

Juridical Review Of The International Criminal Court (Icc) Regarding The Hospital Bombing Case As A War Crime In The Russia-Ukraine Conflict

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Abstract: The world's change is an unavoidable situation, including partnerships between countries that still exist today. Not only just a good partnership occurred in several countries, but some of them also broke their relations to others that it has a possibility to create a conflict and affect other countries in the world. One of the conflicts that is happening recently is Ukraine-Russia when the invasion from Russia direct to Ukraine which results in a big issue occurring for international society. Therefore, by looking at the kind of global problem that occurred, the purpose of this journal is to find out how legal arrangements are going for war crimes due to the effect of the invasion. Then the method of this research is normative juridical. The outcome of this study is if it's the bombing of the Ukrainian hospital is proven to be true, indeed it is one of the war crimes against the civilians which is regulated by the International Criminal Court (ICC). As a way to proceed with these war crimes, one must figure out the existing legal arrangements and find out the possible sanctions that will be imposed on Russia. So, the ICC plays an important role in this problem by starting to investigate the case from now on.

Keyword: International Criminal Court, war crimes, The bombing of the hospital, Ukraine-Russia Conflict.

INTRODUCTION

Countries in the world are currently experiencing some anxiety over the outbreak of conflicts that occurred in several existing countries. One of the conflicts that is still hot is the conflict between Ukraine and Russia which has resulted in several influences on countries that are dragged into the conflict problems they cause. This has become a common issue for the international community. Many regret that this happened. Because basically Russia's invasion of Ukraine certainly has the possibility of negative impacts occurring. Usually, those who are affected and become victims of attacks carried out by the armed military are not only soldiers on duty, but also innocent civilians.

These issues can be viewed from several cases arising from the consequences of the Russian invasion of Ukraine, namely the bombing of hospitals in Ukraine. If this is proven to be true if there is an investigation into the war crimes that occurred, then this fact could become an issue that is raised as a problem when this invasion ends at a later date. In addition, if the countries concerned submit issues of humanity and war crimes to the International Criminal Court or what can be called the *International Criminal Court* (ICC). Because this hospital is a vital public facility for civilians.

Therefore, it is also necessary to examine how international criminal law applies to war crimes that occurred in the hospital bombing case. Therefore, this research needs to be studied through normative juridical based on applicable international criminal law which is particularly related to the International Criminal Court (ICC) as one of the parties that is able to take steps against war crimes that have occurred to see the truth and justice for the victims of citizens. so that the perpetrators can be held accountable for their actions. Therefore a review of the methods used by normative juridical by looking at the law that is approved and becomes an important basis at the ICC. Within the ICC itself, what matters is the importance of trying four types of crimes, namely genocide, crimes against humanity, war crimes, and crimes of aggression. So that the case of the bombing of a hospital in Ukraine is a war crime and a crime against humanity.

DISCUSSION

The author in this paper tries to explore and describe the current conflict between Russia and Ukraine, especially the hospital bombing case in Ukraine from the perspective of International Criminal Law, especially the International Criminal Court (ICC). As stated in the International Criminal Law, it emphasizes the prohibition of international crimes and places responsibility and obligations on countries to follow up and prosecute at least some parts of these crimes. War crimes are exposed

considered a violation heavy against criminal law international nor law international humanitarian during the conflict weapon That raging .

With this in mind, it cannot be denied that there will be crimes such as war crimes when the invasion begins on 24 February 2022, to be precise. Amnesty International previously stated that Russia had carried out indiscriminate attacks on Ukraine. Based on the events that happened to Ukraine, it can be concluded that the large number of civilian victims who lost their lives was caused by armed conflict between Ukrainian and Russian troops where it turned out that piles of violations were found, such as the ceasefire regulations which were violated, especially those in the IV Geneva Convention 1949 concerning the Protection of Civilians in Time of War.

1. Analysis of the International Criminal Court/ICC

History has recorded the existence of war conflicts that have occurred in the world as a form of human development towards what it is today. The war that occurred opened the eyes of the world's inhabitants how big and negative the impact was. Because of the existence of war, humans also learn to get the concept of a peaceful and prosperous world. Although it cannot be denied that the number of victims that occurred so as to ask for accountability from those who have given these losses.

