

CHAPTER ONE

INTRODUCTION

A. Background of Research

The development of self-defense concept in International Law is increasingly widespread. It is proven by many different interpretations made by various states, especially regarding the anticipatory strike. The topic has been crucial issue since 2003 when the United States of America (USA) attacked Iraq, which was very controversial at that time. The USA confirmed that the reason for the attack was the USA's concern to Iraq in developing the Weapons of Mass Destruction, which could potentially be a threat.¹

However, the war ended in the absence of evidence that Iraq had developed the weapon, so the issue became a discussion among the scholars regarding whether the USA's attack on Iraq was justified according to International Law. The USA used anticipatory strike as a reason to justify the attack, but in fact, the validity of anticipatory strike has not regulated by International Law yet. Thus, the debates on the concept of anticipatory strike as self-defense are still being discussed until now and happened in several cases, which will be briefly explained in the research.

There are many states that competed politically and economically which makes the state took precaution actions before the threat come to distract the

¹ Miriam Sapiro, 2003, "Iraq: The Shifting Sands of Preemptive Self-Defense", *The American Journal of International Law*, Vol. 97, No. 3, p. 559.

interests of state, such as by using anticipatory strike.² As happened on January 3rd, 2020 when the United State (US) took action that killed the Iranian Major General, Qassem Soleimani. The US said that the action was anticipatory strike, which is a form of self-defense. However, the case becomes an issue among the scholars, because the attack was only based on the suspicion that stated Qassem Soleimani was the actor behind the American attack near Kirkuk, Iraq, which killed an American contractor and injured several American civilians. However, the question is, whether the attack can be justified under the International Law? Whether anticipatory attacks which based the excessive suspicion is allowed?

The state which uses anticipatory strike expected that the government will be released from international responsibility. The state assumes that anticipatory strike is one action of self-defense which recognized under Article 51 of the UN Charter, namely nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against member of the United Nations, until the Security Council has taken necessary measures to maintain international peace and security. Measures that are taken by members in order to the exercise the right of self-defense shall be reported immediately to the Security Council and shall not affect the authority and responsibility of the Security Council based on the present Charter when

² Katherine Slager, 2012, "Legality, Legitimacy, and Anticipatory Self-Defense: Considering An Israeli Preemptive Strike on Iran's Nuclear Program", *North Carolina Journal of International Law and Commercial Regulation*, Vol. 38, No. 1, p. 267.

the state conduct such an action at any time in order to maintain or restore international peace and security Charter.

Yet, it becomes an issue among states because Article 51 of the UN Charter does not give a clear definition regarding the sentence of “if an armed attack occurs”, whether the sentence can be defined as “before the attacks are conducted by the enemy” or it only applicable “when the attack is already conducted by the enemy.”³ Besides, in self-defense, there are three principles that need to be fulfilled, namely necessity, proportionality, and imminence.⁴ Thus, the topic is important to be discussed to give an understanding to the readers regarding the validity of anticipatory strike as self-defense based on International Law perspective.

The research discusses the validity of the anticipatory strike as self-defense based on International Law with a different approach compared to previous studies. The research analyzes the legality of the anticipatory strike by classifying the anticipatory strike into two types, namely preemptive strike and preventive strike. In previous research (such as in the research by Leo Van Den Hole in 2003 and Katherine Slager in 2012), experts determined the legality of anticipatory strike only in general terms. However, by determining the legality of anticipatory strike in general does not provide answers to future cases, so it is necessary to conduct a deeper analysis of what types of attacks

³ Peter Ørebech, 2014, “UN Charter Article 51 and the Right to ‘Anticipatory Self-Defense’: Validity of the US Preventive War Doctrine Against Al-Qaeda”, *Middle East Critique*, Vol. 23, No. 1, p. 63.

⁴ Leo Van Den Hole, 2003, “Anticipatory Self-Defence Under International Law”, *American University International Law Review*, Vol. 19, No. 1, p. 97.

are allowed by International Law. Therefore, the research analyzes the validity of anticipatory specifically by distinguishing the type of attack in the anticipatory strike in order to give a new formulation for the cases that will happen in the future.

B. Problem Formulation

Based on the background which already explained, the research problem is how is the validity of anticipatory strike as self-defense in war based on International Law perspective with special reference to the case of Qassem Soleimani's death.

C. Objective of Research

The objectives of the research are to understand the concept of anticipatory strike as self-defense in war and analyze the validity of anticipatory strike in International Law perspective with special reference to the case of Qassem Soleimani's death.

D. Benefits of Research

There are some benefits of the research, namely:

1. Theoretical Aspect

The research gives contribution in the development of legal science regarding the concept of anticipatory strike as self-defense in war based on

International Law perspective with special reference to the case of Qassem Soleimani's death.

2. Practical Aspect

The research gives contribution in providing some recommendations for states, international organizations, or individuals, in order to make a better policy and more understanding regarding the validity of anticipatory strike as self-defense in war based on International Law.