

International Law Principles Recognized by Civilized Countries (A Perspective)

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Abstract

Human rights protect individuals, groups, or property. The nation or state officials as part of the country have an international obligation to protect the community and their property, where international human rights standards are established and developed in various international forums. This study aims to provide a critical review of the Convention related to Human Rights which guarantees the right of everyone to be treated equally before the law regardless of race, color, origin, and ethnicity, which also forms the Committee on the Elimination of Racial Discrimination to supervise its implementation. This qualitative research used a descriptive approach to collect data systematically, factually, and quickly in accordance with the description when conducting research. The results of this study showed that the principles of human rights guide law enforcement in prosecuting criminals. These principles emphasize the importance of supervision (including clarity in the chain of command) of law enforcement agencies. These principles also explain in detail the guarantee of the right to life fulfillment.

Keywords: *Human Rights, International Law, International Human Rights Law, United Nations*

INTRODUCTION

One of the Sources of International Law is the General Principles of Law Recognized by a Civilized Nation which is defined as general legal principles implemented in civilized countries or general legal principles applied in modern countries. The principle of law can be interpreted as a general rule that is not for a more general matter application, thus the principle of law must animate every action taken by the international community. On the other hand, a modern state can be interpreted as a state which must meet a state of law requirements which is collectively known as a *Rechtstaat* state of the law with the criteria of equality before the Law, Supremacy of Law, and Human Rights. *Rechtstaat* state of law criteria is upholding human rights, government based on law, separation of powers, and an independent and impartial administrative judiciary. In the context of international law, a modern state, which is defined as a state of law, is manifested in the form of compliance with the principles and norms stated in international law. Various events in the international community that cause problems in international law involve problems between countries due to non-compliance with international law.

One of the problems that arise in relations between countries is territorial claims referred to as national boundaries. National borders can be defined as an imaginary line where state sovereignty begins and ends in violations of state boundaries which often trigger problems between countries.

RESEARCH METHODOLOGY.

This research was conducted using a normative juridical research method by carrying out a comprehensive study based on legislation and empirical juridical research, namely conducting an assessment based on observations of the handling of respect and protection of human dignity in emergencies, especially during armed conflicts.

This study was legal research that employed various approaches to answer the research questions, namely: 1) statute approach, 2) conceptual approach, 3) comparison approach and 4) historical and philosophical approach.

Data analysis was carried out qualitatively. The written legal materials that have been collected were systematized according to the research problems. Furthermore, the legal material was studied and described using the relevant theoretical basis. To answer the research problem, the legal material that has been systematized was assessed so that it can correctly reveal the meaning, position, and implications of international law (formed by the international community consisting of countries).

RESULTS AND DISCUSSION.

One of the vital aspects of international law is compliance with international law which is manifested in the form of carrying out the provisions of international law. International law is defined by Prof. Mochtar Kusumaatmaja as the rules and principles that regulate relations that transcend national borders, between states or countries with other international legal subjects, or international law subjects with one another. It insists that anyone who studies international law is required to understand what rules are, which are interpreted as rules of behavior based on respect in the international community. Moreover, principles are defined as general provisions that must be obeyed, which regulate relations that go beyond national boundaries. Thus, it can be understood that state sovereignty in this context is limited by our knowledge in the previous explanation as boundaries and the subjects of international law are generally recognized as states, individuals, the holy throne, international organizations, belligerents, and insurgents.

Principles in Humanitarian Law.

In light of state, even though it seems simple to say that there is a legal subject as a state, in reality, it is not easy for an entity and takes many conflicts and victims to become a state. There are so many claims to be a country that ends in armed conflict, both international and non-international armed conflicts. International armed conflicts are armed conflicts that occur between countries and between countries and people in their attempts to self-determination as regulated in the United Nations Charter and friendly relations between nations. The non-international armed conflicts in nature are conflicts that occur between states and rebels. The two types of armed conflicts have different legal consequences where international armed conflicts are defined as conflicts that are permitted under international law, while non-international conflicts are defined as conflicts carried out by actions that are contrary to law, namely rebellion so that the legally entitled government can take any legal action to maintain the national unity and integrity of a country. Therefore, there are several interesting definitions to be studied regarding armed conflict topics including the definition of the state, people, and rebels. International law becomes important when considering the current situation in the world, for example, the situation in Palestine, conflicts in Syria and Iraq involving the Islamic State of Iraq and Syria, and in our country specifically in Papua.