Therefore an international tribunal was formed which is useful for resolving problems resulting from war crimes that have occurred. Of course, the development of these international criminal courts is due to the development of international criminal law. This International Criminal Law can be realized due to several supporting factors. Factors driving the development of International Criminal Law, namely ¹:

- a. There have been several advancements in technology. Science and science that cause various types of criminal acts that have just emerged.
- b. The existence of human awareness of a sense of respect or respect related to values that exist in humans universally.
- c. There is awareness of the need for cooperation or *partnerships* that are established to solve problems that occur between the international community.

In its development there were the Nuremberg trials, the Tokyo trials, *the International Criminal Tribunal for Rwanda* (ICTR), and the International Criminal Tribunal for Yugoslavia (ICTY). These courts try all parties concerned in cases of war crimes they committed, especially against civilians. Then the legal bases used in those trials, became the legal regulations that became the foundation for use in the current International Criminal Court (ICC) .

So the ICC itself or what is often called the international criminal court is an independent judicial body that has jurisdiction over individuals suspected of committing genocide, crimes against humanity, and/or war crimes. The ICC was formed based on the 1998 Rome Statute. Article 5 paragraph (1) of the 1998 Rome Statute which explains that the jurisdiction of criminal acts that falls under the authority of the ICC are ²:

- 1) Genocide crime;
- 2) Crimes against humanity;
- 3) war crimes;
- 4) Crime of aggression.

Then it was also explained that the jurisdiction of the International Criminal Court (ICC) also has jurisdiction over the jurisdiction of aggression after ratification of the provisions describing the crime and determining the conditions under which this court or tribunal can exercise jurisdiction over this crime. Of course, these provisions need to be adjusted to the provisions stipulated in the United Nations Charter.

The International Criminal Court (ICC) is the first permanent international criminal court and is based in The Hague, Netherlands. The official languages of the ICC are Arabic, Chinese, English, French, Russian and Spanish and the working languages are currently English and French .³

In Indonesian , author translate sentence above _ with The meaning of the International Criminal Court or Court (ICC) is the first permanent international criminal court and is located in The Hague, Netherlands. The official languages of the ICC are Arabic, Chinese, English and French.

Judging from some of the information and facts above, the ICC is a form of effort by world residents to achieve the desired peace in all existing countries.

2. Chronology and Causes of the Conflict Between Ukraine and Russia

¹ Wayan Parthiana, *International Criminal Law* , (Bandung: Yrama Widya, 2006), p. 125.

² Elsam, “ *Statute of Rome* ”, available at : <http://ref.elsam.or.id/wp-content/uploads/2014/10/Statuta-Roma.pdf> , accessed on 3 June 2022

³Michelle KEATING, “The International Criminal Court: an introduction” available at : https://web.archive.org/web/20130303010710/http://aiic.net/page/1660#_ftn1 , accessed 3 June 2022

The beginning of the Ukrainian-Russian conflict is none other than their history, which used to be united under the auspices of the Soviet Union. You could say this is a matter of internal politics from both countries. The Soviet Union as the umbrella that overshadowed the two countries eventually broke up and dissolved and Ukraine decided to separate itself to become an independent country. After the breakup of the Soviet Union, Ukraine, Russia and Belarus created working forms namely *the Commonwealth of Independence States* (CIS).

But it also ended the same rupture. Then the two of them did some work the same or the agreement returns, and ends up heating up again. This heated up with the revolution in 2014/2015 which occurred in Ukraine where the anti-government community was able to overthrow the former president of Ukraine who tended to be pro-Russia, Viktor Yanukovich. This is one of the things that led to the new government precisely otherwise not pro with Russia. The revolution also gave rise to Ukraine's desire and interest to join in building work the European Union (EU) and the North Atlantic Treaty Organization (NATO).

That way, it further fractured the relationship between the two because Russia did not like the fact that Ukraine, as a country that was close both in terms of territory and history, had become what it is today. As if to reverse direction from Russia as a country that was considered close in the past. When a governmental revolution took place in Ukraine, Russia took advantage of this situation to gain control of Crimea and provide support for separatist movements in Eastern Ukraine against their own government.

