ISSN 2961-8061

# UNIVERSITAS SULTAN AGENG TIRTAYASA
# TIRTAYASA JOURNAL OF INTERNATIONAL LAW
# JURNAL HUKUM INTERNASIONAL

VOLUME 2, NOMOR 1, JUNI 2023

Comparison of Juvenile Systems in Indonesia and South Korea
***Adelia Oktaviani, Satrio Fajar Romadhon, Muhammad Rusli Arafat***

Personal Data Protection in the Era of Globalization (Indonesia Perspective)
***Yogi Muhammad Rahman, Aflah Haora, Elsa Nufitriani Sutansi***

Tindakan Amerika Serikat Dalam Memerangi Terorisme di Afghanistan dan Hubungannya Dengan Prinsip Non Intervensi
***Beni Prawira Candra Jaya***

Implementasi *Minamata Convention on Mercury* Terhadap Kasus Pencemaran Merkuri dan Arsen di Teluk Buyat Indonesia
***Ahmad Rayhan, Widya Ayu Pramesty***

The Double Standards of International Law: A Comparative Study of the Conflict in Ukraine and Palestine
***Khoitil Aswadi***

Tirtayasa Journal of International Law


| Tirtayasa Journal of International Law : Jurnal Hukum Internasional | Volume 2 Nomor 1 | Hlm. 1-81 | Serang, Juni 2023 | e -ISSN 2961-8061 | p-ISSN 2961-8355 |
|---|---|---|---|---|---|

# Tirtayasa Journal of International Law
# Jurnal Hukum Internasional

**Jurnal Fakultas Hukum Universitas Sultan Ageng Tirtayasa**

**e-ISSN: 2961-8061 | p-ISSN: 2961-8355**

**Cover by The Following Indexer Institutions**

Google Scholar

Crossref

# Tirtayasa Journal of International Law
## Jurnal Hukum Internasional

### Jurnal Fakultas Hukum Universitas Sultan Ageng Tirtayasa


Tirtayasa Journal of International Law (TJIL) is a national peer-reviewed journal particularly in the field of International Law. TJIL aims to publish high quality articles from academics, legal scholars, or practitioners at any level. TJIL creates a forum to exchange new ideas in International Law but not limited to: Public International Law, International Criminal Law, International Environmental law, International Humanitarian Law, Human Right, International Law of the Sea, International Dispute Settlement, International Organizations Law, International Private Law.


**Editor in Chief**

Belardo Prasetya Mega Jaya

**Managing Editor**

Mokhamad Gisa Vitrana

**Editorial Team**

Rudi Natamiharja

Muhammad Havez

Rahmi Yuniarti

Muhammad Rusli Arafat

Hera Susanti



**Website**

https://jurnal.untirta.ac.id/index.php/tirtayasatjil/index

**Editorial Office**

3rd Floor, Faculty of Law, Universitas Sultan Ageng Tirtayasa,

Jln. Raya Palka Km 03, Sindangsari, Pabuaran, Banten

**TIRTAYASA JOURNAL OF INTERNATIONAL LAW**
**Volume 2 Nomor 1, June 2023**
**e-ISSN: 2961-8061 | p-ISSN: 2961-8355**
Fakultas Hukum, Universitas Sultan Ageng Tirtayasa, Serang-Banten, Indonesia
https://jurnal.untirta.ac.id/index.php/tirtayasatjil

# TABLE OF CONTENTS

**the Profile of Tirtayasa Journal of International Law** ______ **i**

**Table of Contents** ______ **ii**

**Comparison of Juvenile Systems in Indonesia and South Korea**
*Adelia Oktaviani, Satrio Fajar Romadhon, Muhammad Rusli Arafat* ______ **1**

**Personal Data Protection in the Era of Globalization (Indonesia Perspective)**
*Yogi Muhammad Rahman, Aflah Haora, Elsa Nufitriani Sutansi* ______ **15**

**Tindakan Amerika Serikat Dalam Memerangi Terorisme di Afghanistan dan Hubungannya Dengan Prinsip Non Intervensi**
*Beni Prawira Candra Jaya* ______ **31**

**Implementasi Minamata Convention on Mercury Terhadap Kasus Pencemaran Merkuri dan Arsen di Teluk Buyat Indonesia**
*Ahmad Rayhan, Widya Ayu Pramesty* ______ **55**

**The Double Standards of International Law: A Comparative Study of the Conflict in Ukraine and Palestine**
*Khoitil Aswadi* ______ **71**

TIRTAYASA JOURNAL OF INTERNATIONAL LAW
Volume 2 Nomor 1, June 2023, hlm. (1-14)
Fakultas Hukum, Universitas Sultan Ageng Tirtayasa, Serang-Banten, Indonesia
P-ISSN: 2961-8355 | e-ISSN: 2961-8061
https://jurnal.untirta.ac.id/index.php/tirtayasatjil

# COMPARISON OF JUVENILE JUSTICE SYSTEMS IN INDONESIA AND SOUTH KOREA

**Adelia Oktaviani**[1]
[1] *University of Singaperbangsa Karawang*
*Karawang, West Java*
*Adeliadelia62@gmail.com*

**Satrio Fajar Romadhon**[2], **Muhammad Rusli Arafat**[3]
[3] *University of Singaperbangsa Karawang*
*Karawang, West Java*
[2] *Satriofajarr21@gmail.com*
[3] *Rusli.arafat@fh.unsika.ac.id*

**Info Artikel**
|**Submitted**: 23-11-2022 |**Revised**: 15-05-2023 |**Accepted**: 19-06-2023

How to cite: Adelia Oktaviani, Satrio Fajar Romadhon, Muhammad Rusli Arafat, *et al* "Comparison of Juvenile Justice Systems in Indonesia and South Korea", *Tirtayasa Journal of International Law*, Vol. 2 No. 1, (June, 2023)", hlm. 1-14.

***ABSTRACT:***

*Child growth is a period when children have a high level of curiosity, which sometimes leads them to commit crimes. According to the Indonesian Supreme Court Annual Report 2020, juvenile criminal cases reached 6,146. Meanwhile, as many as 38,590 cases of juvenile crimes were reported in the South Korean Judicial Yearbook 2020. There is a juvenile justice system to resolve juvenile criminal cases. This judicial system aims to educate and protect the rights of Children in Conflict with the Law for their future. The juvenile justice system in Indonesia is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), while there is the Juvenile Act of 2015 that regulated juvenile cases in South Korea. A comparison of the juvenile justice system in the two countries in fostering and protecting juveniles is an interesting matter to discuss. This article includes statistics on juvenile cases, the juvenile justice system, types of punishment, and the laws that apply in both countries. By using normative legal research methods, the result of this article is to give a comparison of how Indonesia and South Korea solve juvenile cases based on their juvenile justice systems and regulations.*

***Keywords***; *Juvenile Justice Systems, Juvenile Crime, Indonesia, South Korea.*

## A. Introduction

Child in conflict with the law has their own judicial system, which is different from the usual criminal justice system that applies to adults. In Indonesia, the child who commits crimes is called a child in conflict with the law, while in South Korea is called *Sonyeon.* Law Number 11 of 2012 concerning the Juvenile Criminal Justice System or UU SPPA, aims to protect children in conflict with the law. Therefore, children can continue their life and prepare for a better future. In Indonesia, according to Article 5 Paragraph 1 of Law Number 11 of 2012, the juvenile justice system must prioritize the restorative justice approach (diversion) to achieve peace between the child and the victim. Also, it aims to avoid deprivation of the child's freedom. Meanwhile, in South Korea, there is a system called

Recommendation of Compromise (*Hwahaegwongo*) to reach an agreement with the victim. According to Seung-Hyun Lee, since the Juvenile Act applied in 1958, juvenile cases have been subject to disposition despite the "risk of committing a crime". It is not like action against an adult.[1]

According to Article 1 of the Conventions on the Rights of the Child, the definition of a child is any person under the age of 18 unless otherwise provided by the laws of a country. All children have all the rights mentioned in this convention. In Article 1 Paragraph 3 of Law Number 11 of 2012, a Child in Conflict with The Law means, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing criminal acts. The Juvenile Act of South Korea used the term "Juvenile" as persons who are under the age of 19. Children play the role of the successor of the nation in the future. During the period of growth, the child needs more attention from parents to be able to control their character and behavior. In this phase, the child has a relatively high level of curiosity about many things. As a result, the child can do anything to satisfy his curiosity. Sometimes, it leads children to commit a crime because the child does not really understand to determine whether it is a good or bad thing. In addition, the child does not have a stable mentality to make a decision. The child is not a miniature of the adult who has a stable mentality.[2]

The Indonesian Supreme Court Annual Report 2020, has reported there were 6,018 juvenile criminal cases in 2018. It decreased to 5,131 cases in 2019. Then, there were 6,146 cases in 2020. Meanwhile, the Judicial Yearbook (*Sabeobyeongam*) issued by a South Korean Court on 27 September 2021, the number of juvenile protection cases received in 2020 increased to 38,590 cases. There were 36,576 cases recorded in 2019. In 2018, there were 33,301 cases, the lowest number in the last 10 years. However, the number of juvenile cases in 2020 has decreased since 2011, which received 46,497 cases in 2011. Other than that, the juvenile protection cases received and resolved in 2020 were 38,293 cases.[3]

---

1 Lee Seung Hyun, "A Critical Study on the Juvenile Regulations in the [Juvenile Act]," *Juvenile Protection Research*, Vol. 34, No. 1, 2021, p. 283.

2 Nur Hidayanti, "Juvenile Criminal Justice with a Restorative Justice Approach and the Best Interest for Children". *Ragam Jurnal Pengembangan Humaniora*, Vol. 13 No. 2, 2013, p. 3.

3 Court Administration Office, *Judicial Yearbook 2021*, (Seoul, 2021), accessed from https://www.scourt.go.kr/portal/news/NewsViewAction.work?pageIndex=1&searchWord=&searchOption=&seqnum=7&gubun=719 p. 757.

South Korea divided juvenile criminal cases into two types according to the punishment, there are the juvenile criminal cases as protective cases with protection dispositions and the juvenile criminal case with criminal penalties. Due to the goal of juvenile justice, which is character correction and environmental adjustment, South Korean juvenile justice resolved 25,579 juvenile criminal cases as protective cases with protection dispositions, while 364 juvenile criminal cases were resolved with criminal penalties in 2020. Furthermore, Indonesia resolved 6,146 cases of juvenile crimes in 2020. 132 cases were carried out through diversion, while other cases were given verdicts of action penalties and criminal penalties.

Based on the data included above, it can be seen there are a highly different number of juvenile criminal cases in Indonesia and South Korea. This article discusses on how is the comparison of the juvenile justice system in Indonesia and South Korea. In addition, it includes the types of punishment and the laws that apply in both countries. The comparison in resolving cases and the differences in giving punishment to the child who commits a crime is an interesting matter to discuss. By comparing the juvenile criminal justice system and the punishments given in Indonesia and South Korea, it can be seen the differences and similarities between the systems in the two countries and the purpose of forming rules to protect the future of juveniles.

## B. Research Method

The research method used in this study is a normative legal research method, which is a research method that examines legal concepts and rules obtained from legislation, legal theory, doctrine, and expert opinions. This method can also be referred to as the library research method. The source of this research data was obtained from primary, secondary, and tertiary legal materials in journals, books/literature, articles, official government documents, and laws in force in both countries, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and the Juvenile Act of South Korea.[4]

## C. Discussion

### 1. Juvenile Justice System in Indonesia and South Korea

#### a. Juvenile Justice System in Indonesia

According to SPPA Law, the child is divided into 3 categories, namely the Child in Conflict with the Law hereinafter referred to as the Child, Victim Child, and Witness Child.

[4] Bachtiar, *Legal Research Methods*, Unpam Press, 2019.

A Child in Conflict with the Law is any person under 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing criminal acts. A Victim Child is any person under 18 years old who experiences physical, mental, and/or economic losses caused by criminal acts. A Witness Child is any person under the age of 18 who can give a statement about a crime that they heard, saw, or experienced.

According to Harahap, institutions that carry out juvenile investigations, juvenile prosecutions, juvenile courts, and juvenile corrections are part of the juvenile delinquency control system, hereinafter referred to as the juvenile criminal justice system.[5] The crime committed by the child is one of the consequences of the child's deviance. The purpose of SPPA Law is to foster the child's actions, so there will be no similar actions repeated for the second time in the future.

In addressing juvenile criminal cases, Indonesia enacted Law Number 11 of 2012 as a substitute for Law Number 3 of 1997 concerning Juvenile Justice under the decision of the Constitutional Court Number 1 / PUU-VIII / 2010.[6] Article 13 Paragraph 1 of Law Number 23 of 2002 concerning Child Protection states, every child during the care of parents, guardians or any party is responsible for the child's protection from discrimination, exploitation, neglect, cruelty, violence, persecution, injustice, and other infringing acts. Thus, the caregiver can be punished if negligent. Juvenile justice in Indonesia is intended to protect the child in conflict with the law with the purpose that the child can meet their long future and provide opportunities through coaching. Therefore, the child gains the identity to become worthwhile human beings for the nation.

Juvenile criminal justice begins with investigation, prosecution, and court hearings for decisions. In every step, the authorized official is obliged to do a diversion. Based on Article 6 of Law Number 11 of 2012 the purpose of diversion is:

1) Achieve peace between the victim and the child.
2) Resolve children's cases outside the judicial process.
3) Avoid children from deprivation of freedom.
4) Encourage the community to participate.
5) To put the child's responsibility.

---

5 Yessy Nidawati, "*Criminal Justice System and Juvenile Criminal Justice System*", 2019.

6 BPK RI, https://peraturan.bpk.go.id/Home/Details/45923/uu-no-3-tahun-1997, accessed on 19 Juli 2022.

Diversion is carried out through discussion by involving the child and his/her parents/guardians, victims, and/or their parents/guardians, community guides, and professional social workers based on a restorative justice approach. The diversion process is an initial stage in the juvenile justice system to avoid judicial proceedings in the courts. Article 7 Paragraph 2, there are several requirements that must be met to do a diversion:

a) shall be punished with imprisonment under 7 (seven) years and

b) not repetition of a crime.

Therefore, a diversion can be done if the criminal act committed is a criminal act that has a punishment of imprisonment under seven years. Also, it is the first criminal act committed by a child. In other words, it is not a repetition (recidivism). If the diversion process is failed, the case will be handed over to the next step until the trial stage. The court has the right to determine the period and the type of punishment that will apply to the child. The lower the criminal threat, the higher the priority for diversion. Diversion is not intended for serious juvenile criminal cases. Serious juvenile criminal cases are resolved through the courts (litigation). However, the settlement of these cases still prioritizes the principle of the best interests of the child. The process of imposing criminal penalties on children is only the last step (*ultimum remedium*) without ignoring children's rights.[7] The age of the child also determines the priority of giving diversion, the younger the age of the child, the higher the priority of diversion.

In the trial process, the role of the juvenile judges is to examine and adjudicate the juvenile case assisted by a single judge. A judge in juvenile proceedings is appointed by a decree of the Supreme Court Head at the suggestion of the Head of the District Court concerned. In a difficult case, especially there is more than one perpetrator, and difficult to prove the guilt, the head of the district court appoints a panel judge to resolve the case. When the trial began, the judge, the prosecutor, and other authorized persons do not use the gown due to maintaining the child's psychology as a defendant. Further, the trial is a private trial, which can be attended by the authorized person, the child, the victim, and their parents. However, the verdict can be read and accessed by the public.

---

7 Nevey Varida Ariani, "Implementation of Law Number 11 of 2012 concerning the Criminal Justice System for Children in an Effort to Protect the Interests of Children", *Media Hukum Journal*, Vol. 21, No. 1, 2014, p. 16.

### b. Juvenile Justice System in South Korea

To resolve a case, each country has its law in addressing juvenile justice cases. The juvenile justice system in South Korea is regulated by the Juvenile Act (*Sonyeonbeob*) which has been in force since 1958. The child referred to in the Juvenile Act are persons under the age of 19 (Article 2). The Juvenile Act currently divides children who commit criminal acts into three categories, namely *Beomjoe Sonyeon* (14 - 18 years old), *Chokbok Seonyeon* (10 - 13 years old), and *Ubeom Sonyeon* (10 - 18 years old). It can be seen there is a different age between one another. In addition, there will be no punishment if a child under 10 years old commits a criminal act.

The juvenile justice system in South Korea distinguishes the types of juvenile criminal cases. First, there is a protective case, which is under the jurisdiction of the Children's Department within the scope of the Family Court or District Court. A protection case is determined on a child who is 10 years old but not yet 14 years old (*Chokbok Sonyeon*) that committed crimes. In this case, the child is not sentenced to a criminal sentence but is tried and given a protective disposition (Protective Detention of Juvenile) by a juvenile judge (single judge). A single judge will take over the trial stage. There is also a possibility for a panel judge to do the trial stage if it is also required in a more serious case. Second, a criminal case is determined on a child who is over 14 years old but under 19 (*Beomjoe Sonyeon*) that committed a criminal offense, further may be sent to a general criminal court or remain in juvenile court. Although the child is being sent to a general criminal court, the juvenile still acquires special treatment because of the minor status.[8] Although cases in juvenile justice in South Korea are divided into two types, the children in the two cases are both criminal offenses. Things that distinguish it are the age category and punishment.

Retrieved from Juvenile Act Article 4 Paragraph 2, if the police find a child who committed a crime, they can directly hand over the child to the juvenile department without going through prosecution. This method is called notification (*Tonggojedo*). "*Notification is a procedure whereby a guardian or the head of a school, social welfare facility, or probation office, etc., directly file a case with the court without going through an investigative agency such as the police or prosecutorial agencies*". The notification method can be used in the case of *Chokbok Sonyeon* or *Ubeom Sonyeon.* This method is a process in which a guardian

[8] Seoul Law Group, *Criminal Minors: Special Treatment for Children Who Committed Crime in Korea,* https://seoullawgroup.com/juvenile-crime-in-korea-special-treatment/, accessed 15 June 2022.

or principal, social welfare facility, or probationary office directly files a case in court without going through investigative agencies such as the police and prosecutors.[9]

However, if the juvenile department in carrying out investigations or the court finds criminal facts that must be punished with imprisonment and are deemed necessary, the juvenile department can submit the case to the public prosecutor through a decision. Afterward, the case is considered as a juvenile criminal case. In the *Beomjoe Sonyeon* case, it must be carried out through investigation and forwarded to the prosecutor's office. After the prosecutor examines the juvenile sent by the police or who is known directly, further considers there is a crime punishable by a fine (mulct) that is less than or equal to a fine, or there is a protective reason, the case should be transferred to the juvenile department as a protective case. Otherwise, the child will be prosecuted in a general criminal court and treated as a criminal case like adult crimes in general.[10]

Before a decision on the disposition of protection is taken, the juvenile judge may recommend Compromise (*Hwaehaegwongo*) to the child under Article 25-3 (1) of the Juvenile Act in the form of compensation for damages and others. There are several conditions to be subjected to in a case of the Recommendation of Compromise.

1) The perpetrator must be *Chokbok Sonyeon* or *Ubeom Sonyeon*;
2) The facts must be clear and the culprit must confess his crime;
3) With the consent of the victim,
4) All requirements that the culprit has no explicit objections must be met.

The stages of Compromise are Acceptance of cases; Selection of appropriate cases by the judge; Investigation by investigators; Reconciliation recommendation procedures (reconciliation counsel); Hearings and decisions (non-disposition, protection disposition).[11] The result of the compromise is to be used as a consideration for the juvenile judge to determine the protective disposition. If the compromise is successful, the judge should immediately determine a trial court date to decide whether the case completes in a non-

9 Court Administration Office, *2018 Youth Notification Practice (Revised Version): Overview, Case Study, Q&A.*, (Seoul: 2018), p. 10.

10 Lee Soon Rae, "Current State of Juvenile Justice Law and Response Strategies for Juvenile Crime, *Criminal Policy Research*, Vol. 71, No. 3, 2007, p. 1056

11 Seoul Family Court, *Recommendation of Reconciliation Procedure for Juvenile Protection Cases*, (Seoul: 2017), p. 1.

disposition or a protective disposition. If the compromise is failed, the juvenile judge should immediately determine a trial court date for the case to decide with a protection disposition.

**c. Comparison of Juvenile Justice Systems in Indonesia and South Korea**

Generally, the comparison of juvenile justice systems in Indonesia and South Korea has some differences. Start with the applicable law, the classification of juveniles as perpetrators, the types of cases, and others. However, in some ways such as the type of trial, there are similarities between Indonesia and South Korea. The comparison can be seen in the following table.

**Table 1. Comparison of Juvenile Justice Systems in Indonesia and South Korea**

| Comparison of Juvenile Justice Systems in Indonesia and South Korea | | | |
|---|---|---|---|
| No | Comparison by | Indonesia | Korea Selatan |
| 1. | The Applicable Law | Law Number 11 of 2012 | Juvenile Act |
| 2. | Child Definition | Child: Any person who is 12 years old and, under 18 years old | Juvenile: Person under 19 years old |
| 3. | Child Classification | Child who commits a criminal act is called a Child in Conflict with the Law | Child who commits a criminal act is classified into three: *Chokbok Sonyeon* (10-13 Years Old), *Ubeom Sonyeon* (10-18 Years Old), *Beomjoe Sonyeon* (14-18Years Old) |
| 4. | Purpose | The SPPA Law intends to protect a child, prepare the child for a better future and provide opportunities for the child through coaching, with the hope that the child will obtain their identity. Therefore, to become independent, responsible, and useful human beings for themselves, their families, communities, nations, and countries. | Ensuring the good coaching of the Juvenile by carrying out necessary actions, such as protective dispositions, etc. In addition, it helps the juvenile with the environment adjustment and the character correction of the Child who shows anti-social behavior, and by providing specific actions regarding criminal dispositions. |
| 5. | Diversion Effort/ | Diversion should offer/do at the level of investigation, prosecution, and examination | There is no diversion term, but there is a Recommendation of Compromise (*Hwahaegwongo*) |

| | | | |
|---|---|---|---|
| | | of Children's cases in the district court | recommended by the Juvenile Judge |
| 6. | Judge | Child judge (single judge) and panel judge also required (if the criminal act sentenced with seven years imprisonment or the case is too complicated) | Single juvenile judge (a panel judge is required in more serious cases) |
| 7. | Types of Trials | Closed trial | Closed trial |
| 8. | Types of Case | Child criminal cases | Protection case and criminal case |
| 9. | Punishment | Penalty of action and Criminal penalty (Primary and Supplementary) | Protective disposition (protective detention of a juvenile) and criminal penalty with special treatment |

Juvenile criminal justice in Indonesia is regulated by Law Number 11 of 2012 or the SPPA Law, while juvenile justice in South Korea is regulated by the Juvenile Act with other laws. The purpose of juvenile justice in both countries is the same, which is to foster, protect and provide opportunities for children to be accepted back into society. The definition of a child is based on age. The SPPA Law states that a child is a person who is 12 years old, but not 18 years old. The Juvenile Act provides that a juvenile is a person under the age of 19. The juvenile criminal justice system in Indonesia uses the term Child in Conflict with the Law for a child who commits a criminal act. Basically, there are two other terms of a child based on the law, which are the Victim Child and Witness Child. However, in this article only discuss the child as the perpetrator. South Korea classified juvenile who commits a crime based on their age, there are three types, namely *Chokbok Sonyeon* (10-13 years), *Ubeom Sonyeon* (10 - 18 years), and *Beomjoe Sonyeon* (14 - 18 years).

Diversion efforts in juvenile criminal justice are implemented as a first step in juvenile justice cases to avoid trial, while in the South Korean juvenile justice system, there is a Recommendation of Compromise (*Hwahaegwongo*) suggested by juvenile judges. The results of this compromise were used as consideration in the trial to determine the protective disposition. Judges in juvenile trials in both countries is a single child/juvenile judges. However, it requires a panel judge if the case is more complicated or if the criminal punishment is seven years of imprisonment. While the panel of juvenile judges in South Korea is also required for complicated or more serious crimes. Child cases in both countries are closed trials, in which only the authorized parties, the child, and the victim who allowed to attend the trial process, and it should not be accessed by the public. The juvenile criminal

case in South Korea is classified into protection cases and criminal cases with each different type of punishment, while the child in conflict with the law in Indonesia is only included in criminal cases in juvenile criminal justice. The punishment system in the Indonesian juvenile justice system recognizes the Penalty of action and Criminal penalty (Primary and Supplementary) as stipulated in the SPPA Law. South Korea is famous for its protective disposition as punishment for the juvenile who commits a crime. but if serious criminal facts are found based on various factors, the child can be subject to criminal penalties that apply to adults with special treatment.