Humanitarian law is a set of rules that are constructed based on international treaties and customs that limit the powers of belligerent parties to use the means and tools of war as well as the protection of war victims. It has been widely understood that the principles of Military Necessity, Humanity, and Chivalry in humanitarian law are interpreted that the use of force or armed force as a way to defeat an opponent in humanitarian law is permitted, but in using armed force as a way to defeat the opponent must pay attention to the principle of humanity and must not use treasonous means. In addition to this principle, there is the Distinction Principle in humanitarian law whereby in an armed conflict the population of the conflicting parties is divided equally into two statuses namely combatant and civilian combatants. They may be killed and may kill but if they are caught, they are treated as prisoners of war. The civilian must be protected and cannot be targeted for attack. Moreover, there is Distinction Principle in humanitarian law and the Proportional principle, which are interrelated between one principle and another. Also, the objectives of humanitarian law include:

1. Protecting combatants and civilians from unnecessary suffering.
2. Guaranteeing human rights that are caught by the enemy.
3. Limiting the powers of the belligerents.

In humanitarian law, there are also terminologies such as Combatant and Civilian as well as Civil and Military Objects. Combatants are members of the armed forces, groups, and units under command who are responsible for their subordinates and are subject to an internal discipline system. Then, civilians are people who are not soldiers, militias, volunteer corps that are part of the armed forces and Organized Resistance Movements, and members of the armed forces who are not recognized by the enemy. 6 Marten Clause stated that in an event where there are no rules governing it, the principles of international law are used which are based on international customs, humanitarian principles, and public opinion.

Talking about the conflict that occurs between Israel and Palestine, it cannot be separated from the birth of the state of Israel history in which it cannot be separated from the role of Britain as the holder of the mandate from the Palestinian territories which should give Palestinian territories to the Palestinians but give the territory to the Jewish movement that gave birth to the state of Israel. Thus, it was recognized by several countries in the world which was continued with the acceptance of Israel in the United Nations. Since Israel became a state, the conflict has never stopped due to the question of whether Israel has the right to the Palestinian territories. Palestine continues to fight for the existence of an independent and sovereign Palestinian state which has not shown any signs of success to this day. The problem is the kind of conflict happening in Palestine remains unclear.

Efforts to Self-Determination as regulated in the United Nations Charter.

In responding to the situation in Palestine, humanitarian law recognizes armed conflicts between people against colonial domination, alien occupation, and racist regimes in their efforts to self-determination as regulated in the United Nations Charter and friendly relations between nations. Colonial Domination was aimed at Portugal against Mozambique meanwhile Alien Occupation was aimed at Israel occupying the west bank and Racist Regimes were aimed at regimes in South Africa. The above situation is considered to no longer exist because Portugal has no longer carried out colonial domination, Israel is no longer occupying the west bank (but on July 1, 2020, there is a plan from Israel to annex the west bank), while the racist regime in South Africa is no longer there. Therefore, The CAR Conflict or the so-called War of National Liberation is considered no longer there,

which means that all regions in the world have obtained their independence, there are no more regions in the world that are under colonies.

The situation that has occurred in Palestine until now has returned to a situation that could cause Palestine for being under Israeli occupation which can be categorized as a violation of international law. What happened with the Islamic State of Iraq and Syria is a situation that occurs in the world which is also an act that is contrary to international law because ISIS is in an area that according to international law occurs in the territory of Iraq and Syria categorized as a rebel. In armed conflict, there is often an entity that is legally categorized as a rebel but calls their entity the independence struggle movement to place a perspective on a movement as a national liberation movement while juridically the movement carried out is secession or rebellion. It should be noted that in this world there are almost no regions that have the right to do the right of self-determination because all people in this world have determined their destiny by becoming an independent country or being part of a country.

As a note that the right of self-determination can only be done once and cannot be done many times or more than once after a person has exercised the right of self-determination and has become part of one country. If people from that part of a country want to be independent, they must get approval from the country where they belong, and if it is not allowed, they cannot get independence, and if they force themselves, it will be included in the category of rebellion. The problem of rebellion becomes complex because each party will claim the responsibilities of the parties in the dispute related to compliance with various aspects of international law which have been confirmed to include aspects of humanitarian law or the law of war and human rights law. Humanitarian law is important in armed conflict because in the event of a violation of humanitarian law it will lead to war crimes, while violations of human rights will cause human rights violations, both of which are attached to elements of the state and power whose personification is attached to an individual who is the personification of the state which in this case is a state official.

Humanitarian law is a branch of international law that places criminal responsibility on individuals which is reflected in article 1 of the 1949 Geneva Conventions which states that the major parties undertake to respect and guarantee the convention in all circumstances.

