

ABSTRAK

Konflik bersenjata yang terjadi di Mali sejak bulan Januari 2012 antara pemerintah Mali dan sejumlah kelompok bersenjata terorganisir menyebabkan hal-hal merugikan yang salah satunya adalah hancurnya bangunan-bangunan bersejarah seperti yaitu 9 makam Wali dan pintu Masjid Sidi Yahia yang merupakan peninggalan dunia yang dilindungi oleh UNESCO. Penyerangan terhadap bangunan-bangunan tersebut dilakukan sekitar tanggal 30 Juni 2012 sampai 11 Juli 2012 oleh Ahmad Al Faqi Al Mahdi dan rekan-rekannya yang berasal dari kelompok-kelompok bersenjata terorganisir yang bernama Al Qaeda in the Islamic Maghreb, dan Ansar Dine. Kasus ini merupakan kasus pertama yang ditangani oleh Mahkamah Pidana Internasional sejak berdirinya Mahkamah Pidana Internasional pada tahun 2002. Melihat uraian diatas, penting untuk diketahui bagaimana penerapan hukum humaniter internasional dalam praktiknya, dimulai dengan mengetahui konvensi-konvensi internasional terkait, mengetahui jenis kejahatan paling serius apa yang terjadi di Mali dalam kurun waktu tersebut, mengetahui alasan-alasan yang menyebabkan kejahatan tersebut tidak diadili langsung dibawah yurisdiksi pengadilan nasional Mali, dan mengetahui alasan-alasan hakim yang memutus Al Mahdi bersalah sebagai pelaku kejahatan perang.

Penulisan hukum ini dilakukan dengan pendekatan yuridis-normatif dan menggunakan metode analisis kualitatif. Kasus diatas dideskripsikan dan dianalisis melalui bahan hukum primer, sekunder dan konvensi-konvensi seperti, Konvensi Den Haag 1907, Konvensi Den Haag 1954, Konvensi Jenewa 1949 dan Protokol Tambahan I & II, dengan mengkaitkan beberapa artikel tersebut terhadap tindakan-tindakan yang dilakukan oleh Al Mahdi selama konflik bersenjata.

Dari hasil penelitian ini disimpulkan, kejahatan paling serius yang dilakukan Ahmad Al Faqi Al Mahdi adalah kejahatan perang berdasarkan Statuta Roma 1998 dan kejahatan tersebut tidak diadili langsung dibawah yurisdiksi pengadilan nasional Mali karena ketidakmampuan Mali untuk mengadili (*unable to prosecute*). Al Mahdi diputus bersalah karena telah memenuhi unsur-unsur kejahatan (*element of crimes*) Pasal 8(2)(e)(iv) Statuta Roma, dengan melakukan pelanggaran terhadap hukum dan kebiasaan humaniter internasional berdasarkan Konvensi Den Haag 1907, Konvensi Den Haag 1954 dan Konvensi Jenewa 1949 beserta protoko-protokol tambahannya, serta telah memenuhi unsur mental (*mental elements*) berdasarkan Pasal 30 dan terbukti bertanggung jawab secara individu berdasarkan Pasal 25 Statuta Roma 1998 sehingga ia bertanggung jawab secara individu atas tindakan-tindakan yang telah ia lakukan dan dapat dikenai hukuman.

Kata Kunci: Hukum Humaniter, Kejahatan Perang, Mahkamah Pidana Internasional, Al Mahdi, Mali

ABSTRACT

The armed conflict that took place in Mali since January 2012 between the Mali government and several organized armed groups had caused the destruction of historic buildings such as 9 mosoleums and the door of the Sidi Yahia Mosque which is a world heritage building and protected by UNESCO. The attacks on those buildings were conducted around June 30, 2012 and July 11, 2012 by Ahmad Al Faqi Al Mahdi and his colleagues from the same organized armed groups called Al Qaeda in the Islamic Maghreb (AQIM), and Ansar Dine. This case is the first case that handled by the International Criminal Court since its establishment in 2002 in terms of prosecuting the war crimes of cultural heritage. Regarding to the description above, it is important to know how the application of international humanitarian law in practice in order to protect cultural heritage in the situation of armed conflict, begins with knowing the relevant international conventions, knowing what kinds of gross violations of human rights were occurred in Mali in that specific time, knowing the reasons of Mali government did not try Al Mahdi under its jurisdiction directly, and knowing the judges reasons to sentence Al Mahdi was guilty of being a perpetrator of the war crime.

This legal writing's done by a juridical-normative approaching, therefore the writer needs to describe this case and analyzes it through primary, secondary legal basis and all the conventions such as, The Hague Convention 1907, The Hague Convention 1954, Geneva Conventions 1949 and Additional Protocols I & II, by relating some of these articles to the conduct that taken by Al Mahdi Mahdi during the armed conflict.

From the results of this study, it is concluded that the t most serious crimes has been committed by Ahmad Al Faqi Al Mahdi by attacking cultural heritage buildings that has violated the provisions of international humanitarian law and international humanitarian customary law and shall be considered as a war crimes under Article 8(2)(e)(iv) of the Rome Statute of 1998 and these crimes were not tried directly under Mali's national court's jurisdiction due to Mali's inability to prosecute since the court administration service was not able to run the chamber effectively, as one of the impacts of the armed conflict. Al Mahdi was found guilty and already fulfilled the element of crimes under Article 8 (2) (e) (iv) The Rome Statute 1998, and also fulfilled the mental elements under Article 30 of the Rome Statute 1998, hence he was individually criminally responsible for acts that he has committed and shall be punished.

Keywords : International Humanitarian Law, War Crimes, International Criminal Court, Al Mahdi, Mali