### 2. Types of Punishments Applied to Children of Offenders

#### a. Types of Punishment for Child Offenders in Indonesia

Even though the perpetrator is a minor or underage, a criminal act cannot be passed casually. A juvenile criminal case has its type of punishment that is different from the usual criminal penalties that apply to adults. Because one of the purposes of punishment for juvenile crimes is to foster and improve the character of the juvenile to be able to be accepted back into their environment. In accordance with the rights of children in The United Nations Convention on the Rights of the Child, children accused of violating the law are entitled to legal assistance and fair treatment. There should be many solutions to help them become a good person in the community. A punishment of imprisonment should only be a last resort.[12]

The SPPA Law stated that there are several types of punishments. Different from South Korea, which knows the level of punishment, Indonesia only recognizes the categories of act penalty and criminal penalties. Article 69 of Law Number 11 of 2012 states that children under 14 years old only get a penalty of action. Meanwhile, children over 14 years old to 18 can be subject to criminal penalties and penalties of actions. The penalty of action is a punishment aimed at educating and protecting (the child) from harm in the future. The form of the penalty of action, namely returns to his parents, treatment in a psychiatric hospital, and coaching at the LPKS (Social Welfare Organizing Institution). Child criminal penalties in the form of imprisonment are carried out at LPKA (Special Child Development Institute) only if the child's conditions and actions are considered to harm the community. Juvenile criminal punishment in the form of imprisonment is the last option. A child who is involved in a criminal act and experiences coaching at LPKA has an age limit of up to 18 years old. It means if the coaching period has not been completed, the child should continue

---

[12] United Nations, *Convention on the Rights of the Child,* Treaty Series, 1577, 3, (1989).

the coaching at the advanced level of LPKA, namely the youth penitentiary, and applies subsequently. Article 71 paragraph 1 of the SPPA Law, it is stated the main criminal penalties:

1) Criminal warning, described in article 72 of SPPA Law
2) Criminal with the requirement:
   a) Coaching outside the institution
   b) Community service, aims to educate children by increasing their concern for positive community activities.
   c) Surveillance. Surveillance is carried out by the public prosecutor and guided by community advisers.
3) Work training
4) Coaching in institutions
5) Prison

Then the additional crime in Article 71 Paragraph 2 of the SPPA Law is deprivation of profits obtained from criminal acts or fulfillment of customary obligations. Child imprisonment is the last option. The role of the judge in sentencing is necessary for the psychology of the child. The judge requires to understand the problems that the child experiences, both from the perspective of the victim and the perpetrator in determining the verdict. The diversion process is a good way to avoid the trial process because it will harm the future of the child and cause trauma. Meanwhile, the purpose of juvenile criminal justice is to educate and foster children from their unlawful treatment to become worthwhile people for themselves, their nation, and their country.

**b. Types of Punishment for Child Offenders in South Korea**

The juvenile criminal punishment system implemented in South Korea recognizes the term Protective Detention of Juveniles. Instead of punishing the child with criminal penalties, South Korea provides protection detention at various levels. Stated in Article 32 Paragraph 1 of the Juvenile Act of South Korea, if it is deemed necessary to order the detention of the protection of a child because of a court, the judge of the competent Juvenile Department shall, by way of a decision, make a disposition that falls within one of the following subparagraphs:

1) To consign a juvenile concerned of the care and custody of his/her guardian or any person who can provide protection for the juvenile in substitution for the guardian;
2) To issue an order to attend a lecture;
3) To issue a community service order;
4) To place a juvenile concerned under the short-term probation of a probation officer;

5) To place a juvenile concerned under the long-term probation of a probation officer;
6) To entrust a juvenile concerned for the care and custody to a child welfare institution under the Child Welfare Act or other juvenile protection institution;
7) To entrust a juvenile concerned to a hospital, a sanatorium or a juvenile medical care and protection institution under the Act on the Treatment of Protected Juveniles, Etc.;
8) To transfer a juvenile to the Juvenile Reformatory within one month;
9) To transfer a juvenile to the Juvenile Reformatory for a short-term; and
10) To transfer a juvenile to the Juvenile Reformatory for a long-term.

The period of protective detention is regulated in the Juvenile Act Article 33. If the child is sentenced to imprisonment, the child is placed in juvenile prison (*Sonyeon Gyodoso*). The punishment of the child offender who is more than 14 years old but under 19 years old is equated with a general criminal sentence but still obtains special treatment. The types of special treatment in the Juvenile Act are divided into three, the abolition of the death penalty and life imprisonment, the reduction of the term of punishment, and indeterminate sentences.

1) Abolition of the Death Penalty and Life Prison
   Article 59 of the Juvenile Act states, "The death penalty or life sentence for a child who was less than 18 years old at the time the crime was committed, was reduced to 15 years in prison." This special treatment applies to child defendants under the age of 18 who are sentenced to death or life imprisonment.
2) Reduction of Sentence
   This special treatment applies to child defendants under the age of 19 by considering various reasons. A reduced sentence is optional and not mandatory. As provided in the Juvenile Act Article 60 Paragraph 2, "The sentence may be reduced if, taking into account the special character of the child, the reduction is deemed reasonable."
3) Indefinite Sentence
   There is a minimum and maximum period if the child defendant is charged with a sentence of more than 2 years. If charged with a "maximum sentence of 6 years and a minimum of 3 years" then the child can be paroled if he has served the minimum sentence with good behavior. This is contained in the Juvenile Act Article 60 (Indeterminate Sentences) which states that "If a juvenile commits a crime punishable by imprisonment for a term limited to two years or more, the sentence must specify a maximum and minimum term within the scope of the term of the sentence. Provided that the maximum term cannot exceed ten years, and the minimum term cannot exceed five years."

## D. Conclusion

According to the Child/Juvenile Criminal Cases data in Indonesia and South Korea, juvenile criminal cases in South Korea are much higher than in Indonesia. The juvenile justice systems in Indonesia and South Korea has some significant differences. The juvenile justice system in South Korea distinguishes child offenders into two different cases, namely

protection cases and criminal cases while Indonesia only has a juvenile criminal case. In Indonesia, there is an effort to address the case outside the court with Restorative Justice approach, which is a diversion. Even though South Korea does not have diversion, there is a Recommendation of Compromise (*Hwahaegwongo*) which is suggested by a judge of the juvenile department. Regardless of the age, Children in Conflict with the Law still get punishment for criminal acts committed even though the punishment is different from adult criminal penalties. Child criminal justice in Indonesia has two types of punishments, namely criminal penalty, and penalty of action. South Korea in prosecuting juvenile cases has protection sentences (Protective Detention of Juvenile) which consist of 10 levels according to the age of the juvenile offender and the level of the type of the case (more complicated case). In addition, children may be punished like adults by providing special treatment.

## E. Suggestion

The author would like to provide a suggestion about the juvenile case transfer from the juvenile department to the public prosecution in South Korea. The case can be transferred if they find criminal facts that must be punished with imprisonment and are deemed necessary. If the juvenile is prosecuted in a general criminal court and treated as a criminal case like adult crimes in general, this is quite contrary to its purpose of fostering and protecting the rights of the child. The author suggests the juvenile justice institution in South Korea could consider to do not transferring the cases to a general criminal court because the perpetrator is a child/juvenile, which needs special treatment under the juvenile department. Furthermore, the enforcement of law in juvenile criminal cases through juvenile justice must be further maximized so that the goal to foster and prepare the future of a child, and to return to society can be achieved by not reducing the rights of the child.

## References

### Books

Bachtiar. *Legal Research Methods*. Unpam Press, 2019;

Court Administration Office. *Judicial Yearbook 2021*. https://ebook.scourt.go.kr/kukudocs/v/pBNcOCMupFA, 2021;

Seoul Family Court. *Recommendation of Reconciliation Procedure for Juvenile Protection Cases*. 2017;

**Journals**

Ariani, Nevey Varida. "Implementasi Undang – Undang Nomor 11 tahun 2012 tentang Sistem Peradilan Pidana Anak dalam Upaya Melindungi Kepentingan Anak." *Jurnal Media Hukum,* Vol. 21, No. 1. 2014;

Hidayanti, Nur. "Peradilan Pidana Anak dengan Pendekatan Keadilan Restoratif dan Kepentingan Terbaik bagi Anak." *Jurnal Pengembangan Humaniora,* Vol. 13, No. 2. 2013;

Lee, S. H. (2021). "A Critical Study on the Juvenile Regulations in the Juvenile Act." *Juvenile Protection Research*, *34(1)* (283-306) http://doi.org/10.35930/KJPR. 34.1.11. 2021;

Lee, S. R. "Current State of Juvenile Justice Law and Response Strategies for Juvenile Crime." *Criminal Policy Research*, 1047-1080. 2007;

Nidawati, Y. "Criminal Justice System and Juvenile Criminal Justice System", 2019;

**Articles**

Law & Good. 2020, "Reconciliation Recommendation System In the Juvenile Protection Procedure." Available on Website: https://www.lawandgood.com/ counsel/11409 Accessed on July 25th, 2022;

Pengadilan Negeri Stabat. 2016, "Pengadilan Anak (n.d.)." Pengadilan anak: https://www. pn-stabat.go.id/2015-06-06-01-33-01/pengadilan-anak.html Accessed on June 17th, 2022;

Seoul Law Group. April 28th, 2021, "Criminal Minors: Special Treatment for Children Who Committed Crime in Korea." Available on Website: https://seoullawgroup.com/juvenile-crime-in-korea-special-treatment/ Accessed on June 15th, 2022;

**Others**

Court Administration Office. 2018, "2018 Youth Notification Practice (Revised Version): Overview, Case Study, Q&A."

Mahkamah Agung. 2019, "Laporan Tahunan 2018 Era Baru Modern Berbasis Teknologi Informasi", Available on Website: https:// mahkamahagung.go.id/files/201902 19121709_FA_MA_20119-_interactive.pdf Accessed at July 24th, 2022;

Mahkamah Agung. 2020, "Laporan Tahunan 2019 Keberlanjutan Modernisasi Peradilan", Available on Website: https://www.mahkamahagung.go.id/laptah/laptah2019/ index.html#p=128 Accessed at July 24th, 2022;

Mahkamah Agung. 2021, "Laporan Tahunan 2020 dalam Suasana Covid-19", Available on Website: https://www.mahkamahagung.go.id/cms/media/8832 Accessed at July 24th, 2022;

United Nations. "Convention on the Rights of the Child" (Issue Treaty Series, 1577, 3). 1989.

TIRTAYASA JOURNAL OF INTERNATIONAL LAW
Volume 2 Nomor 1, June 2023, hlm. (15-30)
Fakultas Hukum, Universitas Sultan Ageng Tirtayasa, Serang-Banten, Indonesia
P-ISSN: 2961-8355 | e-ISSN: 2961-8061
https://jurnal.untirta.ac.id/index.php/tirtayasatjil

# PERSONAL DATA PROTECTION IN THE ERA OF GLOBALIZATION (INDONESIA PERSPECTIVE)

**Yogi Muhammad Rahman**[1]
*[1]Galuh Ciamis University*
*Jl. R.E Martadinata No. 150, Ciamis 46274, Jawa Barat*
*yogi@unigal.ac.id*

**Aflah Haora**[2] **Elsa Nurfitriani Sutansi**[3]
*[2,3]Universitas Sultan Ageng Tirtayasa*
*Jl. Raya Palka KM 3, Sindangsari, Pabuaran, Kab. Serang Provinsi Banten*
*[2]1111210181@untirta.ac.id*
*[3]1111210188@untirta.ac.id*

**Info Artikel**
|**Submitted**: 03-04-2023 |**Revised**: 10-06-2023 |**Accepted**: 15-06-2023

How to cite: Yogi Muhammad Rahman, Aflah Haora, *et al*, "Personal Data Protection in The Era of Globalization (Indonesia Perspective)", *Tirtayasa Journal of International Law*, Vol. 2 No. 1, (June 2023)", hlm. 15-30.

***ABSTRACT:***

*This journal explores the topic of securing personal data in the era of globalization, focusing on the legal framework of International Law and existing laws and regulations in Indonesia, especially the provisions stipulated in Law Number 27 of 2022 concerning Data Protection. The main objective of this study is to provide readers with knowledge regarding the personal data protection regulatory landscape at both national and international levels. This research uses juridical-normative and juridical-empirical methodologies to collect, compile, and research research data. This approach includes the study of legal theories and concepts related to the legal principles of laws and regulations, especially those contained in Law Number 27 of 2022, through journal references or legal materials through electronic media. The goal is to gain theoretical insights that can serve as a foundation for research. Furthermore, this research gave birth to a discourse on individual information governance within the framework of global jurisprudence and regulatory framework in Indonesia, especially Law Number 27 of 2022, along with the consequences caused after its implementation.*

***Keywords****; Personal Data, Data Protection, the Era of Globalization*

## A. Introduction

Technology has developed rapidly in this era of globalization, with new developments constantly being made to improve the quality of life of the people. It has garnered significant public interest and engagement. Undoubtedly, this progress will have both beneficial and detrimental effects. One of the positive effects is the facilitation of information exchange, which in turn creates many opportunities for development based on the information obtained.

It is imperative to enhance privacy policy as an integral component of human rights-related laws, and the safeguarding of personal data through special measures is a means of

upholding the right to privacy, which is an integral component of human rights.[1] Law of the Republic of Indonesia No. 27 of 2022 concerning Personal Data Protection highlights the importance of the above. The main purpose of the personal data protection regulation is to safeguard and ensure the fundamental rights of citizens regarding the protection of personal data.[2] In addition, public access to government services, corporations, business actors, and other institutions is the purpose of this law. In addition, encouraging the expansion of economic sectors and helping the local manufacturing sector become more competitive are also important goals.[3]

In today's era, there are prerequisites that require the fulfillment of the use of the chosen social networking platform. It involves creating an account, which mandates the provision of personal information that is subsequently stored and leaves a digital footprint on all pages visited. Privacy of personal data is exclusive to its owner. Advances in information and communication technology have resulted in reduced privacy restrictions, making it easier to disseminate personal data. Undoubtedly, this will result in adverse consequences that stimulate the emergence of new commercial frameworks centered on trading individual data. Indonesia has experienced many incidents of data leakage, as observed in recent years.

On April 17, 2020, Tokopedia discovered a breach of confidential information relating to no less than 12,115,583 user accounts. Shortly after the event, an additional data breach occurred at Bhineka.com, a company specializing in *e-commerce*. *Shiny Hunters*, a hacking group, is said to have obtained the user data of 1.2 million people from Bhinneka.com. The information is marketed at a price of 12,000 US dollars or equivalent value in Indonesian Rupiah, which is 17,800,000. Previously, Bukalapak, an additional *e-commerce* platform, experienced a data leak. According to records, a total of 12,957,573 user accounts on the platform were exchanged.[4]

---

1 Chris Jay Hoofnagle, Bart van der Sloot & Frederik Zuiderveen Borgesius, "*The European Union General Data Protection Regulation: What It Is and What It Means*", Information & Communications Technology Law, Vol. 28, No. 1, 2019, pp. 66.

2 Rosalinda Elsina Latumahina, "*Aspects Law Protection Data Personal in Cyberspace*", Journal Echo Actuality, Vol. 3, No. 2, 2014, pp. 23.

3 Law of the Republic of Indonesia Number 27 of 2022 concerning Personal Data Protection.

4 ELSAM and Commission I DPR RI, Term of Reference (TOR) Representative Secretariat Commission I DPR and Team Assistance PDP Bill Secretary-general House of Representatives of the Republic of Indonesia, "*Discussion InventoryList Problem (DIM) Bill Protection Data Personal Focus Group Discussion*", Jakarta: Century Park Hotels Wednesday 22 July 2021 hit 10.00- 17.00.

The rise of personal data breaches in Indonesia shows that the privacy rights of its citizens are very vulnerable to exploitation, which has the potential to cause social harm. Therefore, it is imperative to establish a legal framework that governs the trajectory of technological progress to prevent deviant treatment of individuals during the era of globalization.

The legal system plays an important role in shaping the lives of individuals and develops in response to changing norms and values of society. Article 1 (3) of the 1945 Constitution affirms that Indonesia is a state of law. The assertion argues that the law serves as the highest standard for addressing any problem. Despite the different technological and legal nature, they have the same goal of improving the well-being of individuals. International law refers to a comprehensive set of principles and regulations governing the behavior of states with each other, which they are expected to adhere to universally.[5] Law could serve as a tool for social *engineering* and *social controlling*.

Social engineering refers to the deliberate application of legal measures to establish a desired order or structure of society that is in line with predetermined goals. The concept of[6] *social controlling* involves legitimate interventions aimed at preventing deviant behavior in society. It can be concluded that legal instruments are used in *a social engineering* capacity to produce positive change and are reinforced by *social controlling* actions that seek to force individuals to comply with established norms and values.

The study has significant relevance to the current situation, given the ubiquitous use of social networking services in individuals' daily routines. The preparation of this journal is expected to provide enlightenment to the public about the importance of caution in using social media platforms. This journal will discuss the problems that have been described, namely:

1. Safeguarding personal information in the context of globalization from the point of view of international law in Indonesia.
2. The legal framework governing the management of personal data in Indonesia is stipulated by Law No. 27 of 2022.

## B. Research Method

[5] J.G. Starke, "*Introduction Law International*", Jakarta: Sinar Graphicsthing, 2010, pp. 3.
[6] Satijpto Rahardjo, "*Law Progressive: A Synthesis Law Indonesian*", Yogyakarta: Bell Publishing, 2019, pp. 128.

There are social and judicial aspects to this issue that need to be investigated. The researchers chose to use theoretical and empirical legal approaches to data collection and analysis. Juridical-normative studies examine precedents, such as theories, concepts, legal principles, and laws and regulations, which are in direct contact with the problem at hand. An empirical approach is a form of sociological legal research that investigates legal provisions and their impact on individual experience. This methodology is commonly used in the field to explore the intersection of law and society.

According to Bogdan and Taylor, qualitative research methods generate descriptive data in the form of interviews, focus groups, diaries, and other written and oral reports of people's experiences. Data collection techniques refer to the various methodologies that researchers can use to collect data. Researchers have the option of using a single or mixed methodology based on the challenges faced or being investigated.[7] Focusing on Law Number 27 of 2022, however international instruments such as the General Data Protection Regulation (GDPR), Universal Declaration of Human Rights (UDHR), International Covernant on Civil and Political Rights (ICCPR), European Convention on Human Right (ECHR), and the Charter of Fundamental Rights of the European Union (CFREU) are also referenced by researchers. This study uses qualitative data analysis to examine a number of legal theories and ideas related to the application of legal principles. This study utilizes journal references and legal materials accessed through electronic media to obtain theoretical insights as a basis for further research.

## C. Discussion

### 1. Safeguarding personal information in the context of globalization from the point of view of international law in Indonesia

From the point of view of international law, the safeguarding of personal data relating to privacy falls under the umbrella of human rights protection. The concept has its roots in the 1948 Universal Declaration of Human Rights (UDHR), which stood as the first international instrument to protect the right to privacy of individuals. Article 12 of the UDHR specifically regulates this aspect. The notion of privacy was originally formulated by Warren

7 Rachmatul, "*Engineering Collection Data Deep Research Quantitative and Qualitative*", IAIN Sheik Nurjati Cirebon, 2013.

and Brandeis in their article entitled "*The Right to Privacy*" published in the Scientific Journal of Harvard University School of Law.

The journal argues that technological advances and advances in the era of globalization have the potential to increase public awareness of the right of every community to live a fulfilling life, or more specifically, the right of individuals to safeguard their personal lives from interference by the state or others.[8] So, safeguarding and recognizing the right to privacy requires legal action, thereby underscoring the urgency of regulations relating to the privacy of personal data.

On the contrary, EU regulations can serve as a benchmark for other countries, as they provide a thorough and meticulous framework for protecting personal data, particularly the General Data Protection Regulation (GDPR). The regulation outlines basic principles and guidelines for protecting personal data, serving as a valuable reference for countries wishing to establish or refine their own data protection policies. The application of this regulation may result in the imposition of penalties under the GDPR for unauthorized disclosure of data to external entities without the explicit consent of the data owner.

Currently, international law allows individual countries to establish their own laws that protect the privacy and confidential information of individuals. However, International Law has also undertaken various initiatives to standardize regulations in this regard.

1. The right to privacy is governed by Article 17 *of the International Covenant on Civil and Political Rights* (ICCPR). However, the ICCPR does not specifically state that privacy rights include the protection of a person's personal information from unauthorized access. The United Nations Human Rights Committee (HRC) has issued comprehensive guidelines to describe the extent of the right to privacy as described in CCPR General Declaration No.16: Article 17. As per[9] *General Comment*, it is imperative that individuals are given the right to understand the personal data stored in automated data files, along with the purpose for which they are stored. In addition, individuals should be able to identify public authorities,

[8] Richards, Neil and Hartzog Woodrow. "*Taking Trust Seriously in Privacy Law*". Stanford Technology Law Reviews, Vol. 19, No. 431, 2016, pp. 434.

[9] Christopher Kuner, "*The European Union and the Search for an International Data Protection Framework*", Groningen Journal of International Law, Vol. 2, 2014, pp. 76.

individuals or private entities that may have control over their data. Individuals have the right to request deletion or correction of their data if it includes inaccurate personal information or is unlawfully collected, processed, or used.[10]

2. Safeguarding the right to privacy is a concern *of the Council of Europe*, a regional international organization. To that end, the organization has made a number of agreements, including Article 8 of the ECHR, which forms the basis for a convention that comprehensively regulates the handling of personal data. The Convention is the Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data, adopted by the Council of Europe. Individuals have the right to privacy in their homes, in their communications with others, and in their private and family lives, as stated in Article 8, paragraph 1 of the European Convention on Human Rights. This includes protection of the personal life and correspondence of a person hacked. With exceptions in cases of national security, public security, economic prosperity, prevention of crime and harassment, protection of morals and health, and protection of the rights and freedoms of others, states are prohibited from interfering with the right to privacy of individuals under Article 8, paragraph 2 of the European Convention on Human Rights.[11]
3. In addition to the *Council of Europe*, there are other international organizations operating in the European region, such as the European Union. The latter has established an international legal framework aimed at protecting the right to privacy and ensuring the protection of personal data.
4. *The Charter of Fundamental Rights of the European Union* (CFREU) contains provisions relating to the right to privacy. Specifically, Article 7 of the CFREU
5. Establishes that every individual has the right to protection of their personal life, home, and communications. Article 8 deals with the regulation of securing personal information. Article 8 paragraph 1 guarantees everyone the right to privacy. The OECD Guidelines on Privacy Protection and Cross-Border Flow of Personal Data are referred to in paragraph 2 to ensure that data are handled fairly and transparently, for limited purposes, with the consent of data subjects, and in accordance with OECD Guidelines. For the first time, universal rules, and minimum requirements for

---

[10] United Nations, 1988, General Comment No. 16 of Article 17 ("The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation"), pp. 1.

[11] Milton Themba, 2016, "*The Right to Privacy and Identity on Social Network Sites: A Comparative Legal Perspective*", thesis, University of South Africa, pp. 137.

protecting personal information in all member states were established. Article 38(1) of the Statute of the International Court of Justice is consistent with the OECD classification on personal data security as a *general principle of law*.

6. According to Article 8 of the Convention on Human Rights, public entities are obliged to safeguard the privacy of individuals and related data. Individuals must have the ability to carry out appropriate storage or processing of personal data.

Data privacy security is an integral aspect of privacy rights in the realm of information technology. Law Number 27 of 2022 which has just been promulgated in Indonesia regulates the security of users' personal information. In Indonesia, various regulations contain provisions on safeguarding privacy and personal data.

1. According to Article 28G (1) of the 1945 Constitution, everyone has the right to defend himself, his loved ones, his reputation, his honor, and his property. In addition, they deserve to feel a sense of security and protection from any form of intimidation that may affect their actions or inaction. Something that is considered as a fundamental right or privilege that every individual has for being human.
2. This text relates to the legal framework of ITE Law Number 19 of 2016, which aims to protect data privacy and privacy rights. Specifically, Article 26 of the Act discusses:
    a. If there are no legal provisions to the contrary, it is mandatory to obtain the consent of the person concerned for the use of personal information through electronic means.
    b. Persons who have violated their rights as referred to in paragraph (1) may seek compensation through the courts to obtain financial compensation.
    c. To comply with the court's determination, each Electronic System Operator must delete, at the request of the affected party, any Electronic Information and/or Electronic Documents that are considered irrelevant and under the control of the operator.
    d. In accordance with the provisions set forth in the relevant laws and regulations, each Electronic System Operator must provide a way to delete outdated Electronic Information and/or Electronic Documents.

3. According to Article 8 paragraph (1) letter e of Law Number 23 of 2006 concerning Population Administration, the organizer must guarantee the confidentiality and security of information related to population events and other important matters.

**2. The legal framework governing the management of personal data in Indonesia is stipulated by Law No. 27 of 2022**

The notion of privacy is often associated with Western (European) ideology in public discourse in Indonesia, like the concept of human rights. The reasons behind the limited public awareness of privacy, particularly with respect to the protection of personal information, are supported by this statement. In Indonesia, individuals can easily disclose their residential location, date of birth, and family relationships to others in public spaces. In addition, it is customary in Indonesia to provide identity cards (KTP) or other forms of personal identification to third parties that include a person's personal information.[12]

The Constitution, as the supreme legal authority for all legislative provisions, does provide security measures for individual data. The preservation of human rights is guaranteed by the Fourteenth Amendment to the 1945 Constitution, which can be seen in the articles of human rights, especially Articles 28, 28A, and 28J. Article 28G paragraph (1) of the Constitution of the Republic of Indonesia which came into force in 1945 contains provisions on the protection of individual rights of residents. The rights to self-defense, family, honor, dignity and property are guaranteed to all persons covered by this document. In addition, people have the right to be free from fear that may prevent them

from exercising their civil rights. The operationalization of norms relating to data protection requires their incorporation into organic legislation and regulations in accordance with the established hierarchy of legal and regulatory frameworks.

