

**LEGAL ANALYSIS OF THE TALIBAN ACQUISITION OF AFGHANISTAN STATE FROM THE VIEW OF  
INTERNATIONAL CRIMINAL LAW AND THE 1998 ROME STATUTE**

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**Abstract**

After two decades of bringing down the Taliban rule and owning Afghanistan. In 2021, in countering the onslaught of psychological warfare of 9/11, the Joined Nations (USA) chose to take off from Afghanistan in order to anticipate a repeat of the failures of the Soviet Union, which would be much more fatal. Finance and people are taking on a heavy burden that has expanded because the widespreadness has provoked President Biden to sum up the choices made by his forerunner, Donald Trump. Atrocities against followers of the previous regime now haunt the source of internal conflict, after Ashraf Ghani fled abroad. The taliban's military activity and savagery in cracking cities in Afghanistan reinforce questions over the taliban's changing stance to be willing to compromise on sharing control gently using a fair component, which they have never provided support so far. Defense of the full application of sharia and the constant by the Taliban and the seizure of the authority of the great powers within the Local, which made the intermediate war, made the difference of deciding a long time.

**Keyword :** Taliban, take over, Afghanistan

**INTRODUCTION**

In 2021 ago precisely on August 17 2021 Afghanistan was controlled by the Taliban group. mastered the Taliban group is tail from he pulled US and NATO forces after 20 years plug in strength its military in the country of Afghanistan for oppose group former terrorist attack the United States in the WTC incident in 2001 . Withdrawal American and NATO troops from Afghanistan constitute fresh air for the Taliban group they can with easy enter and seize the current government of Afghanistan That under government president Ashraf Ghani. Previously the United States start do operation military in Afghanistan with Meaning objective For do crackdown to group Al-Qaeda terrorists below leader The accused Osama Bin Laden become mastermind from incident hijacking of two civil airplanes which then crash to A building known twins as WTC (World Trade Center) on September 11, 2001 in New York City , United States of America . A must understood together that position all countries in sight International is The same the degree . State has sovereignty of each and must be upheld and respected by others world community . In case this is the United States in series action operation known military with operation Enduring Freedom's military is also known Lots breaking the boundaries of rules and principles law international one is non- intervention principle. The principle of non- intervention is the principles mentioned in UN Charter as fence for other countries to No too mix other country's affairs . though form mix hand the characteristic positive, position of the country must still upheld and

appreciated by these other countries . Principle law humanitarian though No can break through non-intervention principle this .

Arise question in mind We why the Taliban want dominate Afghanistan. Speak about the Taliban group No free from side historical group the. Taliban Islamic group in Afghanistan this at first born consequence from gap social , economics and politics in the country of Afghanistan which at the time it 's below power president Burhannudin rabbani . Dilapidated leadership at the time That make a man named Mullah Muhammad Omar has strong stance For do fight to system governance in Afghanistan moment it. This Muhammad Omar start action and propaganda through the bodies education Mandrasas in Afghanistan. Around 1994 Muhammad Omar made A A movement organization with use strength given weapon Name Taliban . The essence of the Taliban movement sourced from movement the Afghan people of actions dilapidated ruler of the state of Afghanistan which is assessed reign with full evil and no in accordance with Islamic religious law . The Main Mission of the Taliban viz apply law Islam in Afghanistan .

Basically If We analysis the Taliban movement according to corner view law international is category from Belligerent or group armed do something rebellion to something government legitimate in a country. Belligerent group as subject law international subject to the rules of the game from law international specifically Convention Geneva about law war international . Ca n't also denied that deep Taliban group the movement against the United States since succeeded in being overthrown 2001 a lot launched acts of terror such as bomb kill a lot of self injuring and killing civilians No guilty . The terrorist acts carried out by the Taliban done in the middle city the aim For warned the United States and NATO against existence from group the . If reviewed from corner view International That is violation law international and can categorized as subject law international and accessible to Court Speech International (ICC ). As a touchstone for can know can know that the Taliban can said as as Belligerent , can be used from The 1907 Hague Convention ( Fourth Convention ) , namely :

- a. Own clear and involved leader in matter his leadership own not quite enough answer on his subordinates ;
- b. Own uniform ;
- c. Bring weapon in a manner blatantly And ;
- d. Obey law habit war .

The fourth principle need is very noticed and become element most important for belligerent group that is must obey law habit war yes one of them must protect resident civil or non-combatants. If so do we understanding about this belligerent is A group known armed as rebel legitimate government that acts of terror or his attacks launched to government vital objects , No places public . In relation with the Taliban group that this belligerent launched action to government sah Ashraf Ghani and to troops United States military in Afghanistan ( 2001 – 2021 ) for hunt group Al-Qaida terrorism .

