

## INTERNATIONAL CRIMINAL LAW ENFORCEMENT AGAINST CONFLICT IN YEMEN

Tantimin

Faculty of law, Batam International University, tantimin@uib.edu

### ABSTRACT

*War and conflict have always been human habits throughout the history of civilization. Starting from the beginning of the creation of humans on Earth, war has always been a determining factor for human survival, especially the establishment or destruction of civilizations in the world. Of the many conflicts that exist, the conflict in the form of rebellion attracts attention because it is between the ruling government and armed parties dissatisfied with the relevant government policies. The conflict in Yemen poses a threat to close neighboring countries, including Saudi Arabia. In March 2015, the Saudi Arabian government launched a military operation to crush the Houthi group and help to restore the legitimacy of the Yemeni government. However, this operation also cost the civilian population in Yemen. The United Nations Human Rights Council, through the Regional and International Expert Groups, responded by publishing a report stating that there were allegations of international crimes in the military operation. In order to answer the existing problems, a study based on the view of international criminal law is needed. Answering the urgency of this research, the type of legal-normative research is used with a statutory, conceptual, and analytical approach in reviewing this matter. The technique of tracing legal materials is document study.*

<b>Keywords</b>	<i>Yemen Conflic; Military Operation; 1998 Rome Statute</i>
<b>Cite This Paper</b>	Tantimin. (2022). International Criminal Law Enforcement Against Conflict In Yemen. Legal Spirit, 6(1).

### INTRODUCTION

The involvement of non-parties or non-member countries (participants) in the 1998 Rome Statute is suspected of committing crimes of aggression<sup>1</sup> and crimes against humanity in the conflict in Yemen. These countries must be subject to international criminal law. Law enforcement can be carried out in 3 ways: directly through the International Criminal Court (ICC), indirectly through ad hoc courts established based on UN Security Council resolutions, and mixed (hybrid).<sup>2</sup> The Republic of Yemen is located in the Arabian Gulf, directly bordered by Saudi Arabia in the north, Oman in the east, the Gulf of Aden in the south, the Red Sea, and Bab Al-Mandeb in the west. Not only that, but Yemen is also a strategic country because it has a relatively influential geographical location in the middle east region, such as the Red Sea and the Gulf of Aden, where these two locations have become world trade traffic. The 18-mile-long Bab Al-Mandeb is the world's fourth-busiest choke point.<sup>3</sup> The unfavorable

<sup>1</sup> Christmas, S. K., & Roisah, K. (2021). Status Hukum Implementation Legislation Negara Pihak Terhadap Penarikan Diri Statuta Roma 1998. *Jurnal Pembangunan Hukum Indonesia*, 3(2), 267-280.

<sup>2</sup> Martowiriono, S. (2017). Azas Pelengkap Statuta Roma 1998 Tentang Pengadilan Pidana Internasional. *Jurnal Hukum & Pembangunan*, 31(4), 339-356.

<sup>3</sup> Ryan, P. W. (n.d). The Yemen Crisis and the Bab el-Mandeb Maritime Chokepoint. <http://susris.com/2015/04/14/the-bab-el-mandeb-maritime-chokpoint/>. Diakses pada 20 April 2020.

geographical conditions make the majority of cities located in mountainous and valley areas. The similarity of the Yemeni state with other Arab nations is that their tribes have a high and vital role. Tribal chiefs have a prominent and central voice influence because they have political and cultural power.<sup>4</sup>

War and conflict have always been human habits throughout the history of civilization. Starting from the beginning of the creation of humans on Earth, war has always been a determining factor for human survival and especially the establishment or destruction of civilizations in the world. Of the many conflicts that exist, the conflict in the form of rebellion attracts attention because it relates to the ruling government fighting armed parties who are dissatisfied with the relevant government policies.<sup>5</sup> In the conflict in Yemen, many tribes in North Yemen joined the Houthi alliance. They participated in attacking the government, while some other tribes joined the government alliance against the Houthi group. At the same time, the majority of the tribes in South Yemen sided with the Southern Transnational Council (STC), and some other tribes sided with the Yemeni government.<sup>6</sup>

