore, The Hague Peace Conference of 1899 and 1907 emerged to reduce the number of weapons. Starting from the initiative of Russian Tsar Nicolas II in 1898. This proposal was welcomed by the Queen of the Netherlands and finally invited other countries, generally European countries, the United States and Japan.

The significance of the Conference, among others, made an important contribution to "International Humanitarian Law and also made an important contribution to the rules for the peaceful settlement of disputes. Next Development:

1. The Convention for the pacific Covenant of the League of nations in 1919
2. The Statute of the Permanent Court of International Justice (Statute of the Permanent International Court of Justice of 1921);
3. The General Treaty for the Renunciation of War in 1928;
4. The General Act for the Pacific Settlement of International Disputes in 1928;
5. Charter of The United Nations and the Statute of the International Court of Justice 1945;
6. The 1955 Bandung Declaration, which among other things stated: "Settlement of all disputes by peaceful means such as negotiations as well as other peaceful means of the parties' own choice in conformity with the United Nations Charter."
7. The Declarations of the United Nations on principles of International Law concerning Friendly Relations and cooperation among states in accordance with the Charter of the United Nations on October 24, 1970;
8. The Manila Declaration on Peaceful Settlement of Disputes between States, November 15, 1982.

Basic Rules for Peaceful Dispute Resolution in the United Nations Charter, first of all, it should be mentioned here that the nuances of peace have been seen in the UN preamble, which reads:

> WE, THE PEOPLES OF THE UNITED NATIONS, DETERMINED
> to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and • to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and • to establish conditions under which justice and respect for the obligations arising from treaties and other sources of International Law can be maintained, and • to promote social progress and better standards of life in larger freedom,

It appears that the members of the United Nations, among others, have promised to save future generations from the cruelty of wars that have occurred twice and caused tremendous suffering. Then let's take a look at the articles below:

> Article 1 paragraph 1 of the United Nations Charter;
>
> To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and to bring about by peaceful means, and in conformity with the principles of justice and International Law, adjustment or settlement of international disputes or situations which might lead to a breach of peace.

Article 2 paragraph (3) of the United Nations Charter;

All members shall settle their international disputes by peaceful means in such a manner that international peace and security are not in danger:

Article 2 paragraph (4) of the United Nations Charter;

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any manner inconsistent with the purpose of the United Nations

Article 33 of the United Nations Charter (Pacific Settlement of Disputes)

1. The parties to any disputes, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article-51-United Nations-Charter

Nothing in the present charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the security council under the present charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

United Nations General Assembly Resolution No 2625 (XXV) 1970, October 24, 1970 States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry and mediation, conciliation and arbitration, judicial settlement, resort to regional agencies or arrangement or other peaceful means of their choice.

This resolution was reinforced by MU Resolution No. 40/9 (November 8, 1985) and MU Resolution No. 44/21 (November 15, 1989). These resolutions encourage states to "promote international peace and security" and international cooperation in all aspects in accordance with the United Nations Charter. Based on Article 33 of the UN Charter and the resolutions mentioned above, a peaceful settlement is divided into 2 groups:

1. Diplomatic settlement: negotiation, investigation, mediation and conciliation in addition to other methods that are still possibly chosen by the parties. The first method of negotiation is a method that does not involve a third party but directly involves the disputing parties. The other ways are ways that involve a third party in it.
2. Legal Settlement: Arbitration and Trial.

The peaceful settlement desired by the United Nations, as we can see in the provisions of the articles of the United Nations Charter, is indeed a top priority, a legal ideal, but in reality, these beautiful provisions and teach peace are rarely realized in practice. Therefore, people started to talk about what if what happened was violent ways like what happened in World War I and II?

The discussion of the material on the International Court of Justice is actually a fairly complex issue. Why is that? Because the International Court of Justice is part of International Criminal Law. The opinion of Cryer (2010) in his book "An Introduction to International Criminal Law and Procedure" is as follows:

> International Criminal Law...encompasses not only the law concerning genocide, crimes against humanity, war crimes and aggression but also the principles and procedures governing the international investigation and prosecution of these crimes.