Far from problem regarding the Taliban which is subject law criminal International showing that the Taliban is also a groups that can be presented before Justice Criminal International in accordance with provision Rome Statute of 1998. The Rome Statute stipulates types crime international on Article 5 of the Rome Statute ie

- a. Genocide
- b. Crime war
- c. Crime to humanity

d. Crime aggression

Referring to the provisions in article 5 every country in the world without exception may be withdrawn and adjudicated in International Criminal Court (ICC), problems that arise regarding with matter the Is it a country in conflict? the is a participating country ratify Rome Statute? . otherwise of course the country No can represent or facing to court international in a manner direct , However must be submitted by another country through the UN Security Council . Although in the end Afghanistan returned fall the hand of the Taliban is something matter terrifying also , launched from news that author meet that the Taliban are not will use strength weapon to public civil . The Taliban also promised will change style his reign different like they were in the old era , meaning few Taliban relax strict rules to girl . as we know that of the Taliban in previous eras No allow woman For own same rights with one of the boys right For have education .

### Research Methods

Writer in matter This do research with use method Analysis Juridical . this method done with method researching something problem law Then after researched then done A analysis with use prisip law theories and as well as provision relevant law with International Law that is among them Rome Statute of 1998.

## DISCUSSION

### A. Criminal Law International

Criminal Law International or in various literature Language foreign known with the term International Criminal Law or International Straftprozessrecht (Netherlands). Started development initiated by experts law famous in his time . Criminal Law International in 1965 began developed to in branch knowledge law was initiated by Gerhard OW Mueller and Edmund M Wise in A his later work Comparative Law business the continued by Bassiouni and Van Nanda. Criminal Law International is set covering rules contained rules something that is forbidden For carried out and determined by the community international . Quality from something incident crime get world's attention so the world community unites mind and attention To use form something possible rules become something reference or something guidelines To use uphold human rights Human and protect interests of countries in the world without exception

Criminal Law International according to George Schwarzenberger there are 6 ( six ) meanings namely

1. Criminal Law International in a spatial sense legal territorial scope criminal national;
2. Criminal law international in terms of aspects established international as provision in law criminal national ;
3. International law in the sense of authority existing international in law criminal national
4. Criminal law international as the meaning of cooperation international in mechanism judiciary ;
5. Criminal Law International in the sense of recognition law criminal national as proper law held in life civilized nation and society ;
6. Criminal law international in the material <sup>1</sup>sense of the word

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<sup>1</sup> Romli Atmasasmita , *Introduction to Criminal Law International* , Refika Aditama , Bandung, 2006. p.21 \_

Criminal Law International in a manner material can found from a number of type convention International one of them Convention Geneva rules about crime war . Criminal Law International in development own a number of source including :

1. Habit. Habit This develop in a past country then on development furthermore the customs of the country made reference in practice connection law international .
2. Convention. Born from something form agreement with countries remembering something incident certain it's very troubling and must be agreed together that enforcement must done through something established rules and procedures together. Thinking This leave from thinking that possible crime bother security community international must become concentration together .

Arise mind questions We Now How We can identify something form crime can categorized as as room scope from crime international according to writer , there is features special that is among them ;

1. such action must is something existing action in something form characteristic rules supranational , However No close possibility can also be sourced from law national . In case This crime the loaded element international , that is That is condemn global peace and security both in a manner direct nor No direct .
2. Accommodated by a judicial body international or Court Criminal International. Explanation more carry on is means there is something must form cooperation between countries use do handling follow criminal international This start from stage arrest, investigation, prosecution, detention, until final trial process subjects perpetrator crime international the .
3. Attack with use strength aimed gun to public civil by the authorities country . Element This thick on the beak after The Second World War ie start popping up ad - hoc courts established For do court to crimes war . Which is in its development become forerunner will from Rome Statute in 1998 .

Criminal Law International different properly with law civil international . Criminal Law International know exists One the rules made reference as law criminal national and enforceable for everyone who is subject law criminal international . Different case with law civil international only hook law criminal international only refers to shape connection civil law only loaded element foreign whereas For rule keep it in use One stesel law national in the end No know something unification law law that can be enforced to all countries. It becomes distinguishing characteristics and at the same time remind We that crime no and no The same with violation civil , Because crime direct touch with life humans who don't counted price , no will replaced with characteristic things civil .

Before formation types crime or follow criminal regulated international in The Rome Statute as it was known at the time this , Draft Criminal Law International or The International Criminal Code in 1954 stipulated 13 ( three twelve ) entered category as form crime international which includes

1. Acts of aggression
2. Use strength armed against other countries
3. Do assistance weapon For do attack to a country
4. Give A support For do acts of terror in other countries
5. Violation to agreement restrictions something use weapon
6. Annexation of foreign territory
7. Genocide
8. Violation customs and laws war
9. agreement , related assistance , probation , and inducement with point 8 ( eight ).

