

ABSTRAK

Penelitian ini dilatarbelakangi oleh tingginya penggunaan tentara bayaran (*mercenaries*) dalam konflik bersenjata di Benua Afrika, yang menimbulkan dampak serius terhadap perlindungan hak asasi manusia, maraknya penggunaan tentara bayaran di benua afrika seringkali dilatarbelakangi banyak faktor tapi salah satu alasannya adalah ketidak siapan angkatan bersenjata negara yang bersangkutan atau kurangnya personel dimana tentara bayaran ini seringkali dianggap lebih profesional dan lebih terlatih daripada angkatan bersenjata lokal dan lebih cepat akuisisinya untuk langsung dikerahkan ke medan perang, namun praktik penggunaan tentara bayaran sering kali memperburuk kondisi perang dimana kekerasan, pelanggaran HAM, dan eksploitasi sumber daya alam marak dilakukan oleh para tentara bayaran. Latar belakang ini mengacu pada ketentuan Pasal 47 Protokol Tambahan I 1977 Konvensi Jenewa yang secara tegas melarang tentara bayaran, serta sulitnya dalam penegakan hukum di wilayah dengan kerapuhan *governance* dan intervensi geopolitik.

Permasalahan dan Metode Penelitian ini menjawab dua permasalahan yaitu bagaimana pengaturan HHI terkait status hukum tentara bayaran dan apakah praktik penggunaan tentara bayaran dalam konflik bersenjata di Afrika memenuhi standar HHI. Metode penelitian menggunakan pendekatan yuridis normatif dengan mengkaji instrumen hukum primer (Konvensi Jenewa 1949, Protokol Tambahan I 1977, Konvensi PBB 1989 tentang Tentara Bayaran, dan Konvensi *Organisation of African Unity*) 1977) serta sumber sekunder berupa studi kasus di Sudan dan Libya. Analisis data dilakukan secara kualitatif melalui studi literatur dan dokumen terkait dinamika konflik Afrika.

Hasil penelitian dan kesimpulan ini merupakan penelitian yang menunjukkan bahwa secara hukum, tentara bayaran dilarang dalam Hukum Humaniter Internasional karena tidak memenuhi kriteria kombatan (Pasal 47 Protokol Tambahan I 1977) dan berpotensi kehilangan hak sebagai tawanan perang. Namun dalam praktik, aktivitas mereka tetap marak di Afrika melalui penyamaran sebagai PMC yang menawarkan "jasa keamanan" non-tempur. Studi kasus di Sudan (dalam perang sipil pasca-kemerdekaan Sudan Selatan) dan Libya (pada intervensi 2011) membuktikan bahwa tentara bayaran memperpanjang konflik, melanggar prinsip *distinction* (pembedaan kombatan-sipil) dan *proportionality*, serta terlibat dalam eksploitasi sumber daya alam. Penelitian menyimpulkan bahwa praktik tentara bayaran di Afrika bertentangan dengan HHI, dan merekomendasikan penguatan regulasi nasional, kerjasama regional melalui Uni Afrika, serta penutupan celah hukum bagi PMC.

Kata Kunci: Tentara Bayaran, Konflik Bersenjata, Benua Afrika, Hukum Humaniter Internasional

ABSTRACT

This research is motivated by the high use of mercenaries in armed conflicts on the African continent, which has a serious impact on the protection of human rights. The rampant use of mercenaries on the African continent is often motivated by many factors but one of the reasons is the unpreparedness of the armed forces of the country concerned or the lack of personnel where these mercenaries are often considered more professional and better trained than local armed forces and faster acquisition to be directly deployed to the battlefield, but the practice of using mercenaries often worsens the conditions of war where violence, human rights violations, and exploitation of natural resources are rampant by mercenaries. This background refers to the provisions of Article 47 of the 1977 Additional Protocol I to the Geneva Conventions which expressly prohibits mercenaries, as well as the difficulties in law enforcement in areas with fragile governance and geopolitical intervention.

Problems and Methods This research answers two problems, namely how the HHI regulation is related to the legal status of mercenaries and whether the practice of using mercenaries in armed conflicts in Africa meets HHI standards. The research method uses a normative juridical approach by examining primary legal instruments (Geneva Conventions 1949, Additional Protocol I 1977, UN Convention 1989 on Mercenaries, and Organization of African Unity Convention 1977) as well as secondary sources in the form of case studies in Sudan and Libya. Data analysis is done qualitatively through literature and document studies related to African conflict dynamics.

The research results and conclusions show that legally, mercenaries are prohibited in International Humanitarian Law because they do not meet the criteria of combatants (Article 47 of Additional Protocol I 1977) and potentially lose their rights as prisoners of war. In practice, however, their activities remain rampant in Africa under the guise of PMCs offering non-combat “security services”. Case studies in Sudan (in South Sudan's post-independence civil war) and Libya (in the 2011 intervention) proved that mercenaries prolonged conflicts, violated the principles of combatant-civilian distinction and proportionality, and engaged in the exploitation of natural resources. The research concludes that mercenary practices in Africa are contrary to the HHI, and recommends strengthening national regulations, strengthening national laws, and strengthening national laws.

Keywords: Mercenaries, Armed Conflict, African Continent, International Humanitarian Law