The implementation of Law No. 27 of 2022 on October 17, 2022, has clarified the regulations surrounding Personal Data in Indonesia. Therefore, everyone in Indonesia can rest assured that their personal information will be safe. The total number of provisions in Law Number 27 of 2022 is 75. The General Provisions are followed by section Types of Personal Data, Rights of Personal Data Owners, Personal Data Processing, Dispute

12 Revelation Djafar, "*Law Protection Data Personal in Indonesia Landscape*", Urgency and Necessity Updates, pp. 6.

Resolution, and Internal Dispute Resolution.[13] The upcoming discussion will explore certain aspects of Law No. 27 of 2022 concerning Personal Data Security, commonly referred to as the PDP Law.

Before the PDP Law was promulgated in Indonesia, there were at least thirty legal provisions related to the responsibility to ensure the security of personal data, according to a study by the Institute for Community Studies and Advocacy (ELSAM).[14] The Population Administration Law is a law that provides special arrangements for the categorization of personal data. The Population Administration Law, especially Law No. 23 of 2006 as amended by Law No. 24 of 2013, initially defines the scope of personal data including KK Number, NIK, date/month/year/birth, information related to physical and/or mental disabilities, Mother's NPWP, Father's NPWP, and select the contents of records about important events. The Population Administration Law has broadened the scope of personal data to include various categories such as information relating to physical and/or mental disabilities, fingerprints, irises, signatures, and other data elements that can be considered a source of shame for a person. The scope of the Population Administration Law is limited to the regulation of the Population Administration. In other words, the Population Administration Law lacks comprehensive provisions related to the procurement, manipulation, and storage of individual information. The legal framework that provides more protection of data owners' rights is Law No. 11 of 2008 concerning Electronic Information and Transactions which was later amended by Law No. 19 of 2016. Article 26 of the ITE Law establishes the foundation for securing personal data obtained through electronic systems, as outlined in the law. Article 26 paragraph (1) of the ITE Law emphasizes the importance of obtaining the consent of the data owner in utilizing his personal data. Failure to comply with this requirement may result in a violation of civil law rights, as stipulated in Article 26 paragraph (2) of the same law, so that the affected party can bring legal proceedings. The ITE Law also accommodates the right to be forgotten through the provisions of Article 26 paragraph (3) which gives data owners the right to ask electronic system operators to delete irrelevant personal data. Although the ITE Law regulates the handling of personal data, it does not provide a precise description of the term

[13] *Ibid*, pp. 12.

[14] Revelation Djafar, Sumigar Bernhard Ruben Fritz, S. B. L, "*Protection of personal data in Indonesia*", 2016, Available on website: http://weekly.cnbnews.com/news/article.html?no=124000, Accessed March 31th, 2023.

"personal data". Lexicons related to individual information are regulated in legal frameworks such as PP 18/2012 concerning the implementation of electronic systems and transactions, and Permenkoinfo 20/2016 concerning Security of Personal Data in Electronic Systems. The foregoing requires the implementation of sector-specific regulations, such as SEOJK 014/2014, relating to the confidentiality and security of personal data and/or consumers, as stipulated in OJK Circular Letter No.014/SEOJK.07/2014.[15]

According to Article 1 point 2 of Law No. 27 of 2022 concerning Personal Data Protection, "Personal Data" means any and all information relating to an identified or identifiable natural person, whether obtained directly from the subject or indirectly from other sources, whether recorded intangible or intangible media. In line with the provisions of Article 1(2), the protection of Personal Data in the processing chain is a comprehensive effort aimed at protecting the constitutional rights of the Personal Data subject concerned.

In accordance with Article 12(1), a person whose personal data is processed improperly may, in accordance with applicable law, file a claim with the court and demand compensation for the losses suffered. Therefore, in the event of a breach of the processing of personal data, both individuals and corporations have the right to seek legal recourse and claim compensation.

Law no. 27 of 2022 outlines the role of personal data controllers and personal data processors. Individuals, public entities, and international organizations that determine the purposes and supervise the handling of personal data are referred to as personal data controllers. The term "personal data processor" refers to an individual, public entity or international organization that processes personal data on behalf of a personal data controller, either independently or in cooperation.

This law regulates the duties of controllers and processors of personal data. Articles 20 to 50 of the regulatory framework outline the responsibilities of the personal data controller. Included in this duty is the obligation to protect the privacy of personal data and to take reasonable measures to prevent its disclosure or use by any third party without the prior permission of the data subject. The responsibilities of personal data processors range from Article 51 to Article 52. These obligations include, inter alia, the obligation to process

[15] Siti Yuniarti, *"Legal Protection of Personal Data in Indonesia"*, Journal Business Economics, *Communication, and Social Sciences*, 2019, pp. 152.

personal data solely based on orders from the personal data controller, and the necessity to obtain written consent from the personal data controller before engaging in additional processing of personal data.

According to Law no. 27 of 2022, the rights of persons whose personal data are processed, as described in Articles 8, 9, 10, and 13 (paragraphs 1) and (2), may be waived in certain situations. Defense concerns the security and safety of a nation. Concerns with the criminal justice system. Theories of public interest concerned with government policymaking. Financial services, such as money, payment methods, and financial system stability, fall within the scope of state administration. Individuals express a tendency towards statistical pursuits and scientific investigations.

Article 58 paragraph of this law stipulates that the government is responsible for the implementation of Personal Data Protection measures. (1). The implementation of Personal Data Protection is responsible for the implementation of Personal Data Protection as referred to in paragraph (1). Furthermore, the determination of the institution in question is carried out by the President and the accountability lies with the President.

The business entity in Article 58 paragraph (2) undertakes: a. Development and establishment of Personal Data Protection safeguards policies and strategies, which serve as directions for Personal Data Subjects, Personal Data Controllers and Personal Data Processors. Supervise the implementation of Personal Data Protection measures. Implementation of administrative measures to enforce compliance with this law. The act of facilitating the resolution of disputes outside the court system.

In addition to the institution as referred to in Article 58 paragraph (2) authorized to: a. Develop and implement regulations relating to the security of personal data. Oversee the Personal Data Controller's compliance with regulatory requirements. In the event of a breach by the Personal Data Controller or Personal Data Processor of Personal Data Protection, administrative sanctions shall be imposed. The purpose of this law is to assist law enforcement in investigating and prosecuting crimes that may involve personally identifiable information. Work with similar organizations in other countries to investigate and remedy possible personal data protection violations at an international level. Examine whether the requirements for sending Personal Data outside the Unitary State of the Republic of Indonesia have been fulfilled or not. Instruct the Personal Data Controller and/or Personal

Data Processor in a way that enables you to track their progress because of your supervision. Report the results of your efforts to enforce rules designed to protect personally identifiable information. Complaints and/or reports about possible violations of the Personal Data Protection Act are reported to the relevant organization. Follow up on suspected violations of Personal Data Protection by investigating complaints, documentation, and/or tracking results. Find and notify all parties found to be involved in a Personal Data Protection breach claim. People are trying to get private and public organizations to hand over information, data, and documents related to privacy breaches they believe have occurred. Gather and display expertise necessary for investigations and investigations into possible violations of laws protecting personally identifiable information.

Article 62 of Law No. 27 of 2022 concerning international cooperation arrangements. The first paragraph explains that international cooperation measures are carried out by governments together with other governments or international bodies concerned with securing personal data. Paragraph (2) explains that the implementation of this Law through international cooperation is guided by established provisions and basic principles of international law. In addition, the public has the potential to contribute to the enforcement of Personal Data Protection, either through direct or indirect means. Education, training, advocacy, outreach, and supervision are examples of ways to engage in the community and follow the law.

In Chapter XIII, Article 65, Paragraph (1), the law prohibits the use of personally identifiable information. In particular, no one is allowed to steal someone else's identity for financial gain or other purposes, as this may cause the victim's confidential information to be compromised. Violation of the rules and regulations outlined in this article may be subject to a fine of up to Rp. 5,000,000,000.00 and/or a maximum imprisonment of five years as referred to in Article 67 Paragraph 1. (1). Subsection (2) clarifies that no one may share another person's personal information without that person's consent. Article 67 paragraph 2 regulates criminal sanctions, including imprisonment for a maximum of four years and/or a maximum fine of Rp. 4,000,000,000.00 for acts contrary to the laws and regulations outlined in this article. (2). Pursuant to paragraph 3, no one shall use another person's Personal Information unlawfully. As mentioned in Article 67 Paragraph 1, criminal threats for ignoring the provisions and laws mentioned in this article can be threatened with imprisonment for a maximum of five years and/or a maximum fine of Rp. 5,000,000.000.00.

Article 66 of the regulation regulates the prohibition of falsifying or falsifying Personal Data. It is stated that people cannot perform these acts as they may cause harm to others and their participation in them is prohibited. Criminal penalties for violations of this rule include imprisonment for a maximum of six years and/or a maximum fine of Rp. The amount is Rp. 6,000,000,000.00 as required in Article 68. Additional penalties may be imposed through confiscation of profits and/or property obtained or obtained unlawfully, and the granting of restitution as referred to in Article 69, in addition to the penalties stipulated in Articles 67 and 68.

The potential legal consequences for business actors in the event of a data leak are regulated in Article 70 of Law Number 27 of 2022. In particular, the law recognizes companies as legal entities subject to personal data regulations.

According to Article 71 paragraph (1) of the court deed, the court that issued the fine gives time to the convicted person to pay the fine for one month, starting from the date the judgment has permanent legal force. As long as there is an urgent reason, the time referred to in paragraph (1) may be extended for a maximum of another month in accordance with the details in paragraph (2). If the fine is not paid within the period specified in paragraphs 1 and 2, the procuratorate may confiscate and sell the offender's property or income to cover the debt. If the confiscation and sale of property or income as referred to in paragraph (3) is insufficient or cannot be implemented, the unpaid fine is replaced by the maximum imprisonment for the crime concerned as referred to in paragraph (4). The period of detention as referred to in paragraph (4) is determined by the presiding judge and set forth in an official court decision, as described in paragraph (5) of the deed.

If the confiscation and sale of assets or income as referred to in Article 71 paragraph (4) is carried out against the convicted company and is considered insufficient to settle the crime, the corporation may be subject to other alternatives in accordance with paragraph (1) of Law No. Article 72 sanctions, including temporary suspension or for a maximum part or all of its business activities for a period of up to five years. In accordance with paragraph (2), the court determination must determine the period for stopping the Company's business activities, either temporarily or permanently, in accordance with paragraph (1). Additional criminal sanctions in the form of restitution are subject to the provisions in Article 71 and Article 72 as referred to in Article 73.

In the contemporary age of globalization, our individual information is stored in databases of corporate entities and government bodies. This is a direct result of our actions, such as registering in various applications and providing personal information traceable back to us. After looking at the provisions outlined in the PDP Law, what are the legal implications in case of a breach of personal data? Before further discussion, it is important to acknowledge that the personal data controller bears the responsibility for safeguarding and guaranteeing the security of personal data under the scope of its processing. This obligation requires the development and implementation of operational and technical measures aimed at protecting personal data from potential interference that may arise during the processing stage. In addition, it assesses the level of safeguarding of an individual's personal information considering the characteristics and potential dangers associated with personal data that require protection during the processing of such data. Within 72 hours of becoming aware of a breach of personal data security, the supervisor is required to notify affected individuals and institutions in writing. Personal data managers have a responsibility to notify the public if a security breach causes substantial disruption to public services or harms the interests of the community.

According to Article 47 of the PDP, the personal data controller is responsible for its processing and must demonstrate accountability by fulfilling its duty to respect the principles of personal data protection. In the event of a violation of Article 46 paragraphs (1) and (3) or Article 47 of the PDP Law, the relevant administrative authority may issue a written reprimand, temporarily suspend the violator's personal data processing activities, order the violator to delete or destroy the personal data in its possession, or levy administrative fines. The institution is authorized to impose administrative sanctions, which may be fines of up to 2% of the entity's annual income or income for various violations.

## D. Conclusion

In the perspective of international law, the protection of human rights towards the protection of personal data that is private originates from the Universal Declaration of Human Rights 1948 (UDHR) which is the first international instrument that protects a person’s right to privacy. On the other hand, there is the General Data Protection Regulation (GDPR) by the European Union which contains principles and rules for the protection of personal data that can be used as a reference by countries that will make or design rules on personal data protection. This is also supported by the creation of International Law rules in

harmonizing this matter, including International Convenant on Civil and Polittical Rights (ICCPR), Council of Europe, European Union, Charter of Fundamental Right of the European Union (CFREU).

When it comes to the protection of personal data in Indonesia itself, there are rules that are clearly regulated. It is regulated by Law No. 27 of 2022 on the Protection of Personal Data. The General Terms, Types of Personal Data, Rights of Data Owners, Personal Data Processing, Responsibilities of the Controller and Processor in the processing of personal data, Personal data Transfer, Prohibition in the Use of Personal Data, Establishment of Guidelines for the Conduct of the Personal Data Controller, Exception to Personal Data Protection, Dispute Resolution, International Cooperation, Public Role, Criminal Clauses, Transition Clauses and Closing Clauses.

## E. Suggestion

After conducting a thorough analysis of several scientific publications related to personal data, it has been determined that safeguarding personal data is the most important thing. It is anticipated that the public will be increasingly aware of the importance of protecting personal data in the current era of globalization, thus negating the need for inadvertent disclosure of such information. happen. Participation from both the public and the government is expected to increase in securing personal data, especially in the territory of Indonesia.

## References

### Books

Rahardjo, Satjipto. *Progressive Law: A Synthesis of Indonesian Lawa.* Yogyakarta: Genta Publishing, 2009;

Strake, J.G. "Introduction to International Law". Vol. 10. Jakarta: Sinar Grafika, 2010;

Themba, Milton. *The Right to Privacy and Identity on Social Network Sites: A Comparative Legal Perspective. thesis,* University of South Africa, 2009:

Soekanto, Soerjono. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, cet. 9. Jakarta, Rajawali Press, 2006;

### Journals

Kuner, Christopher. "The European Union and the Search for an InternationalData Protection Framework". Groningen Journal of International Law. Vol. 2;

Richards, Neil and Hartzog, Woodrow. Taking Trust Seriously in PrivacyLaw. *Stanford Technology Law Review,* Volume 19:431, 2016;

Yuniarti, Siti. "Legal Protection of Personal Data in Indonesia", *Journal of Business Economics, Communication, and Social Sciences,* Vol. 1 No. 1, 2019;

**Laws**

Law Number 12 of 2011 as amended by Law Number 15 of 2019 concerning the Establishment of Laws and Regulations stipulates that content material regarding criminal provisions can only be contained in the Law, Provincial Regional Regulations, or District/City Regional Regulations;

Law of the Republic of Indonesia Number 27 of 2022 concerning Personal Data Protection.

**Reports and Conferences**

Elsam and Commission I of the House of Representatives, Term of Reference (TOR) Representative of the Secretariat of Commission I of the House of Representatives and the PDP Bill Assistance Team Secretary General of the House of Representatives of the Republic of Indonesia "Discussion of the Problem Inventory List (DIM) of the Personal Data Protection Bill" Focus Group Discussion, Century Park Hotel, July 22, 2020;

Rachmatul, *Data Collection Techniques in Quantitative and Qualitative Research.* IAIN Syekh Nurjati Cirebon, 2013;

**Others**

Djafar, Wahyudi. " Personal Data Protection Law in Indonesia: Landscape, Urgency and Need for Update";

Wahyudi, Djafar and Sumigar Bernhard Ruben Fritz, S. B. L. 2016. *"Protection of personal data in Indonesia"*, Available on website:

http://weekly.cnbnews.com/news/article.html?no=124000, Accessed March 31th, 2023.

TIRTAYASA JOURNAL OF INTERNATIONAL LAW
Volume 2 Nomor 1, June 2023, hlm. (31-54)
Fakultas Hukum, Universitas Sultan Ageng Tirtayasa, Serang-Banten, Indonesia
P-ISSN: 2961-8355 | e-ISSN: 2961-8061
https://jurnal.untirta.ac.id/index.php/tirtayasatjil

# TINDAKAN AMERIKA SERIKAT DALAM MEMERANGI TERORISME DI AFGHANISTAN DAN HUBUNGANNYA DENGAN PRINSIP NON INTERVENSI[1]

**Beni Prawira Candra Jaya**
*BPJS Kesehatan Cabang Metro*
*Jl. AH. Nasution No. 123D Kelurahan Yosorejo, Kecamatan Metro Timur, Kota Metro*
beniprawira.bp@gmail.com

**Info Artikel**
|**Submitted**: 14-03-2023 |**Revised**: 09-06-2023 |**Accepted**: 15-06-2023

How to cite: Beni Prawira Candra Jaya, "Tindakan Amerika Serikat Dalam Memerangi Terorisme di Afghanistan dan Hubungannya Dengan Prinsip Non Intervensi", *Tirtayasa Journal of International Law*, Vol. 2 No. 1, (Juni, 2023), hlm. 31-54.

## *ABSTRACT:*

*Terrorism is a threat for any country and an international crime that must be fought by every country, but a country is not allowed to fight terrorism in the territory of another country, because it is contrary to the principle of non-intervention, which stresses the principle of the sovereign equality of every country. But in fact, the United States has committed military attacks against Afghanistan which resulted in many civilian casualties, Afghans people died, and they didn't include the thousands of people who had to flee to the surrounding countries. This research aimed to examine and analyze the principle of non-intervention on the regulations according to the international law and its relations with action of the United States to combat the terrorism in Afghanistan. The Research in this thesis conducted in normative legal research. The results showed that the regulation on non-intervention principle governed by international law was regulation in general legal principles, the UN Charter, and UN General Assembly Resolution No. 2131 and 2625. It was also known that the US intervention into Afghanistan are carried out by humanitarian reasons, self defence and to catch and prosecute the perpetrators of terrorism is an act that violates the principle of non-intervention in international law. It happened because there is no evidence of crimes against humanity in Afghanistan. United States also intervened without permission from the government of Afghanistan and didn't coordinate with the UN Security Council. In fact, because of such action would lead to the view that the purpose of the United States was not only to fight against the perpetrators of terrorism, but also to change the form of government of Afghanistan.*

***Keywords: Non-Intervention, International Crime, Terrorism***

## ABSTRAK:

*Terorisme merupakan ancaman terhadap negara dan kejahatan internasional yang wajib di perangi oleh setiap negara, akan tetapi suatu negara tidak diperkenankan untuk memerangi terorisme di wilayah negara lain, karena bertentangan dengan prinsip non intervensi yang sangat menekankan asas kesetaraan kedaulatan bagi setiap negara. Namun pada kenyataannya, Amerika Serikat telah melakukan tindakan serangan militer terhadap Afghanistan yang mengakibatkan banyaknya korban sipil, dan belum termasuk ribuan penduduk yang harus mengungsi ke negara sekitar. Tujuan dari penelitian ini adalah untuk mengkaji dan menganalisis pengaturan prinsip non intervensi menurut hukum internasional dan kaitannya dengan tindakan Amerika Serikat dalam memerangi terorisme di Afghanistan. Metode penelitian yang dilakukan adalah penelitian hukum normatif, dengan teknik pengumpulan data melalui studi pustaka dan dokumen terhadap bahan hukum primer maupun sekunder. Hasil penelitian menunjukkan bahwa prinsip non*

[1] Penelitian Dilaksanakan Dalam Rangka Tugas Skripsi Mahasiswa Fakultas Hukum Universitas Lampung Tahun 2015.

*intervensi diatur dalam prinsip hukum umum, Piagam PBB, serta Resolusi Majelis Umum PBB Nomor 2131 dan 2625. Diketahui bahwa tindakan Amerika Serikat terhadap Afghanistan yang dilakukan dengan alasan kemanusiaan, pembelaan diri dan menangkap serta mengadili para pelaku terorisme adalah pelanggaran terhadap prinsip non intervensi dalam hukum internasional, Hal ini karena tidak ditemukan bukti terjadinya kejahatan kemanusiaan di Afghanistan. Amerika juga melakukan intervensi tanpa izin dari pemerintah Afghanistan dan tidak berkoordinasi terlebih dahulu dengan Dewan Keamanan PBB. Bahkan, akibat dari tindakan tersebut justru menimbulkan pandangan bahwa tujuan Amerika Serikat yang sebenarnya tidak hanya memerangi para pelaku terorisme, tetapi juga mengubah bentuk pemerintahan Afghanistan.*

***Kata Kunci:*** *Non-Intervensi, Kejahatan Internasional, Terorisme*

## A. Pendahuluan

Negara merupakan organisasi yang mempunyai wilayah tertentu, rakyat yang diperintah oleh penguasa, pemerintah yang berdaulat dan diakui oleh negara lain.[2] Hukum internasional mengartikan negara sebagai salah satu pemilik, pemegang atau pendukung hak dan pemikul kewajiban berdasarkan hukum internasional. Sebagai salah satu subjek hukum internasional, terdapat hak dan kewajiban yang dipikul oleh suatu negara.[3] Hak-hak yang berhubungan dengan kedudukan negara terhadap negara lain yang sering diutarakan ialah hak kemerdekaan, hak kesederajatan dan hak untuk mempertahankan diri. Adapun kewajiban-kewajiban yang berhubungan dengan kedudukan negara terhadap negara lain yang sering diutarakan ialah tidak melakukan perang, melaksanakan perjanjian internasional dengan itikad baik dan tidak mencampuri urusan negara lain.[4]

Berkaitan dengan hak yang berhubungan dengan kedudukan negara tersebut, salah satunya yaitu hak mempertahankan diri dalam rangka menjaga kedaulatan negara tersebut. Negara dalam mempertahankan wilayah kedaulatan dari adanya ancaman kejahatan merupakan kewajiban mutlak. Ancaman tersebut dapat berasal dari luar maupun dari dalam negara tersebut, termasuk dari adanya ancaman serangan terorisme.

Terorisme terjadi pertama kali sebelum Perang Dunia II, dilakukan dengan cara pembunuhan politik terhadap pejabat pemerintah. Bentuk kedua terorisme dimulai di Aljazair di tahun 50-an, dilakukan oleh pasukan pembebasan yang mempopulerkan "serangan yang bersifat acak" terhadap masyarakat sipil yang tidak berdosa oleh *Algerian Nationalist*. Pembunuhan dilakukan dengan tujuan untuk mendapatkan keadilan. Bentuk

---

2 Yulia Neta dan M. Iwan Satriawan, *Ilmu Negara,* Bandar Lampung : PKKPU FH Universitas Lampung, 2013, hlm. 4.

3 F. Sugeng Istanto, *Hukum Intenasional,* Yogyakarta : Universitas Atmajaya, 1998, hlm. 29.

4 *Ibid*.

ketiga terorisme muncul pada tahun 60-an dan terkenal dengan istilah "terorisme media", berupa serangan acak terhadap siapa saja untuk tujuan publisitas.[5]

Sejak tahun 2020 hingga saat ini, tindakan terorisme mengalami penurunan di berbagai negara di dunia. Hal ini terjadi karena bertepatan dengan pandemi Covid -19, sehingga kasus terorisme tercatat menurun karena seluruh dunia fokus pada mitigasi kesehatan. Brookings Institute menyebut jumlah korban dari aksi terorisme di Amerika Serikat pada 2020 menurun drastis. Sementara, badan kontra-terorisme di Malaysia menyebut *lockdown* membantu mengurangi ancaman teror.[6]

Perkembangan tindakan terorisme yang dilakukan dengan cara "serangan yang bersifat acak" terhadap masyarakat sipil terjadi pada tanggal 11 September tahun 2001 di Amerika Serikat. Peristiwa tersebut merupakan serangkaian serangan bunuh diri yang telah diatur terhadap beberapa target di kota New York, New Jersey dan kota Washington D.C. pada 11 September 2001. Kejadian tersebut dilakukan oleh sekelompok teroris dengan membajak empat pesawat terbang yang berbeda.[7]

Tindakan tersebut diketahui di bawah kendali pembajak yang berasal dari kelompok teroris Al-Qaeda. Untuk melihat motif atau latar belakang dari serangan Al-Qaeda ke gedung WTC ini, para pengamat mengacu pada sejumlah pidato Osama bin Laden sebagai pemimpin tertinggi. Bin Laden sempat mendeklarasikan perang suci melawan AS serta mengeluarkan fatwa pada tahun 1998 yang berisi seruan untuk membunuh orang-orang AS.[8]

Secara eksplisit, Osama Bin Laden merilis tulisan berjudul *"Letter to America"* yang menyatakan latar belakang serangan, di antaranya adalah[9] :

a. Amerika Serikat mendukung Israel;
b. Adanya serangan pada warga Muslim di Somalia;
c. Dukungan pada umat Muslim Lebanon yang terdampak agresi Israel;

---

5 *Ibid.*

6 Liputan6.com, *4 Kasus Terorisme yang terjadi di Dunia selama pandemi Covid-19,* diakses melalui situs https://www.liputan6.com/global/read/4518650/4-kasus-terorisme-yang-terjadi-di-dunia-selama-pandemi-covid-19 pada tanggal 29 Mei 2023 pukul 10.26 WIB.

