



PELANGGARAN HAM BERAT (THE MOST SERIOUS CRIME)

R. Herlambang Perdana Wiratraman, SH., MA.

Mata Kuliah Hak Asasi Manusia
Departemen Hukum Tata Negara
Fakultas Hukum Universitas Airlangga
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Pokok Bahasan



- Pengertian Pelanggaran HAM Berat
 - Memahami Jenis-Jenis Pelanggaran HAM Berat
 - Memahami Mekanisme Hukum untuk Mengadili Pelanggaran HAM Berat
 - Merefleksikan Kasus-Kasus Pelanggaran HAM Berat di Indonesia
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Pustaka

- Statuta Roma
- UU No. 39 Tahun 1999
- UU No. 26 Tahun 2000
- Wiratraman, R. Herlambang Perdana (2004) *Politik Hukum Penyelesaian Pelanggaran HAM Berat di Indonesia: Upaya Membangun Perspektif Keadilan bagi Korban dan Menciptakan Peradaban Berperikemanusiaan di Masa Depan*. Makalah Seminar HAM: “Quo Vadis Penyelesaian Pelanggaran HAM Berat Masa Lalu?”, Forsam, Surabaya, 13 Desember 2004.
- Wiratraman, R. Herlambang Perdana (2005) *Antara Mengungkap Sejarah Penindasan Masa Lalu & Penindasan (Teks Amputasi) Sejarah Masa Lalu*, Makalah Semiloka Pusham Unair dan Elsam, “Mendorong Pemulihan Hak-Hak dan Keadilan Bagi Korban Pelanggaran HAM Berat Masa Lalu Pasca Diberlakukannya Undang-Undang Komisi Kebenaran dan Rekonsiliasi”, 17-18 Februari 2005.

Pengertian Pelanggaran HAM Berat

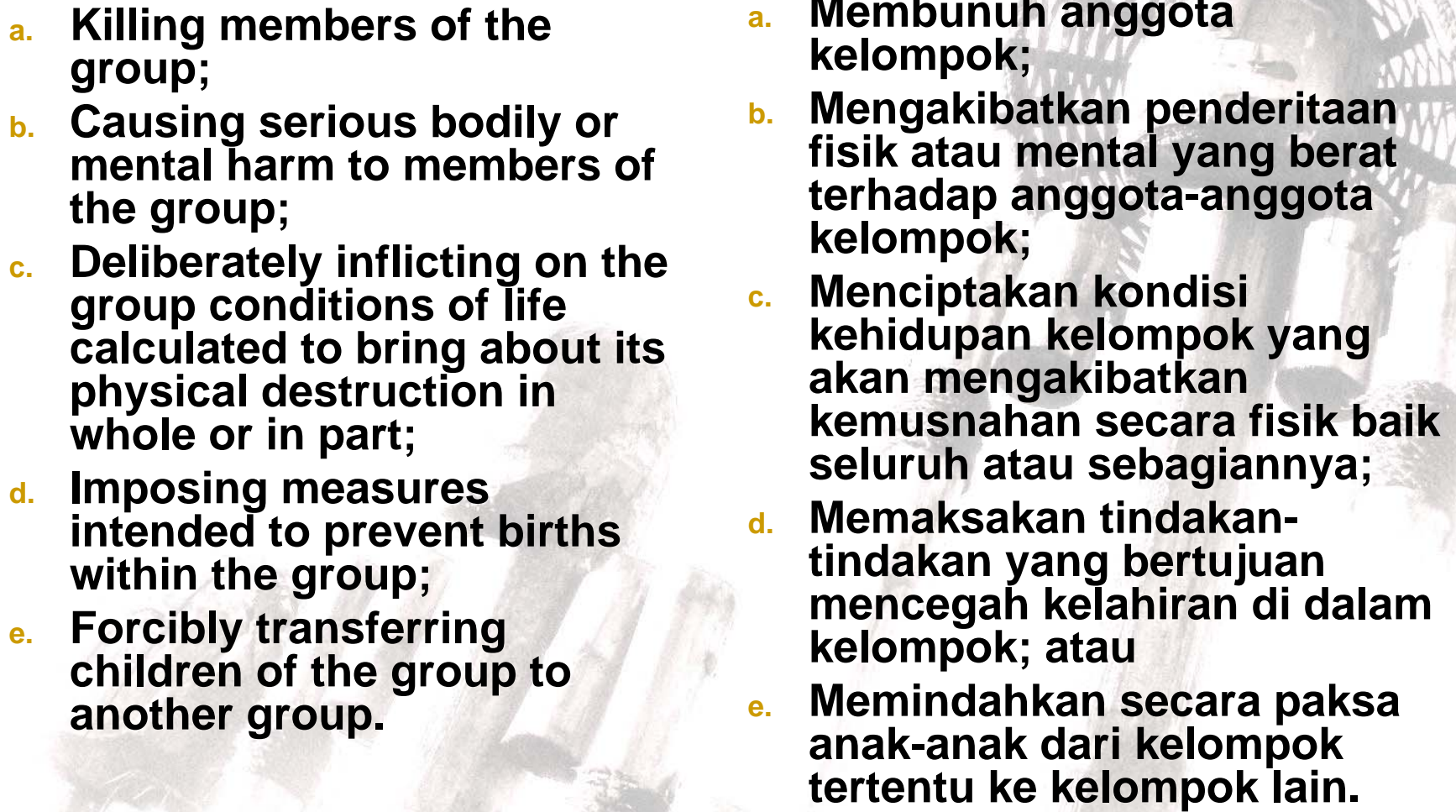
- Rome Statute Art. 5: the most serious crimes of concern to the international community as a whole:
- This Statute with respect to the following crimes:
 - (i) *The crime of genocide;*
 - (ii) *Crimes against humanity;*
 - (iii) *War crimes;*
 - (iv) *The crime of aggression.*
- Pasal 1 ayat (2) UU 26/2000: Pelanggaran Hak Asasi Manusia yang berat adalah pelanggaran hak asasi manusia sebagaimana dimaksud dalam Undang-undang ini.
- Pelanggaran hak asasi manusia yang berat meliputi:
 - a. *kejahatan genosida;*
 - b. *kejahatan terhadap kemanusiaan*