The wave of democratization in Arab countries, "Arab Spring," became one of the factors causing the domestic conflict in Yemen in 2011.<sup>7</sup> The conflict in Yemen is currently becoming complicated, considering the many actors involved in the conflict. Starting from Al-Dawla Al-Islamiya Al-Iraq Al-Sham (DAESH) or now commonly called the Islamic State of Iraq and Syria (ISIS), Al Qaeda in the Arabian Peninsula (AQAP), Southern Transnational Council (STC), and Saudi Arabia. Its allies have helped the Yemeni government deal with rebels and terror groups attacking the government.<sup>8</sup> The increasingly complex conflicts affect the government's legitimacy, causing the government's credibility to deteriorate.<sup>9</sup> The Yemeni government is in the middle of the conflict. In the north, the government has to face the Houthis. In the south, the government faced the STC group that wanted independence and also had to face AQAP and ISIS. The conflict worsened when the Houthis captured the capital Sana'a in 2015. In February 2015, after receiving protection from Saudi Arabia, Yemeni president Abdurrabu Mansyur Hadi returned to the Yemeni city of Aden. Since then, under President Abdurrabu Mansyur Hadi, the Yemeni government has expressed a stance against the Houthis.<sup>10</sup>

The conflict in Yemen impacts close neighboring countries, one of which is Saudi Arabia. The impact is in the form of many refugees from Yemen who enter the border areas of Saudi Arabia. Areas or cities on the border are also the targets of attacks carried out by the Houthi group. The Red Sea, through which Saudi Arabia trades, is also the target of the group's attacks.<sup>11</sup> In order to support the Yemeni government and try to restore the government's legitimacy, King Salman agreed with the Saudi Arabian government to get

---

<sup>4</sup> Ainayyah, N. H., Setiyono, J., & Supriyadhie, H. K. (2020). Analisis Hukum Humaniter Internasional Pada Penggunaan Tentara Anak Dalam Konflik Bersenjata Non-Internasional Di Yaman. *Diponegoro Law Journal*, 9(2), 441-455.

<sup>5</sup> Pailalah, M. G. (2017). *Permasalahan Pengakuan Terhadap Kelompok-Kelompok Belligerent dari Segi Hukum Humaniter Internasional*. Medan: Skripsi Program Studi Departemen Hukum Internasional Fakultas Hukum Universitas Sumatera Utara. Medan.

<sup>6</sup> Jones, C. (2011). The Tribes That Bind : Yemen and the Paradox of Political Violence. *Clive Jones Studies in Conflict & Terrorism*, 12, 902-16.

<sup>7</sup> Bilbao, M.D.M.C. (n.d). Yemen, the War the World has Forgotten – Its Actors as the Way to Understand the Conflict.

[http://database.jornaldefesa.pt/crises\\_e\\_conflitos/medio\\_oriente/JDRI%20243%20140617%20iemen](http://database.jornaldefesa.pt/crises_e_conflitos/medio_oriente/JDRI%20243%20140617%20iemen).

Diakses pada 20 April 2019.

<sup>8</sup> Halim, A. (2019). *Analisa Kebijakan Raja Salman Melakukan Intervensi Militer di Yaman Tahun 2015-2017*. Malang: Skripsi Program Studi Ilmu Hubungan Internasional Fakultas Ilmu Sosial dan Ilmu Politik Universitas Muhammadiyah Malang.

<sup>9</sup> Tandayu, T. R., & Wibowo, A. (2020). Analisis Yuridis Terhadap Blokade Di Pelabuhan Hudaydah Yaman Yang Menyebabkan Kematian Anak-Anak. *Reformasi Hukum Trisakti*, 2(1).

<sup>10</sup> *Ibid*.

<sup>11</sup> Shalihah, F. A., & Sidik, H. (2021). Pelanggaran Hukum Internasional dalam Konflik Yaman Tahun 2015-2019 dan Akibatnya terhadap Situasi Krisis Kemanusiaan. *Jurnal ICMES*, 5(1), 22-42.

involved in the Yemen conflict. The involvement of the Saudi kingdom in its regional affairs after the 1999 gulf conflict is a novelty in its foreign policy. Saudi Arabia's involvement in the Yemen conflict is by conducting the military intervention, as it is known that King Salman is a person with a military background. So the policy he took was different from his predecessor, King Abdullah, who preferred the non-military option in dealing with the Yemen conflict. For example, by providing financial assistance, initiating mediation between the Ali Abdullah Saleh government and the opposition in 2011.<sup>12</sup>