7 Vivanews.co.id, *Tragedi 9-11,* diakses melalui situs : http://dunia.news.viva.co.id/news/read/246153-11-9-2001tragedi-9-11 pada tanggal 29 Mei 2023 pukul 10.30 WIB.

8 International.kontan.co.id, *Peringatan peristiwa 911: Ini dia latar belakang serangan Al-Qaeda ke gedung WTC,* diakses melalui situs https://internasional.kontan.co.id/news/peringatan-peristiwa-911-ini-dia-latar-belakang-serangan-al-qaeda-ke-gedung-wtc?page=all, pada tangga 29 Mei 2023 pukul 10.51 WIB.

9 *Ibid.*

d. Adanya kekejaman terhadap umat Muslim di Chechnya oleh Rusia;
e. Pemerintah pro Amerika di Timur Tengah yang bertentangan dengan kepentingan umat Muslim;
f. Adanya penindasan terhadap warga Muslim di Kashmir oleh India;
g. Penolakan atas kehadiran militer Amerika Serikat di Arab Saudi;
h. Pemberlakuan sanksi embargo terhadap Iraq.

Tepat pada hari Selasa, 11 September 2001 pukul 8.45 pagi waktu New York, pesawat Boeing 767 milik maskapai *American Airlines* menghantam menara utara gedung WTC (*World Trade Center*) di kota New York. Sementara itu pesawat kedua, Boeing 767 milik *United Airlines* menghantam menara selatan WTC di sekitar lantai 60. Tabrakan itu menyebabkan ledakan hebat, reruntuhan bangunan berjatuhan ke gedung-gedung sekitarnya dan jalanan di bawahnya.[10]

Pesawat ketiga yaitu sebuah pesawat milik *American Airlines* dengan nomor penerbangan 77 mengarah ke Washington dan menabrak sisi timur gedung kantor pusat Pentagon pukul 9.45 waktu Washington. Sebanyak 125 personel militer dan warga sipil tewas di Pentagon bersama 64 orang didalam pesawat.[11] Pesawat keempat milik *United Airlines* dengan nomor penerbangan 93 dibajak dan jatuh ke wilayah pemukiman di sebelah barat Pennsylvania pukul 10.10 pagi.[12]

Insiden pembajakan beberapa pesawat tersebut mengakibatkan jumlah korban meninggal di WTC dan sekitarnya mendekati 4.000 orang, termasuk 343 petugas pemadam kebakaran dan 23 personel kepolisian yang berusaha mengevakuasi dan menyelamatkan para pegawai yang terjebak di lantai atas.[13] Akibat dari insiden tersebut, jaringan militan Al-Qaeda pimpinan Osama bin Laden dituding sebagai pihak yang bertanggung jawab atas insiden itu. Sebanyak 19 pelaku adalah teroris dari Arab Saudi dan beberapa negara Arab lain.[14]

---

10 *Ibid.*
11 *Ibid.*
12 Rahmi Fitriyani, *Kajian Mengenai Legalitas Formal Use Of Force Amerika Serikat Terhadap Afghanistan,* Orbit: Jurnal Hubungan Internasional, Vol.1, No.1, Jakarta : Pusat Kajian Hubungan Internasional, UIN, Januari 2008, hlm. 66.
13 Vivanews.co.id, *Tragedi 9-11,* http://dunia.news.viva.co.id/news/read/246153-11-9-2001--   tragedi-9-11, *Loc.cit.*
14 *Ibid.*

Amerika Serikat yang melancarkan tuduhannya kepada jaringan militan Al-Qaeda, juga menganggap negara Afghanistan sebagai pihak yang telah memberikan perlindungan kepada Osama Bin Laden, karena memang sebelum terjadinya serangan 11 September, Amerika Serikat telah mengidentifikasi pemerintah Taliban di Afghanistan sebagai pelindung dan pendukung Al-Qaeda.[15] Taliban yang menolak untuk menyerahkan Osama bin Laden kepada pemerintah negara Amerika Serikat, membuat Amerika Serikat memutuskan untuk memulai operasi militer ke wilayah Afghanistan dalam rangka memerangi dan menangkap para pelaku teroris yang dituding bertanggung jawab atas insiden 11 September 2001.

Operasi militer ini dimulai pada tanggal 7 Oktober 2001 yang berlangsung selama beberapa bulan, dengan serangan awal melalui udara oleh pesawat-pesawat pembom yang berbasis di darat serta pesawat-pesawat tempur berbasis kapal induk.[16] Amerika Serikat yang melakukan operasi militer pada tahun 2001, telah berhasil membuat Taliban mundur ke wilayah timur dan selatan Afghanistan dan membuat kota Kabul menjadi ibukota yang tidak nyaman dan muram.[17] Amerika Serikat kemudian juga berusaha mengatur negara itu dan mempromosikan beberapa nilai khasnya, seperti demokrasi dan liberalisme.[18] Bulan Desember 2001, faksi-faksi yang ada di Afghanistan dan merupakan kelompok oposisi dari Taliban mengadakan pertemuan di Bonn, Jerman dan pertemuan tersebut disponsori oleh PBB (Perserikatan Bangsa-Bangsa).[19]

Pertemuan tersebut memperoleh kesepakatan untuk membentuk pemerintahan *interim* (sementara) dan menciptakan suatu proses menuju pembentukan pemerintahan yang lebih permanen. Pemerintahan *interim* tersebut mulai bertugas sejak tanggal 22 Desember 2001 dengan Hamid Karzai sebagai pemimpinnya.[20] Otoritas *interim* ini memegang tampuk kepentingan selama enam bulan sambil mempersiapkan terbentuknya "*Loya Jirga*"

---

15 Rahmi Fitriyani, *Kajian Mengenai Legalitas Formal Use Of Force Amerika Serikat Terhadap Afghanistan, Loc.cit.*

16 Elin Yunita Kristanti, "*Amerika Serikat Mengobarkan Perang di Afghanistan,*" www.liputan6.com, diakses melalui situs http://news.liputan6.com/read/2115168/7-10-2001-amerika-serikat-kobarkan-perang-di-afghanistan pada tanggal 29 Mei 2023 pukul 10.00 WIB.

17 Dina Susanti dan Farah Monika, *Peran AS dalam Transisi Rezim di Negara Lain: Studi Kasus Afganistan*, Global Jurnal Politik Internasional Vol. 7 No. 2, Mei 2005, hlm. 49.

18 www.hizbuttahrir.or.id, *Analisis Politik dibalik Pertemuan di London,* diakses melalui situs :http://hizbut-tahrir.or.id/2010/02/15/analisis-politik-dibalik-pertemuan-london/ pada tanggal 29 Mei 2023 pukul 10.00 WIB.

19 *Ibid.*

20 www.bbc.com, *Afghanistan Profile,* diakses melalui situs: http://www.bbc.com/news/world_south-asia-12024253 pada tanggal 29 Mei 2023 pukul 10.56 WIB.

(Parlemen Tradisional Afghanistan) pada pertengahan bulan Juni 2002 yang akan memutuskan bentuk dari struktur otoritas transisional. Otoritas transisional ini, diketuai oleh Presiden Hamid Karzai, mengubah namanya pemerintahan Afghanistan menjadi" Negara Islam Transisional Afghanistan (TISA/*Transitional Islamic State of Afghanistan*).[21] Operasi-operasi militer yang dijalankan Amerika Serikat di Afghanistan untuk memerangi jaringan teroris Al-Qaeda dari tahun ke tahun turut menyebabkan munculnya pengungsian di wilayah selatan dan barat daya Afghanistan. Jumlah korban anak-anak yang meninggal dunia akibat perang Afghanistan mencapai 561 jiwa dan yang terluka sebanyak 1.195 jiwa.[22] Keadaan ini semakin diperburuk dengan banyaknya korban sipil yang meninggal dunia sebanyak 17.774 orang dan sebanyak 29.971 korban terluka, belum termasuk jumlah penduduk yang harus mengungsi ke berbagai negara sekitar, yang diperkirakan mencapai lebih dari tiga juta orang.[23]

Tindakan Amerika Serikat ini mengukuhkan citra Amerika Serikat sebagai negara *superpower* yang unilateral.[24] Hal ini dipertegas oleh menteri luar negeri negara Inggris, yaitu Jack Straw yang menyatakan bahwa "Ini bukan perang melawan Islam, ini perang melawan teroris".[25]Amerika Serikat memiliki alasan tersendiri untuk melegitimasi tindakannya, presiden Bush dalam pidatonya mengemukakan 4 alasan Amerika Serikat harus menyerang Afghanistan yaitu:[26]

a. *Chapter IV of United Nation Charter*
*b. Intervention by Invitation*
*c. Humanitarian Intervention*
*d. Self Defence*

Dewan Keamanan PBB, dalam Resolusi No. 1368 tentang ancaman terhadap

[21] Liputan6, "*Oposisi Taliban Menyepakati Pembentukan Pemerintahan Transisi*,", www.liputan6.com, diakses melalui situs : http://news.liputan6.com/read/22491/oposisi-taliban-menyepakati-pembentukan-pemerintah-transisi pada tanggal 29 Mei 2023 pukul 11.00 WIB.

[22] Andreas Gerry Tuwo, "*Ribuan Warga Sipil Tewas Akibat Perang Afghanistan,*" diakses melalui situs : http://news.okezone.com/read/2014/02/08/413/937959/ribuan-warga-sipil-tewas-akibat-perang pada tanggal 29 Mei 2023 pukul 19.00 WIB.

[23] Gita Amanda, "*Kematian Warga Sipil Afghanistan Meningkat 25%*", www.republika.co.id, diakses melalui situs: http://www.republika.co.id/berita/internasional/global/15/02/18/njynrx-pbb-kematian-warga-sipil-meningkat-25-persen-di-afghanistan pada tanggal 29 Mei 2023 pukul 19.00 WIB.

[24] Tindakan Unilateral diartikan sebagai tindakan sepihak yang dilakukan oleh suatu negara dengan menimbulkan akibat hukum.

[25] Iwan Hadibroto, et al, Perang Afghanistan: Di Balik Perseteruan AS vs Taliban, (Jakarta: Gramedia Pustaka Utama,2001), hlm. 2.

[26] Bill Bowring, *The Degradation of the International Legal Order?: The Rehabilitation of Law and the Possibility of Politics*, Routledge : London , 2008, hlm. 57.

perdamaian dan keamanan internasional yang disebabkan oleh tindakan teroris, menyebutkan bahwa PBB memperbolehkan suatu negara mengambil tindakan yang dianggap perlu terhadap sebuah negara atau golongan yang melakukan maupun melindungi terorisme dimana salah satu isi Resolusi tersebut adalah: "Mengajak negara-negara tersebut bekerjasama secepatnya untuk menegakkan keadilan bagi pelaku, penggerak dan pendukung dari penyerangan-penyerangan teroris ini dan menekankan bahwa hal-hal tersebut harus dipertanggungjawabkan bagi pertolongan, bantuan atau penyembunyian pelaku-pelaku, penggerak-penggerak dan pendukung-pendukung dari tindakan ini akan dipertanggungjawabkan".[27]

Alasan kedua, ketiga dan keempat menunjukkan bahwa Amerika Serikat melakukan penyerangan di Afghanistan karena diserang terlebih dahulu, dan menganggap perlu melakukan serangan balik ke Afghanistan yang merupakan markas teroris yang dipimpin oleh Osama bin Laden.[28] Namun dalam hal ini, Amerika Serikat tidak mempedulikan PBB, meskipun Piagam PBB Pasal 1 dan 2 sangat menekankan prinsip perdamaian dan non-intervensi dalam hubungan internasional.[29]

Berdasarkan uraian diatas, penulis tertarik untuk mengkaji dan menganalisis bagaimana Amerika Serikat melakukan intervensi di wilayah Afghanistan dalam rangka memerangi kejahatan terorisme, kajian dan analisis tersebut penulis uraikan dengan rumusan masalah sebagai berikut:

1. Bagaimana pengaturan mengenai prinsip non intervensi menurut hukum internasional?
2. Bagaimana legalitas tindakan intervensi negara Amerika Serikat dalam memerangi terorisme di wilayah negara Afghanistan menurut hukum internasional?

## B. Metode Penelitian

Metode penelitian yang digunakan adalah penelitian hukum normatif (*Normative Legal Research*) yaitu penelitian hukum kepustakaan yang mengacu pada norma hukum

27 Resolusi Dewan Keamanan PBB Nomor 1368.
28 *Ibid.*
29 Mohammad Shoelhi, *Demi Harga Diri Mereka Melawan Amerika*, Jakarta: PT Pustaka Cidesindo, 2003, hlm. 152.

yang terdapat dalam peraturan perundang-undangan.[30] Kemudian juga mendasarkan pada karakteristik yang berbeda dengan penelitian ilmu sosial pada umumnya.[31]

Sedangkan fokus kajiannya adalah hukum positif, hukum positif yang dimaksud disini adalah hukum yang berlaku suatu waktu dan tempat tertentu, yaitu suatu aturan atau norma tertulis yang secara resmi dibentuk dan diundangkan oleh penguasa, di samping hukum yang tertulis tersebut terdapat norma didalam masyarakat yang tidak tertulis yang secara efektif mengatur perilaku anggota masyarakat.[32]

## C. Pembahasan

### 1. Prinsip Non Intervensi Sebagai Prinsip Hukum Umum

Hukum internasional merupakan aturan yang menjadi landasan bagi setiap subjek hukum internasional untuk melakukan kegiatan hubungan internasional. Dalam pelaksanaannya, terdapat sumber hukum yang mengatur hubungan antar subjek hukum internasional. Pasal 38 ayat (1) Statuta Mahkamah Internasional menjelaskan bahwa dalam mengadili perkara-perkara yang diajukan kepadanya, Mahkamah Internasional akan mempergunakan sumber hukum internasional yang meliputi:[33]

a. Perjanjian internasional, baik yang bersifat umum maupun khusus, yang mengandung ketentuan hukum yang diakui secara tegas oleh subjek hukum internasional;
b. Kebiasaan Internasional, sebagai bukti dari suatu kebiasaan umum yang telah diterima sebagai hukum;
c. Prinsip hukum umum yang diakui oleh bangsa-bangsa yang beradab;
d. Keputusan pengadilan dan ajaran para sarjana yang paling terkemuka dari berbagai negara sebagai sumber tambahan untuk menetapkan kaidah hukum.

Prinsip hukum umum yang dimaksudkan dalam Pasal 38 ayat (1) ialah prinsip yang meliputi prinsip kelangsungan negara, prinsip non intervensi dan sebagainya.[34] Prinsip ini merupakan sumber hukum formal utama yang berdiri sendiri disamping kedua sumber hukum lainnya yaitu perjanjian dan kebiasaan internasional.

---

30 Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, cet. 9, Jakarta: Rajawali Press, 2006, hlm. 23.
31 Asri Wijayanti dan Lilik Sofyan Achmad, *Strategi Penulisan Hukum,* Bandung: CV Lubuk Agung, 2011, hlm. 43.
32 *Ibid.*
33 Mochtar Kusumaatmadja dan Etty R. Agoes, *Pengantar Hukum Internasional, Op.cit.*, hlm. 113-115.
34 *Ibid,* hlm. 149.

Prinsp non intervensi dalam hubungan internasional adalah kondisi dimana suatu negara tidak diperbolehkan untuk mengintervensi urusan atau permasalahan dalam negeri negara lain. Misalnya menyangkut penentuan sistem politik, ekonomi, sosial, sistem budaya dan sistem kebijakan luar negeri suatu negara.[35]

Berkaitan dengan tindakan Amerika Serikat terhadap negara Afghanistan, tentu telah melanggar pirnsip non intervensi. Hal ini terlihat dari upaya penggunaan kekuatan militer dalam menyerang pemerintah Taliban di Afghanistan. Selain campur tangan militer, Amerika Serikat juga berupaya melakukan campur tangan politik dengan berusaha mempromosikan beberapa nilai khasnya, seperti demokrasi dan liberalisme.[36] Campur tangan politik tersebut menghasilkan pemerintahan *interim* (sementara) yang dibentuk pada tanggal 22 Desember 2001 dengan Hamid Karzai sebagai pemimpinnya.[37]

**2. Piagam PBB (Perserikatan Bangsa-Bangsa)**

Piagam PBB adalah konstitusi PBB yang ditandatangani di San Francisco pada tanggal 26 Juni 1945 oleh 50 (lima puluh) anggota asli PBB. Piagam ini mulai berlaku pada 24 Oktober 1945 setelah diratifikasi oleh lima anggota pendirinya yaitu Cina, Prancis, Uni Soviet (sekarang Rusia), Inggris, Amerika Serikat dan mayoritas penandatangan lainnya.[38] Piagam ini mengatur berbagai macam persoalan, termasuk mengenai persamaan derajat dan penghormatan kedaulatan terhadap setiap negara. Berkaitan dengan kedaulatan negara, Piagam PBB telah mengatur prinsip kedaulatan negara dan non-intervensi dalam dalam Pasal 2 ayat (4) Piagam PBB yang berbunyi[39] ”semua anggota harus menahan diri dalam hubungan internasional mereka dari ancaman atau penggunaan kekerasan terhadap integritas teritorial atau kemerdekaan politik negara manapun, atau dengan cara lain tidak konsisten dengan tujuan PBB”.[40]

Pasal tersebut secara tidak langsung menyatakan bahwa dalam hubungan antar negara tidak diperbolehkan adanya intervensi. Secara rinci, Pasal 2 ayat (4) Piagam PBB

---

35 Malcolm N. Shaw, *Hukum Internasional*, Edisi keenam, diterjemahkan oleh Derta Sri Widowatie, dkk, Bandung: Nusa Media, 2013, hlm. 1152.

36 www.hizbuttahrir.or.id, *Analisis Politik dibalik Pertemuan di London, Loc.cit.*

37 www.bbc.com, *Afghanistan Profile, Loc.cit.*

38 ` www.republika.co.id, *hari ini Piagam PBB ditanda tangani,* diakses melalui situs http://www.republika.co.id/berita/internasional/global/13/06/26/moz8ln-hari-ini-di-1945- piagam pbb-ditandatangani, pada tanggal 29 Mei 2023, pukul 10.00 WIB.

39 Pasal 2 Ayat (4) Piagam PBB.

40 Terjemahan bebas Penulis.

menjelaskan bahwa suatu negara tidak boleh turut campur tangan terhadap permasalahan internal maupun eksternal negara lain, hal ini dilakukan untuk menjamin adanya prinsip persamaan (*equality*) kedudukan negara dalam keanggotaan PBB.[41]

Penafsiran mengenai makna dari pasal 2 ayat (4) Piagam PBB juga dipertegas oleh Majelis Umum PBB pada tahun 1965, dengan mengeluarkan pernyataan yang isinya antara lain:[42]

1. Tidak ada satu negarapun yang mempunyai hak untuk turut campur tangan, secara langsung atau tidak langsung, dengan alasan apapun dalam urusan internal atau eksternal suatu negara.
2. Bahwa setiap negara memiliki hak yang tidak dapat diganggu gugat untuk memilih sistem politik, ekonomi, sosial, dan budayanya.
3. Bahwa semua negara harus menghormati hak menentukan nasib sendiri dan kemerdekaan rakyat dari suatu negara.

Berkaitan dengan tindakan Amerika Serikat di Afghanistan, dapat dipastikan bahwa tindakan tersebut sangat bertentangan dengan Pasal 2 ayat (4) piagam PBB. Pada faktanya, Amerika Serikat melakukan tindakan kekerasan yang bertentangan dengan integritas teritorial dan kemerdakaan politik negara Afghanistan. Tindakan kekerasan tersebut dilakukan dengan cara melakukan serangan militer ke wilayah kedaulatan Afghanistan dengan alasan untuk menangkap dan mengadili para pelaku kejahatan terorisme.

### 3. Resolusi PBB (Perserikatan Bangsa-Bangsa)

Hukum internasional dalam perkembangannya melahirkan suatu tatanan sumber hukum baru yaitu resolusi atau keputusan suatu organisasi internasional yang diakui oleh negara-negara di dunia saat ini.[43] Resolusi dapat dikatakan sebagai suatu hasil keputusan dari suatu masalah yang telah disetujui melalui konsensus maupun pemungutan suara menurut aturan dan tata cara yang telah ditetapkan oleh organisasi internasional atau badan yang bersangkutan. PBB dalam menggunakan istilah “resolusi” tidak hanya mencakup akan suatu rekomendasi melainkan juga keputusan.[44] Mengingat organisasi internasional PBB

---

41 Erika, *Meneropong Prinsip Non Intervensi yang Masih Melingkar dalam ASEAN, Loc.cit.*, hlm. 179.

42 Tim dosen Hukum Internasional FH-UGM, *Pengantar Hukum Internasional*. Yogyakarta: FH-UGM. 2011, hlm. 23-24.

43 Mochtar Kusumaatmadja dan Etty.R. Agoes, *Pengantar Hukum Internasional, Op.Cit.*, hlm. 154.

44 Boer Mauna, *Hukum Internasional-Pengertian, Peranan dan Fungsi dalam Era Dinamika Global*, Bandung: PT. Alumni, 2011, hlm. 465.

merupakan organisasi terbesar dimana hampir seluruh negara di dunia sebagai anggotanya, maka dapat dipastikan pengaruh dan ruang lingkup berlakunya resolusi tersebut sangat besar dan luas.

Resolusi yang dikeluarkan oleh PBB hanya berasal dari Majelis Umum maupun Dewan Keamanan PBB. Resolusi yang dikeluarkan oleh Majelis Umum biasanya hanya bersifat anjuran dan tidak mengikat secara hukum, sedangkan Dewan Keamanan memiliki kompetensi untuk mengeluarkan resolusi yang mengikat semua negara anggota PBB.[45] Pelaksanaan dari isi resolusi yang dikeluarkan oleh suatu organisasi internasional termasuk PBB setidaknya harus memiliki fungsi-fungsi sebagai berikut : [46]

1. Menciptakan kewajiban, hak dan atau kekuatan maupun wewenang (fungsi substantif);
2. Menentukan fakta atau keadaan hukum yang dapat menentukan fungsi substantif tersebut.
3. Menentukan bagaimana dan kapan suatu fungsi substantif tersebut dapat berlaku.

Berkaitan dengan prinsip keseteraan kedaulatan dan prinsip non intervensi, PBB telah mengeluarkan beberapa Resolusi, diantaranya adalah Resolusi Majelis Umum PBB Nomor 2131 (XX) Tahun 1965 tentang deklarasi perlindungan kemerdekaan dan kedaulatan serta tidak diterimanya tindakan intervensi di wilayah domestik suatu negara, resolusi tersebut berbunyi:[47]

1. Tidak ada negara yang memiliki hak untuk campur tangan, langsung atau tidak langsung, untuk alasan apapun, dalam urusan internal atau eksternal dari negara lain. Akibatnya, intervensi bersenjata dan semua bentuk lain dari gangguan atau ancaman terhadap kepribadian negara atau unsur ekonomi, politik dan budaya adalah perbuatan yang dikutuk;
2. Tidak ada negara yang dapat menggunakan atau mendorong penggunaan ekonomi, politik atau jenis lain yang memaksa negara lain untuk mengamankan diri atau untuk keuntungan apapun. Juga, tidak ada negara yang harus mengatur, membantu, menyulut, menghasut atau mentolerir teroris atau kegiatan bersenjata yang

[45] Malcom N. Shaw QC, *Hukum Internasional*, Edisi Keenam, Terj. Derta Sri Widowatie, et.al, Bandung: Nusa Media, 2013. Hlm. 97.

[46] Marko Divac Oberg, *The Legal Effect of Resolution of The UN Security Council and General Assembly in The Jurisprudence of The ICJ*, Munich: European Journal of International Law, 2006. hlm. 881.

[47] Resolusi Majelis Umum PBB Nomor 2131 (XX).

diarahkan dengan kekerasan untuk menggulingkan rezim negara lain, atau campur tangan dalam perselisihan sipil di negara lain;

3. Penggunaan kekuatan untuk mencabut masyarakat dari identitas nasional mereka merupakan pelanggaran terhadap hak-hak asasi mereka dan prinsip non-intervensi;
4. Ketaatan kewajiban ini merupakan kondisi yang penting untuk memastikan bahwa negara-negara hidup bersama dalam damai antara satu sama lain, karena segala bentuk praktek intervensi tidak hanya melanggar semangat dan tujuan PBB, tetapi juga mengarah kepada penciptaan situasi yang mengancam perdamaian dan keamanan internasional;
5. Setiap negara memiliki hak mutlak untuk memilih sistem ekonomi, sosial budaya dan politik tanpa campur tangan dalam bentuk apapun oleh negara lain;
6. Semua hegara harus menghormati hak penentuan nasib sendiri dan kemerdekaan bangsa dan negara, harus bebas dilakukan tanpa ada tekanan asing, dan dengan penghormatan mutlak untuk hak asasi manusia dan kebebasan fundamental. Sebagai akibatnya, semua negara akan memberikan kontribusi untuk penghapusan diskriminasi ras dan kolonialisme dalam segala bentuk dan manifestasinya;
7. Untuk tujuan dari deklarasi ini, istilah "negara" meliputi negara individu dan kelompok dari negara-negara;
8. Tidak ada dalam deklarasi ini dapat ditafsirkan sebagai upaya mempengaruhi dengan cara apapun mengenai ketentuan yang relevan dari Piagam PBB yang berkaitan dengan pemeliharaan perdamaian dan keamanan internasional, khususnya yang terdapat dalam Bab VI, VII dan VIII.

