

ABSTRAK

Studi Perbandingan *International Criminal Tribunal for The Former Yugoslavia (ICTY)*, *The International Criminal Tribunal For Rwanda (ICTR)* dan *International Criminal Court (ICC)*

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Keberadaan pengadilan internasional ICTY (*International Criminal Tribunal for The Former Yugoslavia*), ICTR (*The International Criminal Tribunal For Rwanda*) dan ICC (*International Criminal Court*) tidak terlepas dari adanya suatu kebutuhan masyarakat internasional untuk menegakkan keadilan dan menghukum para pelaku pelanggaran hak asasi manusia dan pelaku kejahatan internasional di negara-negara di dunia. Selain itu keberadaan pengadilan internasional ICTY, ICTR dan ICC dalam menangani kejahatan internasional semakin penting dikarenakan pengadilan nasional memiliki keterbatasan yurisdiksi untuk merespon kejahatan internasional sehingga diperlukan adanya analisis tentang bentuk pengadilan internasional ICTY, ICTR dan ICC.

Penelitian ini membahas permasalahan tentang bagaimana proses pembentukan, pengaturan yurisdiksi dan struktur di ICTY, ICTR, dan ICC. Penelitian ini juga memuat permasalahan tentang bagaimana persamaan dan perbedaan Statuta ICTY, ICTR, dan Statuta Roma. Pendekatan masalah yang digunakan dalam penelitian ini adalah hukum normatif (penelitian hukum kepustakaan). Data yang digunakan adalah data sekunder yang diperoleh dari peraturan-peraturan hukum internasional dan data-data kepustakaan terkait materi yang mendukung pembahasan dari permasalahan. Analisis data yang digunakan adalah deskriptif kualitatif.

Hasil penelitian tentang proses pembentukan, pengaturan yurisdiksi dan struktur ICTY, ICTR dan ICC menunjukkan: **Pertama**, dalam hal pembentukan ICTY, ICTR, dan ICC dilakukan melalui mekanisme yang berbeda. ICTY dan ICTR dibentuk berdasarkan resolusi Dewan Keamanan PBB, sedangkan ICC dibentuk melalui konferensi internasional. **Kedua**, pengaturan yurisdiksi ICTY, ICTR, dan ICC terdapat perbedaan dalam ruang lingkup yurisdiksi material, yurisdiksi teritorial, yurisdiksi personal, dan yurisdiksi temporal. **Ketiga**, dalam hal struktur organ menunjukkan bahwa ICTY dan ICTR memiliki kesamaan identik yang terdiri dari *chambers*, *registry*, dan *office of prosecutors*. Sementara struktur organ ICC berbeda dengan ICTY dan ICTR, dimana struktur organ ICC terdiri dari *presidency divisions*, *registry*, dan *office of prosecutors*.

Perbandingan Statuta ICTY, Statuta ICTR, dan Statuta Roma menunjukkan persamaan maupun perbedaan dalam beberapa aspek. Dalam hal persamaannya: **Pertama**, penggunaan prosedur umum persidangan; **Kedua**, prosedur

perlindungan hukum saat proses persidangan berlangsung; *Ketiga*, secara substansi ketiga statuta tidak mengatur hukuman mati dalam pemidanaan terdakwa dan hanya menerapkan hukuman penjara seumur hidup. Dalam hal perbedaannya ketentuan yang termuat dalam Statuta ICTY, Statuta ICTR dan Statuta Roma meliputi beberapa aspek yaitu struktur organ, muatan prinsip umum hukum pidana, permohonan banding, peran Dewan Keamanan PBB, prosedur penyerahan kasus, kewajiban melakukan kerjasama, pendanaan dan prosedur amandemen.

Kata Kunci: *International Criminal Court (ICC), The International Criminal Tribunal For Rwanda (ICTR), International Criminal Tribunal for The Former Yugoslavia (ICTY), dan Perbandingan.*

ABSTRACT

Comparative Study International Criminal Tribunal for The Former Yugoslavia (ICTY), The International Criminal Tribunal For Rwanda (ICTR) and International Criminal Court (ICC)

By

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The existence of the International Criminal Tribunal for the Former Yugoslavia, ICTR (The International Criminal Tribunal For Rwanda) and ICC (International Criminal Court) are inseparable of the international community necessary to uphold justice and punish perpetrators of human rights abuses and perpetrators of international crimes in the the world. In addition, the existence of international tribunals ICTY, ICTR and ICC in eliminate international crimes become most important because the national courts have limited jurisdiction to responding international crime, so there needs an analysis of international tribunals ICTY, ICTR and ICC.

This research is discusses about how the process of establishment, regulation of jurisdiction and structure ICTY, ICTR, and ICC. In addition, this research also contains an issues of how similarities and differences between ICTY Statute, ICTR, and Rome Statute. Approach to the problem used in this study is the normative law approach (literature research). The data used are secondary data obtained from the rules of international law and literature data related to the material which support the discussion of the problem. Analysis of the data used is qualitative analysis.

The results of research about process of established, regulation of jurisdiction and structure of ICTY, ICTR and ICC show: **First**, in the process of established ICTY, ICTR, and ICC is through with different mechanism. ICTY and ICTR are established based on UN Security Council resolutions, while ICC is established through international conferences. **Second**, the regulation of jurisdiction ICTY, ICTR, and ICC there are differences in the material jurisdiction, territorial jurisdiction, personal jurisdiction, and temporal jurisdiction. **Third**, in terms of structure organ it show that ICTY and ICTR have identical similarities consists of chambers, registry, and office of prosecutors. While the ICC structure organ is different from ICTY and ICTR, the ICC structure organ consists of presidency divisions, registry, and office of prosecutors.

Comparisons of the ICTY Statute, the ICTR Statute and the Rome Statute show similarities and differences in some aspects. In the case of the similarities: **First**, the use of general procedures of the trials; **Second**, legal procedures of protection during the trial process; **Third**, the substance of all three statutes do not regulate the death penalty in prosecution of defendants and only life imprisonment. In the

case of differences between the provisions contained in the Statute of the ICTY, the Statute of the ICTR and the Rome Statute include several aspects of organ structure, general principles of criminal law, appeal, the role of the UN Security Council, the procedure of handover of cases, obligations of cooperation, funding and amendment procedures.

Keywords: Comparison, International Criminal Court (ICC), International Criminal Tribunal For Rwanda (ICTR), and International Criminal Tribunal for The Former Yugoslavia (ICTY).