

Analisa kejahatan perang dan unsur-unsurnya dalam kasus prosecutor v. Dusko Tadic = The analysis of war crimes and its elements in the case of prosecutor v. Dusko Tadic

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Abstrak

War Crimes are one of the crimes that shocks the conscience of human. War crimes have contextual elements (armed conflict), mens rea elements, and actus reus elements. An armed conflict can exist in the form of international armed conflict and internal armed conflict. ICTY considered these elements in the case of Prosecutor v. Dusko Tadic. ICTY used the standard of overall control to determine the type of armed conflict occurred in that case. ICTY also considered each of the underlying offences of Dusko Tadic, but ICTY did not elaborate the specific elements in its consideration. Dusko Tadic was sentenced 25 years of prison. Many legal scholars debated on the consideration of the ICTY. It can be seen that the overall control standard is the right standard to determine the type of armed conflict and to answer the issue of state responsibility. The scholars also criticized the ICTY consideration because it did not elaborate on the specific of the elements of Dusko Tadic's underlying offences.

<hr>Kejahatan Perang merupakan salah satu kejahatan yang melukai hati nurani manusia. Kejahatan Perang memiliki unsur kontekstual yaitu unsur konflik bersenjata, unsur mens rea, dan unsur actus reus. Unsur konflik bersenjata dapat berupa konflik bersenjata internasional maupun konflik bersenjata nasional. ICTY dalam kasus Prosecutor v. Dusko Tadic membahas mengenai unsur-unsur ini. ICTY menggunakan standar overall control dalam menentukan unsur konflik bersenjata. ICTY juga membahas tiap-tiap kejahatan dari Dusko Tadic namun tidak memberikan penjelasan yang mendetail dalam putusannya. Pada akhirnya Dusko Tadic dihukum 25 tahun penjara. Banyak ahli memperdebatkan pertimbangan-pertimbangan dari ICTY. Terlihat bahwa standar overall control lebih tepat untuk digunakan dalam menentukan konflik yang terjadi dan dalam menjawab isu state responsibility. Para ahli juga mengkritik akan pertimbangan ICTY yang tidak membahas mendetail mengenai unsur-unsur dari tiap-tiap kejahatan Dusko Tadic.