

## STATE RESPONSIBILITY IN PROTECTING CIVIL SOCIETY HUMAN RIGHTS

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**ABSTRACT:** This research is a research that examines in a normative juridical manner the responsibility of the warring state to protect the human rights of civilians in territory of the country. This research aims to provide understanding to the public regarding the protection of human rights that must be fulfilled by the state when it becomes a party to a war. The research method used is a normative juridical research method that examines international legal documents namely the 1907 Hague Convention, the 1949 Geneva Convention and Protocol I and Protocol II 1977. combatants and civilians, if that country has decided to become a party to the war. Nonetheless, the state still has the obligation to guarantee with all its might to safeguard the safety of its country's civilians who are not directly involved in the war as a form of fulfillment of human rights as stipulated in these conventions. In addition to maintaining the safety of civilians, the state also has an obligation to prevent combatants from committing acts that can be categorized as war crimes.

**Keywords :** *Civil Society; Human Rights; Responsibility; War.*

### INTRODUCTION

Based on the provisions of international human rights law, the definition of state responsibility relates to the state's obligation to fulfill, safeguard and respect human rights that are considered internationally. The emergence of state responsibility as a result of violations of international law by the state. The emergence of state responsibility if there is a violation of an international obligation to do something or not do something, based on international agreements or international customary law. State responsibility is a key principle that stems from the equal rights of every state and the doctrine of sovereignty. Provisions on defense related to war issues called International Humanitarian Law have been regulated by international legal instruments. IHL broadly aims to protect civilians and combatants physically and mentally, people who die at the hands of opponents are guaranteed their human rights, restore peace and limit the

powers of the fighting parties (Marentek, 2019). In the international world this armed conflict is common.

The conflict of interest with other countries or clashes between groups within one's own country is the beginning of armed conflict. However, this can be called pursuing the national interest. There are two armed conflicts, namely non-international armed conflicts or domestic conflicts and international armed conflicts. Armed conflict is an incident of sufficient violence and resistance between disputing parties. So that this conflict is certain to result in many victims, namely from the combatants side or from the civilian side who did not participate in the conflict. Armed conflict also results in the loss of the sense of security of the citizens. But the existence of humanitarian law needs to be questioned in terms of armed conflict and the parties also need to be analyzed clearly to determine a quick solution. The problem that often occurs is how to protect civilians especially citizens who are declared missing, detained and arrested as well as international implementation of proper treatment during civil wars. The life of the state cannot be separated from problems of conflict between countries (H Suryokumoro & Ikaningtyas, 2020). Protection for civilians who are victims of armed conflict needs to be upheld and requires strong action by the government together with the legal instruments used by the warring parties clearly and not arbitrarily. For example, the case of armed conflict in Papua, where the conflict is increasing and causing many casualties from civilians who should be protected by law. Regulations regarding armed conflict are contained in several conventions, namely the 1907 Hague Convention, the 1949 Geneva Convention and Additional Protocols I and II 1977. Armed conflict is regulated to protect victims so that violence does not occur which has serious consequences. It has been explicitly explained in the 1945 Constitution that the state has an obligation to protect its citizens. As stated in Articles 28A to 28J, they also explain the protection of human rights for citizens (Yudawan, 2021). The state is responsible as a whole in providing guarantees of legal protection for civilians who make up the state defense system.

## **Problem**

From the background described above, the main issues are how are civilians or civilian areas in an area of armed conflict, is there protection for civilians or innocent people and what are the war crimes and the legal basis for state responsibility?

