

ABSTRAK

Kejahatan genosida merupakan *delictum sui generis* dan pelanggaran terhadap norma *jus cogens* yang melarang pemusnahan suatu kelompok nasional, etnis, ras, atau agama. Meskipun telah diatur dalam berbagai instrumen hukum internasional, dugaan kejahatan genosida oleh Israel terhadap warga Palestina di Gaza pasca-7 Oktober 2023 menunjukkan adanya jurang antara norma (*Das Sollen*) dan realitas penegakan hukum (*Das Sein*). Penelitian ini bertujuan untuk: (1) menganalisis pengaturan kejahatan genosida dalam Hukum Pidana Internasional; dan (2) menganalisis penerapan aturan larangan genosida serta mekanisme penegakan hukumnya terhadap konflik bersenjata di Gaza, Palestina. Penelitian ini menggunakan metode penelitian hukum normatif (*doctrinal legal research*) dengan pendekatan perundang-undangan (*statute approach*), pendekatan konseptual (*conceptual approach*), dan pendekatan kasus (*case approach*). Bahan hukum yang digunakan meliputi bahan hukum primer (Konvensi Genosida 1948, Statuta ICTY, Statuta ICTR, dan Statuta Roma 1998), bahan hukum sekunder (buku, jurnal, laporan resmi PBB), dan bahan hukum tersier. Hasil penelitian menunjukkan bahwa: Pertama, kejahatan genosida diatur secara komprehensif dalam Hukum Pidana Internasional dengan ciri khas persyaratan niat khusus (*dolus specialis*). Kodifikasi modern Statuta Roma 1998 dan *Elements of Crimes* memperkuat penegakan hukum melalui pengaturan pertanggungjawaban pidana individual (Pasal 25), pertanggungjawaban komando (Pasal 28), serta penghapusan imunitas dan alasan perintah atasan (Pasal 33). Kedua, tindakan militer Israel di Gaza secara yuridis memenuhi unsur fisik (*actus reus*) dan unsur mental (*mens rea*) genosida. Unsur *actus reus* terbukti dari pembunuhan massal puluhan ribu sipil, penderitaan fisik/mental berat, penciptaan kondisi hidup menuju pemusnahan (kelaparan buatan/IPC Fase 5 dan blokade total), serta pencegahan kelahiran. Unsur *dolus specialis* terbukti secara inferensial dari retorika dehumanisasi pejabat puncak Israel yang selaras dengan pola tindakan nyata yang terulang (*manifest pattern of conduct*), seperti penargetan fasilitas medis, air, dan zona aman. Namun, penegakan hukum *in concreto* mengalami hambatan mutlak akibat ketidakmauan (*unwillingness*) peradilan nasional Israel, penggunaan Hak Veto di Dewan Keamanan PBB, ketiadaan eksekutor mandiri ICC, serta penolakan akses investigasi lapangan oleh Israel.

Kata Kunci: Hukum Pidana Internasional, Kejahatan Genosida, *Dolus Specialis*, Gaza, Israel, Mahkamah Pidana Internasional (ICC).

ABSTRACT

The crime of genocide is a *delictum sui generis* and a violation of *jus cogens* norms prohibiting the destruction of a national, ethnic, racial, or religious group. Despite being regulated under various international legal instruments, the alleged crime of genocide committed by Israel against Palestinians in Gaza post-October 7, 2023, reveals a gap between legal norms (*Das Sollen*) and the reality of law enforcement (*Das Sein*). This study aims to: (1) analyze the framework governing the crime of genocide under International Criminal Law; and (2) evaluate the application of anti-genocide rules and its law enforcement mechanisms regarding the armed conflict in Gaza, Palestine. This study employs normative legal research (*doctrinal legal research*) utilizing the statute approach, conceptual approach, and case approach. The legal materials consist of primary legal materials (1948 Genocide Convention, ICTY Statute, ICTR Statute, and 1998 Rome Statute), secondary legal materials (books, journals, official UN reports), and tertiary legal materials. The results indicate that: First, the crime of genocide is comprehensively regulated under International Criminal Law, characterized by the strict requirement of specific intent (*dolus specialis*). Modern codification under the 1998 Rome Statute and the *Elements of Crimes* reinforces law enforcement by establishing individual criminal responsibility (Article 25), command responsibility (Article 28), and eliminating official immunity and superior orders defenses (Article 33). Second, Israel's military actions in Gaza legally satisfy both the physical elements (*actus reus*) and mental elements (*mens rea*) of genocide. The *actus reus* is evidenced by the mass killing of tens of thousands of civilians, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about physical destruction (engineered famine/IPC Phase 5 and total blockade), and imposing measures to prevent births. The *dolus specialis* is proven inferentially from dehumanizing rhetoric by top Israeli officials aligned with a repeated *manifest pattern of conduct*, such as targeting healthcare facilities, water infrastructure, and designated "safe zones". However, concrete enforcement faces absolute obstacles due to the unwillingness of Israeli national courts, the exercise of the Veto Power in the UN Security Council, the ICC's lack of an independent enforcement body, and Israel's denial of investigative access.

Keywords: *International Criminal Law, Crime of Genocide, Dolus Specialis, Gaza, Israel, International Criminal Court (ICC).*