The word "Procedure" refers to procedural Law, or how the process of examining and resolving international criminal cases in an international court institution with laws relating to the matter. Cryer's opinion above is still in the narrow category of opinion because what is meant by international crimes is limited to 4 (four) crimes: genocide crime, Crimes against humanity, War Crimes and Crimes of Aggression. This provision is taken from the provisions of Article 5 of the 1998 Rome Statute) as follows:

> Article 51 Crimes within the jurisdiction of the Court The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression.

While the broad opinion can be seen in Bassiouni's (1956) opinion, which says:

> "International Criminal Law is a product of the convergence of two different legal disciplines which have emerged and developed along different paths to becoming complimentary and coextensive. They are the Criminal law aspect of International Law and the international aspect of national criminal Law."

With this opinion, Bassiouni said that international crimes do not only consist of 4 crimes but 28.

Based on the internationalization of crimes and the characteristics of international crimes, in the context of international criminal law, international crimes have a hierarchy. From 1812 to 2003, based on 281 International Conventions, there were 28 categories of international crimes as follows:

1. Aggression.
2. Genocide.
3. Crimes against humanity.
4. War crimes.
5. Unlawful possession or use or emplacement of weapons.
6. Theft of nuclear materials.
7. Mercenaries.
8. Apartheid.
9. Slavery and slave-related practices.
10. Torture and other forms of cruel, inhuman or degrading treatment.
11. Unlawful human experimentation.
12. Piracy.
13. Aircraft hijacking and unlawful acts against international air safety.
14. Unlawful acts against the safety of maritime navigation and the safety of platforms on high seas.
15. Threat and use of force against internationally protected persons.
16. Crimes against United Nations and associated personnel.
17. Taking of civilian hostages.
18. Unlawful use of the mail.
19. Attacks with explosives.

20. Financing of terrorism.
21. Unlawful traffic in drugs and related drug offenses.
22. Organized crime.
23. Destruction and/or theft of national treasures.
24. Unlawful acts against certain internationally protected elements of the environment.
25. International traffic in obscene materials.
26. Falsification and counterfeiting.
27. Unlawful interference with submarine cables.
28. Bribery of foreign public officials.

Based on the 28 categories of international crimes, M. Cherif Bassiouni divided the levels of international crimes into three. *First*, international crimes, referred to as international crimes, are part of jus cogens. The typical characteristic of international crimes is related to human peace and security as well as fundamental human values. Eleven crimes occupy the top hierarchy as international crimes:

> Aggression, Genocide, Crimes against humanity. War crimes, theft of nuclear materials. Mercenaries, Apartheid, Slavery and slave-related practices. Torture and other forms of cruel, inhuman, or degrading treatment. Unlawful human experimentation.

Second, international crimes are known as international delicts. The typical and character of international delicts relates to protected international interests involving more than one country or victims and losses arising from one country. Thirteen international crimes are included in international crimes:

1. Piracy.
2. Aircraft hijacking and unlawful acts against international air safety.
3. Unlawful acts against the safety of maritime navigation and the safety of platforms on the high seas.
4. Threat and use of force against the internationally protected person.
5. Crimes against United Nations and associated personnel.
6. Taking of civilian hostages.
7. Unlawful use of the mail.
8. Attacks with explosives.
9. Financing of terrorism.
10. Unlawful traffic in drugs and related drug offenses.
11. Organized crime
12. Destruction and/or theft of national treasures.
13. Unlawful acts against certain internationally protected elements of the environment.

Third, an international crime is known as an international infraction. In normative international criminal Law, an international infraction is not included in the category of international crime and international delicts. There are only four crimes covered by international Infraction:

1. International traffic in obscene materials.
2. Falsification and counterfeiting.
3. Unlawful interference with submarine cable.
4. Bribery of foreign public officials.

The broad and narrow differences of opinion regarding International Criminal Law can be understood logically given the differences in approach and focus of study from the young field of science which is still in the search for this form. It can also be said that this International Criminal Law will always develop in line with advances in technology and international relations.

Prior to the 1990s, the term International Criminal Law overlapped with the term Transnational Criminal Law. Both refer to a set of rules in domestic criminal Law that regulate state jurisdiction over crimes that have transnational aspects. The main source of this Law is the domestic rules. However, after the 1990s, an international criminal court institution that was mandated by international Law emerged, the ICTY (International Criminal Tribunal for the former Yugoslavia) dan ICTR (International Criminal Tribunal for Rwanda) (Pasek, 2018), then began to develop the specifications of the International Criminal Law that are different from the previous understanding. The enforcement of International Law, especially in cases of violations of International Law, has not been carried out in accordance with the principles of justice and taking into account the principle of Equality Before the Law.