As time went on, the conflict did not subside, but instead became more inflamed with the many issues of attacks from November 2021. Therefore, several world leaders criticized Russia's actions. One of them is the economic sanctions launched on Russia after being warned by the President of the United States, Jon Baiden.

Even Turkish President Recep Tayyip Erdogan also stepped in to take the initiative to initiate negotiations between the two. Russia has not stood idly by and denies accusations of the attack. In an exclusive interview with CNBC Indonesia on February 16, the Russian Ambassador to Indonesia, Lyudmila Georgievna Vorobieva, said that Russia had never intended to attack its neighbor. He said this issue arose after the US, NATO and their allies exhaled. ⁴Putin, as the President of Russia, asked in essence that NATO should not carry out and stop military activities being carried out in Ukraine and Timor Europe.

Russia also added to the EU and NATO alliance not to accept any former Soviet Union countries as their members. On February 15 during a press conference with German Chancellor Olaf Scholz in Moscow, Putin said that he would also withdraw all his troops from Russia's borders- Ukraine. From the Russian side, they do not want war with Ukraine and are willing to seek a settlement with the West. But the western countries, which are deploying NATO intelligence, suspect that Russia will continue to attack even if it is limited, taking advantage of the rebel movements of East Ukraine.

Without warning, Putin then announced that Donetsk (DPR) and Luhansk (LRP) as two regions opposed to the Ukrainian government became independent. Based on the basis of peace, Putin helped the two regions to become independent by attacking and sending troops to Ukraine. And sparked a military operation carried out by Russia in Ukraine in order to defend separatists in the east of the country. That is the chronology behind it and made the situation what it is today where the conflict is still going on today.

3. Cases of Hospital Bombings in Ukraine by Russia

After we look at the chronology that has been explained above, it can be concluded that the conflict and invasion of this military operation were still ongoing until the time this paper was written by the author. The events of the conflict turned out to be a lot of issues that developed and occurred in it. One of the cases that has also received world attention and criticism is the bombing of a hospital as a public facility for civilians in Ukraine. This bombing attack occurred on March 9, 2022, namely at a special hospital for children and maternity in Mariupol. The attack damaged hospital facilities and claimed three lives. About 17 people were injured in this attack.⁵

However, according to the Russians it was just an accusation and the attack was launched because it was suspected that there was an earlier provocation from the hospital. Russia also argues that the hospital has also ceased operations and instead served as a bastion of the Ukrainian nationalist Fortress

⁴Sefti Oktarianisa, “Chronology and Background to the Conflict between Russia and Ukraine”, available at: <https://www.cnbcindonesia.com/news/20220304134216-4-320044/kronologi-dan-latar-Back-konflik-russia-dan-ukraina/2>, accessed 3 June 2022.

⁵Ikhsan Abdul Hakim, *After the Bersalin Hospital Bomb, Russia Accused of Attacking a Cancer Hospital in Ukraine*, available at: <https://www.kompas.tv/article/269868/usai-bom-rumah-sakit-bersalin-russia-dutuduh-attack-cancer-hospital-in-Ukraine>, accessed 3 June 2022.

National Battalion of Azov. So that there were no casualties and dismissed the evidence circulating in the media as a mere lie made up to make Russia's name ugly in the eyes of the world.

It is also alleged that Russia carried out another attack on a cancer hospital on Saturday, March 12, 2022 in Mykolaiv, South Ukraine. The hospital facilities that were launched by the bomb were certainly badly damaged. Furthermore, Ukraine says 67 children have died across the country since the invasion and at least 1,170 civilians have been killed in Mariupol. ⁶From these issues, even though the actual facts and validity are not yet known, it is still a problem that must be investigated and underlined as a result of invasions or conflicts caused by the two countries that are at war.