Berkaitan dengan tindakan Amerika Serikat terhadap Afghanistan, hal tersebut sangat menyimpang dan bertentangan dengan isi Resolusi Majelis Umum PBB Nomor 2131 (XX) Tahun 1965. Pada faktanya, Amerika Serikat telah melakukan intervensi bersenjata dengan cara mengirim pasukan militer ke wilayah Afghanistan dengan alasan untuk menangkap dan mengadili para pelaku kejahatan terorisme. Selain itu, Amerika Serikat justru berusaha merubah sistem pemerintahan Afghanistan menjadi sistem demokrasi dan liberal. Amerika Serikat juga berupaya membentuk otoritas pemerintahan *Interim* (sementara) dengan menunjuk Hamid Karzai sebagai pemimpinnya.[48]

[48] www.bbc.com, *Afghanistan Profile, Loc.cit.*

Selain itu, ketentuan mengenai kesetaraan kedaulatan dan prinsip non intervensi juga diatur dalam Resolusi Majelis Umum PBB No. 2625 (XXV) Tahun 1970 tentang deklarasi prinsip-prinsip hukum internasional mengenai hubungan dan kerjasama antar negara sesuai dengan piagam PBB (Perserikatan Bangsa-Bangsa), resolusi tersebut berbunyi:[49]

1. Prinsip bahwa setiap negara harus menahan diri mereka, dalam hubungan internasional, dari ancaman atau penggunaan kekerasan terhadap integritas teritorial atau kemerdekaan politik negara manapun, atau dengan cara lain yang tidak konsisten dengan tujuan PBB;
2. Prinsip bahwa setiap negara harus menyelesaikan sengketa internasional dengan cara damai agar perdamaian, keamanan internasional dan keadilan tidak terancam punah;
3. Tidak ada campur tangan dalam urusan yurisdiksi dalam negeri setiap negara, sesuai dengan Piagam PBB;
4. Kewajiban bagi setiap negara untuk bekerja sama dengan satu sama lain sesuai dengan Piagam PBB;
5. Prinsip persamaan hak dan penentuan nasib sendiri dari masyarakat;
6. Prinsip kesetaraan kedaulatan negara;
7. Prinsip bahwa Negara harus memenuhi kewajibannya sesuai dengan ketentuan yang terdapat dalam Piagam PBB;

Berkaitan dengan tindakan Amerika Serikat dalam memerangi terorisme di Afghanistan, maka hal tersebut tentu sangat bertentangan dengan isi Resolusi Majelis Umum PBB No. 2625 (XXV) Tahun 1970, terutama dalam pasal 1 dan pasal 4. Pada faktanya, Amerika Serikat dalam upaya menangkap dan mengadili para pelaku kejahatan terorisme justru tidak bekerja sama dan tidak berkoordinasi dengan pemerintah Afghanistan. Hal ini terbukti dari Amerika Serikat yang melakukan serangan bersenjata ke wilayah Afghanistan dengan mengirimkan pasukan laut, darat, maupun udara. Serangan tersebut dilakukan dengan menjatuhkan sedikitnya 2000 bom dan peluru kendali. Serangan tersebut juga tidak semuanya tepat sasaran, sehingga mengakibatkan jatuhnya korban jiwa yang sebagian besar dari masyarakat sipil dan bukan dari pasukan Taliban.[50]

---

[49] Resolusi Majelis Umum PBB Nomor 2625 .

[50] Iwan Hadibroto, et al, *Perang Afghanistan: Di Balik Perseteruan AS vs Taliban*, Gramedia Jakarta: Pustaka Utama, 2001, hlm. 29.

### 4. Kronologi Peristiwa 11 September 2001

Peristiwa ini terjadi pada hari Selasa, 11 September 2001 yang diawali pada pukul 8.45 pagi waktu New York, New Jersey dan kota Washington D.C. dengan kronologi sebagai berikut:

1. Pesawat Boeing 767 milik maskapai *American Airlines* menghantam menara utara gedung WTC (*World Trade Center*) di kota New York.
2. Pesawat kedua, Boeing 767 milik *United Airlines* dengan nomor penerbangan 175 menghantam menara selatan WTC di sekitar lantai 60.
3. Pesawat ketiga, yaitu pesawat milik *American Airlines* dengan nomor penerbangan 77 menghantam sisi timur gedung kantor pusat Pentagon pukul 9.45 waktu Washington.
4. Pesawat keempat milik *United Airlines* dengan nomor penerbangan 93 dibajak dan jatuh ke wilayah pemukiman di sebelah barat Pennsylvania pukul 10.10 pagi.[51]

Akibat dari peristiwa tersebut, presiden Amerika Serikat pada saat itu, George W. Bush akhirnya mengambil sebuah tindakan untuk menyerang setiap pihak yang ikut secara langsung atau tidak langung atas peristiwa tersebut.[52] Amerika Serikat mengumumkan bahwa yang bertanggung jawab atas serangan tersebut adalah organisasi teroris Al-Qaeda yang dipimpin Osama bin Laden yang bermarkas di Afghanistan. Alibi Amerika dalam hal ini adalah pemerintah Afghanistan (rezim Taliban) menolak untuk bekerja sama dan menyerahkan Osama bin Laden, dan karenanya dianggap bersekutu dengan teroris. Amerika Serikat juga melihat beberapa indikasi yang membuat peristiwa 11 September 2001 merupakan tanggung jawab Osama bin Laden dan jaringan Al-Qaeda, menurut Amerika Serikat adalah:[53]

1. Sebelum peristiwa 11 September terjadi, Osama bin Laden telah mengeluarkan fatwa yang mewajibkan setiap orang muslim untuk membunuh warga Amerika Serikat, sipil maupun militer;
2. Pada Agustus dan September, mata-mata Osama bin Laden diperintahkan untuk kembali ke Afghanistan sebelum 10 September;
3. Dari 19 pembajak, setidaknya 3 orang diantaranya merupakan anggota jaringan Al

---

51 Rahmi Fitriyani, *Kajian Mengenai Legalitas Formal Use Of Force Amerika Serikat Terhadap Afghanistan, Loc,cit.*
52 Bien Pasaribu dan Jamaludin Sitongga, *Perang Bush Memburu Osama,* Jakarta : Sinar Haiti, 2001. hlm. 86.
53 Abdul Halim Mahally, "*Membongkar Ambisi Global Amerika Serikat,*" Jakarta : Pustaka Sinar Harapan, 2003, hlm. 108.

Qaeda. Setidaknya seorang pembajak terlibat dalam serangan kapal angkatan laut Amerika Serikat USS Cole dan melakukan pengeboman di kedutaan Amerika Serikat di Kenya dan Tanzania;

4. Berdasarkan penelusuran terhadap gerakan pembajak sebelum 11September, para penyidik menemukan beberapa diantara mereka bertemu dengan orang suruhan Osama bin Laden dan secara teratur menerima uang dari jaringan Al-Qaeda.

Beberapa indikasi yang ditemukan mengakibatkan pemerintah Amerika Serikat mendeklarasikan perang melawan teror (*war on terror*) sebagai respon pasca serangan 9/11. Pernyataan ini mengindikasikan bahwa Amerika Serikat akan melakukan pembalasan dengan aksi militeristik (perang).[54]

### 5. Kronologi Serangan Amerika Serikat ke Afghanistan

Amerika Serikat sebagai negara yang menjadi korban sasaran tindakan teror 11 september 2001 bereaksi sangat hebat atas tragedi itu. Pada tanggal 27 September 2001, Amerika Serikat melakukan serangan ke negara Afghanistan dengan kronologi sebagai berikut:

1. 7 Oktober 2001, Amerika Serikat meluncurkan pesawat-pesawat pembom yang berbasis di darat seperti B-1, B-2 dan B-52, pesawat-pesawat tempur berbasis kapal induk seperti F-14 dan F/A 18, dan rudal jelajah yang diluncurkan dari kapal selam Amerika dan Inggris.[55]
2. 15 Oktober 2001, Amerika Serikat kembali mengirimkan pesawat-pesawat pengebom untuk menghantam sasaran militer di Barat laut kota Kabul, ibu kota Afghanistan. Serangan tersebut berlangsung selama sembilan hari dan telah menjatuhkan sedikitnya 2000 bom dan peluru kendali dan membuat pasukan Taliban mundur ke wilayah timur serta selatan Afghanistan.[56]
3. 5 Desember 2001, Amerika Serikat menawarkan perundingan terhadap pasukan Taliban dan akhirnya pada tanggal 7 Desember Taliban menyerahkan diri. Walaupun begitu, Amerika Serikat masih gagal menangkap Osama bin Laden ketika itu.[57]

---

[54] Douglas Kellner, From *9/11 to Terror War: the Dangers of the Bush Legacy*, Oxford: Rowman and Littlefield, 2003. Hlm. 54.

[55] www.liputan6.com, *Amerika Serikat Mengobarkan Perang di Afghanistan, Loc.cit.*

[56] Dina Susanti dan Farah Monika, *Peran AS dalam Transisi Rezim di Negara Lain: Studi Kasus Afganistan*, *Loc.cit.*

[57] Bagus Dharmawan, *Petaka di Gunung Afghan,* Jakarta: Kompas, 2003, hlm. 16.

4. 6 Desember 2001, Kelompok oposisi dari Taliban mengadakan pertemuan di Bonn, Jerman.[58] Pertemuan tesebut memperoleh kesepakatan untuk membentuk suatu stabilitas dan pemerintahan di Afghanistan melalui dibentuknya pemerintahan *interim* (sementara) dan menciptakan suatu proses menuju pembentukan pemerintahan yang lebih permanen.
5. 22 Desember 2001, dibentuk pemerintahan *interim* Afghanistan dan mulai bertugas sejak tanggal 22 Desember 2001 dengan Hamid Karzai sebagai pemimpinnya.[59] Otoritas *interim* ini memegang tampuk kepentingan selama enam bulan sambil mempersiapkan terbentuknya" Loya *Jirga*" (Parlemen Tradisional Afghanistan) pada pertengahan bulan Juni 2002 yang akan memutuskan bentuk dari struktur otoritas transisional. Otoritas transisional ini, diketuai oleh Presiden Hamid Karzai, mengubah namanya pemerintahan Afghanistan menjadi" Negara Islam Transisional Afghanistan (TISA/*Transitional Islamic State of Afghanistan*).[60]

Pasca terpilihnya Hamid Karzai sebagai presiden Afghanistan, Amerika Serikat tetap melanjutkan operasi-operasi militer yang dijalankan selama bertahun-tahun.[61]

### 6. Alasan-Alasan Amerika Serikat Melakukan Tindakan Intervensi di Afghanistan

Prsesiden Bush dalam pidatonya mengemukakan 4 alasan Amerika Serikat harus menyerang Afghanistan yaitu:[62]

a. *Chapter IV of United Nation Charter* (Resolusi Dewan Keamanan PBB No.1368 tentang ancaman terhadap perdamaian dan keamanan internasional yang disebabkan oleh tindakan teroris) yang dikeluarkan pada tanggal 12 September tahun 2001;
*b. Intervention by Invitation;*
*c. Humanitarian Intervention;*
*d. Self Defence.*

Dewan Keamanan PBB, dalam Resolusi No.1368 tentang ancaman terhadap perdamaian dan keamanan internasional yang disebabkan oleh tindakan teroris, menyebutkan bahwa PBB memperbolehkan suatu negara mengambil tindakan yang

---

[58] *Ibid.*
[59] www.bbc.com, *Afghanistan Profile, Loc.cit.*
[60] www.liputan6.com, *Oposisi Taliban Menyepakati Pembentukan Pemerintahan Transisi, Loc.cit.*
[61] news.okezone.com, *Ribuan Warga Sipil Tewas Akibat Perang Afghanistan, Loc.cit.*
[62] Bill Bowring, *Loc.cit.*

dianggap perlu terhadap sebuah negara atau golongan yang melakukan maupun melindungi terorisme dimana isi Resolusi tersebut adalah:[63]

1. Secara tegas mengutuk tindakan mengerikan serangan teroris yang berlangsung pada 11 September 2001 di New York, Washington, DC dan Pennsylvania dan tindakan itu, seperti tindakan terorisme internasional, sebagai ancaman terhadap perdamaian dan keamanan internasional;
2. Menyampaikan simpati dan duka cita yang mendalam kepada para korban dan keluarga mereka dan kepada orang-orang serta pemerintah Amerika Serikat;
3. Mengajak kepada semua negara untuk bekerja sama mendesak dan membawa pelaku ,penyelenggara dan pendukung serangan teroris ke pengadilan, dan menekankan bahwa mereka bertanggung jawab atas tindakan membantu, mendukung atau menyembunyikan para pelaku, penyelenggara dan pendukung dari tindakan ini untuk bertanggung jawab;
4. Panggilan juga pada masyarakat internasional untuk melipat gandakan upaya mereka untuk mencegah dan menekan aksi teror termasuk dengan meningkatkan kerja sama dan penuh atas pelaksanaan konvensi anti-teroris internasional yang relevan dan dengan Resolusi Keamanan Dewan dalam bagaian dari resolusi nomor 1269 (1999) pada 19 Oktober 1999;
5. Menyampaikan kesiapan untuk mengambil semua langkah yang diperlukan untuk merespon serangan teroris 11 September 2001, dan untuk memerangi segala bentuk terorisme, sesuai dengan tanggung jawabnya berdasarkan Piagam Perserikatan Bangsa-Bangsa;
6. Memutuskan untuk tetap mengadili masalah ini.

Isi resolusi Dewan Kemanan PBB No.1368 Tahun 2001 menjelaskan bahwa dunia internasional sangat menentang adanya tindakan terorisme. Pelaksanaan resolusi tersebut sangat berkaitan dengan prinsip yurisdiksi universal yaitu setiap negara mendapatkan legitimasi untuk menangkap dan memerangi para pelaku kejahatan internasional, termasuk kejahatan terorisme. Prinsip yurisdiksi universal dalam pelaksanaannya harus mempertimbangkan apakah pelaku berada di wilayahnya atau tidak, karena negara tidak bisa melaksanakan yurisdiksi universal bila pelaku tidak berada di wilayahnya. Akan merupakan

[63] Resolusi Dewan Keamanan PBB Nomor 1368.
[58] Terjemahan bebas dari penulis.

pelanggaran hukum internasional bila negara memaksa menangkap seseorang yang berada di wilayah negara lain.[64]

Berkaitan dengan tindakan serangan Amerika Serikat ke Afghanistan, tentu tindakan tersebut tidak sesuai dengan isi Resolusi Dewan Keamanan PBB Nomor 1368. Hal ini karena isi resolusi tersebut hanya menyebutkan tentang upaya memerangi terorisme secara umum dan tidak ada pernyataan khusus yang meligitimasi menyerang organisasi teroris Al Qaeda. Bahkan lebih jauh, isi resolusi tersebut juga tidak menyebutkan untuk menyerang pemerintahan suatu negara. Namun pada faktanya, Amerika Serikat tidak hanya menyerang organisasi teroris Al-Qaeda, tetapi juga menyerang pasukan Taliban yang ketika itu merupakan pemerintah resmi negara Afghanistan.

**7. Intervensi Kemanusiaan**

Alasan lainnya yang dikemukakan Amerika Serikat dalam melakukan intervensi adalah karena intervensi kemanusiaan. Kejahatan kemanusiaan didalam suatu negara, sebagaimana diatur dalam Pasal 7 Statuta Roma Tahun 1998 tentang Mahkamah Pidana Internasional yang meliputi :[65]

1. Pembunuhan;
2. Pembasmian;
3. Perbudakan;
4. Deportasi atau pemindahan penduduk secara paksa;
5. Pemenjaraan atau perampasan berat lainnya dari kebebasan fisik yang melanggar aturan dasar hukum internasional;
6. Penyiksaan;
7. Perkosaan, perbudakan seksual, prostitusi, kehamilan paksa, sterilisasi paksa, atau bentuk lain kekerasan seksual yang sebanding;
8. Penganiayaan terhadap kelompok atau kolektivitas pada politik, ras, kebangsaan, etnis, budaya, agama, jenis kelamin sebagaimana didefinisikan dalam ayat 3, atau putaran lain yang diakui secara universal sebagai hal yang dilarang menurut hukum internasional, sehubungan dengan tindakan apapun sebagaimana dimaksud dalam ayat ini atau kejahatan dalam yurisdiksi Pengadilan;
9. Penghilangan paksa seseorang;

[64] Sefriani, *Hukum Internasional : Suatu Pengantar, Loc.cit.*
[65] Pasal 7 Statuta Roma Tahun 1998.

10. Kejahatan apartheid;
11. Tindakan tidak manusiawi lainnya yang bersifat sama yang secara sengaja menyebabkan penderitaan, atau luka serius terhadap badan atau mental atau kesehatan fisik.

Ketentuan yang terdapat dalam Pasal 7 Statuta Roma Tahun 1998 menjelaskan mengenai tindakan-tindakan yang dapat dikategorikan sebagai kejahatan internasional. Selain itu, pelaksanaan intervensi kemanusiaan dapat dijalankan tidak hanya berdasarkan fakta adanya kejahatan kemanusiaan yang terjadi di dalam suatu negara, melainkan juga harus mendapatkan mandat ataupun izin dari Dewan Keamanan PBB melalui tindakan secara kolektif maupun individual.

Berkaitan dengan tindakan serangan Amerika Serikat ke Afghanistan, tentu tindakan tersebut tidak sesuai dengan ketentuan intervensi kemanusiaan. Hal ini karena negara Arghanistan tidak pernah melakukan kejahatan kemanusiaan sebagaimana dijelaskan dalam Pasal 7 Statuta Roma Tahun 1998 tentang Mahkamah Pidana Internasional.

### 8. Intervensi Untuk Pembelaan Diri (*Self Defence*)

Alasan terakhir Amerika melakukan serangan ke Afghanistan adalah untuk pembelaan diri. Hukum internasional mengakui adanya tindakan *self defence* berdasarkan latar belakang peristiwa penembakan kapal *Caroline* milik Amerika Serikat yang terjadi pada tahun 1837, saat itu rakyat inggris menyita dan menghancurkan sebuah kapal di Amerika. Penembakan itu dilakukan karena kapal tersebut memasok kebutuhan kelompok-kelompok warga Amerika Serikat yang selama itu melakukan serangan terhadap teritorial Kanada.[66]

Dalam komunikasi yang dijalin antara menteri luar negeri Amerika Serikat dengan pemerintah Inggris pada waktu itu, berujung pada kesimpulan bahwa tindakan Inggris dikategorikan sebagai "*The Nescessity of self defence and preservation".* Inggris mengklaim bahwa tindakan mereka adalah sebuah tindakan *self defence*.[67] Akibat dari peristiwa tersebut, menteri luar negeri Amerika Serikat ketika itu akhirnya merumuskan tindakan *self defence*

---

66 Malcom N. Shaw QC, *Hukum Internasional*, Edisi Keenam, Terj. Derta Sri Widowatie, et.al, Bandung: Nusa Media, 2013. Hlm. 1142.

67 D. J. Harris, *Cases and Materials on International Law*, Sixth Edition, London: Sweet & Maxwell, 2004. Hlm. 889.

dapat dilakukan dengan dengan cara yang masuk akal dan tidak berlebihan, selain itu juga harus memenuhi kriteria-kriteria berikut ini:[68]

1. *Instant (*berlangsung sangat cepat)
2. *Overwhelming* (keadaan terpaksa yang luar biasa)
3. *There is no alternative* (tidak ada pilihan lain)
4. *No moment for deliberation* (tidak ada waktu untuk bermusyawarah)

Unsur-unsur tersebut pada akhirnya diterima oleh pemerintah Inggris dan saat ini diakui sebagai bagian dari kebiasaan internasional.[69] Pengaturan mengenai tindakan *self Defence* diatur dalam Piagam PBB dalam pasal 51 yang mengakui adanya tindakan *self defence* sebagai "*inherent right*" yaitu hak yang melekat baik pada individu atau kolektif untuk melakukan *self defence.* Pasal 51 Piagam PBB menjelaskan bahwa:[70] "tidak ada satu pun ketentuan dalam piagam PBB yang boleh merugikan hak perseorangan atau bersama untuk membela diri apabila suatu serangan bersenjata terjadi terhadap satu anggota perserikatan bangsa-bangsa, sampai dewan keamanan mengambil tindakan-tindakan yang diperlukan untuk memelihara perdamaian serta keamanan internasional".[71]

Pasal 51 piagam PBB tersebut bermakna bahwa penggunaan tindakan kekerasan atas dasar pembelaan diri dilakukan karena adanya hak kemanusiaan yang melekat untuk melakukan pembelaan diri ketika terjadi kekerasan pada dirinya. Tindakan *self defence* yang terkandung dalam pasal 51 Piagam PBB juga memberikan makna tentang pembatasan kondisi tentang penggunaan kekuatan bersenjata, dan tidak terkait dengan tata cara berperang.[72]

Berkaitan dengan tindakan intervensi yang dilakukan oleh Amerika Serikat atas dasar pembelaan diri (*Self Defence*), maka sudah tentu tidak dibenarkan dalam hukum internasional. Hal ini karena tindakan Amerika Serikat tidak memenuhi unsur-unsur yang harus dipenuhi untuk melakukan pembelaan diri (*Self defence*) yaitu harus dalam keadaan serangan bersenjata, karena pada faktanya peristiwa 11 september 2001 bukanlah serangan bersenjata, melainkan peristiwa pembajakan pewawat terbang. Selain itu, tuduhan yang dilancarkan oleh Amerika Serikat sebagai respon atas serangan 11 September yang

---

[68] Malcom N. Shaw QC, *Hukum Internasional, Ibid.*
[69] *Ibid.*
[70] Pasal 51 Piagam PBB.
[71] Terjemahan Bebas Penulis.
[72] www.Kemlu.go.id, *Interdiksi dan Hak Mempertahankan diri, Ibid.*

menimpanya seharusnya ditujukan terhadap Arab Saudi, karena mayoritas pelaku yang berhasil ditangkap merupakan warga negara Arab Saudi, namun pada kenyataannya Amerika Serikat justru melakukan penyerangan terhadap negara Afghanistan. Tindakan Amerika Serikat juga tidak memenuhi kriteria-kriteria yang telah dijelaskan sebelumnya yaitu harus berlangsung dengan cepat, keadaan yang sangat terpaksa, tidak ada pilihan lain dan tidak ada waktu untuk bermusyawarah.

## D. Kesimpulan

Hukum internasional menjelaskan bahwa prinsip non intervensi merupakan salah satu prinsip dasar dalam hukum internasional, prinsip ini juga diatur Piagam PBB, serta Resolusi Majelis Umum PBB Nomor 2131 tentang deklarasi perlindungan kemerdekaan dan kedaulatan serta tidak diterimanya tindakan intervensi di wilayah domestik suatu negara. Selain itu juga diatur dalam Resolusi Majelis Umum PBB Nomor 2625 tentang deklarasi prinsip-prinsip hukum internasional mengenai hubungan dan kerjasama antar negara sesuai dengan piagam PBB.

Serangan Amerika Serikat ke Afghanistan yang dilakukan dengan alasan kemanusiaan, pembelaan diri (*self defence*) dan dalam upaya menangkap serta mengadili para pelaku terorisme merupakan tindakan yang melanggar prinsip non intervensi dalam hukum internasional. Hal ini terjadi karena tidak terpenuhinya unsur-unsur tentang kejahatan kemanusiaan dan *self defence* sebagaimana diatur dalam hukum internasional terhadap kejahatan kemanusiaan di Afghanistan yang dikemukakan oleh Amerika Serikat. Selain itu, Amerika melakukan intervensi tanpa izin dari pemerintah Afghanistan dan tidak berkoordinasi terlebih dahulu dengan Dewan Keamanan PBB, sehingga alasan yang dikemukakan Amerika Serikat untuk menyerang Afghanistan sangatlah tidak tepat dan tidak dibenarkan menurut hukum internasional. Bahkan, akibat dari tindakan tersebut justru menimbulkan pandangan bahwa tujuan Amerika Serikat yang sebenarnya tidak hanya untuk memerangi para pelaku terorisme, tetapi juga untuk mengubah bentuk pemerintahan Afghanistan.

## E. Saran

Berdasarkan kesimpulan yang telah dijabarkan, maka dapat diajukan beberapa saran sebagai berikut:

1. Hukum internasional tidak menyebutkan secara eksplisit boleh atau tidaknya suatu

negara untuk melakukan intervensi atas dasar untuk memerangi terorisme di wilayah negara lain. Untuk itu, perlu dibuatnya suatu aturan yang tegas dan jelas yang mengatur tentang dasar, tujuan dan batasan mengenai tindakan intervensi untuk tujuan memerangi terorisme di wilayah negara lain.