With the development of technology and international relations, the legal problems faced by each country are not only domestic affairs or internal affairs but also matters that arise as a result of the relationship of a country with other countries, both in bilateral, regional and universal relations. This means that every country must be prepared to face the possibility of an international conflict.

Thus philosophically, it can be seen that the conditions of peace and war are two conditions that go hand in hand in the drama of human life in this world. Therefore, the peaceful side is regulated in the UN Charter, where all the provisions of its articles invite peace. Even threatening other countries is not allowed (note the provisions of Article 2 paragraph (4) of the UN Charter). Countries are also only allowed to wage war if it is carried out in order to defend themselves from attacks by other countries (Article 51 of the UN Charter).

On the other hand, on the violent side, war is a reality that occurs in human life. So the war cannot be prevented, but steps are taken to make the war run humanely (to humanize war). Therefore, war must still be regulated in complete regulations and provide legal protection. Moreover, it can force perpetrators of violations of the Law of War (war criminals) to be tried fairly and impartially (fair).

With these two conditions, the provisions of International Humanitarian Law (International Humanitarian Law) cannot be confronted with the United Nations Charter in the sense that they are mutually contradictory because they both have different backgrounds and philosophies. We need and accept both as a reality and a will from God to solve the big problems in this world properly and correctly based on the principles of justice.

War in the United Nations and the International Court of Justice Perspectives

Due to World War I and II, most people recognize war as one of the forms of violence that causes the most victims. What is more concerning is that most of the victims of the war are civilians. However, it must be understood that in the perspective of International Humanitarian Law, war is one way to resolve disputes, with a note if peaceful means can no longer be taken or it can be said if there has been a deadlock. What exactly is war? Oppenheim defines war as ... a contention between two or more states, through their armed forces, for the purposes of overpowering each other and imposing such conditions of peace as the victor pleases.

The desire to become a superpower has caused the United States to make violence the best and fastest way. At the beginning of World War II, there was concern among physicists

in the West that Hitler was thought to have the ability to develop nuclear weapons. At the request of his friend Leo Szilard on August 2, 1939, Albert Einstein wrote a letter to the US President at that time, Franklin Delano Roosevelt and suggested that the United States develop an atomic bomb (uranium) before Germany was preceded by it, Einstein's (Wirengjurit, 2002)letter said, among others:

> I believe, therefore, that it is my duty to bring to your attention that extremely powerful bombs of a new type may thus be constructed. A single bomb of this type, carried by boat and exploded in a port, might very well destroy the whole port together with some of the surrounding territory.

Finally, on December 6, 1941, which was 1 day before Pearl Harbor was attacked by Japan, the US government administration decided to start the project of making an atomic bomb, and in August 1942, it was officially named the Manhattan Project. This gigantic project was led by the eminent physicist Robert Oppenheimer. This bomb test itself was carried out on July 16, 1945, in the Alamogordo field, New Mexico, USA.

It was proven that Germany did not have nuclear weapons as reported, so now Leo Szilard instead wrote a letter to the President, which essentially warned of the dangers of this atomic bomb for the world and mankind. Many physicists later opposed the use of this atomic bomb, especially against Japan. The proposal of this group of physicists was rejected on the grounds. First, the test may not have been completely successful and second. The most important thing is that August 9, 1945, was the deadline for the agreement made by the Soviet Union to declare war on Japan. Japan surrendered before the Soviet Union occupied the country.

The US finally dropped the atomic bomb on the city of Hiroshima on August 6, 1945, and on the city of Nagasaki on August 9, 1945. Japan was destroyed, both cities were crushed, and innocent human victims fell so that Japan surrendered to the allies. 1948 Nobel Prize in Physics winner Patrick MS Blacken expressed his regrets as follows: The dropping of the atomic bomb was not so much the last military act of the second world war as the first act of the cold Diplomatic War with Russia. Other regrets were also expressed by US President Dwight D Eisenhower, who stated: "It wasn't necessary to hit them with that awful thing (Wirengjurit, 2002)."