At sunset, Saudi Arabia's military intervention in Yemen began in March 2015, marked by "Operation Decisive Storm." This operation was marked when the Houthi group wanted to take control of the Aden region, which was the center of the Yemeni government. This operation lasts for one month. Operation Decisive Storm got satisfactory results, namely the successful recapture of several areas, such as Taiz and Aden, which the Houthi rebel group previously controlled. The liberation of areas controlled by AQAP is called the Mukalla area. Then, after running for a month, the Saudi Arabian coalition replaced it with "Operation Renewal Hope," which began in April 2015. This operation aims to restore the lives of the Yemeni people based on three main aspects, namely military, political and humanitarian assistance. The military operations carried out by the Saudi Arabian coalition, both Operation Decisive Storm and Operation Renewal Hope have had a huge impact on the welfare of the people of Yemen. The use of military force which was initially carried out to deal with the Houthi rebel group and other rebel groups, in fact caused many casualties from the civilian population. It is even indicated that an international crime has occurred.<sup>13</sup> The UN Human Rights Council then responded by giving a mandate to the Regional and International Group of Experts on Yemen, with the task of carrying out a comprehensive examination of the human rights situation in the country. The findings of the group are detailed in a 41-page report released on 29 August 2018. The report analyzes the main patterns of violations and crimes of international human rights, international humanitarian law and international criminal law committed by parties to the armed conflict in Yemen. In addition, significant areas were identified where violations and crimes occurred.

Among the conclusions, the experts stated that a number of entities in the Yemeni government and coalition, including Saudi Arabia, the United Arab Emirates (UAE) and Yemen's de facto authorities had taken the aforementioned actions. It thus relies on an independent and competent tribunal because it is an international crime. The report also explains that Saudi Arabia's coalition air strikes have caused many civilian casualties. Air strikes reportedly hit residential areas, markets, cemeteries, weddings, detention facilities, boats on which civilians were traveling, to medical facilities. They believe that entities in the Yemeni government and coalition forces may have carried out attacks that violated the principles of distinction, proportionality and precaution.<sup>14</sup> With the report from the Regional and International Expert Group for Yemen, that in handling the armed conflict in Yemen, it is indicated that there have been several crimes that can be categorized as international crimes. This is because the existence of an entity within the Yemeni government and the military intervention of the Saudi Arabian coalition resulted in casualties not only from the Houhti rebel group and other rebel groups, but also victims from the civilian population. Therefore, it is necessary to criticize and at the same time analyze the conflict in Yemen from the perspective of the jurisdiction of the International Criminal Court to find out what categories of international crimes have occurred in Yemen. Then the settlement process is carried out based on international criminal law. The research objectives are: first to determine the jurisdiction of the international criminal court based on the 1998 Rome Statute of the International Criminal Court. Second, analyzing the juridical review of

---

<sup>12</sup> *Ibid.*

<sup>13</sup> Prakoso, L. T. (2019). Law Enforcement In The Use Of Chemical Weapons In Armed Conflict. *E-Jurnal SPIRIT PRO PATRIA*, 5(2), 91-107.

<sup>14</sup> Anonim. (n.d). <https://www.alinea.id/dunia/pbb-semua-pihak-dalam-konflik-yaman-kemungkinan-lakukan-kejahatan-perang-b1U4q9dz7>, Diakses pada 20 April 2019.

international crimes in Yemen which were indicated to have been carried out during military operations by the Saudi Arabian coalition and the Yemeni government; and Third, find a solution to the international crimes that have occurred in Yemen. Based on the background of the problems described previously, the problems that can be formulated are: (1) What is the jurisdiction of the International Criminal Court?; (2) What is the juridical review of international crimes that have occurred in Yemen?; and (3) How is the process of resolving international crimes that occurred in Yemen?.

## RESEARCH METHOD

There are two types of research: normative legal research and empirical legal research. This paper uses normative-legal research because the focus of the study departs from the ambiguity of norms.<sup>15</sup> Normative legal research is legal research conducted by examining library materials or secondary data. Normative legal research is also known as doctrinal legal research. The approaches used include the statute, conceptual, and analytical approaches. Tracing legal materials uses technical document studies in primary data<sup>16</sup> sourced from national journals, international Journals, theses, theses, and dissertations. In contrast, secondary data comes from literature and electronic articles. Then the data were collected, processed, and presented in qualitative descriptive analysis.

## RESEARCH RESULTS

### 1. Jurisdiction of the International Criminal Court

The Court was established based on the 1998 Rome Statute, which was the result of a diplomatic conference that took place in Rome on 15-17 July 1998, which was attended by representatives of the countries of the world, representatives of inter-governmental organizations. ) and non-governmental organizations (non-governmental organizations). The draft text was prepared by the International Law Commission, which was mandated to do so by the UN General Assembly. In 1998, after going through a long process, the final and authentic text of the Statute of the International Criminal Court was finally completed. This final manuscript was then discussed and authenticated using the signature of representatives of the countries present at the Diplomatic Conference in Rome on 15-17 April 1998.<sup>17</sup> Since then, the Rome Statute has been declared open for countries to express their consent to be bound under Article 125 paragraphs (2) and (3). Now the Rome Statute has come after fulfilling the requirements regarding its entry into force, as confirmed in Article 126 paragraph (1). Thus, the Court has legally established itself as a permanent international criminal tribunal. Its domicile is in The Hague (The Hague) in the Netherlands, as confirmed in Article 3 paragraph (1). The overall Statute consists of 13 sections, and these thirteen sections consist of 128 articles.<sup>18</sup> The Previous international criminal justice bodies were the Nuremberg Court in 1945 and Tokyo in 1946, the ex-Yugoslavia Court in 1993, and Rwanda in 1994. The International Criminal Court has four jurisdictions, namely personal jurisdiction, criminal jurisdiction, and territorial jurisdiction, and temporal jurisdiction.<sup>19</sup>