GENOCIDE atau Kejahatan Genosida



- Art. 6 Rome Statute: *any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:.....*
- Pasal 8 UU 26/2000: *setiap perbuatan yang dilakukan dengan maksud untuk menghancurkan atau memusnahkan seluruh atau sebagian kelompok bangsa, ras, kelompok etnis, kelompok agama, dengan cara:.....*

Jenis Kejahatan Genosida

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- a. **Killing members of the group;**
 - b. **Causing serious bodily or mental harm to members of the group;**
 - c. **Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;**
 - d. **Imposing measures intended to prevent births within the group;**
 - e. **Forcibly transferring children of the group to another group.**
- a. **Membunuh anggota kelompok;**
 - b. **Mengakibatkan penderitaan fisik atau mental yang berat terhadap anggota-anggota kelompok;**
 - c. **Menciptakan kondisi kehidupan kelompok yang akan mengakibatkan kemusnahan secara fisik baik seluruh atau sebagiannya;**
 - d. **Memaksakan tindakan-tindakan yang bertujuan mencegah kelahiran di dalam kelompok; atau**
 - e. **Memindahkan secara paksa anak-anak dari kelompok tertentu ke kelompok lain.**

Crimes Against Humanity atau Kejahatan Terhadap Kemanusiaan

- Art. 7 Rome Statute: “Crime Against Humanity” means any of the following acts when committed as part of a widespread or systematic **attack directed** against any civilian population, with knowledge of the attack:....
- Pasal 9 UU 26/2000: salah satu perbuatan yang dilakukan sebagai bagian dari serangan yang meluas atau sistematis yang diketahuinya bahwa **serangan tersebut ditujukan secara langsung** terhadap penduduk sipil, berupa:

