

BAB III

PENUTUP

A. Kesimpulan

Berdasarkan Pembahasan dan analisis yang telah diuraikan penulis dalam bab-bab sebelumnya, maka penulis dapat menyimpulkan :

1. ICC memiliki yurisdiksi terhadap warga negara yang berasal dari negara bukan pihak Statuta Roma, dengan syarat : Subjek yang diadili adalah individu sesuai ketentuan Pasal 25 ayat (1) Statuta Roma, prasyarat yurisdiksi ICC terpenuhi sesuai dengan ketentuan Pasal 12 dan 13 Statuta Roma, dan kejahatan yang diduga terjadi termasuk dalam yurisdiksi ICC sesuai dengan ketentuan Pasal 5 Statuta Roma. Ukraina telah menerima yurisdiksi ICC, awalnya melalui deklarasi tertulis (pada 9 April 2014 dan 8 September 2015) yang disusul dengan ratifikasi pada 1 Januari 2025. Awalnya Jaksa Penuntut ICC hendak membuka penyelidikan secara *Proprio Motu*, tetapi sebelum menerima konfirmasi dari Kamar Pra-persidangan, OTP menerima *referral* dari 39 negara pihak Statuta Roma sehingga atas dasar ini, Jaksa penuntut ICC membuka penyelidikan terhadap situasi di Ukraina. Palestina menerima yurisdiksi ICC melalui deklarasi tertulis pada 1 Januari 2015, kemudian mengikatkan diri secara aksesori pada Statuta Roma secara resmi pada 1 April 2015, kemudian merefer kejahatan yang terjadi di wilayahnya termasuk Yerusalem Timur sejak 13 juni 2014. Disini Prinsip non-retroaktif Statuta Roma tidak dilanggar karena Pasal 11 ayat (2) Statuta Roma memberikan pengecualian bagi negara yang menerima yurisdiksi

ICC melalui deklarasi tertulis, sehingga atas dasar ini, Jaksa Penuntut ICC membuka penyelidikan terhadap Situasi di Palestina. Dengan demikian, ICC memiliki dasar kewenangan untuk menerapkan yurisdiksinya terhadap pelaku dari negara bukan peratifikasi Statuta Roma meskipun penerapannya menuai kontroversi dari berbagai negara.

2. Penerapan yurisdiksi ICC terhadap individu dari negara bukan peratifikasi Statuta Roma melanggar prinsip-prinsip hukum internasional, dalam hal ini yaitu Rusia dan Israel, karena : Pertama, kedua negara tersebut bukan peratifikasi Statuta Roma sehingga mereka tidak tunduk pada ketentuan Statuta Roma. Kedua, penerapan yurisdiksinya tidak melalui *referral* DK PBB. Ketiga, ketentuan prinsip komplementaritas hanya berlaku bagi negara anggota-anggota Statuta Roma saja, sehingga penerapan yurisdiksi ICC terhadap Rusia dan Israel melanggar prinsip ini. Namun demikian, prinsip ini dapat disimpangi dengan mempertimbangkan norma *Jus Cogens*. Meskipun Prinsip *Pacta Sunt Servanda* dan *Pacta tertiis nec Nocent nec Prosunt* merupakan prinsip fundamental dalam hukum perjanjian internasional, *Jus Cogens* secara hierarki lebih tinggi dari keduanya, sehingga pelanggaran dapat dikesampingkan.

Dengan dasar-dasar ini, maka bisa disimpulkan bahwa ICC secara umum memiliki dasar hukum untuk menerapkan yurisdiksinya terhadap individu yang berasal dari negara bukan pihak Statuta Roma, meskipun dalam penerapannya berlawanan dengan prinsip hukum internasional.

B. Saran

Berdasarkan penemuan dalam penulisan skripsi ini, Statuta Roma memiliki beberapa celah yang dapat menghambat ICC untuk menjalankan tugasnya terutama yang berkaitan dengan yurisdiksi. Masalah terbesar ICC dalam menjalankan tugasnya adalah dari penerapan yurisdiksi ICC terhadap negara bukan peratifikasi yang menimbulkan penolakan dan kecaman dari banyak negara. Penulis menyarankan agar dilakukan amandemen untuk mencegah agar para penjahat terhadap kemanusiaan ini tidak lolos yaitu misalnya pada Pasal 12 mengenai ketentuan prasyarat ICC untuk menerapkan yurisdiksinya, pada ayat (2) bisa ditambahkan ketentuan apabila kejahatan yang dilanggar termasuk ke dalam kejahatan *Jus Cogens* (seperti Genosida, kejahatan terhadap kemanusiaan, dan kejahatan perang), maka secara otomatis ICC memiliki yurisdiksi atas kejahatan tersebut tanpa harus menunggu negara yang terkait untuk menerima yurisdiksi ICC terlebih dahulu.

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