**Personal Jurisdiction**, based on legal subjects that can be tried, or personal Jurisdiction (*rationae personae*), the International Criminal Court can only try individuals (natural persons). Perpetrators of crimes within the Jurisdiction of the Court must be held accountable for their actions individually (individually), including government officials, military and civilian commanders.<sup>20</sup> It is confirmed in Article 25 paragraph (1) "the court shall have jurisdiction over natural persons according to this statute." Thus, the Court only

---

<sup>15</sup> Diantha, I. M. P. (2016). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Prenada Media.

<sup>16</sup> Tan, D. (2021). *Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyenggarakan Penelitian Hukum*. NUSANTARA: Jurnal Ilmu Pengetahuan Sosial, 8(8), 2463-2478.

<sup>17</sup> Parthiana, I.W. (2015). *Hukum Pidana Internasional*. Bandung: CV Yrama Widya.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Sefriani. (2007). Yurisdiksi ICC terhadap Negara Non Anggota Statuta Roma 1998. *Jurnal Hukum*, 2 (14), 314-332.

has personal Jurisdiction over individuals, so not against states or other subjects of international law other than individuals. However, for this individual subject, there is an exception to a criminal offender stipulated in the Statute if the perpetrator at the time of the crime was less than 18 (eighteen) years old, as regulated in Article 26 of the Statute concerning "exclusion of jurisdiction over persons under eighteen".

**Criminal Jurisdiction** regulates the scope or material Jurisdiction (*nationae materiae*) in crimes, which constitute the most severe crimes in the international community's view, as regulated in Article 5 paragraph (1). This article states, "the Jurisdiction of the Courts shall be limited to the most severe crime of concern to the international community as a whole. That Courts have Jurisdiction under this Statute for the following crimes: (a) the crime of genocide; (b) Crimes against humanity; (c) war crimes; (d) the crime of aggression. Each of these crimes (except the crime against aggression) is detailed in Article 6 on genocide, Article 7 on crimes against humanity, Article 8 on war crimes. The following is a further explanation of the scope of the Court's criminal jurisdiction:<sup>21</sup> a) **Genocide Crime**. According to Article 6 of the Statute, a genocide crime is any act carried out with the intent to destroy the whole or a part of a particular nation, ethnicity, race, or religious group. For example, killing, causing serious physical and mental harm to group members, using weapons to inflict physical harm on the group's living conditions, forcibly taking measures to prevent births within the group, and forcibly transferring children from one group to another; b) **Crime against humanity**, as regulated in Article 7 of the Statute, is any act carried out as part of a wide or systematic direct attack against the civilian population, with knowledge of the attack. Included in these crimes against humanity are murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or cruel deprivation of physical freedom, which is a violation of the basic principles of international law, torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence, torture against groups identified as political collectivities, races, countries, ethnicities, cultures, religions, and genders, enforced disappearances, and apartheid crimes. It was previously developed in the context of the law of war or based on the 1907 Hague Convention, a codification of the customary law of armed conflict. This convention states that the laws of humanity are the basis of protection for parties involved in war and civilians in an armed conflict.<sup>22</sup> In addition, every other inhumane act which is carried out intentionally to cause great suffering, and serious physical and mental injury to the victim, is also included in the category of crimes against humanity; and c) **War Crimes**. According to Article 9 of the Statute, war crimes are grave breaches of the 1949 Geneva Conventions. The acts referred to intentional killing, torture, or inhumane treatment, including biological experiments, intentionally causing severe suffering or serious physical harm, widespread destruction and unlawful taking of property, forcing prisoners of war or other protected persons to assist enemy forces by deliberately depriving prisoners of war and protected persons from fair and regular trials, unlawful deportation and imprisonment and hostage-taking. Protection from war victims has been regulated in the Geneva Conventions I of 1949 concerning the Improvement of the Condition of the Wounded and Sick Members of the Armed Forces in the Field of Battlefields, the Second Geneva Convention of 1949 concerning the Improvement of the Conditions of the Wounded, Sick and Shipwrecked Members of the Armed Forces in the Battlefield, the Convention Geneva III 1949 concerning the Treatment of Prisoners of War, 1949 Geneva Convention IV concerning the Protection of Civilians in Time of War, Additional Protocol I to the 1949 Geneva Conventions concerning the Protection of Victims of War Conflicts in International Armed Conflict, and Additional Protocol II to the 1949 Geneva Conventions