If you pay close attention, this policy, which incidentally is also a US cruelty, is considered quite strange considering that besides the US committed atrocities by dropping atomic bombs on the two cities in Japan on August 6 and August 9, 1945, the thinking was planned and started in 1939 (Einstein's letter), then followed up with the Manhattan Project in 1941 and 1942. Whereas in 1941 also (to be precise, on August 14, 1941), the US and Britain (represented by Franklin Delano Roosevelt and Winston Churchill, respectively) had announced the existence of a Great Plan of Peace for all people around the world ("a Plan to help all the men in all the lands") known as the Atlantic Charter. Perhaps this is what academics rarely pay attention to why US policy can change in just a short time and almost simultaneously. For James Petras, this is not something strange because actually, the US defeat at Pearl Harbor was a deliberate defeat. Because for the US (the most powerful country in the world), there is one big problem for him, how the (USA) can create a cause (justification) in order to carry out attacks against other countries and bring other countries to their knees. James F. Tracy of Global research stated that there is a century-old tradition of the US Government, the tradition of the US lying to achieve its policy goals (A Century of Lies: The Rationales for Engaging in Foreign Wars, A Centuryold White House Tradition).

Conspiracies are always carried out by US presidents, and another example can be given here. For example, Robert Stinner (Petras, 2009), in his well-documented study, Day of Deceit: The Truth about FDR and Pearl Harbor, shows that: "Roosevelt provoked war against Japan by carefully executing the eight-step program to overthrow and embargo

Japan created by Lieutenant Commander Arthur H. Mc. Collum is the leader of maritime intelligence for the Far East region. FDR had foreknowledge of the Japanese attack on Pearl Harbor, as they monitored every step of the Japanese convoy's progress. Stinner also revealed that Admiral Kimmel, the person in charge of defense at Pearl Harbor, was systematically excluded from receiving important intelligence reports about convoys of Japanese troops advancing, and this prevented him from carrying out US defenses at his base (Pearl Harbor). The surprise attack by the Japanese side resulted in the death of over 3000 American soldiers and also the destruction of ships and planes had succeeded in provoking the war as FDR wanted." This is another interesting fact about the US conspiracy/lie.

It is clear from the facts above that in addition to the US inviting to establish peace through the Atlantic Charter (1941) and then continuing until the establishment of the United Nations (October 24, 1945), it has been punctuated with tremendous violence that has forced countries around the world to recognize that the US is a Super Power country, although then a big question arises, do we still believe in International Law made by the US when the US itself is the biggest violator and traitor in the history of life in the world? This proves that International Law, however beautiful in formulation, is full of nuances of peace, but behind it, we also see the play of the world's great political powers by a handful of Super Power countries.

On the other hand, the UN Charter will not be legally enforceable without the existence of UN institutions, both 5 Main Bodies in the UN: The General Assembly, The Security Council, The Economic and Social Council, The Trusteeship Council and The Secretary, as well as other institutions that are under the UN agencies, all of which must submit and obey the principles of the UN as explained in Article 103 of the UN Charter as follows:

> In the event of a conflict between the obligations of the members of the United Nations under the present charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Suppose the provisions of the article are considered a conflict between the obligations contained in the UN Charter and the obligations stipulated in the agreements between countries. So what must be enforced are the obligations contained in the United Nations Charter. Therefore, Article 103 of the United Nations Charter is a provision that can control agreements between countries around the world that were made after the establishment of the United Nations.

If the Rome Statute of 1998 regulates and recognizes 4 main crimes: War Crimes, Crimes Against Humanity, Genocide and Crimes of Aggression. But in reality, we see Bassiouni saying that there are 28 types of international crimes. This means that the development of these types of crimes continues and cannot be stopped. Thus, the development of legal rules is also required. It is more accurate to say that the rules of international Law are Progressive Laws.

With the development of the rules of International Law, the institutions of international courts have also been developed. The institutions of international courts to try perpetrators of war crimes were initially incidental, casuistic, then ad-hoc courts emerged. Examples include the Nuremberg Trial, ICTR (International Criminal Tribunal for Rwanda), and ICTY (International Criminal Tribunal for the former Yugoslavia). At the national level, there is also an ad hoc Human Rights Court in the case of Timor Timur. In the course of the trial, the ad hoc courts became ineffective and often impartial because these courts were nothing more than courts held by the victors of the war to try the losers in the war. This is what is called Victor Justice.