2. Berkaitan dengan aturan yang dibuat, sebaiknya diikuti dengan peningkatan kapasitas setiap negara dalam hal pertahanan dan keamanan. Peningkatan kapasitas tersebut dapat dilakukan dengan membentuk suatu lembaga khusus yang bertugas menangani tindak kejahatan terorisme. Lembaga tersebut diberikan kewenangan khusus hanya untuk memerangi para pelaku kejahatan terorisme, baik secara preventif maupun represif. Dengan adanya pembentukan lembaga tersebut, diharapkan tidak perlu ada lagi campur tangan dari negara lain dalam upaya memerangi kejahatan terorisme dalam internal suatu negara, sebagaimana yang telah dilakukan Amerika Serikat dalam melakukan tindakan intervensi di Afghanistan untuk memerangi pelaku kejahatan terorisme.

**Daftar Pustaka**

**Buku**

Abdul Halim Mahally, "*Membongkar Ambisi Global Amerika Serikat,*" Jakarta: Pustaka Sinar Harapan, 2003;

Asri Wijayanti dan Lilik Sofyan Achmad, *Strategi Penulisan Hukum,* Bandung: CV Lubuk Agung, 2011;

Bagus Dharmawan, *Petaka di Gunung Afghan,* Jakarta: Kompas, 2003;

Bien Pasaribu dan Jamaludin Sitongga, *Perang Bush Memburu Osama,* Jakarta : Sinar Haiti, 2001;

Bill Bowring, *The Degradation of the International Legal Order?: The Rehabilitation of Law and the Possibility of Politics*, Routledge: London , 2008;

Boer Mauna, *Hukum Internasional-Pengertian, Peranan dan Fungsi dalam Era Dinamika Global*, Bandung: PT. Alumni, 2011;

D. J. Harris, *Cases and Materials on International Law*, Sixth Edition, London: Sweet & Maxwell, 2004.

Douglas Kellner, From *9/11 to Terror War: the Dangers of the Bush Legacy*, Oxford: Rowman and Littlefield, 2003;

F Sugeng Istanto, *Hukum Intenasional,* Yogyakarta : Universitas Atmajaya, 1998 Jawahir Thantowi dan Pranoto Iskandar, *Hukum Internasional Kontemporer,* Bandung: PT Refika Aditama, 2006;

Iwan Hadibroto, et al, *Perang Afghanistan: Di Balik Perseteruan AS vs Taliban*, Jakarta: Gramedia Pustaka Utama, 2001:

Malcolm N. Shaw, *Hukum Internasional*, Edisi keenam, diterjemahkan oleh Derta Sri Widowatie, dkk, Bandung: Nusa Media, 2013;

Mochtar Kusumaatmadja dan Etty R. Agoes, *Pengantar Hukum Internasional,* Bandung: Alumni, 2003;

Mohammad Shoelhi, *Demi Harga Diri Mereka Melawan Amerika*, Jakarta: PT Pustaka Cidesindo, 2003;

Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, cet. 9, Jakarta: Rajawali Press, 2006;

Tim dosen Hukum Internasional FH-UGM, *Pengantar Hukum Internasional*. Yogyakarta : FH-UGM. 2011;

Yulia Neta dan M. Iwan Satriawan, *Ilmu Negara,* Bandar Lampung : PKKPU FH Universitas Lampung, 2013.

**Jurnal**

Dina Susanti dan Farah Monika, *Peran AS dalam Transisi Rezim di Negara Lain: Studi Kasus Afganistan*, Global Jurnal Politik Internasional Vol. 7 No. 2 , Mei 2005;

Marko Divac Oberg, *The Legal Effect of Resolution of The UN Security Council and General Assembly in The Jurisprudence of The ICJ*, Munich: European Journal of International Law, 2006;

Rahmi Fitriyani, *Kajian Mengenai Legalitas Formal Use Of Force Amerika Serikat Terhadap Afghanistan,* Orbit: Jurnal Hubungan Internasional, Vol.1, No.1, Jakarta: Pusat Kajian Hubungan Internasional, UIN, Januari 2008;

**Internet**

Liputan6.com, *4 Kasus Terorisme yang terjadi di Dunia selama pandemi Covid-19, available on website :* https://www.liputan6.com/global/read/4518650/4-kasus-terorisme-yang-terjadi-di-dunia-selama-pandemi-covid-19;

Vivanews.co.id, *Tragedi 9-11, Available On Website* http://dunia.news.viva.co.id/news/read/246153-11-9-2001--tragedi-9-11, diakses pada 29 Mei 2023;

International.kontan.co.id, *Peringatan peristiwa 911: Ini dia latar belakang serangan Al-Qaeda ke gedung WTC, Available on Website:*

https://internasional.kontan.co.id/news/peringatan-peristiwa-911-ini-dia-latar-belakang-serangan-al-qaeda-ke-gedung-wtc?page=all, diakses pada 29 Mei 2023;

Kristanti, Elin Yunita, www.liputan6.com, *Amerika Serikat Mengobarkan Perang di Afghanistan, Available On Website:* http://news.liputan6.com/read/2115168/7-10-2001-amerika-serikat-kobarkan-perang-di-afghanistan, diakses pada 29 Mei 2023;

www.hizbuttahrir.or.id, *Analisis Politik dibalik Pertemuan di London, Available On Website* :http://hizbut-tahrir.or.id/2010/02/15/analisis-politik-dibalik-pertemuan-london/, diakses pada tanggal 20 Maret 2015 pukul 10.00 WIB;

www.bbc.com, *Afghanistan Profile, Available on Website*: http://www.bbc.com/news/world south-asia-12024253, diakses pada 29 Mei 2023.

www.liputan6.com, *Oposisi Taliban Menyepakati Pembentukan Pemerintahan Transisi, Available On Website* http://news.liputan6.com/read/22491/oposisi-taliban-menyepakati-pembentukan-pemerintah-transisi, diakses pada 29 Mei 2023.

news.okezone.com, *Ribuan Warga Sipil Tewas Akibat Perang Afghanistan, Available On Website*: http://news.okezone.com/read/2014/02/08/413/937959/ribuan-warga-sipil-tewas-akibat-perang, diakses pada 29 Mei 2023.

www.republika.co.id, *Kematian Warga Sipil Afghanistan Meningkat 25%, Available On Website*: http://www.republika.co.id/berita/internasional/global/15/02/18/njynrx-pbb-kematian-warga-sipil-meningkat-25-persen-di-afghanistan, diakses pada 29 Mei 2023.

www.republika.co.id, *hari ini Piagam PBB ditanda tangani, Available On Website* : http://www.republika.co.id/berita/internasional/global/13/06/26/moz8ln-hari-ini-di-1945- piagam-pbb-ditandatangani, diakses pada 29 Mei 2023.

TIRTAYASA JOURNAL OF INTERNATIONAL LAW
Volume 2 Nomor 1, June 2023, hlm. (55-70)
Fakultas Hukum, Universitas Sultan Ageng Tirtayasa, Serang-Banten, Indonesia
P-ISSN: 2961-8335 | e-ISSN: 2961-8061
https://jurnal.untirta.ac.id/index.php/tirtayasatjil

# IMPLEMENTASI *MINAMATA CONVENTION ON MERCURY* TERHADAP KASUS PENCEMARAN MERKURI DAN ARSEN DI TELUK BUYAT INDONESIA

**Ahmad Rayhan**
*Fakultas Hukum, Universitas Sultan Ageng Tirtayasa*
*Jln. Raya Palka Km3, Sindangsari, Pabuaran, Kab. Serang*
*ahmadrayhan@untirta.ac.id*

**Widya Ayu Pramesty**
*Fakultas Hukum, Universitas Sultan Ageng Tirtayasa*
*Jln. Raya Palka Km3, Sindangsari, Pabuaran, Kab. Serang*
*widyapramesty13@gmail.com*

**Info Artikel**
|**Submitted**: 07-02-2023 |**Revised**: 22-05-2023 |**Accepted**: 05-06-2023

How to cite: Ahmad Rayhan, Widya Ayu Pramesty, "Implementasi *Minamata Convention on Mercury* Terhadap Kasus Pencemaran Merkuri dan Arsen di Teluk Buyat Indonesia", *Tirtayasa Journal of International Law*, Vol. 2 No. 1, (June, 2023)", hlm. 55-70.

**ABSTRACT:**

*Pollution of Buyat Bay by PT Newmont Minahasa Raya since 1996 is one of the biggest environmental pollution cases that has shocked the international community, unfortunately the Buyat Bay case has failed in its handling in court both criminally and civilly. The negative impact arising from the mining sector for the surrounding environment is the occurrence of water pollution by heavy metals, especially Mercury. In this case there is an international convention that regulates Mercury, namely the Minamata Convention on Mercury 2013 which was ratified by the president in 2017. This article will discuss the Minamata Convention In Mercury 2013 and its Implementation in Indonesia and the Implementation of the Minamata Convention 2013 in Cases of Mercury and Arsenic Pollution in Buyat Bay. This research is normative research. The results of this study are related to the history and development of the Minamata Convention on mercury 2013 in Indonesia along with the benefits of ratifying the Minamata Convention and the Implementation of the Minamata Convention on Mercury 2013 with the formation of the National Action Plan Team for Mercury Reduction and Elimination with 6 strategies: 1) Strengthening Commitment, Coordination and Cooperation between related ministries/non-ministerial government agencies; 2) Strengthening Coordination and Cooperation between Central and Regional Governments; 3) Formation of Information System; 4) Strengthening Community Involvement through Communication, Information and Education; 5) Strengthening the Commitment of the Business World in Reducing Mercury; and 6) Application of Environmentally Friendly Alternative Technologies.*

***Keywords:** Minamata Convention, Mercury, Buyat Bay, Environmental Pollution.*

**ABSTRAK:**

*Pencemaran Teluk Buyat oleh PT Newmont Minahasa Raya sejak 1996 merupakan salah satu kasus pencemaran lingkungan terbesar yang sempat menggemparkan dunia internasional, sayangnya kasus teluk buyat mengalami kegagalan dalam penanganannya di persidangan baik secara pidana maupun perdata. Dampak negatif yang ditimbulkan dari sektor pertambangan bagi lingkungan sekitar adalah terjadinya pencemaran air oleh logam berat Terutama Merkuri. Dalam hal ini terdapat konvensi Internasional yang mengatur mengenai Merkuri yakni Minamata Convention on Mercury 2013 yang telah diratifikasi oleh presiden pada tahun 2017. Artikel ini akan membahas mengenai Minamata Convention In Mercury 2013 serta Implementasinya di Indonesia dan Implementasi Minamata Covention 2013 Dalam Kasus Pencemaran Merkuri dan Arsen di Teluk Buyat. Penelitian ini merupakan Penelitian normative. Hasil dari penelitian ini adalah*

*terkait Sejarah dan perkembangan Minamata Convention on mercury 2013 di Indonesia beserta manfaat ratifikasi Konvensi Minamata tersebut dan Implementasi Minamata Convention on Mercury 2013 dengan dibentuknya Tim Rencana Aksi Nasional Pengurangan dan Penghapusan Merkuri dengan 6 strategi: 1)Penguatan Komitmen, Koordinasi dan Kerjasama antar Kementrian/Lembaga Pemerintah NonKementrian terkait; 2)Penguatan Koordinasi dan Kerjasama antar Pemerintah Pusat dan Daerah; 3) Pembentukan Sistem Informasi; 4) Penguatan Keterlibatan Masyarakat melalui Komunikasi, Informasi dan Edukasi; 5) Penguatan Komitmen Dunia Usaha dalam Pengurangan Merkuri; dan 6)Penerapan Teknologi Alternatif Ramah Lingkungan.*

**Kata Kunci**: Konvensi Minamata, Merkuri, Teluk Buyat, Pencemaran Lingkungan.

## A. Pendahuluan

Lingkungan hidup merupakan bagian yang mutlak yang tidak bisa dipisahkan dari kehidupan manusia. Manusia bertahan hidup memenuhi kebutuhan hidupnya dari lingkungan hidup. Ketersediaan yang disesiakan lingkungan hidup menjadi komponen paling utama untuk menunjang suatu komunitas hidup. Lingkungan hidup dalam kepustakaan inggris disebut sebagai *environment*, kemudian dalam kepustakaan Belanda disebut *milleu*, sementara dalam kepustakaan perancis disebut dengan *I'environment.*[1]

Menurut Michael Allaby, lingkungan hidup diartikan sebagai: *the physical. Chemical, biotic condition surrounding and organism*. Ahli hukum lingkungan terkemuka Universitas Padjajaran mengartikan lingkungan hidup sebagai semua kondisi dan benda, termasuk didalamnya manusia dan tingkah perbuatannya, yang terdapat dalam ruang tempat manusia berada dan mempengaruhi hidup serta kesejahteraan manusia dan jasad hidup lainnya. menurut ketentuan pokok pengelolaan Lingkungan Hidup No. 4 tahun 1982, lingkungan hidup memiliki makna kesatuan ruang dengan semua benda, daya, dan keadaaan makhluk hidup, termasuk di dalamnya manusia dan perilakunya yang mempengaruhi kelangsungan perikehidupan dan kesejahteraan manusia serta makhluk hidup lainnya. definisi ini hampir tidak berbeda dengan yang ditetapkan dalam Undang-Undang tentang Pengelolaan Lingkungan Hidup No. 23 Tahun 1997, yang dalam pembahasan selanjutnya disebut UUPLH 1997.[2]

Indonesia merupakan salah satu negara yang kaya akan berbagai macam sumber daya alam, baik berupa sumber daya alam yang dapat diperbaharui *(renewable resources)* maupun sumber daya alam yang tidak dapat diperbaharui *(unrenewable resources).* Hal ni menjadikan Indonesia memiliki julukan sebagai negara Industri. Pembangunan sektor

---

[1] Desy Safitri, ZE Ferdi fauzan Putra, Aerita Marini, *Ekolabel dan Lingkungan Hidup*, Pustaka Mandiri, Tangerang, 2020, hlm. 2.

[2] N.H.T. Siahaan. *Hukum Lingkungan dan Pembangunan. Pustaka Erlangga,* Jakarta, 2010, hlm. 4.

industri di Indonesia mulai mengarah kepada yang lebih maju. Namun, semakin majunya sektor Industri di Indonesia membuat beberapa hal termasuk lingkungan terkena dampak negatifnya. Kerusakan alam oleh aktivitas manusia disebabkan oleh kegiatan eksplorasi dan eksploitasi yang berlebihan. Aktivitas yang marak terjadi di Indonesia adalah aktivitas pertambangan. Karena Indonesia merupakan negara yang kaya akan Sumber Daya Alam yang melimpah terutama pada bidang pertambangan. Sektor pertambangan sendiri di Indonesia menyumbang kontribusi besar bagi pemerintah Indonesia. Hingga 16 November 2018, torehan Pendapatan Negara Bukan Pajak (PNBP) dari sektor mineral dan batubara (minerba) sudah melebihi target dalam APBN 2018, yaitu sebesar Rp 41,77 triliun. Angka itu lebih tinggi 23,1 persen dibandingkan target yang dibebankan sebanyak Rp 32,1 triliun.[3]

Meskipun begitu, karena sektor pertambangan merupakan salah satu sektor yang paling menyumbang PNBP terbanyak, sektor pertambangan merupakan sektor yang paling merugikan bagi lingkungan. Banyaknya keuntungan yang diraup dari sektor pertambangan ini membuat timbulnya pertambangan tanpa izin (PETI). PETI ini menyebabkan kerusakan terhadap lingkungan hidup dikarenakan dalam pengelolaannya tidak memperhatikan aspek pokok seperti pertumbuhan, aspek pemerataan, aspek lingkungan, dan aspek konservasi. Selain PETI, Pertambangan yang dengan izin pun terkadang mengabaikan terkait dengan pengelolaan dan pemanfaatan bahan galian serta dampak yang ditimbulkan bagi lingkungan.[4]

Dampak negatif yang biasanya ditimbulkan dari sektor pertambangan bagi lingkungan sekitar adalah terjadinya pencemaran air oleh logam berat. Salah satu logam berat yang menjadi permasalahan dalam pencemaran air di Indonesia adalah jenis Merkuri. Merkuri atau disebut juga air raksa adalah logam berat yang berbahaya bagi manusia. Merkuri sendiri terikat pada batuan dan tanah. Bagi tubuh, logam merkuri mengandung zat karsinogenik yang dapat mimicu kanker.[5] Merkuri dinyatakan sebagai bahan yang berbahaya dan beracum dalam Peraturan pemerintah (PP) No. 74 tahun 2001. Regulasi mengenai lingkungan hidup

---

[3] Ichsan Emrald Alamsyah, "Sektor Tambang yang Turut Membantu Pembangunan Nasional", https://www.republika.co.id/berita/piv0r7349/sektor-tambang-yang-turut-membantu-pembangunan-nasional dikunjungi pada tanggal 18 Desember 2022.

[4] Esti Kukuh Perbawati, Wahyu Yun Santoso, Himawan Tri Bayu, "Analisis Implementasi Konvensi Minamata Dan Pemanfaatan Teknologi Pada Sektor Pertambangan Emas Skala Kecil (Pesk) Di Kulon Progo, D. I. Yogyakarta", *Tesis,* Universitas Gadjah Mada, 2022, hlm. 2.

[5] Guntur Ekaputra Bernandus, Bobby Polii, Johnly Alfred Rorong, "Dampak Merkuri Terhadap Lingkungan Perairan Sekitar Lokasi Pertambangan di Kecamatan Loloda Kabupaten Halmahera Barat Provinsi Maluku Utara", *Agrisosioekonomi-Unsrat*. Volume 17 Nomor 2. 2021, hlm. 608.

diatur dalam Undang-Undang Lingkungan Hidup No. 32 Tahun 2009 mengenai Perlindungan dan Pengelolaan Lingkungan Hidup sebagaimana dejelaskan mengenai definisi pencemaran lingkungan hidup dalam Pasal 1 ayat 14. Dalam skala yang lebih besar, pencemaran air oleh limbah merkuri ini diatur dalam sebuah perjanjian internasional yakni *Minamata Convention on Mercury*. [6]

Teluk Buyat adalah teluk kecil yang terletak di pantai selatan semenanjung Minahasa, Sulawesi Utara. Meskipun teluk ini merupakan Teluk kecil, namun terkenal karena adanya aktivitas pertambangan dari PT. Newmont Minahasa Raya yang dimulai sejak tahun 1996. Teluk ini digunakan PT. Newmont sebagai penempatan limbah pertambangan untuk aktivitas pertambangan emasnya. Kemudian pada tahun 2004 bersamaan dengan habisnya produksi emas dan pemberhentian operasi aktivitas pertambangan ditutup namun tetap dilanjutkan dengan pengamatan lingkungan pasca-penambangan yang terus berlangsung hingga 2009.[7]

PT Newmont Minahasa Raya melakukan pembuangan limbah tailing dasar laut (Limbah dari proses produksi pengolahan bijih emas dan tembaga yang belum digunakan secara optimal untuk pengerasan jalan) ke perairan teluk buyat.[8] Penggunaan metode pembuangan limbah tailing dasar laut (*submarine tailings disposal*) merupakan metode yang cukup murah tetapi beresiko tinggi terhadap lingkungan hidup.[9] Limbah Tailing tersebut menyebar dan logam berat yang dikandungnya menyebabkan pencemaran di lingkungan teluk buyat, tidak adanya termoklin (lapisan termal) permanen di wilayah teluk buyat dan adanya faktor *upwelling* (Pergerakan Massa air bersuhu dingin dan kaya nutrisi dari kedalaman lautan menuju permukaan laut) dan *turbulence* (Perubahan kecepetan aliran udara). Hal ini sangat bertentangan dengan dokumen resmi perusahaan yang menyebutan bahwa wilayah teluk buyat memiliki termoklin permanen di dasar laut yang dapat menahan tailing agar tidak menyebar di lautan.[10]

---

[6] Undang-Undang Lingkungan Hidup No. 32 Tahun 2009 mengenai Perlindungan dan Pengelolaan Lingkungan Hidup.

[7] UNUSA, "Teluk Buyat" https://p2k.unkris.ac.id/id3/3065-2962/Teluk-Buyat_88108_p2k-unkris.html dikunjungi pada tanggal 17 Desember 2022

[8] Irene B. D. Sariowan, "Pertanggungjawaban Pidana Bagi Korporasi Yang Terbukti Melakukan Pencemaran Dan Perusakan Lingkungan Hidup Menurut Undang-Undang Nomor 32 Tahun 2009", *Lex Privatum,* Vol. 11 No. 1, 2023, hlm. 5.

[9] Rahmadi T, *Hukum Lingkungan Di Indonesia*, PT. Raja Grafindo, Jakarta, 2011, hlm. 221.

[10] Jaringan Advokasi Tambang, *Prosiding Konferensi Internasional Pembuangan Tailing Ke Laut*, JATAM, Jakarta, hlm. 1.

Dampak yang terjadi setelah pencemaran lingkungan yang dilakukan oleh PT Newmont Minahasa Raya, sekelompok nelayan tiba-tiba memohon untuk dilakukan penyelidikan independen oleh Pemerintah Indonesia atas kadar limbah di Teluk Buyat. Hal ini dikarenakan nelayan melihat jumlah ikan yang mati mendadak amat tinggi dan disertai pembengkakan. Kemudian warga sekitar juga mengeluhkan masalah kesehatan yang tak biasa, seperti tremor, sakit kepala, dan pembengkakan di beberapa area tubuh. Setelah dilakukan penyelidikan pasca-penambangan peneliti menemukan bahwa beberapa logam berat seperti arsen, antimon, merkuri, dan mangan tersebar di area Teluk Buyat.[11] Beberapa pihak selanjutnya memfasilitasi uji Laboratorium dengan mengambil sampel darah penduduk secara acak. Berdasarkan hasil uji laboratorium, ditemukan darah responden terkontaminasi merkuri dan arsen yang melebihi standar diperbolehkan.[12] Selain itu terdapat penelitian yang menyatakan Merkuri total pada ikan dan gastropoda melampaui batas maksismum, Gastropoda ditemukan telah mengandung tembaga (Cu) dalam kadar yang sangat tinggi di Teluk Buyat dan Teluk Totok, masing-masing 124 mg/Kg dan 116 mg/Kg.[13]

Dari Permasalahan di Teluk Buyat ini peneliti merasa perlu untuk melakukan penelitian mengenai implementasi *Minamata Convention* 2013 dalam kasus pencemaran merkuri dan arsen di Teluk Buyat, hal ini dikarenakan *Minamata Convention* juga membahas mengenai merkuri terutama terkait pencemarannya, sehingga menjadi menarik untuk melihat bagaimana *Minamata Convention* 2013 melihat pencemaran di teluk Buyat. Artikel ini akan membahas mengenai *Minamata Convention In Mercury 2013* serta Implementasinya di Indonesia dan Implementasi *Minamata Covention 2013* Dalam Kasus Pencemaran Merkuri dan Arsen di Teluk Buyat.

## B. Metode Penelitian

Penelitian ini menggunakan Pendekatan metode normative. Penelitian hukum normatif adalah suatu proses untuk menemukan suatu aturan hukum, prinsip-prinsip hukum, maupun

---

11 Suara Karya, "Merkuri di Buyat darimana Asalnya?", https://www.minerba.esdm.go.id/berita/minerba/detil/20121013-merkuri-di-buyat-dari-mana-asalnya dikunjungi pada tanggal 21 Desember 2022.