---

<sup>21</sup> *Ibid.*

<sup>22</sup> Mahkamah Agung. (2006). *Pedoman Unsur-Unsur Tindak Pidana Pelanggaran Hak Asasi Manusia Yang Berat dan Pertanggungjawaban Komando*. Jakarta: Mahkamah Agung RI.

concerning the Protection of War Victims in Armed Conflict Non-International.<sup>23</sup> Regarding the Crime of aggression, the Statute does not explain as the last three categories of crimes are described in detail in certain articles. Regarding this Crime, the Statute only explains that the UN charter is a reference for the Crime of aggression. The charter also does not explain the Crime of aggression. It only stipulates that according to Chapter VII of the United Nations Security Council Charter, the Statute has the right to take steps in stages and deploy multinational forces when acts threaten international peace and violate aggression. It becomes the weakness of the Statute because it can lead to various interpretations and affect the existence of legal certainty for accused parties that commit the Crime.

**Temporal Jurisdiction**, based on time or temporal Jurisdiction (*ratione temporis*), the Court only has Jurisdiction over crimes committed after the entry into force of the Rome Statute, namely on July 1, 2002. This temporal Jurisdiction is regulated in Article 11 of the Statute. Suppose a country becomes a party after the entry into force of the Statute. In that case, the Court only has Jurisdiction over crimes committed after the Statute comes into force against that country. Unless that country makes a declaration as required in Article 12 paragraph (3) of the Statute.

**Territorial Jurisdiction**, based on the locus of crime or territorial Jurisdiction (*ratione loci*), the Court may adjudicate cases submitted by participating countries whose territory is the site of the commission of international crimes. Included in this definition is the country where the ship or aircraft of the participating country. In addition, the Court's Jurisdiction also applies in the territory of a non-state party that recognizes the Court's Jurisdiction based on an ad hoc declaration. However, how far such a state will be willing to state its acceptance of the Jurisdiction of the Court is entirely up to the country concerned.

In addition, the UN Security Council, under its powers under Chapter VII of its Charter, has the right to submit through the prosecutor for crimes committed on the territory of the state. It is expressly regulated in Article 13 point b of the Statute. However, this handover can only occur if the UN Security Council first convenes to discuss problems in the territory of countries that are not participants in the Statute. According to the UN Security Council, when the problems are considered a threat to world security and peace, it can end with a decision (a resolution) to be followed up under the provisions in the Statute. Thus, theoretically, impunity is avoided for the person concerned.<sup>24</sup>

## 2. International Crime in Yemen: Juridical Overview

The existence of international criminal law cannot be separated from international crimes as the substance of international criminal law itself.<sup>25</sup> The regulation of international crimes in international law is very important, especially for countries to participate in regulating international crimes in their national laws and regulations so that they can maintain and narrow the scope of these crimes. In the context of law enforcement, international criminal law and national criminal law must have a complementary relationship. International crimes are then adopted into national criminal law rules. It aims to prevent the occurrence of these crimes in the country concerned.<sup>26</sup>

In a report released on 28 August 2018 by UN Regional and International Experts, they analyzed the main patterns of violations and crimes of international human rights, international humanitarian law, and international criminal law committed by parties to the armed conflict in Yemen. In addition, significant areas were identified where violations and crimes occurred. The 41-page report also states that in handling the armed conflict in Yemen, several international crimes are suspected. It is due to the existence of entities within the Yemeni government and the military intervention of the Saudi Arabian coalition, which

---

<sup>23</sup> Awoah, A.E (2016). Perlindungan Terhadap Korban Perang Dalam Perspektif Konvensi-Konvensi Internasional Tentang Hukum Humaniter dan HAM. *Jurnal Lex Crimen*, V(7), 143.

<sup>24</sup> Parthiana, I.W. (2015). *Op.Cit*.

<sup>25</sup> Hiariej, E. O. S. (2002). *Pengadilan atas Beberapa Kejahatan Serius Terhadap HAM*. Erlangga. Jakarta.

<sup>26</sup> Nainggolan, P. P. (2002). *Terorisme dan Tata Dunia Baru*. Jakarta: Sekjen DPR-RI.

resulted in casualties not only from the Houthi rebel group and other rebel groups but also victims from the civilian population.