10. Piracy
11. Apartheid
12. Threats and use strength
13. Slavery

Then how about the basis used in operate law criminal international This question the direct clicked , because basically all laws and rules Certain own spirit For turn on rule law the . Legal principles become foundations and guidelines in apply law the . Principles law criminal international can sourced from agreement together or from law international and can also be sourced from law national country .

1. **Legal principles criminal international sourced from law international** that is for example pacta sunt servanda or agreement is as a law binding on the parties in A convention . In advance writer Already explain source law international sourced from convention international . In addition to the principle of Pacta Sunt Servanda there is principle others are sourced from law international that is there is something system laws that are universal and form unification accepted and also embraced by all country , rule the must be honored .
2. **Legal principles criminal international sourced from law criminal national** including the basics legality or that No There is something action can convicted If action the No There is the rules . Characteristics principle This breathe certainty law something action No will caught and not can punished If rule the No invited in a manner authorized by an authorized body. Territorial principle that implies that something rule criminal national valid and binding ( can enforced ) for citizens of that country nor a foreigners within the country . The third that is principle of ne bis In Idem or what we know because it is also adhered to by the basic Indonesian Criminal Code This explain and give guidelines that something follow criminal No can tried twice. Example If something charged crime element international Already judged by a Justice country , Justice international or other state courts do not can judge the person with same case .

## **B. Crime International According to Rome Statute and Jurisdiction International Criminal Court**

Crime international development all ends and reaches something point termination . About twists and turns crime international This up to the moment This last at its peak by formulating it Statute Rome . This Rome Statute is results from conference diplomatic event which took place in Rome on 15 – 17 July 1998. Which was attended by members Union Nations . Through The Rome Statute of 1998 was also formed something arbitral court still , different from before before ie ICTY and ICTR are only characteristic temporary and ad-hoc. Court This known with Name International Criminal Court (ICC ) based in The Hague (Netherlands).

Speak about This Rome Statute No will regardless from ICC , can said that Rome Statute is law or rules , while the ICC is a judicial body international For enforce provision in Rome Statute done each other related One each other and no separated One with the others. ICC in matter This own jurisdiction For take action subjects breaking law provision regulated law in Rome Statute enacted in Article 5 ie covers types crime

1. Genocide
2. Crime To Humanity
3. War Crimes

#### 4. Crime Aggression

The crimes mentioned on own explanation of each each in Statute. **Genocide** explained in statutes as intended action For destroy whole or partly group public Good That public religion , public custom , tribe nation certain things to do with method kill group that , the action aimed at so For prevent birth something generation new to the group that , omission something condition with objective annihilate group the as poured in Rome Statute Article 6. **Crimes To Humanity** that is intended action to public civil conduct in a manner widespread and systematic attack the covers action murder , torture , enslavement , rape , imprisonment without reasons and procedures that don't Obviously , transfer in a manner forced or deportation persecution to ethnicity certain on base politics and differences ethnic group race and religion embodied in article 7 of the Statute . War Crimes refers to provisions Convention Geneva on August 12 , 1949 which was in his actions including action murder , action No human like test biological , force a prisoner war For Work in relevant state service , as poured in Article 8 of the Rome Statute .

The evils are within the Rome Statute previously already set in Statutes tatutes the establishment of the previous ICC like in ICTY and ICTR. However writer analyze type his crimes only that includes about crime to humanity only , whereas For crime to genocide , crime wars and invasions are adopted from convention different international like UN Declaration December 11, 1946 concerning Genocide and the Convention Geneva 12 August 1949 about War Crimes .

On turn furthermore the ICC has Jurisdiction For do prosecute and prosecute the perpetrators crime individually . Wrong thinking if country in matter This become burdened subject not quite enough answer criminal . In accordance with provision in Article 25 of the Rome Statute explains that somebody subject to responsible answer criminal for those who

1. Do deed crime Good done Alone nor together .
2. Do command and also try crime the
3. Help or make it easy done follow crime the
4. Do assistance in matter providing logistical support action crime the
5. Do incitement action genocide .

Subjects that fulfills personal elements above can on trial into the Court International . As information additional ICC not can do prosecution or judge someone who is aged under 18 years moment crime the going on . In addition the ICC has characteristic or based on principles restroactive justice which is contained in Article 24 (1 ) which reads that No nobody can imposed responsible answer criminal according to terms chapter in statutes this , if incident crime the done or happen before statutes This formed . Everyone who do follow criminal before exists statutes This No may be judged by provisions statutes this . This Rome Statute new can enacted in 2002 after being ratified by 60 participating countries , This is the conditions set in The Rome Statute loaded itself in Article 126 .

Arise question now How If a country is not enter one of the participating countries ratify provision This Rome Statute whereas currently happen conflict laws in that country are violated provision article 5 of the Statute the . According to The Rome Statute Alone If a country is not become member or state parties . the country No can submit case to ahead Court International but it must be the UNSC that proposes case the to The Public Prosecutor of the Court so that further be dealt with follow by the Court International .