## **Research Methods**

In this study, normative juridical research was used because it aims to understand societal phenomena and social phenomena, namely between civilians and combatants in armed conflicts. In this method are presented in words and report specific views obtained from various sources of informants (Humanika, 2021). This discussion also

describes the facts regarding the contents of the 1864 Geneva Convention and the 1907 Hague Convention so that it is easy to understand and in order to generate new hypotheses, identify the rights of civilians or the protection of civilians regulated in the 1864 Geneva Convention and Protection for civilians regarding civilians who may not receive arbitrary action from enemies of their country is regulated in the 1907 Deen Haag Convention

## **Discussion**

### **A. Overview of International Law**

#### **A.1. Definition of International Law**

The definition of international law itself has been widely expressed by the opinions of leading experts from international law. Mochtar Kusumaatmadja argues that international law is the overall rules and legal principles governing a relationship or issue that crosses national boundaries (Kusumaatmadja, 1997). Meanwhile, according to Jawahir Thontowi and Pranoto Iskandar stated that international law is a set of rules made and addressed to sovereign states exclusively. Furthermore, Jawahir and Pranoto also argued that international law is actually not a rule that is enforced as is the law owned by the state (Thontowi & Iskandar, 2006). Meanwhile JG Starke (Starke, 1992) gives two definitions of international law, namely:

1. Rules of law relating to the functioning of international institutions or organizations, their relations with each other and relations with states and individuals.
2. Certain legal rules relating to individuals and non-state entities insofar as the rights and obligations of each individual and non-state entity are important to the international community.

From the opinions of the experts mentioned above, it can be concluded that international law is a rule or rule of law that regulates relations between subjects of international law that cross national boundaries.

#### **A.2. Subjects of International Law**

Ordinary people will give the opinion that the state is the only subject of international law. This opinion is reasonable because the international world is synonymous with relations between countries. However, in the perspective of international law that has developed, the state is not the only major subject of international law as stated by society in general. Thus, it

can be clarified that the subjects of international law are (Kusumaatmadja, 1997):

1. Country
2. Vatican Holy See
3. International Red Cross
4. International Organization
5. Individual
6. Rebellion and parties to the dispute

## **B. General Review of International Criminal Law**

### **B.1 Definition of International Criminal Law**

The term international criminal law was initially introduced by legal experts from Europe, but over time, international criminal law was developed as a branch of legal science. The definition of international criminal law has been put forward by several international criminal law experts. George Schwarzenberger provides 6 definitions of international criminal law as follows (Atmasasmita, 2006):

- 1) International criminal law within the territorial scope of international criminal law
- 2) International criminal law in an international scope that has been stipulated as a provision in national criminal law
- 3) International criminal law within international authority in national criminal law
- 4) International criminal law in the cooperation mechanism of national criminal justice administration
- 5) International criminal law in the provisions of national criminal law which is recognized as proper law in the life of a civilized state society
- 6) Material international criminal law

### **B.2. Scope and Principles of International Criminal Law**

Talking about international criminal law, there is a scope that becomes the frame of discussion so that international criminal law can be understood. The scope of discussion of international criminal law consists of four objects of study, namely:

- 1) International criminal acts in terms of the history of development, conception and international conventions.
- 2) Issues of criminal jurisdiction over international crimes
- 3) Procedures for enforcing international criminal law are included in bilateral and multilateral cooperation in preventing and eradicating criminal acts
- 4) Instruments for enforcing international criminal law in the establishment of an international criminal court

Apart from its scope, international criminal law has basic principles and special principles which form the basis of international criminal law. The general principles contained in international criminal law also apply to national criminal law. The general principles of international criminal law include:

1. Principle *Pacta Sunt Servanda*

This principle implies that an agreement can bind the parties. When connected with sources of international criminal law, international agreements are at the top of the hierarchy of sources of international criminal law.

2. Principle of Good Faith (good faith)

The principle which is one of the basic principles in international law because it states that all obligations carried out by international law must be carried out as well as possible.

3. Principle *The civitas maxima*

This principle means that the universal legal system must be implemented as well as possible.

4. The principle of reciprocity/principle of reciprocity

The principle of reciprocity gives the understanding that if a country wants a good treatment from another country, then that country must also give good treatment to other countries.

In addition to the four general principles above, international criminal law also has specific principles. Specific principles contained in international criminal law include:

1. *Aut punere aut dedere*

This principle means that the perpetrators of international crimes must be tried based on the law in which they committed their crimes. In other words, criminal acts must be tried based on *locus delicti*.