In line with the report, a non-governmental organization (NGO) concerned with human rights has filed a complaint against a member of the Arab coalition, the United Arab Emirates (UAE), with the International Criminal Court on charges of committing war crimes in Yemen. The Arab Organization for Human Rights (AOHR) legal adviser, Joseph Breham, said his client indicted the UAE for "indiscriminate attacks on civilians." The London-based AOHR also accused the UAE of using banned cluster bombs and hiring mercenaries to torture and execution. With the reports of Regional and International Experts and the indictment of NGOs, it is necessary to carry out a preliminary investigation. Investigations were carried out to find evidence of violations reported by the Experts and indictments from the said NGO. Under what is stated in Article 15, paragraph (2), "the prosecutor shall analyze the seriousness of the information received. For this purpose, he or she may seek additional information from States, organ of the United Nations, intergovernmental or non-governmental organization, or other reliable resources that he or she deems appropriate and may receive written or oral testimony at the seat of the Courts".

As the reports were released and the indictments submitted to the Court, several forms of crimes based on the criminal jurisdiction of the International Criminal Court have emerged. They are crimes against humanity in Article 7 of the Statute, war crimes in Article 8, and the crime of aggression; although it has not been regulated in more detail in certain articles, they can be based on the 1949 Geneva Conventions. However, it should be noted that Yemen is not one of the countries that recognize the 1998 Rome Statute (non-State Parties). Thus, the jurisdiction contained in the International Criminal Court will be difficult to apply to crimes committed by the Yemeni government or the Arab coalition. It works the same with the indictments from NGOs about war crimes committed by the UAE because the UAE is a non-State party. With the discourse between the Jurisdiction of the International Criminal Court and the status of Yemen and the United Arab Emirates as non-State parties, it is necessary to look at other references in the form of international conventions and UN Security Council resolutions related to the issue of armed conflict in Yemen.

The military intervention carried out by the Saudi Arabian coalition in Yemen reaps the pros and cons. The intervention itself is prohibited under international law. Referring to the principle of non-intervention contained in the United Nations Charter, Article 2 paragraph (7) prohibits a country from interfering in the internal affairs of another country in any form.<sup>27</sup> In certain cases, this intervention is carried out not only as an act of self-defense but also based on the approval of the legitimate government.<sup>28</sup> In practice, military intervention is always related to armed force. It is contrary to what is regulated in Article 2 paragraph (4) of the United Nations Charter, which states that, in international relations, all countries must refrain from using violent means, using weapons against other countries, or other non-violent means. What is regulated by Article 2 paragraph (4) in the form of a prohibition on the use of force is a rule that is considered very important in international law and is placed as one of the highest norms of international law (*ius cogens*).<sup>29</sup>

### **3. Settlement of International Crime Cases in Yemen**

The position of the International Criminal Court is only a complement to the domestic courts owned by each country. It is emphasized in Preamble paragraph 10 of the Statute, which states that "the International Criminal Court establishment under this statute shall be complementary to national criminal jurisdiction." The same thing is also stipulated in Article 1 of the Statute. Based on the 1998 Rome Statute, the International Criminal Court has

---

<sup>27</sup> Dini, R.J. (n.d). *Tinjauan Yuridis Intervensi Militer Koalisi Saudi Arabia dalam Konflik Bersenjata di Yaman*. Denpasar: Skripsi Program Kekhususan Hukum Internasional dan Hukum Bisnis Internasional Fakultas Hukum Universitas Udayana.

<sup>28</sup> Starke, J. G. (2010). *Pengantar Hukum Internasional*. Jakarta: Sinar Grafika.

<sup>29</sup> Sefriani. (2011). *Hukum Internasional – Suatu Pengantas*. Jakarta: Rajawali Press.

jurisdiction over countries originating from non-state parties under the following conditions:<sup>30</sup> 1) In the case referred by the UN Security Council to the International Criminal Court; 2) In the case of a citizen of a non-state party committing a crime in the territory or territory of a member country of the Rome Statute or a country that has accepted the Court's jurisdiction concerning the crime; and 3) In the case of non-state parties, they have agreed to exercise jurisdiction over certain crimes.

The process of resolving criminal cases at the International Criminal Court consists of several stages: **Investigation and Prosecution**, according to Article 53 paragraph (1). After evaluating all available information, the Prosecutor may begin an investigation into the crimes committed in Yemen unless the Prosecutor believes there are no reasonable grounds for proceeding as provided in the statutes. Then the Pre-Trial Chamber is formed, whose duties are stated in Article 56 paragraph (2), to (a) make recommendations or orders relating to procedures that must be followed; (b) provide instructions or directions regarding the records that need to be made in the case process; (c) appoint a person who is considered an expert to assist; (d) authorize a legal advisor to accompany a person who has been detained or has appeared before the Court to fulfill a summons or appoint a legal advisor if the person concerned is unable to appoint his legal advisor; (e) take other measures in the context of gathering and safeguarding evidence.