In running function For do enforcement law criminal international in accordance with provision Nor does the Rome Statute can Act in a manner free . A little confusing However that's how Court International as Subject of International Law must also obey to applicable provisions of international law universally that is one of them non- intervention principle . Authority Court The lighted international wide can resulted loss sovereignty free from countries in conflict by cause That so Court International (ICC ) has complementary nature \_ as implied in Article 1 Statute that is in the end expected that every country makes rules for each support listed crimes in Statute For made in each country . Principle base in statutes This aim For give chance to court national For carry out Justice national If happen nature of crime international , if the state is not able presenting data judge perpetrators **(Unable and Unwillingness)** so here the role of the ICC begins to run . Court This No can accept something case If case the currently in the process of inspection and or tried by the court national . So stay here is known that jurisdiction from the very ICC though universal and coercive stick to the practice No can Act arbitrary There is procedures based on the principle of non- intervention that protects sovereignty and honor court national , except If court national the No can Again walk or no country brave or No capable presenting perpetrator .

### **C. Legal Analysis of Transfer of Sovereignty Legitimate Government of Afghanistan by the Taliban.**

taker diversion government legitimate by the Taliban appalling world , after Joe Biden pulled his troops to outside Afghanistan with fast Taliban troops got with easy take over power in the cities of Afghanistan , to the end can occupy the city of Kabul that became center the government of the state of Afghanistan. Almost for 20 years knocked out from Afghanistan consequence United States invasion to that country , now they (Taliban) can return rule Afghanistan. arise question in mind thought We is matter the is something form crime International referring to provisions Rome Statute . According to Writer matter the No is form crime international , Because No load elements and types follow criminal in accordance with provision articles 5 – 8 of the Rome Statute . taker diversion the done in a manner fast and in peace without There is actions violence by the Taliban . Not even civil society do fight when arrival Taliban troops enter into the Kabul city .

Writer think that about events that occurred the No is something form follow criminal except If series action taker diversion government this is done with series action No man specifically categorized actions as crime to humanity. With No entry element follow criminal so that in a manner logically too realm from ICC or court criminal international . Writer more think that This is conflict state sovereignty if something when sued between government Ashfar Ghani and the Taliban and is realm from ICJ or International Court Justice ie Court Different international function with ICC. ICJ more to settlement related conflicts with sovereignty a country. According to the data information already explained by the author also that cases that occurred at that time before it is approved The Rome Statute doesn't can be submitted to court criminal international .

However If We see series action bomb kill themselves in years going to 2021 provisions the violate provision about habit war in accordance with Convention Geneva The year is 1949. In 2019 a bomb car exploded in the nearby city of Kabul US headquarters , in incident the killed 10 residents civilians and at least 42 others injured . this \_ is violation to principles and habits war , the Taliban constitutes group armed or rebel to governance , goals main from rebellion the addressed to government No to public

civil in general . Although in series action taker diversion government No there is incoming actions into the category as follow criminal crime international , however Still just actions other Still related with actions bomb kill self done as acts of terror that cause his death inhabitant civil is form violation to war , so according to writer with entry of the Taliban as subject law international then the Taliban can be held accountable answer in a manner criminal .

About matter the in Rome Statute article 28 explained about not quite enough based answer on Command and Boss other . In case This writer feel more right If We refers to the terms Article 28 letters (b ) on the Statutes that is mentioned that superior responsible answer to subordinate in thing :

1. Known by superiors the that si subordinate the want do or currently do something follow crime .
2. The crime happened the in control effective from the supervisor concerned the .
3. Failed superior in do something necessary and measurable actions ( in common sense ). in his power For do prevention and suppression or take action continue through reporting to authorized official .

However If want to use on base command according to writer No is meaningful thing or Can said The same just because he was noticed element For attached responsible answer criminal on base command or superior the The same just .

## **CONCLUSION**

Come to the end of writing scientific papers this . According to the exposure already information conveyed by the author in advance so writer can conclude that :

1. Taker diversion rule by the Taliban against legitimate government of Afghanistan No enter into the category from law criminal international , Because No There is elements crime that occurred in series action the .
2. With so matter the neither entered into the jurisdiction from ICC ( International Criminal Court) above provision Rome Statute 1998. Conflict This more enter into the realm from Court International (IJC ) or International Justice Courts.
3. Although so there are also actions coloring crime the actions of the Taliban in times of war with the United States and the Government of Afghanistan, that is the position of the Taliban which is Belligerent enters into the subject law Which international already explained in advance that Belligerent should be subject to the law habit war or Convention Geneva 1949 ( Laws of War ) , breach about law war is incoming crime into the criminal jurisdiction of the ICC according to Rome Statute .

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