4. Analysis of Hospital Bombings in Ukraine as a War Crime

From the cases previously mentioned, conflicts involving military or armed operations cannot be separated from civilian casualties. If the case of the hospital bombing is proven to be true if there is a further investigation under International Criminal Law by the ICC, then the case is a war crime. War crimes themselves, in the Rome Statute war crimes refer to the Geneva Convention that certain acts or actions committed by war actors or parties to war are committed by war actors or parties involved in war against the rights of a person or property. somebody.⁷

From this explanation, the bombing of a hospital is a vital public facility for civilians. Because it concerns a person's right to get health and get protection from the hospital. If the hospital is destroyed by the bomb that was launched, then their place for medical health is gone. It also illustrates that a person's right to health is taken away due to the ongoing armed conflict. The bombing of this hospital is therefore a war crime. This is also supported by the existence of references originating from the articles of the Geneva Convention where in essence three important components of war crimes can be drawn, namely:

- a. It includes acts that seriously violate laws and customs of war. Certainly it could be classified as an act of war crime in that it constitutes a gross violation of the laws and customs of war;
- b. This action was carried out in a state of dispute or armed conflict. The existence of a relationship requirement for the crime that occurred, namely having an adequate relationship between the crime and armed conflict so that the application of international humanitarian law cannot apply or work as it should;
- c. This action causes criminal responsibility to be imposed on the individual. This obligation cannot be contested because of the possibility of including state responsibility. So that it can create a method so that individuals who are guilty of war crimes can be held accountable and held accountable for all the actions that have been committed.

In addition, if Russia is proven guilty, Russia can also be prosecuted for genocide considering the large number of victims of Ukrainian civilians which will be proven by the estimated number of deaths resulting from the conflict, invasion, invasion, Russian military operations. It can be considered as genocide because if the mass killings continue to occur, of course the Ukrainian race or nation will experience an annihilation crisis due to the Russian invasion of Ukraine. Followed by accusations of crimes against humanity because attacking civilians who are unarmed, defenseless and not even related to military conflict between the two countries is a crime against humanity. Humanity, whose life needs to be valued and respected, has been violated by attacks on children and their mothers as civilians who, if proven true, are victims of the bombing of hospitals in Mariupol and Mykolaiv.

5. The Jurisdiction and Role of the ICC on War Crimes Related to Hospital Bombings in Ukraine

The ICC as the International Criminal Court has the authority to try Russia if it is proven guilty of war crimes and other crimes that have been violated during the conflict and the invasion of Russia's military operations took place in Ukraine. The ICC's jurisdiction and regulations regarding war crimes are in the category of material jurisdiction emphasized in Article 5 paragraph 1 of the Rome Statute which explains the crimes being tried include crimes of genocide, crimes against humanity, war crimes and crimes of aggression.

Then the special jurisdiction that deals with war crimes can be seen in Article 8 of the Rome Statute where this is included in the category of other serious violations of law and customs that can be applied in international armed conflicts, within the framework of established international law. ⁸Then explained

⁶ Ahmad Fauzi Iyabu, *Children's Hospital in Ukraine Affected by Attacks Despite Armistice*, White House, available at: <https://voi.id/berita/143490/rumah-sakit-anak-anak-di-ukraina-terkena-russian-attacks-despite-the-gross-white-house-truce>, retrieved 3 June 2022.

⁷ Dudung mulyadi, Iwan Setiawan, Mamay Komariah, *International Criminal Law*, Galuh Nurani Publishing House, 2015. page 31.

⁸ Elsam, Op. Cit, p.6.

again in more detail at this point there are several points related to the bombing of a hospital in Ukraine. Some pertinent settings such as:

- a. Attacks on civilians who are not directly involved in the conflict intentionally;
- b. Intentional attack on civilian objects;
- c. Deliberately carrying out an attack knowing that the attack could cause harm to civilians;
- d. Bombing and attacking facilities such as buildings, towns, villages, housing or non-military objects;
- e. Attacks on buildings used for religious, educational, artistic, scientific, historical monuments, hospitals and places for sick people.

In essence, if read carefully, these points constitute a violation of the law against war crimes which has clearly been regulated by the ICC Jurisdiction. The incident of the hospital bombing in Ukraine is the duty and responsibility of the ICC to be resolved immediately. Therefore, the role of the ICC is very important to bring to justice this incident after the conflict between the two countries ends and if a trial is held.