2. *Aut dedere aut judicare*

*That the state has the obligation to prosecute and prosecute the perpetrators of international crimes and is obliged to cooperate with other countries in detaining, prosecuting and trying the perpetrators of crimes.*

3. *Par in parem in hebet imperium*

*This principle confirms that the head of state cannot be punished under the laws of another country. In other words, this principle is the impunity right of the head of state in conducting international relations.*

## C. War Overview

### C.1. Definition of

War War is an action that is expressed physically and non-physically or it can be said that a condition of hostility that uses violence between two or more parties in carrying out domination in the disputed area. In today's modern era, war is more towards technological and industrial superiority so that the term war is no longer a verb, but has become an adjective that generally means "opposition". In the Big Indonesian Dictionary, war has a definition as hostility between two parties or also as a major armed battle between two or more troops, as well as utterances that can trigger a dispute.

In addition to the definitions previously described, the definition of war has also been put forward by international law experts. Experts who give their opinions regarding the definition of international law include:

1. Karl Von Clausewitz

Clausewitz defines war as a struggle on a large scale intended by one party to subdue its opponent to fulfill its will (Starke, 2004). From his opinion, there are two important aspects that need to be concerned about war, namely that it is carried out on a large scale and the parties involved in the war have the aim of subordinating and imposing certain provisions.

2. Dinstein

Dinstein gives his opinion on several elements in defining war. Some of the elements put forward by Dinstein are:

1. Presence of hostilities involving 2 or more countries

2. The involvement of the armed forces
3. There is a goal to defeat the country that is the enemy party.
4. The objective of defeating the enemy symmetrically rests with the nations involved.

So from the explanation that has been briefly described, it can be concluded that war is a conflict that occurs between two or more parties involving certain elements and the desire to be dominant in a certain territory belonging to other parties involved in the conflict. In addition, from the definitions that have been elaborated by experts, it can also be concluded that war is a form of armed conflict.C.2

### **Definition of Armed Conflict (*Armed Conflict*)**

The definition of armed conflict is also emphasized by international humanitarian law experts in order to reduce confusion in the definition of war. Pietro Verri provides an understanding of the term armed conflict which is a general expression that includes all forms of confrontation between several parties, namely:

1. Two or more countries
2. A country with a non-state entity
3. a country and a rebel faction
4. two ethnic groups within a country.

Mansyur Effendi gives the notion of war or armed conflict as a legal situation that makes it possible for two or more groups of people who have the same degree in the perspective of international law to carry out arms disputes. Oppenheim also gave his opinion regarding war which was stated as "*war is contention between two or more states through their armed forces for the purpose of overpowering each other and imposing such conditions of peace as the victor pleases.*"

In disputes or disputes between countries, there are several elements in common, namely the realization of the most extreme form, namely physical war, in which each party tries to carry out its will by force. Thus, from the brief explanation described above, it can be concluded that armed conflict and war are two of the same thing and are interconnected with one another.

## Discussion

### A. Presence of Civilians in Armed Conflict Areas

People who are not involved in the conflict, but are in the conflict zone. So what is meant by "protected persons" in this case are civilians. Armed conflicts have fatal consequences that are not wanted by all humans. From the explanation above, it can be understood that there is no war that does not leave casualties or material losses. Therefore, human rights have the primary objective of protecting combatants and civilians physically and mentally from necessary suffering; secondly, to guarantee certain human rights of persons who fall into the hands of the enemy; third, enabling the return of peace; and fourth, limiting the strength of the combatants (Adwani, 2012). Humanitarian law arrangements aim to guarantee the rights of people in conflict areas and limit the power of conflicting parties to refrain from actions that go beyond human boundaries. With this arrangement, the parties do not commit cruelty or violence, as in an armed conflict, various actions can be taken to defeat the enemy. In a conflict, the main goal often turns out to be the destruction of the enemy. In conflicts between individuals, the main cause of conflict is often the feeling of being belittled by the other party. For that, these people must humiliate or destroy the opposing party to restore the dignity of the person who was humiliated. In general, opposing parties seek to destroy the enemy, but must respect the provisions of humanitarian law against those who can be destroyed, but not innocent civilians.