**Detention and Handover to the Court.** It is impossible for the Court or its parts to directly arrest and detain the person concerned who is currently in the country's territory or the territory of another country, so there must be cooperation between the Court and the country concerned. Before the Court, **the Preliminary Examination (Pre-Trial)** is regulated in Article 60 paragraphs (1-5) of the Statute. According to paragraph (1), the Pre-Trial Chamber must be sure that the person who has been handed over or the person who voluntarily appears to fulfill the summons has been given information about the crimes he is accused of. Based on the Statute, the person must understand his rights, including the right to apply for a temporary release to the Pre-Trial Chamber pending trial. Furthermore, in paragraph (2), a person who is subject to detention based on a detention order issued by the Pre-Trial Chamber may apply for a temporary release to the Pre-Trial Chamber pending trial. In paragraph (3), the Pre-Trial Chamber must periodically review its decision, whether it is a decision to continue to detain or temporarily release the person concerned. Then paragraph (4) confirms that the Pre-Trial Chamber must ensure that no one is detained for an unreasonable period. Meanwhile, paragraph (5) explains that to give the Pre-Trial Chamber the authority, if deemed necessary, to issue a detention order to ensure certainty regarding the presence of the person who has been released before the Court trial: 1) **Trial**: Article 62 confirms the place of trial. The trial must be held at the domicile of the Court, which according to Article 3 paragraph (1), is in The Hague, Netherlands unless the Court decides elsewhere. In comparison, Article 3 paragraph (1) requires the defendant's presence during the trial. The requirement means that the Judicial Chamber does not recognize case examination in absentia; 2) **Evidence**: Based on Article 69 paragraph (1), concerning evidence in the form of testimony from a witness, before giving his testimony under the Law of Procedure and Evidence, an action must be taken to guarantee the truth of the evidence to be given; and 3) **Decision Making and Sentencing**: After going through the trial process following the Statute and the Law of Procedure and Evidence, the Court must finally decide on the case. The decision can be in the form of a decision to release the defendant from all charges and demands of the Public Prosecutor because it is not proven or the evidence submitted is very weak. Alternatively, vice versa, it could be in the form of punishment if it is proven at trial that he is guilty of the charges against the accused. The types of punishment that can be imposed are emphasized in Articles 77 and 78. Article 77 itself specifies two types of punishments that can be applied to an accused who is proven to have committed a crime subject to the Court's jurisdiction.

---

<sup>30</sup> Akande, D. (2003). The Jurisdiction of International Criminal Court Over Nationals of Non-Parties : Legal Basis and Limits. *Journal of International Criminal Justice*, 618, 1.

The settlement of alleged cases of war crimes, crimes against humanity, and crimes of aggression in Yemen becomes difficult if we refer to the Rome Statute. It is because Yemen is a non-state party, a country that is not a member of the International Criminal Court, so it cannot be brought before the Court. This principle is a form of state sovereignty over its national legal jurisdiction. Therefore, if the UN believes these crimes can threaten world security and peace, the UN Security Council can immediately respond by firmly issuing a resolution to the countries concerned to resolve the case immediately.

## CONCLUSION

The military intervention carried out by the Saudi Arabian coalition, which initially aimed to deal with the armed conflict in Yemen, turned into acts of war crimes, crimes against humanity, and crimes of aggression. The three alleged international crimes are under the jurisdiction of the International Criminal Court but later become difficult to apply because Yemen and the United Arab Emirates are not member states/participants of the 1998 Rome Statute. The discussion resulted in the UN Security Council responding to these cases by referring to the Conventions- Related International Conventions and issuing resolutions on the urge to settle cases in Yemen because they threaten world security and peace. The 1998 Rome Statute needs to be continuously reviewed and updated on substances considered outdated due to the increasingly complex development of the international community. Then to respond to the armed conflict that occurred in Yemen, the UN Security Council should be the leading sector to handle this by sending the United Nations Peacekeeping Force. It is to prevent military intervention from other countries, resulting in violations/crimes with an international dimension.