If we look at the international case of this conflict and the support of all eyes on this war crime, an international criminal trial in this case should have been held regardless of the outcome or winner of this Ukrainian-Russian invasion conflict. The ICC also plays a role in starting to move by investigating the truth that occurred in violations of war crimes and crimes against humanity as a result of this invasion. So that the court process held by the ICC will go one step further and avoid a protracted trial. Such is the magnitude of the role of the ICC as the International Criminal Court which is the permanent court for this case.

6. Possible Sentences for War Crimes Related to Hospital Bombings in Ukraine

Not to forget, the ICC must also ensure that the parties who are responsible if it is proven that the hospital bombing was carried out, will be given sanctions according to their actions, such as providing compensation to victims who have suffered losses. It does not rule out the possibility of imprisonment for war crimes violations that resulted in losses of Ukrainian civilians. This can be seen from Article 77 of the Rome Statute which regulates the punishment to be applied, namely that the court can give punishments for crimes committed as follows:

- a. Prison sentences can be given for a certain period of time (there is a possibility of years), which of course cannot exceed the maximum period of 30 years;
- b. Life imprisonment if this can be justified based on the gravity of the crime committed and considering the personal condition of the person to be punished.

Apart from the prison sentences already mentioned, the International Criminal Court (ICC) can also determine the following sentences:

- 1) There is a fine that is used as a punishment based on the category that has been determined in the Law of Procedure and Evidence;
- 2) Redemption of proceeds, wealth and assets can be carried out either directly or indirectly from the crime committed, provided that it does not harm the rights of *bona fide third parties*.

From the points mentioned above, of course, it has been discussed about what punishment might be acceptable for those who commit international criminal crimes. After that, it was also discussed in Article 78 of the Rome Statute which, if taken to its essence, was about how the determination of the sentence was carried out, namely:

- a) The ICC, when determining the punishment of a party proven guilty, must be based on the Rules of Procedure and Evidence, taking into account certain factors, for example the gravity of the crime committed and the personal condition of the person to be punished;
- b) The ICC must reduce the sentence given to prison on the basis of time considerations, even if someone has been previously detained in accordance with the order of the International Criminal Court itself. Then the Court may grant a reduction in time otherwise spent in detention relating to the acts underlying the crime;
- c) If a person has been convicted of having committed more than one crime, the court must notify each of the laws for each crime and the joint sentence which will state the total length of the prison term. This period may not be less than the maximum number of each sentence announced and cannot exceed 30 years imprisonment or life imprisonment based on what has been stated in Article 77, paragraph 1(b) previously.

So, once again, if it has been proven that a war crime was committed by Russia against Ukraine, then the possible punishment that will be given is based on the Rome Statute, which has discussed the details of the punishment in the points above. These penalties can be given according to the level of crime committed against civilians depending on the evidence and investigations that will be carried out later. Application punishment this is also expected Can done with fairness without looked position or position somebody Good in a manner political nor economy . So that the victims who have lost life nor families left behind , get a proper sense of justice with the situation that befell them .

CONCLUSION

Russia's invasion of Ukraine is an international issue that is being hotly discussed by the world community. One that was also highlighted was the bombing of a children's, maternity and cancer hospital in Ukraine. It was a problem that resulted from the military invasion launched by Russia. This is one of the crimes that will be tried by the International Criminal Court / ICC in the Rome Statute Article 5, to be more precise, war crimes which are emphasized more.

Hospital bombings are included as war crimes because these attacks are deliberately directed at public facilities, namely hospitals, which will certainly cause heavy losses to civilians if the bombing of the hospital is proven to be a mistake on the part of the Russians. The International Criminal Court should immediately conduct an investigation into what crimes occurred as a result of Russia's invasion of Ukraine. So that the punishment of both imprisonment and fines for the guilty parties can be immediately accounted for by the civilian victims in Ukraine. Therefore, the ICC must act quickly and responsively to the issues caused by the conflict between the two countries. ICC is also expected neutrality in give punishment against the suspects without looked frills background behind from the suspects the .

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