

ABSTRACT

LEGAL STATUS OF MERCENARY IN INTERNATIONAL LAW

By

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Mercenary are often interpreted as soldiers who fight in an armed conflict with the main motivation in the form of material gain. Blackwater Executive Outcomes, in security operations in Iraq, Pakistan and Afghanistan as well as Sandline International, mercenaries who helped Sierra Leone against the Revolutionary United Front are one example of the existence of mercenaries. To date, there is no consensus on the legal definition of who qualifies as a mercenary. Every regulation regarding mercenaries has a difference in defining mercenaries, so the interpretation and position in the law is different.

The study found that the legal status of mercenaries categorized as non-combatant and has no right to the status of war prisoners if caught by the state authorities where the mercenaries do their activities based on the provisions of Article 47 paragraph (1) of Additional Protocol I 1977, Article 3 of the OAU Convention for the Elimination of Mercenarism in Africa 1977, and Article 16 of the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries 1989. The determination of the status of mercenaries (combatants or war prisoners) can only be carried out by competent courts of judicial power if there are provisions that designate mercenarism as a distinct crime. Determination of the legal status of mercenaries has an impact on whether mercenarism can be said to be a criminal offense or not.

Based on OAU Convention 1977 and UN Convention 1989, activities related to mercenaries are declared as criminal acts because of the negative impact caused can disrupt the stability of a country in carrying out its functions and violate human rights. Therefore, every person (both a natural and legal person) who commits a crime of mercenarism is considered to have violated the applicable convention and must be subject to sanctions.

Keywords: Legal Status, Mercenary, International Law.

ABSTRAK

STATUS HUKUM TENTARA BAYARAN (*MERCENARY*) DALAM HUKUM INTERNASIONAL

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Tentara bayaran (*mercenary*) sering diartikan sebagai tentara yang bertempur dalam sebuah konflik bersenjata dengan motivasi utama berupa keuntungan materi. *Blackwater Executive Outcomes*, yang terlibat dalam operasi-operasi keamanan di Irak, Pakistan, dan Afganistan serta *Sandline International* yang membantu Sierra Leone melawan *Revolutionary United Front*, merupakan salah satu contoh dari eksistensi tentara bayaran. Hingga saat ini, belum ada konsensus tentang definisi hukum mengenai siapa yang memenuhi syarat sebagai tentara bayaran. Setiap regulasi yang mengatur mengenai tentara bayaran memiliki perbedaan dalam mendefinisikan tentara bayaran, sehingga penafsiran dan kedudukannya dalam hukum pun berbeda.

Penelitian menemukan bahwa status hukum dari tentara bayaran dikategorikan sebagai *non-kombatan* dan tidak berhak atas status tawanan perang apabila tertangkap oleh otoritas negara di mana tentara bayaran tersebut melakukan aktivitasnya berdasarkan ketentuan Pasal 47 ayat (1) Protokol Tambahan I 1977, Pasal 3 *OAU Convention for the Elimination of Mercenarism in Africa* 1977, dan Pasal 16 *International Convention against the Recruitment, Use, Financing, and Training of Mercenaries* 1989. Adapun penentuan status tentara bayaran (kombatan atau tawanan perang) hanya dapat dilakukan oleh pengadilan yang kompeten dari kekuasaan kehakiman jika memang terdapat ketentuan yang menunjuk *mercenarism* sebagai *distinct crime*. Penentuan status hukum tentara bayaran berdampak pada apakah *mercenarism* dapat dikatakan sebagai tindak pidana atau tidak.

Berdasarkan *OAU Convention* 1977 dan Konvensi PBB 1989, kegiatan terkait tentara bayaran dinyatakan sebagai tindak kriminal karena dampak negatif yang ditimbulkan dapat mengganggu stabilitas suatu negara dalam menjalankan fungsinya dan melanggar hak asasi manusia. Sehingga, setiap orang (baik manusia pribadi maupun badan hukum) yang melakukan kejahatan *mercenarism* dianggap telah melakukan pelanggaran terhadap konvensi yang berlaku dan wajib dikenakan sanksi.

Kata Kunci: Status Hukum, Tentara Bayaran, Hukum Internasional.