## REFERENCES

- Ainayyah, N. H., Setiyono, J., & Supriyadhie, H. K. (2020). Analisis Hukum Humaniter Internasional Pada Penggunaan Tentara Anak Dalam Konflik Bersenjata Non-Internasional Di Yaman. *Diponegoro Law Journal*, 9(2), 441-455.
- Akande, D. (2003). The Jurisdiction of International Criminal Court Over Nationals of Non-Parties : Legal Basis and Limits. *Journal of International Criminal Justice*, 618, 1.
- Anonim. (n.d). <https://www.alinea.id/dunia/pbb-semua-pihak-dalam-konflik-yaman-kemungkinan-lakukan-kejahatan-perang-b1U4q9dz7>, Diakses pada 20 April 2019.
- Awoah, A.E (2016). Perlindungan Terhadap Korban Perang Dalam Perspektif Konvensi-Konvensi Internasional Tentang Hukum Humaniter dan HAM. *Jurnal Lex Crimen*, V(7), 143.
- Bilbao, M.D.M.C. (n.d). Yemen, the War the World has Forgotten – Its Actors as the Way to Understand the Conflict. <http://database.jornaldefesa.pt/crises e conflitos/medio oriente/IDRI%20243%20140617%20iemen>. Diakses pada 20 April 2019.
- Christmas, S. K., & Roisah, K. (2021). Status Hukum Implementation Legislation Negara Pihak Terhadap Penarikan Diri Statuta Roma 1998. *Jurnal Pembangunan Hukum Indonesia*, 3(2), 267-280.
- Diantha, I. M. P. (2016). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Prenada Media.

- Dini, R.J. (n.d). *Tinjauan Yuridis Intervensi Militer Koalisi Saudi Arabia dalam Konflik Bersenjata di Yaman*. Denpasar: Skripsi Program Kekhususan Hukum Internasional dan Hukum Bisnis Internasional Fakultas Hukum Universitas Udayana.
- Halim, A. (2019). *Analisa Kebijakan Raja Salman Melakukan Intervensi Militer di Yaman Tahun 2015-2017*. Malang: Skripsi Program Studi Ilmu Hubungan Internasional Fakultas Ilmu Sosial dan Ilmu Politik Universitas Muhammadiyah Malang.
- Hiariej, E. O. S. (2002). *Pengadilan atas Beberapa Kejahatan Serius Terhadap HAM*. Erlangga. Jakarta.
- Jones, C. (2011). The Tribes That Bind : Yemen and the Paradox of Political Violence. *Clive Jones Studies in Conflict & Terrorism*, 12, 902-16.
- Mahkamah Agung. (2006). *Pedoman Unsur-Unsur Tindak Pidana Pelanggaran Hak Asasi Manusia Yang Berat dan Pertanggungjawaban Komando*. Jakarta: Mahkamah Agung RI.
- Martowiriono, S. (2017). Azas Pelengkap Statuta Roma 1998 Tentang Pengadilan Pidana Internasional. *Jurnal Hukum & Pembangunan*, 31(4), 339-356.
- Nainggolan, P. P. (2002). *Terorisme dan Tata Dunia Baru*. Jakarta: Sekjen DPR-RI.
- Pailalah, M. G. (2017). *Permasalahan Pengakuan Terhadap Kelompok-Kelompok Belligerent dari Segi Hukum Humaniter Internasional*. Medan: Skripsi Program Studi Departemen Hukum Internasional Fakultas Hukum Universitas Sumatera Utara. Medan.
- Parthiana, I.W. (2015). *Hukum Pidana Internasional*. Bandung: CV Yrama Widya.
- Prakoso, L. T. (2019). Law Enforcement In The Use Of Chemical Weapons In Armed Conflict. *E-Jurnal SPIRIT PRO PATRIA*, 5(2), 91-107.
- Ryan, P. W. (n.d). The Yemen Crisis and the Bab el-Mandeb Maritime Chokepoint. <http://susris.com/2015/04/14/the-bab-el-mandeb-maritime-chokrpont/>. Diakses pada 20 April 2020.
- Sefriani. (2007). Yurisdiksi ICC terhadap Negara Non Anggota Statuta Roma 1998. *Jurnal Hukum*, 2 (14), 314-332.
- Sefriani. (2011). *Hukum Internasional – Suatu Pengantas*. Jakarta: Rajawali Press.
- Shalihah, F. A., & Sidik, H. (2021). Pelanggaran Hukum Internasional dalam Konflik Yaman Tahun 2015-2019 dan Akibatnya terhadap Situasi Krisis Kemanusiaan. *Jurnal ICMES*, 5(1), 22-42.
- Starke, J. G. (2010). *Pengantar Hukum Internasional*. Jakarta: Sinar Grafika.
- Tan, D. (2021). Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum. *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial*, 8(8), 2463-2478.

Tandayu, T. R., & Wibowo, A. (2020). Analisis Yuridis Terhadap Blokade Di Pelabuhan Hudaydah Yaman Yang Menyebabkan Kematian Anak-Anak. *Reformasi Hukum Trisakti*, 2(1).