Jenis Kejahatan terhadap Kemanusiaan



- a. Murder;
 - b. Extermination;
 - c. Enslavement;
 - d. Deportation or forcible transfer of population;
 - e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - f. Torture;
 - g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- a. Pembunuhan;
 - b. Pemusnahan;
 - c. Perbudakan;
 - d. Pengusiran atau pemindahan penduduk secara paksa;
 - e. Perampasan kemerdekaan atau perampasan kebebasan fisik lain secara sewenang-wenang yang melanggar (asas-asas) ketentuan pokok hukum internasional;
 - f. Penyiksaan;
 - g. Perkosaan, perbudakan seksual, pelacuran secara paksa, pemaksaan kehamilan, pemandulan atau sterilisasi secara paksa atau bentuk-bentuk kekerasan seksual lain yang setara;

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- h. **Persecution** against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - i. Enforced disappearance of persons;
 - j. The crime of apartheid;
 - k. **Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.**

- h. **Penganiayaan** terhadap suatu kelompok tertentu atau perkumpulan yang didasari persamaan paham politik, ras, kebangsaan, etnis, budaya, agama, jenis kelamin atau alasan lain yang telah diakui secara universal sebagai hal yang dilarang menurut hukum internasional;
 - i. Penghilangan orang secara paksa; atau
 - j. Kejahatan apartheid.
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War Crimes

Article 8: war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

“War Crimes” means:

- a. Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:**
- b. Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law**
- c. In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause**

.... Etc (related to armed conflicts not of an international character)

The Crime of Aggression

- Art. 5 (2) Rome Statute:
The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted **in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.** Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.
- Art. 121 – Amendments
- Art. 123 – Review of the Statute: **Seven years after the entry into force of this Statute** the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5.

Mekanisme Pengadilan untuk Mengadili Pelanggaran HAM Berat

1. **National Court** (Pengadilan HAM berdasarkan UU 26/2000)
 2. **Ad-Hoc Tribunals** → (the creation of International Tribunals by the United Nations Security Council under its Chapter VII powers, which empowers it to take measures “to maintain or restore international peace and security”)
 1. International Criminal Tribunal for the Former Yugoslavia
 2. International Criminal Tribunal for Rwanda
 3. **Hybrid Tribunals**
 1. East Timor Special Panels
 2. Special Court for Sierra Leone
 4. **Permanent Tribunal** – The International Criminal Court (ICC)
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East Timor Special Panels



- The Special Panels were established in 2002, by UNTAET Regulation 2000/15
 - The East Timor Special Panels have jurisdiction over four international crimes: genocide (Section 4), crimes against humanity (Section 5), war crimes (Section 6) and torture (Section 7). In addition, the Special Panels have jurisdiction over two crimes under East Timor's law: murder (Section 8) and sexual offences (Section 9)
 - According to Section 22 of the Regulation, the Panels are each composed of two international judges and one East Timor's judge.
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Refleksi Kasus-Kasus Pelanggaran HAM Berat di Indonesia (i)

- **Mengapa kasus-kasus pelanggaran HAM berat berhenti di tengah jalan?**

Contoh: Kasus Penculikan Aktifis? Kasus Wasior-Wamena? Kasus Kerusuhan Mei 1998? Kasus Trisakti, Semanggi I-II? Kasus Abepura?

- **Mengapa kasus-kasus yang diajukan ke Pengadilan HAM justru banyak membebaskan terdakwa?**

Contoh: Kasus Tanjung Priok 1984 (14 terdakwa, 12 bebas - 2 kasasi di MA); Kasus Timor Timur (18 terdakwa, semua bebas kecuali Eurico Guterres yang sedang kasasi)

- Apa maksudnya dibentuk Pengadilan HAM?
- **Melanggengkan Impunitas?**

Refleksi Kasus-Kasus Pelanggaran HAM Berat di Indonesia (ii)

- Apakah “Economic oppression as crimes against humanity”? (*Prof. George Kent, Hawaii University*): *Lihat kasus busung lapar, kemiskinan di NTT, Lapindo (corporate crimes), labour cheap policy.*
- Bagaimana kasus-kasus pembunuhan dan pembantaian pasca 1998? *Petani di Bulukumba, Manggarai, Ketajek, Branggah Banaran, Grati?*

Upaya keadilan bagi korban yang tertunda adalah justru pelanggaran HAM Berat yang sistematis dan berbahaya bagi peradaban kemanusiaan dan masa depan Indonesia.