Protection of civilians as regulated in Geneva Convention IV is not the same as "protected persons" regulated in Geneva Conventions I, II and III, whose protection is intended for combatants or people who take part in hostilities, while the protection of civilians is for civil servants. civil, civil intended for people who do not take part in hostilities (Article 27 Geneva Convention IV 1949). In this case the conflicting parties are prohibited from doing the following: First, force, both physically and spiritually, to obtain information; secondly, causing physical suffering; third, imposing collective punishment; fourth, acts of intimidation, terrorism and theft; fifth, reprisals against civilians; and sixth, capturing people to be taken as hostages (Herman Suryokumoro & Ikaningtyas, 2020).

In essence, the prohibition is very important to be implemented by the warring parties, both in international and non-international armed conflicts. The problem of its implementation in non-international armed conflicts is highly dependent on the will of the state and the actions of the warring parties. In fact, the victims of non-international armed conflicts currently account for 80% of the victims of existing disputes. In addition, the protection of persons against violence, intimidation or human dignity is enhanced. As Suhaidi said, the international community continues to strive to protect human dignity through international instruments.



With regard to victims of non-international armed conflicts, Protocol II 1977 distinguishes between general protection and special protection, as mentioned above. General protection means that all people have the right to personal respect, dignity and religious beliefs, are entitled to humane treatment and are protected from acts of violence against life, health and welfare. Meanwhile, special protection is given, such as for children being given assistance in treatment, education, reintegration into their families, and prevention of participation in the armed forces.

Protocol II 1977, concerning victims of non-international armed conflicts, distinguishes between general protection and special protection, as mentioned above. Public protection means that everyone has the right to personal respect, dignity and confidence, is entitled to humane treatment and is protected from violence against life, health and well-being. Meanwhile, special protections are offered, such as child care, education, reintegration into the family and prevention of participation in the armed forces (Awoah, 2016).

The child needs special distinctions and continuous improvement for the child's condition without distinction and for the child's development and education. There are various groups of children who need special protection. First, children who are in an emergency, namely refugees, children who are in armed conflict; second, children who experience legal conflicts regarding the implementation of juvenile justice, deprivation of children's independence, restoration of the child's physical and psychological condition; and third, exploited children. Children must be protected from economic exploitation and self-harm, sexual opportunity, kidnapping, child trafficking, participation in armed and drug activities.

The special treatment for children regulated in the Geneva Convention was then complemented by new provisions regulated in Article 27 of Protocol I of 1977. Based on Protocol I, children are entitled to the care and assistance needed according to their age. ; they may not be listed. in the armed forces before the age of 15, and if they are directly involved in combat at that age, if they are caught, they must receive special treatment according to their age and those who are arrested before the age of 18, may not be punished. to death. Parties to armed conflict are prohibited from recruiting minors into their armed forces or involving children in armed conflict, so that children do not become victims of work that is not suitable for them.

#### **B. Protection of Civilians or Innocent Persons**

Civilians are people living in areas of armed conflict. The principle of humanity and the principle of protection is one of the primary principles of humanitarian law. Civilians are not enemies of war, if doubts arise from someone to determine whether a person he met was a civilian or a combatant, then that person must assume that the person he met was a civilian. This is stated in Additional Protocol 1 to the Geneva

Convention Article 50 of 1977. States parties to war must protect the rights of their civilians, for this reason there must be restrictions between combatants and civilians in war. Protection for civilians is contained in the 1864 Geneva Convention, it is explained that:

1. Medical parties such as hospitals, ambulances, and medical personnel who are involved in war for humanitarian purposes or to treat soldiers who are fighting must be recognized as neutral parties so they must be protected.
2. Civilians who help injured people in armed conflict must also be protected
3. Combatants who are injured as a result of armed conflict must be treated first
4. The red cross emblem is a symbol whose function is to protect and to locate and identify health facilities, personnel and equipment. <sup>[1]</sup>

Such protection may not be misused or used for other things, such as for example using an ambulance to transport weapons because an ambulance as a neutral party will definitely not be attacked so that war parties use this opportunity to transport weapons to safety. Such matters are of course not permitted because neutral parties may not be used for these matters because neutral parties have their rights protected in the Geneva convention.