12 Irene B.D. Sariowan, *Op.Cit*., hlm. 6

13 Natalie D.C. Rumampuk dan Veibe Warouw, "Bioakumulasi Total merkuri, Arsen, Kromium, Cadmium, Timbal Di Teluk Totok Dan Teluk Buyat, Sulawesi Utara" *Jurnal LPPM Bidang Sains dan Teknologi*, UNSRAT, Vol. 2 No. 2, 2015, hlm. 58-59.

doktrin-doktrin hukum guna menjawab isu hukum yang dihadapi.[14] Data yang digunakan merupakan data sekunder seperti peraturan perundnag-undangan, keputusan pengadilan, teori hukum, dan dapat berupa pendapat para sarjana. Dalam hal ini *minamata convention on mercury* merupakan acuan utama yang digunakan dalam penulisan karya ilmiah ini. Analisis data yang digunakan juga berupa analisis kualitatif dengan menjelaskan data-data yang ada dengan kata-kata.[15]

## C. Pembahasan

### 1. *Sejarah Dan Perkembangan Minamata Convention on Mercury* 2013 di Indonesia

Konvensi Minamata adalah perjanjian internasional yang secara detail menjelaskan mengeai merkuri serta penggunaannya, diciptakannya perjanjian internasional ini dimaksudkan untuk melindungi Kesehatan makhluk hidup serta ekosistem terkait dengan cara mengurangi sumber-sumber pencemaran logam berat merkuri serta semua bentuk aktivitas manusia dengan mengatur industri-industri yang menggunakan ataupun menghasilkan produk bermerkuri. Konvensi Minamata sendiri diciptakan atas dasar semakin tingginya kesadaran masyarakat internasional serta negara-negara dunia akan bahayanya pencemaran logam berat merkuri bagi kehidupan manusia. Dari dasar pemikiran tersebut kemudian diadakan sebuah konferensi yang diprakarsai oleh Perserikatan Bangsa-Bangsa (PBB) yang pada akhirnya menghasilkan perjanjian internasional baru mengenai lingkungan yaitu Konvensi Minamata tahun 2013.[16]

Konvensi ini dinamakan Konvensi Minamata karena salah satu kasus pencemaran merkuri yang paling popular sepanjang sejarah adalah *"minamata diseases"* yang terjadi di Jepang sekitar tahun 1950. Kasus ini terjadi akibat pembuangan limbah dari Industri pupuk *Chisso Chemical Corporation* yang terjadi di prefektur Minamata. *Minamata Diseases* merupakan penyakit yang menyerang sistem syaraf dengan gejala utama yaitu gangguan sensorik, ataksia, penyempitan konsentris bidang visual, dan gangguan pendengaran.[17]

*United Nations Environmental Programme (UNEP)* melakukan sebuah kajian pada tahun 2001 mengenai merkuri dan senyawa merkuri terkait dengan aspek dampak kesehatan,

---

14 Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada, Jakarta, 2010, hlm. 35.
15 Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif,* PT. Raja Grafindo Persada, Jakarta, hlm. 24.
16 Esti Kukuh, *Op. Cit.*
17 *Ibid.*

sumber, transportasi, peredaran dan perdagangan merkuri, serta teknologi pencegahan dan pengendalian merkuri. *United Nations Environmental Programme (UNEP)* berdasarkan kajian tersebut menyimpulkan bahwasanya diperlukan suatu upaya internasional untuk menurunkan resiko dari dampak yang ditimbulkan merkuri bagi kesehatan manusia dan keselamatan lingkungan hidup. Kemudian di tahun 2009 *United Nations Environmental Programme (UNEP)* menyelenggarakan *Govenrning Council (GC)* pada tahun 2009 yang menyetujui untuk dilakukan suatu negosiasi *Global Legally Binding Instrument on Mercury* dengan membentuk *Intergovernmental Negotiating Committee (INC).*[18]

Konvensi Minamata ini ditandatangani oleh 92 negara dunia pada *diplomatic conference* di Minamata, Provinsi Kumamoto, Jepang pada 10 Oktober 2013. Konvensi ini mulai berlaku secara global pada tanggal 16 Agustus 2017. Konvensi Minamata terdiri atas 35 Pasal serta 5 Lampiran. Yang mana, pasal-pasal dalam konvensi Minamata dibagi menjadi 4 bagian utama, yakni:

1. Pasal yang mengatur mengenai operasional yang memuat kewajiban mengurangi emisi serta lepasna merkuri senyawa antropogenik kepada lingkungan;
    a. Mengkontrol sumber pasokan dan perdagangan merkuri
    b. *Phase out* dan *phase down* dalam penggunaan merkuri di produk dan produk
    c. Pengendalian penggunaan merkuri di Pertambangan Emas Skala Kecil
    d. Pengendalian emisi dan lepasan merkuri serta senyawa merkuri
    e. Penyimpanan, limbah, dan lahan terkontaminasi
2. Pasal mengenai dukungan bagi negara pihak, mengenai;
    a. Sumber dan mekanisme pendanaan
    b. Peningkatan kapasitas, bantuan teknis dan alih teknologi
    c. Komite implementasi dan kepatuhan
3. Pasal mengenai informasi dan peningkatan kesadaran termasuk aksi untuk mengurangi dampak merkuri
4. Pasal mengenai administrasi lainnya.

Kemudian 5 lampiran dalam Konvensi Minamata mengatur mengenai produk-produk mengandung merkuri, proses produksi yang menggunakan merkuri atau senyawa merkuri,

---

[18] *Ibid.*

pertambangan emas skala kecil, daftar titik sumber emisi merkuri dan senyawa merkuri ke atmosfer, prosedur arbitase dan konsiliasi.[19]

Indonesia sendiri telah meratifikasi Konvensi Minamata Tahun 2013 kedalam Undang-Undang Nomor 11 tahun 2017 tentang pengesahan *Minamata Convention On Mercury*. Indonesia meratifikasi Undang-Undang ini bukan tanpa tujuan. Undang-Undang No. 11 Tahun 2017 disahkan dengan beberapa pertimbangan yakni bahwa penggunaan merkuri dari aktivitas manusia berpotensi memberikan dampak yang serius terhadap kesehatan manusia dan lingkungan hidup serta dengan mengambil pelajaran atas kasus yang terjadi pada tanggal 10 Oktober 2013 di Kumamoto, Jepang. Undang-Undang ini disahkan pada tanggal 20 September 2017 oleh Presiden Republik Indonesia Joko Widodo.[20]

Manfaat bagi Indonesia dengan adanya ratifikasi Minamata Convention 2013 diantaranya:[21]

1. Memberikan dasar hukum bagi negara untuk mengeluarkan undang-undang dan kebijakan untuk menjamin lingkungan yang bersih dan sehat bagi masyarakat Orang Indonesia.
2. Memberikan rasa aman dan memelihara kesehatan serta melindungi sumber daya manusia generasi mendatang akibat dampak negatif dari air raksa;
3. Memperkuat pengawasan pengadaan, peredaran, peredaran, perdagangan merkuri dan senyawa merkuri;
4. Menjamin kepastian usaha di bidang industri, kesehatan, pertambangan emas dan energi skala kecil;
5. Mendorong sektor industri untuk tidak menggunakan merkuri sebagai bahan baku dan bahan penolong dalam proses produksi;
6. Membatasi penggunaan merkuri sebagai bahan tambahan pada produk dan mengendalikan emisi merkuri;
7. Mendorong bidang kesehatan untuk tidak lagi menggunakan merkuri pada alat dan produk kesehatan untuk kesehatan;

---

[19] Gitya Abriany Putri Kamase. *Analisis Ratifikasi Konvensi Minamata Dalam Hubungannya Terhadap Tambang Emas Rakyat Desa Sekotong*. Makassar, hlm. 4.

[20] Undang-Undang Republik Indonesia No. 11 Tahun 2017 Tentang Pengesahan *Minamata convention on mercury*.

[21] Agoes Djatmiko, dkk., "Benefits Of Indonesia Ratification Of Minamata Convention On Mercury", *International Journal of Business, Economics and Law*, Vol. 18, Issue 4, 2019, hlm. 4-5.

8. Meningkatkan kapasitas tenaga kesehatan untuk membantu atau membantu masyarakat yang terkena dampak merkuri;
9. Mendorong masyarakat untuk tidak menggunakan merkuri dalam aktivitasnya;
10. Mendorong sektor energi untuk mengurangi pelepasan merkuri ke udara, air dan tanah.
11. Penguatan pengaturan dan pengawasan pengelolaan limbah yang mengandung merkuri;
12. Mengurangi resiko tanah, air dan udara tercemar merkuri;
13. Memberikan kesempatan kepada Indonesia untuk mendapatkan bantuan internasional, termasuk bantuan teknis, alih teknologi dan pendanaan dalam upaya pengendalian emisi merkuri dan pemberantasan merkuri dalam kegiatan sektor industri dan kegiatan di Indonesia;
14. Meningkatkan kerjasama global untuk pertukaran informasi di bidang penelitian dan pengembangan, khususnya substitusi merkuri dalam proses industri dan untuk mencapai tujuan pembangunan berkelanjutan.

Pasca ratifikasi *Minamata Convention on Mercury,* Indonesia melakukan berbagai langkah dalam pengaplikasian ratifikasi tersebuut, diantaranya dengan membuat berbagai macam peraturan perundang-undangan terkait pengurangan dan penghapusan merkuri seperti:[22]

1. Undang-Undang Nomor 11 tahun 2017 Tentang Pengesahan Konvensi Minamata Mengenai Merkuri (Minamata Convention on Mercury).
2. Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintah Daerah.
3. Peraturan Presiden Nomor 21 Tahun 2019 Tentang Rencana Aksi Nasional Pengurangan dan Penghapusan Merkuri (RAN PPM). Dalam Perpres 21/2019 ini disebutkan target pengurangan merkuri adalah sebanyak 50% pada bidang prioritas manufaktur, 33,2% pada bidang prioritas energi pada tahun 2030, sedangkan target penghapusan merkuri sebanyak 100% di bidang prioritas PESK pada tahun 2025 dan 100% pada bidang prioritas bidang peralatan kesehatan (sumber Perpres No. 21 Tahun 2019).

[22] Grace Juanita Romauli Siregar, *Buku 1: Kebijakan Pengurangan dan Penghapusan Merkuri di Indonesia*, Global Opportunities for Long-term Development of Artisanal and Small Scale Gold Mining (ASGM) Sector: Integrated Sound Management of Mercury in Indonesia's ASGM Project (GOLD-ISMIA), Jakarta, 2020, hlm. 10-11.

4. Peraturan Menteri LHK Nomor. 81 Tahun 2019 Tentang Pelaksanaan Peraturan Presiden Nomor 21 Tahun 2019 Tentang Rencana Aksi Nasional Pengurangan dan Penghapusan Merkuri. Permen LHK ini mengatur Merkuri tentang penyusunan RAD-PPM; pemantauan dan evaluasi RAN-PPM beserta pelaporannya, serta sistem pemantauan dan evaluasi terintregrasi pengurangan dan penghapusan Merkuri
5. Peraturan Menteri Kesehatan Nomor 41 Tahun 2019 Tentang Penghapusan dan Penarikan Alat Kesehatan Bermerkuri di Fasilitas Pelayanan Kesehatan.
6. Peraturan Menteri Perdagangan Republik Indonesia No. 74 Tahun 2018 tentang perubahan atas peraturan menteri perdagangan Nomor 28 tahun 2018 tentang pelaksanaan pemeriksaan Tata niaga impor di luar kawasan pabean (post border).
7. Keputusan Menteri ESDM Nomor 1827 K/30/MEM/2018 Tentang Pedoman Pelaksanaan Kaidah Teknik Pertambangan yang Baik.

## 2. Implementasi *Minamata Covention 2013* Dalam Kasus Pencemaran Merkuri Dan Arsen Di Teluk Buyat

Konvensi Minamata mewajibkan para pihak untuk mengatur standar lingkungan dalam peraturan domestik mereka untuk emisi merkuri ke atmosfer dan pelepasan merkuri ke air dan tanah. Konvensi Minamata bertujuan untuk melindungi kesehatan manusia dan lingkungan dari emisi antropogenik dan pelepasan merkuri dan senyawa merkuri. Konvensi tersebut memberikan kerangka hukum bagi Indonesia, negara yang meratifikasi, untuk memberlakukan undang-undang dan kebijakan untuk mencegah dampak buruk merkuri dan senyawa merkuri, serta untuk memastikan lingkungan yang bersih dan sehat bagi warga negara Indonesia. Dengan mengikat para pihak yang terlibat dalam kontrak.[23] Indonesia telah menerbitkan dua Peraturan Pemerintah (PP) mengenai Merkuri. PP Nomor 74 Tahun 2001 tentang Pengelolaan Bahan Beracun Berbahaya (B3), menyatakan bahwa logam berat merkuri termasuk kedalam kategori B3 dan terbatas dalam hal penggunaannya. Kedua, PP Nomor 101 Tahun 2014 tentang Pengelolaan Limbah B3, menyatakan bahwa limbah merkuri wajib dikelola.[24]

---

23 Nunu Anugrah, "COP-4 Minamata Tentang Merkuri, dari Indonesia untuk Dunia", http://ppid.menlhk.go.id/berita/siaran-pers/6263/cop-4-minamata-tentang-merkuri-dari-indonesia-untuk-dunia dikunjungi pada tanggal 17 Desember 2022.

24 *Ibid.*

Teluk Buyat telah dicemari oleh PT Newmont Minahasa Raya sejak tahun 1996, setiap hari sebanyak 2.000 Ton tailing ke dasar perairan teluk Buyat. Dampak dari pembuangan Tailing ini adalah puluhan ikan mati di wilayah teluk buyat dan adanya masalah kesehatan yang terjadi di masyarakat sekitar.[25] Selain itu Masyarakat mulai kehilangan sumber air bersih, dan kumpulan debu yang senantiasa ada di lingkungan sekitar teluk buyat. Dalam kasus pencemaran Teluk Buyat Pemerintah menyimpulkan bahwa, perusahaan tambang emas PT Newmont Minahasa Raya telah mencemari lingkungan di Teluk Buyat, Minahasa, Sulawesi Utara. Menurut Menteri Lingkungan Hidup Nabiel Makarim menyatakan, kesimpulan yang diambil berdasarkan rekomendasi tim khusus yang dibentuk pemerintah untuk melakukan penelitian. Kasus itu segera dibahas dalam rapat koordinasi tingkat menteri bidang politik dan keamanan serta menteri bidang kesejahteraan rakyat. PT Newmont, yang resmi menutup operasi pertambangannya, dinyatakan telah melanggar standar baku mutu, terutama untuk kandungan arsen, air raksa, dan sianida. Perusahaan pertambangan berbasis di Amerika Serikat itu juga melanggar izin pembuangan limbah ke laut.[26]

Sebelum adanya Ratifikasi Minamata Convention 2013, Pemerintah dan Pemerintah Daerah telah melakukan berbagai macam upaya guna menanggapi keluhan masyarakat, beberapa hal tersebut yaitu: pemerintah daerah Sulawesi Utara melakukan penelitian yang ditunjuk berdasarkan Surat Penunjukkan (SP) Gubernur Provinsi Sulawesi Utara Nomor 3 Tahun 1999. Penelitian pertama dilakukan oleh Tim Independen yang terdiri atas beberapa peneliti Universitas Sam Ratulangi dan Pemda Sulawesi Utara. Hasil penel itian tersebut mengindikasikan adanya pencemaran sejumlah logam berat di sekitar pipa pembuangan tailing. Hasil penelitian ini menjadi kontroversi antara pemda dengan PT Newmont Minahasa Raya, dikarenakan PT Newmont membantah hasil penelitian tersebut dan melakukan penelitian baru dengan hasil yang berbeda.[27]

Dalam rangka menengahi Pemda dan PT Newmont Minahasa Raya, Pemerintah Pusat menurunkan Tim Terpadu yang dibentuk berdasarkan Keputusan Menteri Negara Lingkungan Hidup No. 97 Tahun 2004, Jo Keputusan MENLH No. 191 tahun 2004 Tim Penanganan Kasus Pencemaran dan Perusakan Lingkungan Hidup di Desa Buyat Pante dan Desa Ratatotok Timur Kabupaten Minahasa Selatan, Provinsi

---

25 Kiki Lutfiah, "Kasus Newmont (Pencemaran Di Teluk Buyat)", *Kybernan: Jurnal Ilmiah Ilmu Pemerintahan*, UNISMA Bekasi, Vol. 2, No. 1, 2011, hlm. 17-21.

26 *Ibid.*

27 *Ibid.*, hlm. 21-22.

Sulawesi Utara. Pemerintah Pusat Menyimpulkan, Perusahaan Tambang Emas PT Newmont Minahasa Raya telah mencemari lingkungan di teluk Buyat,[28] dan Laporan Audit Internal Newmont dibeberkan oleh harian *New York Times* yang menyebutkan bahwa 33 Ton merkuri yang harusnya dikumpulkan dan dikirim ke PPLI selama 4 tahun, ternyata 17 Ton dilepas di Udara dan 16 Ton dilepas ke teluk Buyat.[29]

Pemerintah Indonesia mengajukan gugatan hukum secara perdata maupun pidana terhadap PT Newmont Minahasa Raya dengan tuntutan memenuhi clean up 30 tahun dan ganti rugi materil sekitar US$ 117 Juta atau sekitar Rp. 1.058 Triliun serta ganti rugi imaterill senilai Rp. 150 Miliar. Namun sayangnya gugatan pidana ini harus menemui kegagalan dalam sidang putusan kasus pidana lingkungan. Hal ini dikarenakan adanya intervensi dari pihak asing yang senantiasa menjadikan iklim investasi di Indonesia sebagai tameng.[30]

Pasca Indonesia meratifikasi Konvensi Minamata, Indonesia membentuk Tim Teknis khusus dalam pengelolaan merkuri. Tim teknis ini dibuat untuk menyusun serta menerbitkan Rencana Aksi Nasional (RAN) yang berdasarkan lampiran dalam Konvensi Minamata yakni penghapusan penggunaan merkuri pada pengolahan emas. RAN bertujuan untuk melindungi kesehatan manusia dan lingkungan dari dampak negatif merkuri melalui pengenalan praktik PESK yang bertanggung jawab yang berfokus pada penghapusan penggunaan merkuri, adopsi teknologi pengolahan emas yang lebih aman dan tidak beracun, serta secara bersamaan menangani permasalahan sosial, kelembagaan, keuangan dan regulasi yang ada.[31] Adapun di dalam RAN penghapusan merkuri dalam pengolahan emas tahun 2014-2018 memiliki tujuan spesifik berdasarkan 3 komponen utama ini, diantaranya:

1. Komponen 1: Kerangka hukum serta penguatan kelembagaan
2. Komponen 2: Penelitian serta Pengembangan
3. Komponen 3: Peningkatan kesadaran dan komunikasi

Strategi Pengurangan Merkuri dalam Rencana Aksi Nasional dilakukan melalui:[32]

---

28 *Ibid.*, hlm. 23.

29 R.R. Ariyani, "Laporan New York Times Soal Newmont Sama dengan Temuan Tim Terpadu", http://www.tempointeraktif.com, dikunjungi, 22 Mei 2023 Pukul 11.22.

30 Kiki Luthfiah, *Op.Cit.*, hlm. 25.

31 Rencana Aksi Nasional, Penghapusan Penggunaan Merkuri Pada Pengolahan Emas 2014-2018, Tim Teknisi Penyusunan Rencana Aksi Nasional Penghapusan Penggunaan Merkuri pada Pengolahan Emas, 2013.

32 Peraturan Presiden Nomor 21 Tahun 2019 tentang Rencana Aksi Nasional Pengurangan dan Penghapusan Merkuri.

1. Penguatan Komitmen, Koordinasi dan Kerjasama antar Kementrian/Lembaga Pemerintah NonKementrian terkait;
2. Penguatan Koordinasi dan Kerjasama antar Pemerintah Pusat dan Daerah;
3. Pembentukan Sistem Informasi;
4. Penguatan Keterlibatan Masyarakat melalui Komunikasi, Informasi dan Edukasi;
5. Penguatan Komitmen Dunia Usaha dalam Pengurangan Merkuri; dan
6. Penerapan Teknologi Alternatif Ramah Lingkungan

Dengan adanya Konvensi Minamata tersebut diharapkan Pemerintah dapat lebih tegas dalam penegakan hukum terutama terkait Pencemaran Lingkungan. Hal ini dikarenakan salah satu isi dari Konvensi Minamata adalah berkaitan dengan pengolahan limbah tailing (atau bahan tambang salahsatunya merkuri). Sehingga Pemerintah memiliki kekuatan hukum yang lebih kuat dalam menegakkan hukum terhadap pelanggar pencemaran Hukum Lingkungan.

## D. Kesimpulan

Konvensi Minamata adalah perjanjian internasional yang secara detail menjelaskan mengeai merkuri serta penggunaannya, diciptakannya perjanjian internasional ini dimaksudkan untuk melindungi Kesehatan makhluk hidup serta ekosistem terkait dengan cara mengurangi sumber-sumber pencemaran logam berat merkuri serta semua bentuk aktivitas manusia dengan mengatur industri-industri yang menggunakan ataupun menghasilkan produk bermerkuri. Konvensi Minamata sendiri diciptakan atas dasar semakin tingginya kesadaran masyarakat internasional serta negara-negara dunia akan bahayanya pencemaran logam berat merkuri bagi kehidupan manusia. Oleh karena itu diprakarsai oleh PBB, dibuatlah suatu konvensi yang mengatur mengenai merkuri. Dinamakan *Minamata Convention* dikarenakan salah satu kasus yang fenomenal sepanjang sejarah yakni pencemaran merkuri yang menyebabkan penyakit yang dinamakan *Minamata Diseases* yang terjadi di Jepang. Konvensi ini terdiri dari 35 Pasal dan 5 Lampiran yang diratifikasi oleh 92 negara di Dunia termasuk Indonesia. Indonesia meratifikasi Konvensi Minamata Tahun 2013 kedalam Undang-Undang No. 11 Tahun 2017 tentang Pengesahan *minamata convention on mercury* (Konvensi Minamata Mengenai Merkuri).

Indonesia telah menerbitkan dua Peraturan Pemerintah (PP) mengenai Merkuri. PP Nomor 74 Tahun 2001 tentang Pengelolaan Bahan Beracun Berbahaya (B3), menyatakan

bahwa logam berat merkuri termasuk kedalam kategori B3 dan terbatas dalam hal penggunaannya. Kedua, PP Nomor 101 Tahun 2014 tentang Pengelolaan Limbah B3. Dalam kasus pencemaran Teluk Buyat Pemerintah menyimpulkan bahwa, perusahaan tambang emas PT Newmont Minahasa Raya telah mencemari lingkungan di Teluk Buyat, Minahasa, Sulawesi Utara. 3 komponen yang terdapat dalam RAN yang dapat dilakukan dalam menanggulangi pencemaran merkuri sebagai bentuk ratifikasi dari implementasi Konvensi Minamata yakni; Kerangka hukum serta penguatan kelembagaan, Penelitian serta Pengembangan, dan Peningkatan kesadaran dan komunikasi. Keadaan lingkungan hidup saat ini merupakan sarana untuk memprediksikan keadaan di masa mendatang. Hal tersebut menyebabkan peraturan hukum lingkungan yang diciptakan dan diperlukan seharusnya mampu pula menjangkau keadaan dan peraturan jauh kedepan dalam menetapkan berbagai kaidah atau norma yang menyangkut pula penetapan nilai-nilai yaitu nilai yang berlaku saat ini dan nilai yang diharapkan diberlakukan di masa mendatang.

## E. Saran

Saran yang bisa Penulis berikan dalam jurnal ilmiah ini adalah perlunya implementasi dari Undang-Undang No. 11 Tahun 2017 tentang Pengesahan *Minamata Convention on Mercury* yang tegas dari pemerintah pusat dan pemerintah daerah setempat terkait pengawasan industry tambang yang ada di Indonesia. Jadikan kasus yang sudah lampau sebagai pelajaran terkait dengan pengelolaan limbah pada industry tambang agar tidak terjadi lagi kasus yang serupa seperti yang terjadi di Teluk Buyat. Sanksi pidana juga sekiranya perlu diterapkan dalam kasus pencemaran limbah merkuri agar para perusahaan tambang juga senantiasa mengelola pembuangan limbah tambangnya dengan baik dan tidak mencemari lingkungan.

## Daftar Pustaka

### Buku

Desy Safitri, ZE Ferdi fauzan Putra, Prof. Dr. Aerita Marini, M.E. *Ekolabel dan Lingkungan Hidup*, Pustaka Mandiri, Tangerang, 2020;

Grace Juanita Romauli Siregar, *Buku 1: Kebijakan Pengurangan dan Penghapusan Merkuri di Indonesia*, Global Opportunities for Long-term Development of Artisanal and Small-Scale Gold Mining (ASGM) Sector: Integrated Sound Management of Mercury in Indonesia's ASGM Project (GOLD-ISMIA), Jakarta, 2020;

N.H.T. Siahaan. *Hukum Lingkungan dan Pembangunan.* Pustaka Erlangga, Jakarta, 2010;

Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada, Jakarta, 2010;

Rahmadi T., *Hukum Lingkungan Di Indonesia,* PT. Raja Grafindo, Jakarta, 2011;

Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif,* PT. Raja Grafindo Persada, Jakarta.

**Artikel/Jurnal**

Agoes Djatmiko, dkk., "Benefits Of Indonesia Ratification Of Minamata Convention On Mercury", *International Journal of Business, Economics and Law*, Vol. 18, Issue 4, 2019;

Esti Kukuh Perbawati, Dr. Wahyu Yun Santoso, S. H, M. Hum., LL.M; Himawan Tri Bayu, M. P., S. T., M. E., D. Eng. "Analisis Implementasi Konvensi Minamata Dan Pemanfaatan Teknologi Pada Sektor Pertambangan Emas Skala Kecil (Pesk) Di Kulon Progo, D. I. Yogyakarta", *Tesis,* Universitas Gadjah Mada, 2022;

Gitya Abriany Putri Kamase. "Analisis Ratifikasi Konvensi Minamata Dalam Hubungannya Terhadap Tambang Emas Rakyat Desa Sekotong", *Skripsi*, UNHAS, Makassar, 2018;

Guntur Ekaputra Bernandus, Bobby Polii, Johnly Alfred Rorong, "Dampak Merkuri Terhadap Lingkungan Perairan Sekitar Lokasi Pertambangan di Kecamatan Loloda Kabupaten Halmahera Barat Provinsi Maluku Utara", *Agrisosioekonomi-Unsrat*. Volume 17 Nomor 2. 2021;

Irene B. D. Sariowan, "Pertanggungjawaban Pidana Bagi Korporasi Yang Terbukti Melakukan Pencemaran Dan Perusakan Lingkungan Hidup Menurut Undang-Undang Nomor 32 Tahun 2009", *Lex Privatum,* Vol. 11 No. 1, 2023;

Jaringan Advokasi Tambang, *Prosiding Konferensi Internasional Pembuangan Tailing Ke Laut*, JATAM, Jakarta;

Kiki Lutfiah, "Kasus Newmont (Pencemaran Di Teluk Buyat)", *Kybernan: Jurnal Ilmiah Ilmu Pemerintahan,* UNISMA Bekasi, Vol. 2, No. 1, 2011;

Natalie D.C. Rumampuk dan Veibe Warouw, "Bioakumulasi Total merkuri, Arsen, Kromium, Cadmium, Timbal Di Teluk Totok Dan Teluk Buyat, Sulawesi Utara" *Jurnal LPPM Bidang Sains dan Teknologi,* UNSRAT, Vol. 2 No. 2, 2015;

Rencana Aksi Nasional, Penghapusan Penggunaan Merkuri Pada Pengolahan Emas 2014-2018, Tim Teknisi Penyusunan Rencana Aksi Nasional Penghapusan Penggunaan Merkuri pada Pengolahan Emas, 2013.