From the perspective of International Humanitarian Law, war is something natural that must happen in this world. Therefore, the war cannot be prevented from occurring.

What can be done is that the occurrence of war must be humanized (To Humanize War), by regulating the procedures for the war in legal rules, for example, regulating what weapons may be used in war, so that the impact it causes does not cause widespread damage, then how to prosecute war crimes, and how to provide protection to victims of war, protection of prisoners of war, protection of medical officers, volunteers, including protection of the natural environment. This is what is called "How to Humanize war (Permanasari, 1999)".

While the second, in the perspective of the UN Charter, war must be avoided. So that all problems between countries must be resolved by peaceful means. A new country may go to war for one reason only, to defend itself from attacks by other countries (selfdefense). Therefore, the issue of war does not get detailed regulations in the UN Charter because the UN Charter does not regulate war. Instead, the UN Charter is a Peace Charter that wants the world to be at peace without war.

So it can be said that the UN Charter wants ideal conditions (das sollen) in a safe world without war. Meanwhile, International Humanitarian Law recognizes that war is something that must happen, and therefore it is necessary to make legal rules (das sein perspective, which occurs in reality). This is what we must realize there are indeed two different paradigms of thought between the United Nations Charter and International Humanitarian Law. With these two paradigms, the philosophy of conflict between countries in the world must depart from these two paradigms of thought.

World War II has brought great suffering to millions of people in this world. Therefore, the United Nations grew and developed from deep thought that in this world, there should no longer be wars, and the international community should work together to be able to resolve problems that could trigger wars.

By looking at the workings of ad Hoc courts that are impartial and non-objective, the international community, especially human rights activists, feel the need for the international forum to have a Court that can stand objectively above all countries whose task is to prosecute perpetrators of international crimes. On July 17, 1998, the statute establishing the International Criminal Court reached a decisive stage. The UN Diplomatic Conference, held on June 15, 1998, has produced the statute with the position of 120 countries supporting, 7 countries opposing, and 21 countries abstaining. What's interesting is that the United States, Iraq and China are among the most opposing ranks of countries. Finally, after 60 countries ratified the statute, the Court was finally established under the name of the International Criminal Court and legally enforced, entry into force in 2002 (Kasim, 2000).

The Rome Statute in Article 5 states that the jurisdiction or authority of the International Criminal Court only covers: war crimes, crimes against humanity, crimes of genocide and crimes of aggression. In practice, the International Court of Justice, especially those that try war criminals, is full of political elements. It is difficult to realize a fair and impartial trial. The Nuremberg Trial, and the Tokyo Trial, for example, what happened was that a trials was carried out by a war-winning country against a war-losing country.

Dr. Miro Cerar, in his writings on The Relationship Between Law and Politics, states that the basic characteristics of the relationship between Law and politics are as follows. According to Miro Cerrar, the relationship between Law and politics has 3 fundamental aspects: Law as an end, Law as a tool or Law as a constraint. In the first condition, politics will define legal or institutional values as its goal. In this case, the political understanding of legal values and institutions is identical to the understanding of authentic legal and institutional values. In the second condition, politics views law as a tool to fulfill certain political interests. Politics is neutral towards the Law. While in the third condition, politics view the Law as an obstacle to realizing its political goals. In this third condition, Law may take precedence over politics or vice versa. Meanwhile, according to Keith E. Whittington,

Professor of Politics from Princeton University, "Law and politics are like twin brothers. Law is an essential tool for government action, and an instrument ruler can use to influence society (Widowatie, 2004). Law is also a tool to control and regulate the government. It is not surprising that Law is the most important gift in the political struggle, and it determines how politics is governed".

On the other hand, H.L.A. Hart discusses the scope of application/enforcement of the Law as follows: "In certain systems, an absolute monarch exercising legislative power can be seen as being outside the scope of the laws he makes, and even in a democratic system, laws may be made without being enforced for those who make them, but only for special classes as indicated in the Law. However, the scope of application of a law is always a question of its interpretation (Khozim, 2013).