Safe areas to guarantee the safety of civilians are also regulated in the Geneva Convention. There are conditions for making an area to be used as a safe area, the conditions are as follows:

1. An area that will be made a safe area in accordance with an order from a country that will make the area a safe area may use that area only a small part.
2. The area to be used as a safe area must have a smaller population compared to the possible accommodations there.
3. The area that will be used as a safe area must not be close to and have anything to do with the military or large industrial and administrative buildings
4. The area that will be used as a safe area is not an area that according to the possibility can be used as a battlefield.

In addition to the protection from the warring states to their civilians described above, there is also special protection given to civilians. This special protection is intended for civilians who are members of social organizations such as the National Red Cross Association. They carry out their duties as volunteers for humanitarian and social purposes to help civilians during war.

Protection for civilians regarding civilians who may not receive arbitrary action from enemies of their country is regulated in the 1907 Deen Haag Convention which regulates the laws and customs of war on land, in this convention regulates (Consol & Recueil, 1910):

1. Civilians cannot be coerced into providing information about the military side of an armed conflict.
2. Civilians cannot be forced to swear an oath of allegiance to an enemy who controls the privacy and property of civilians.
3. Civilians may not be imprisoned
4. Civilians should not be forced to provide taxes and other collections
5. Arbitrary deprivation of civil rights is prohibited.

In order to achieve a goal of a war party state to protect the human rights of its civilians, all war parties concerned are supposed to comply with and implement the rules of International Humanitarian Law. Because International Humanitarian Law contains rules to protect civilians who are victims of war. Each war party must prioritize humanitarian principles, so that when they act, they prioritize the humanitarian side, such as not taking actions that could cause excessive misery.

#### C. War Crimes and the Legal Basis of State Responsibility

In simple terms, "war crimes" arise from acts that violate the laws and customs of armed conflict. It should be noted that not every violation of legal and customary norms in an armed conflict can be classified as a war crime. One such view is the view that "war crimes laws provide for individual criminal responsibility for serious violations of international humanitarian law". (crimes with individual criminal responsibility for violations of international humanitarian law). War crimes are intentional acts of committing gross violations of the Geneva Conventions I, II, III, IV and Additional Protocol I, if those acts result in death, serious suffering or serious injury to the persons involved. prisoners of war or protected civilians. War crimes have a broad meaning and include many terms such as assault, including the use of drugs or mind-altering medical procedures as an act, experimental or physical assault, and others.

The legal basis for state responsibility in international criminal law in the form of an obligation to try perpetrators of international crimes can be found in various international legal instruments. Among the international legal instruments that govern the state's obligation to bring perpetrators to justice are as follows: 1) the 1948 Convention to Prevent and Punish the Crime of Genocide; 2) Convention on the Non-Applicability of Restrictions on Law against War Crimes and Crimes Against Humanity, 1968. 3) Geneva Convention, 1949; 4) Additional Protocol I of 1997; 5) Statutes of ad hoc international courts in The Hague and Rwanda; 6) Rome Statute.

## Conclusion

Armed conflict is an incident of considerable violence and resistance between disputing parties. So that this conflict is certain to result in many victims, namely from the combatants side or from the civilian side who did not participate in the conflict. Armed conflict also results in the loss of the sense of security of the citizens. Protection for civilians who are victims of armed conflict needs to be upheld and requires strong action by the government together with the legal instruments used by the warring parties clearly and not arbitrarily. In this study, using a qualitative methodology because it aims to understand the phenomenon of society and social phenomena, namely between civilians and combatants in armed conflict. States parties to war must protect the rights of their civilians, for this reason there must be restrictions between combatants and civilians in war. Protection for civilians is contained in the 1864 Geneva Convention and safe areas to guarantee the safety of civilians are also regulated in the Geneva Convention. Protection for civilians regarding civilians who may not receive arbitrary action from enemies of their country is regulated in the 1907 Deen Haag Convention which regulates the laws and customs of war on land.

## Limitations and Future Studies

This analysis has been attempted as best as possible by the authors but still has limited knowledge so that this research allows for further studies in the future.

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