**Peraturan Perundang-Undangan**

Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup;

Undang-Undang Republik Indonesia No. 11 Tahun 2017 tentang Pengesahan *Minamata convention on mercury;*

Peraturan pemerintah (PP) No. 74 tahun 2001 tentang Pengelolaan Bahan Berbahaya dan Beracun;

Peraturan Presiden Nomor 21 Tahun 2019 tentang Rencana Aksi Nasional Pengurangan dan Penghapusan Merkuri.

**Internet**

Nunu Anugrah, "COP-4 Minamata Tentang Merkuri, dari Indonesia untuk Dunia", http://ppid.menlhk.go.id/berita/siaran-pers/6263/cop-4-minamata-tentang-merkuri-dari-indonesia-untuk-dunia dikunjungi pada tanggal 17 Desember 2022;

R.R. Ariyani, "Laporan New York Times Soal Newmont Sama dengan Temuan Tim Terpadu", http://www.tempointeraktif.com, dikunjungi, 22 Mei 2023;

Suara Karya, "Merkuri di Buyat darimana Asalnya?", https://www.minerba.esdm.go.id/berita/minerba/detil/20121013-merkuri-di-buyat-dari-mana-asalnya dikunjungi pada tanggal 21 Desember 2022;

UNUSA, "Teluk Buyat" https://p2k.unkris.ac.id/id3/3065-2962/Teluk-Buyat_88108_p2k-unkris.html dikunjungi pada tanggal 17 Desember 2022;

Ichsan Emrald Alamsyah, "Sektor Tambang yang Turut Membantu Pembangunan Nasional", https://ekonomi.republika.co.id/berita/piv0r7349/sektor-tambang-yang-turut-membantu-pembangunan-nasional dikunjungi 22 Mei 2023.

TIRTAYASA JOURNAL OF INTERNATIONAL LAW
Volume 2 Nomor 1, June 2023, hlm. (71-81)
Fakultas Hukum, Universitas Sultan Ageng Tirtayasa, Serang-Banten, Indonesia
P-ISSN: 2961-8355 | e-ISSN: 2961-8061
https://jurnal.untirta.ac.id/index.php/tirtayasatjil

# THE DOUBLE STANDARDS OF INTERNATIONAL LAW: A COMPARATIVE STUDY OF THE CONFLICT IN UKRAINE AND PALESTINE

**Khoitil Aswadi**
*Universitas Jenderal Achmad Yani Yogyakarta*
*Gamping, Sleman, Yogyakarta*
*khoitilaswadi300@gmail.com*

**Info Artikel**
|**Submitted**: 13-04-2023 |**Revised**: 21-06-2023 |**Accepted**: 25-06-2023

How to cite: Aswadi, Khoitil, "The Souble Standards of International Law: A Comparative Study of the Conflict in Ukraine and Palestine", *Tirtayasa Journal of International Law*, Vol. 2 No. 1, (June, 2023)", hlm. 71-81.

***ABSTRACT:***

*This study investigates the effect of double standards in international law on conflict resolution in Ukraine and Palestine. Through a comparison of conflicts in the two countries, this study finds that double standards in international law affect conflict resolution in Ukraine and Palestine differently. There is evidence of a double standard in international law related to the different interests of the major powers in the conflict in the two countries. The impact of this double standard affects the effectiveness of efforts to resolve the conflict in Ukraine and Palestine, with conflict resolution in Ukraine being achieved more quickly than in Palestine. Therefore, this research suggests the need for consistency and equality in the application of international law in dealing with conflicts, and seeking peace negotiations involving all parties involved in the conflict in order to achieve a sustainable resolution.*

***Keywords:*** *Double Standards, Conflict Resolution, Parties Involved.*

## A. Introduction

The background of this discussion is that the two conflicts that occurred in Ukraine and Palestine are still unresolved issues to date, involving many parties from countries and armed groups. Despite having different backgrounds and causes, both of them face the same problems related to double standards in international law and violations of human rights. Therefore, a comparative study that focuses on this issue is considered important and relevant to provide an effective solution to resolve the conflict.

A comparative study of the conflicts in Ukraine and Palestine will reveal the existence of double standards in international law and its effects on conflict resolution. Previous research has identified the existence of double standards and the role of major countries in resolving conflicts in Ukraine and Palestine, but there is not yet sufficient

understanding of the impact of these double standards.[1] Therefore, this study will analyze how double standards in international law affect conflict resolution in Ukraine and Palestine, as well as its impact on conflict resolution efforts in both countries.

This study aims to provide a better understanding of the existence of double standards in international law and its impact on conflict resolution efforts in Ukraine and Palestine. In addition, this research is also expected to provide input to overcome these double standards and encourage consistency and equality in the application of international law in dealing with conflicts in the future. The purpose of this study is to evaluate the differences in the effectiveness of conflict resolution efforts in Ukraine and Palestine related to the existence of double standards and to show the importance of peace negotiations involving all parties involved in the conflict to achieve a sustainable resolution.

## B. Research Method

Based on the formulation of the problem above, In this study the research method used is comparative study with a qualitative approach.[2] The purpose of this research is to compare the conflicts in Ukraine and Palestine and analyze the influence of double standards in international law on conflict resolution in both countries.

This research method involves data collection through interviews with relevant informants, document studies, and direct observations. The collected data will then be analyzed using comparative analysis techniques. In this analysis, data from both countries will be compared to identify differences and similarities in the influence of double standards in international law on conflict resolution in Ukraine and Palestine.

By employing a qualitative approach, this research aims to gain a deep and detailed understanding of the differences and similarities between the conflicts in Ukraine and Palestine, as well as how double standards in international law affect efforts to resolve the conflicts in both countries..

1 Elena Chachko and Katerina Linos, "International Law after Ukraine: Introduction to the Symposium," *AJIL Unbound* 116, no. 2011 (2022): 124–129.
2 Muhammad Arsyam and M. Yusuf Tahir, "Ragam Jenis Penelitian Dan Perspektif," *Al-Ubudiyah: Jurnal Pendidikan dan Studi Islam* 2, no. 1 (2021): 37–47.

## C. Discussion

On this occasion, we will discuss the interesting topic of Double Standards of International Law in the context of the conflicts in Ukraine and Palestine. We will begin by examining the concept of double standards and how this affects conflict resolution in both countries. Next, we will look for evidence of double standards in international law in dealing with the conflicts in Ukraine and Palestine, and their impact on conflict resolution efforts. Finally, we will explore the relationship between the double standards in international law in dealing with the conflicts in Ukraine and Palestine and the different interests of the major powers, and how this affects the effectiveness of conflict resolution in the two countries.

### 1) What is double standard in international law?

Double standards refer to situations where different treatment is given to two groups or individuals in the same or similar circumstances.[3] In the realm of international law, this occurs when developed nations apply more lenient standards to themselves while imposing stricter standards on developing countries. For instance, developed countries demand strict adherence to human rights and environmental standards from developing nations, despite frequently failing to meet these standards or even violating them. Examples of this can be seen in unfair economic policies, civil wars, and instances of arbitrary arrests and detentions without trial. Double standards also manifest in how developed countries handle international conflicts. When they employ military force to safeguard their own interests, it is considered legitimate and a form of international protection. However, when weaker nations engage in similar actions, it is deemed a breach of international law and subjected to economic or military sanctions.

Various international legal sources support the explanation of double standards in international law. The United Nations Charter stresses the importance of equal and fair treatment for all countries. Human rights conventions establish standards that all nations must respect regardless of their status. International environmental agreements lay out environmental standards that all countries must adhere to. Decisions by the International Court of Justice highlight the significance of equal treatment for all countries in cases involving violations of international law. Resolutions passed by the UN Security Council

[3] Onuma Yasuaki, "The ICJ: An Emperor Without Clothes? International Conflict Resolution, Article 38 of the ICJ Statute and the Sources of International Law," *Liber Amicorum Judge Shigeru Oda* (2023): 191–212.

can provide examples of legal sources that pertain to the differential treatment of developed and developing countries. While the issue remains controversial, these legal sources serve as foundations and guidelines for promoting fair treatment and equality in international law.

In the context of international law, double standards are a sensitive and controversial issue, because small countries feel they are not being treated fairly. Therefore, it is important for the international community to apply the same standards to all countries, without discrimination, in order to create justice and peace throughout the world. Double standards in international law can have both positive and negative impacts. Some of them are:

The positive impact is as follows:

a) Encouraging meeting higher standards: When developed countries demand developing countries to comply with stringent human rights and environmental standards, this can motivate the countries to meet higher standards than they did before.
b) Increase compliance with international law: When the same standards are applied to all countries, it can improve compliance with international law and reduce violations of international law.
c) Improve oversight and accountability: The same standards applied to all countries can also increase oversight and accountability, so that countries that violate international law can be tried and punished.

While the negative impact is as follows:

a) Increasing injustice and inequality: Double standards can increase injustice and inequality in the international system, as developed and powerful countries can leverage their power to impose more lax or flexible standards for themselves, while demanding on developing or weaker countries to comply with stricter standards.
b) Frustrate and exacerbate international tensions: When developing or weak countries feel that they are not getting fair treatment from developed and powerful countries, this can frustrate and exacerbate international tensions.

c) Increasing human rights and environmental violations: Double standards can exacerbate human rights and environmental violations, as developed and powerful countries can use their power to violate human and environmental rights in other countries, while suing countries others to meet higher standards.

Double standards in international law is a complex and sensitive issue. Even though the same standards should be applied to all countries, there are still countries that use double standards to their advantage. The impact can be positive or negative, but to create global justice and peace, efforts must be made to apply the same standards to all countries. The international community must take firm and consistent action to ensure compliance with human rights and environmental standards around the world.

**2) How does the comparison of the conflicts in Ukraine and Palestine show that there is a double standard in international law and its impact on efforts to resolve the conflict?**

The conflicts in Ukraine and Palestine, although they are different in terms of background and root causes, demonstrate the existence of double standards in international law and their impact on conflict resolution efforts. The Ukrainian conflict is considered a matter of state sovereignty and has strong international support, such as economic sanctions from the United States and the European Union and resolutions from the United Nations. Meanwhile, the Palestinian conflict is seen as a matter of national liberation and lacks strong international support from Western countries[4]. Although many Western countries have condemned Israel's acts of violence, they have not taken concrete steps to force a resolution to the conflict as they did in Ukraine.

Double standards in international law can have an impact on conflict resolution efforts. The more internationally recognized conflict in Ukraine has allowed for many diplomatic efforts from Western countries to facilitate peace negotiations between Ukraine and Russia. However, the conflict in Palestine rarely receives the same attention from the international community, making efforts to resolve the conflict more difficult. Injustice and fears of spreading conflict can also arise as a result of double standards in international

[4] Awad Slimia, Prof Mohammad, and Fuad Othman, "The Double Standards of Western Countries Toward Ukraine and Palestine 'Western Hypocrisy,'" *Central European Management Journal* 30 (2022): 476–485.

law. Countries that do not have strong international support to resolve conflicts may feel disadvantaged and tend to take extreme measures. If the international community is inconsistent in resolving conflicts, this can create distrust in the international legal system and exacerbate conflict situations around the world.

In the context of double standards in international law, many conflicts other than Ukraine and Palestine show injustice in conflict resolution, which shows that the current international legal system is far from perfect and needs to be improved. However, this double standard can also create structural injustices in the international legal system, where it is easier for powerful states to gain international support for their agendas than small or poor states.

Therefore, there is a need for fair and consistent attention to all conflicts around the world, regardless of whether these conflicts are recognized internationally or not. Reform of the international legal system is also needed to ensure that every country, no matter how strong or weak, gets fair and equal legal protection. This will help create an international legal system that is more just, effective, and able to overcome the problems of injustice and power imbalance that exist in the current system.

**3) Is there any evidence of double standards in international law in dealing with the conflicts in Ukraine and Palestine, and how does this affect efforts to resolve conflicts in the two countries?**

The meaning of the concept of "double standards" in international law can be interpreted in a number of ways, but in general, it refers to situations in which different legal standards apply to different countries in similar situations. In relation to Ukraine and Palestine, there are arguments stating that there are double standards in handling conflicts in the two countries. For example, when Russia took control of Crimea in 2014, the international community criticized Russia's actions as a violation of international law. However, the international response to Israel's 1967 takeover of territories in the West Bank, Gaza Strip and East Jerusalem was much more limited, despite several United Nations (UN) resolutions condemning the move.[5]

---

[5] Ibid.

Factors such as geopolitical interests, historical and cultural factors, as well as the influence of big powers can be the cause of different responses in dealing with the conflicts in Ukraine and Palestine. Some argue that there is a pro-Israel bias in international policy that allows Israel to violate international law without significant consequences. The existence of double standards can affect conflict resolution efforts in both countries, because it can create distrust and tension in international relations, and increase the possibility of future conflicts if a country feels that it is not recognized or judged unfairly by the international community.

The existence of double standards in international law can threaten stability and security in Ukraine, Palestine, and the world at large, as well as become an obstacle in efforts to resolve conflicts in both countries. Therefore, countries and international organizations need to work together to encourage consistent and fair application of international law in dealing with global conflicts. Although the majority of countries and international organizations agree that international law must be applied regardless of the interests or strengths of a state, the existence of double standards is still a controversial and complex topic in practice.

It requires the cooperation of all parties to resolve conflicts, not just the fair and consistent application of international law. Therefore, countries and international organizations must increase dialogue and cooperation to deal with global conflicts. There have been several attempts to reach a resolution to the conflict in Ukraine and Palestine, but there have been no significant results. Even so, small actions such as dialogue and diplomacy can help build trust and strengthen international cooperation.

4) **Is the double standard in international law in dealing with the conflict in Ukraine and Palestine related to the different interests of major countries and how does this affect the effectiveness of conflict resolution in both countries?**

Double standards in international law refer to the unequal treatment of countries in the same situation. In the same case, we can see how double standards are applied in resolving conflicts in Ukraine and Palestine. Major powers have different interests in any international conflict, especially if they have strategic interests in the region. Therefore, the

different interests of the major powers can influence how they handle the conflicts in Ukraine and Palestine.

The effectiveness of conflict resolution largely depends on how the major powers handle the situation. When there is a double standard applied, this can affect the effectiveness of conflict resolution in Ukraine and Palestine because settlement efforts can be hampered. In these two conflicts, there are several major countries that have interests in Ukraine and Palestine, and it is sometimes seen that they apply different double standards in dealing with the conflicts in Ukraine and Palestine. This could hinder efforts to resolve the conflict effectively and prolong the suffering of the Ukrainian and Palestinian people.

Several major countries such as Russia and the United States have strategic interests in Ukraine. Russia wants to maintain its influence in the region, while the United States wants to expand its influence in Eastern Europe. The two countries have conflicting interests and can apply double standards in dealing with the Ukrainian conflict. For example, Russia rejects foreign interference in the Ukrainian conflict, but at the same time supports pro-Russian rebels in the Donbas region. On the other hand, the United States and European countries support the Ukrainian government and condemn Russia's actions in the Donbas region. They demanded that Russia stop supporting pro-Russian rebels and return Crimea to Ukraine.

Several major countries such as the United States, Israel and Saudi Arabia have different strategic interests in Palestine [6]. The United States supports Israel as a strategic ally in the Middle East, while Saudi Arabia wants to maintain influence in the region and support Palestinian independence. This resulted in different approaches to dealing with conflict in the region. The United States tends to be pro-Israel and rejects recognition of Palestine as an independent state, while Saudi Arabia and other Arab countries support Palestinian independence and demand Israel's withdrawal from the occupied territories.

Injustice and double standards in handling conflicts can hinder an effective resolution, prolonging the suffering of the peoples of Ukraine and Palestine. Therefore, it takes a concerted effort from all countries to resolve conflicts and avoid double standards in international law.

---

6 Syakieb Sungkar, "Benturan Antarperadaban Huntington," *Dekonstruksi* 6, no. 01 (2022): 128–159.

## D. Conclusion

Double standards in international law occur when different treatment is given to two groups or individuals in similar situations. Developed countries often impose stricter standards on developing nations while applying more lenient standards to themselves. This can be seen in areas such as human rights, environmental regulations, and international conflicts. Various international legal sources, including the United Nations Charter, human rights conventions, environmental agreements, International Court of Justice decisions, and UN Security Council resolutions, emphasize the importance of equal treatment for all countries. While double standards remain controversial, these sources provide a foundation for promoting fairness and equality in international law.

The conflicts in Ukraine and Palestine highlight the presence of double standards in international law and their impact on conflict resolution efforts. While the Ukrainian conflict receives significant international attention and support, the Palestinian conflict lacks similar backing. This discrepancy influences diplomatic efforts and can create injustice, inequality, and increased tensions. It demonstrates that the international legal system requires improvement to ensure fair treatment and equal protection for all countries, regardless of their size or power.

Evidence suggests the existence of double standards in international law regarding the conflicts in Ukraine and Palestine. Russia's actions in Crimea faced widespread international criticism, while Israel's occupation of territories in Palestine received comparatively limited condemnation. Geopolitical interests, historical and cultural factors, and the influence of major powers contribute to differential responses. This inconsistency affects conflict resolution efforts, leading to distrust and potential conflicts when countries perceive unfair treatment. The international legal system must be reformed to provide consistent and fair attention to all conflicts and ensure equal legal protection for every country.

Double standards in international law regarding the conflicts in Ukraine and Palestine are related to the differing interests of major countries. The strategic interests of powerful nations can influence their handling of these conflicts, impacting their effectiveness in resolving them. Major powers like Russia and the United States have conflicting interests in Ukraine, while the United States, Israel, and Saudi Arabia have

varying interests in Palestine. These differences can result in the application of double standards, hindering conflict resolution efforts and prolonging the suffering of the affected populations. To achieve effective conflict resolution, concerted efforts from all countries are necessary, and double standards in international law must be avoided.

## E. Suggestion

Based on the discussion regarding the double standard in international law in handling the conflict in Ukraine and Palestine, there are several suggestions that can be taken:

1) It is important to avoid double standards in international law and ensure fair and consistent treatment of both parties to the conflict. Major powers and the international community must prioritize the principles of international law and humanitarian interests over their national interests in achieving effective and sustainable conflict resolution in these two countries.
2) Differences in the interests of major countries also need to be considered in resolving conflicts in Ukraine and Palestine. Major powers should not only prioritize their national interests, but also consider the principles of international law and humanitarian interests to reach a fair and consistent resolution for both sides of the conflict.
3) Major countries and the international community must provide appropriate and consistent sanctions against countries that violate international law, without exception. This will help prevent double standards in handling conflicts in the future.
4) It is also important to promote dialogue and diplomacy in solving the conflicts in Ukraine and Palestine. The countries and parties involved in the conflict must be encouraged to reach an agreement that benefits both parties, taking into account the principles of international law and humanitarian interests.

Further efforts are needed to strengthen oversight and international law enforcement mechanisms, so that acts violating international law can be stopped and dealt with effectively. This will help prevent double standards in handling conflicts in the future, and ensure protection and justice for all parties involved in the conflict.

## References

Arsyam, Muhammad, and M. Yusuf Tahir. “Ragam Jenis Penelitian Dan Perspektif.” *Al-Ubudiyah: Jurnal Pendidikan dan Studi Islam,* Vol.2, No. 1 (2021);

Chachko, Elena, and Katerina Linos. “International Law after Ukraine: Introduction to the Symposium.” *AJIL Unbound* 116, no. 2011 (2022);

Colombo, Sandro. “Are Death and Suffering in Ukraine Different than in Yemen, Afghanistan or Ethiopia? Double Standards in Humanitarian Assistance.” *Epidemiologia e Prevenzione,* Vol. 46, No. 3 (2022);

Harahap, Ali Musa, Rudi Candra, Aprilia Restuning Tunggal, Ida Susilowati, Dini Septyana Rahayu, Afni Regita Cahyani Muis, Zahidiyah Ela Tursina, and Novi Rizka Amalia. *Mengenal Hubungan Internasional Madani*. Edited by Ali Musa Harahap. Ponorogo, Jawa Timur: UNIDA Gontor Press, 2022;

Khairunisa, Adilah Hasna, Mohamad Rosyidin, and Muhammad Faizal Alfian. “Memori Dan Trauma Dalam Hubungan Internasional: Dukungan Austria Terhadap Israel Dalam Melawan Aksi Boikot, Divestasi, Dan Sanksi (BDS).” *Journal of International Relations,* Vol. 8, No. 1 (2022);

Manurung, Hendra, Arry Bainus, Rusadi Kantaprawira, and Teuku Rezasyah. “Indonesia’S Defence Diplomacy in Asia Pacific: A Study on Indonesia – Russia Defence Cooperation.” *Journal of Pharmaceutical Negative Results* Vol. 13, No. 8 (2022);

Mas’odi, Mas’odi. “White Supremacy, Kekerasan Wacana, Dan Ketidakadilan: Analisis Politik Standar Ganda Dunia Barat Dalam Konflik Di Palestina Dan Ukaraina.” *Al-Irfan : Journal of Arabic Literature and Islamic Studies* Vol. 5, No. 2 (2022);

Setiawan, Azhari. “Diplomatic Dilemma Dan Standar Ganda Politik Amerika Serikat Terhadap Konflik Sipil-Militer Mesir Tahun 2013.” *Jurnal Hubungan Internasional* Vol. 4, No. 1 (2015);

Slimia, Awad, Prof Mohammad, and Fuad Othman. “The Double Standards of Western Countries Toward Ukraine and Palestine ‘Western Hypocrisy." *Central European Management Journal* 30 (2022);

Sungkar, Syakieb. “Benturan Antarperadaban Huntington.” *Dekonstruksi,* Vol. 6, No. 01 (2022):

Yasuaki, Onuma. “The ICJ: An Emperor Without Clothes? International Conflict Resolution, Article 38 of the ICJ Statute and the Sources of International Law.” *Liber Amicorum Judge Shigeru Oda* (2023);

**Previous Issues**
**Vol 1, No 1 June 2022**
**Tirtayasa Journal of International Law**

1. Kedaulatan Wilayah Udara Indonesia Dalam Aspek Hukum Nasional dan Internasional (Studi Kasus Pesawat Sipil Tanpa Izin dan Pesawat Tempur di Wilayah Zona Ekonomi Eksklusif Indonesia
2. Pentingnya Mengadopsi Ketentuan Lembaga *Pre-Trial Chamber Pada International Criminal Court* Dalam Sistem Peradilan Pidana Indonesia
3. Global War on Terror by the United States from the Perspective of International Humanitarian Law
4. Tindakan Bom Bunuh Diri (*Suicide Terrorism*) Sebagai Bagian dari Terorisme Ditinjau dari hukum Humaniter Internasional
5. Principle of Sovereign Equality and Non-Interference in the Internal Affairs of a State

ISSN 2961-8061
9 772961 806007

**Previous Issues**
**Vol 1 , No 2 December 2022**
**Tirtayasa Journal of International Law**

1. Kajian Yuridis Hukum Persaingan Usaha Terhadap Perkembangan Pasar Uang Elektronik Dalam Perkembangan Pasar Nasional dan Internasional
2. the Effectiveness of Implementation and Compliance with ICCPR in the Case of Violations of the Right to Life and the Right to be Free from Tortured in Syria
3. Pemberian Amnesty Terhadap Pelaku Kejahatan Internasional Melalui Proses Transitional Justice
4. Penegakan Hukum Terhadap Pencemaran Laut Bintan Dalam Mengimplementasikan Pasal 192-237 UNCLOS 1982
5. Implementasi Pasal 2 dan Pasal 5 Convention on the Elimination of All Forms of Discrimination againts Women (CEDAW) Terkait Marital Rape di Indonesia
6. Konsekuensi Hukum Hak Referral dan Hak Deferral Dewan Keamanan Terhadap International Criminal Court

# Tirtayasa Journal of International Law
# Jurnal Hukum Internasional

## Jurnal Fakultas Hukum Universitas Sultan Ageng Tirtayasa

Dewan Redaksi Tirtayasa Journal of International law mengucapkan terima kasih atas kontribusi para Mitra Bestari (Reviewers) untuk penerbitan jurnal Vol 2 No 1, Juni 2023. Partisipasi Mitra Bestari TJIL dari dalam maupun luar UNTIRTA merupakan kunci dari keberlanjutan jurnal Tirtayasa Journal of International Law.

Tirtayasa Journal
of International Law



| Tirtayasa Journal of International Law : Jurnal Hukum Internasional | Volume 2 Nomor 1 | Hlm. 1-83 | Serang, Juni 2023 |
|---|---|---|---|