By using this analytical knife from Hart's HLA theory, it is only natural that the US often makes laws but violates them and betrays itself. In contrast, other countries are ordered to obey the rules of International Law. Or the US openly dares to make its own doctrine that clearly deviates from the standard of International Law in order to achieve its political goals, such as the Pre-emptive Strike, which is known as George Bush's doctrine that contradicts the provisions of Article 2 paragraph (4) and Article 51 of the United Nations Charter. The pre-emptive strike doctrine is practiced by the US by way of attacking other countries so that the attacked country is very easy to defeat. What the US did by attacking first was at the same time contrary to the provisions of Article 1 of the Hague Convention III of 1907, which stated:

> The contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a declaration of war, giving reasons, or of an ultimatum with a conditional declaration of war.

From the provisions of the article, it is clear that a battle will not start before a declaration of war by giving reasons for the attack. The purpose of this declaration is so that the country that will be attacked can prepare to provide resistance or condition the war to run fairly.

Weaknesses of ICC (International Criminal Court).

First, by prioritizing legal certainty and limiting jurisdiction to only 4 types of crimes: crimes of genocide, crimes against humanity, war crimes and crimes of aggression, it is certain that the ICC does not cover many types of crimes that are growing in the international community. *Second*, The ICC only has jurisdiction over international crime cases after its establishment of the ICC (2002). So cases that occurred before the establishment of the ICC it was clearly outside the jurisdiction of the ICC. This means that the ICC applies the non-retroactive principle even though it shouldn't have to be because if that principle is firmly held, it is clear that many cases of international crimes will escape prosecution (Impunity), whereas the purpose of establishing the ICC, among others, is also to stop the existence of impunity.

The ICC functions as a complementary court, meaning that if a case can be tried in a country based on the principle of state sovereignty and Universal Jurisdiction, then the case is no longer possible to be submitted to the ICC, in addition to violating the ne bis in idem. In the case of Saddam Hussein, actually, the accusations against Saddam Hussein were committing war crimes and keeping weapons of mass destruction. This should have been brought to the ICC, especially after 2002. But in fact, Saddam Hussein was "made" by a special court, the so-called "Iraqi Special Tribunal". Regarding the trial of Saddam Hussein, information was found in the Downing Street Memo it was found the fact that the US had an "evil" plan to launch military action in Iraq with accusations that Iraq was stockpiling weapons of mass destruction, a baseless allegation, the memo contained the sentence, Bush wants to remove Saddam, through military action, justified by the conjunction of terrorism

and WMD. This is proof that the accusations against Iraq were fabricated. George Bush also stated in a British Broadcasting Society broadcast on March 19 at 6 am as follows:

> "Surrender or not, Saddam Hussein will continue to invade Iraq to carry out Turkicization and secularization of it. It was done to eliminate the religion that produces terror in the Middle East and in the world in general" (Aziz, 2007).

There is another reason why Saddam was not brought to the ICC? Because the US was worried that if he was tried at the ICC, Saddam would not necessarily be sentenced to death, even though the US really wanted Saddam's death.

Besides the weaknesses of the ICC above, it turns out that the US actually does not approve of the establishment of the ICC, and the US has not yet ratified the 1998 Rome Statute. Even the US has openly dared to insult and underestimate the existence of this ICC institution. For example, we can see this in the attitude of the American President's Administration. The United States (US) Donald Trump has sanctioned the Chief Prosecutor of the International Criminal Court (ICC) and one of his top officials. The sanctions were imposed on ICC officials as the Court investigated US troops in Afghanistan. The Trump administration has also denounced the ICC for its ongoing preliminary investigation into alleged war crimes in the Palestinian territories, including its policies against Israeli settlements.

The Trump administration's decision to impose sanctions on senior ICC staff is another bold attack on international justice. Daniel Balson, Amnesty International's Director of Advocacy, said in a statement: "This tribunal is made up of legal professionals who have devoted their professional lives to pursuing justice for the victims and survivors of some of the most horrific crimes, including crimes against humanity. They should be commended for their commitment, not be the target of punitive bullying campaigns."

The International Criminal Court itself insists that what they are doing is in accordance with procedure. After all, the ICC investigation includes not only US soldiers but also Taliban insurgents and the Afghan government itself. The ICC considers this US move redundant. The US has not signed the 1998 Rome Statute, even though Clinton was signed at the time, but then under George W. Bush, the US resigned. The US considers that the ICC's jurisdiction to be able to bring charges against US citizens is illegal.

The initiative to establish the International Criminal Court itself began in 1872 by Gustave Moynier after seeing the victims of the war between France and Prussia in 1870. Then at the Congress of the Federation of the International Human Rights League in Paris in 1927 at that time the Australian Human Rights League proposed the establishment of a Court of Justice. Permanent International Morals. The formal signal for the establishment of the International Criminal Court was after the Nuremberg Court and Tokyo Trials, wherein the 1948 UN Genocide Convention, which was formed through UN General Assembly Resolution no.260 dated December 9, 1948, it was stated: "..Person charged with genocide shall be tried by a competent tribunal of the state in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction."

The words in bold indicate the intention of the United Nations to establish an International Criminal Court for the crime of genocide. This effort is made to anticipate if the national Court does not play a role. Then the United Nations ordered the International Law Commission to study the desire and the possibility of its formation. The issue only resurfaced in 1989, supported by the end of the cold war and the increasing number of victims of genocide in the former Yugoslavia and Rwanda. Finally, the ILC succeeded in making the 1993 draft, and it was revised in 1994. In 1995 the General Assembly formed a Preparatory Committee. Sessions were held by the ILC between March, April and August 1996, then in February, August and December 1997 and in March and April 1998. The next Diplomatic Conference by the UN General Assembly was held in Rome from June 15 to July

17, 1998. Finally, the Conference approved the Statute of the establishment of the International Criminal Court (PPI) with the result that 120 countries agreed, 7 opposed, and 21 abstained. Article 126 of the Rome Statute stipulates that in order to be ratified by at least 60 countries, and on July 1, 2002, the provisions of Article 126 of the Rome Statute were fulfilled, the Assembly of State Parties in February 2003 elected for the first time 18 judges, then in April 2003 chose the public prosecutor and in June 2003 chose the Chief Registrar (Pasek, 2018).

Conclusion

If the International Criminal Court continues to run by maintaining limited jurisdiction, it can be ensured that for other crimes outside the provisions of Article 5 of the Rome Statute, it will be submitted to each country based on universal jurisdiction. This happens a lot in transnational crimes, as well as in crimes of terrorism, drugs, human trafficking, and so on. With this universal jurisdiction, every country has the right to arrest perpetrators of international crimes, then try them and punish them based on the Law in force in that country. This principle is intended so that perpetrators of international crimes will not have the opportunity to be free from prosecution. However, this universal jurisdiction can also be politicized by countries that prosecute perpetrators of international crimes by adjudicating arbitrarily or perhaps based on discriminatory feelings or opportunities for revenge, as did the US when forming the IST with the Iraqi Transitional Government to prosecute Saddam, who had pre-determined must be sentenced to death, while the crimes he is accused of are not actually proven (holding weapons of mass destruction).

Another thing that needs to be done is that the principles of criminal legal certainty should not be enforced because, in cases of extraordinary crimes against humanity (Extra Ordinary Crime), including in the case of genocide, the priority should be on achieving justice so that the retroactive principle can be applied. Don't let criminals go unpunished because of rigid regulations. This is one of the weaknesses of the ICC. As for what happened at the Nuremberg Court, which tried German criminals in the World War. In the Nuremberg trial, the retroactive principle was applied. In this case, Judge Francis Biddle objected that it was not an Ex Post Facto (Retroactive) law but rather an effort to restore a sense of justice to the international community as a result of the crimes against peace by the German side with extraordinary cruelty beyond the moral limits of human civilization. The Nuremberg Trial can be said as "...to have brought our law in balance with the universal judgment of mankind" Judge Biddle also said that it was not the question of whether Goering and his associates were tried that was important but whether it was fair to try Goering? (Pasek, 2018)

Suggestion

However, the big question that must be asked is why the US cannot be prosecuted for its cruel actions by dropping atomic bombs on Hiroshima and Nagasaki? Is it because the current International Court of Justice still prioritizes legal certainty? Either may be because the US is still difficult to be touched by the Law (because of its power) and playing with international Law arbitrarily? Including his demeaning of the existence of the ICC? This is the homework for all of us, especially the experts in International Law, to immediately revise the Rome Statute.

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