Respect in article 1 above means that the state will carry out the provisions of the convention which means that it will carry out what is ordered by the convention and will not do what is prohibited in the convention and guaranteeing respect is interpreted as doing all efforts so that the convention can be implemented which includes the obligation to disseminate the provisions of the convention to its armed forces and, if possible, to residents within its country so that during armed conflict the convention can be implemented.

The philosophy that no country wants to violate humanitarian law is a philosophy of respecting and guaranteeing respect in the convention so that what happens is an individual, who violates humanitarian law where the state must make laws and regulations regarding violations of humanitarian law, find and prosecute the perpetrators.

International Criminal Law as Internationally Regulated Criminal Law.

In reality, it turns out that the perpetrators of Humanitarian Law violations are the highest state elements such as the Head of State or the Commander of the Armed Forces. Therefore the law in that country is unable to work because the highest official in a country is the personification of the state. In such circumstances, international law can be used as one of the international community's efforts. One of the examples of the international community's effort is the use of the International Criminal Tribunal for the Former Yugoslavia, where one of those tried was Slobodan Milosevic who was the President of Yugoslavia when the conflict occurred. Human rights violations are possible to occur in international armed conflicts and from a human rights perspective. Violations of human rights are inherent in the state and power whose personification is also attached to individuals who are state personifications, which in this case are individuals who are state officials. The two fields of science, namely humanitarian law and human rights are related to international criminal law where international criminal law can be interpreted as criminal law that is regulated internationally. Therefore, every action that is included in international crime cannot be denied. War crimes and serious human rights violations are included in the International Criminal Crime which is an aspect of study in international criminal law and can be tried before an international court, which in the history of the development of international law is known as the Nuremberg Trial, Tokyo Trial, International Criminal Tribunal for Rwanda, and International Criminal Tribunal for the former Yugoslavia.

War crimes, crimes against humanity, genocide, and aggression in the latest developments of the advancement of international law have become a masterpiece of the international community with the establishment of the International Criminal Court based on the 1998 Rome Statute where International Law can hold individuals accountable for crimes that are the jurisdiction of the Rome Statute 1998. Efforts to create a peaceful world continue to be carried out by the international community, one of which is the existence of the International Criminal Court which cannot be separated from the spirit of the international community contained in the Preamble of the United Nations Charter which reads to save future generations from the dangers of war that may arise 75 years later. The ideals of the international community to create a peaceful world have not yet been fully achieved.

Wars that continue to occur cannot always be prevented by the mechanisms contained in international law. The Security Council as the person in charge of world peace and security tends to be unable to handle various conflicts in the world, especially if permanent members of the security council are involved. The provisions contained in article 25 of the United Nations Charter state that Security Council decisions are binding and should be a basis for the authority possessed by the Security Council to compel countries in the world to comply with their decisions and as a means to achieve world peace. However, the Security Council is often unable to make decisions due to issues of interest in each of the permanent members of the Security Council, the veto power contained in article 27 paragraph 3 of the United Nations Charter makes it difficult for the Security Council to make decisions. Article 27 of the United Nations Charter which consists of 3 paragraphs begins with Article 27 Paragraph 1 which states that each member of the Security Council has one vote, then continues with Article 27 paragraph 2 which says that for procedural matters decisions are taken with 9 votes in agreement from members of the Security Council and Article 27 paragraph 3 states that in non-procedural matters it is taken with 9 votes in agreement from members of the Security Council with 5 permanent members expressing their agreement. The situation contained in article 27 paragraph 3 which regulates non-procedural problems become obstacle for the Security Council in making decisions, because it is often interpreted as important problems related to world peace and security, which in the end the non-procedural problems are very important depending on the interests of the permanent members of the Security Council which include the United States, Britain, France, China, and Russia.

In a situation when the interests of the permanent members of the Security Council are involved, the Security Council is unable to make decisions and bring about the world situation as it is today. Various conflict situations in the world can not be denied and can not be separated from the inability of the Security Council to act due to being shackled by the interests of each permanent member of the Security Council. The Syrian issue can't be denied that America tends to support the rebels and Russia tends to support the Government. In the Palestinian conflict, America tends to have close relations with Israel. Situations like these make it increasingly difficult for the world to realize the goals of the international community to achieve world peace and security. The domestic situation of countries that are part of the international community also cannot be separated from global issues such as human rights. As stated in the previous description, in a non-international armed conflict, there is an obligation imposed on the state at least to be able to implement a mini-convention or convention in miniature.

Convention in miniature is that in an armed conflict, the major participants must at least do: People who are not actively participating in the conflict, including members of the armed forces who have laid down their weapons and those who are no longer participating (*hors de combat*) due to illness, injury, or any other cause, under any circumstances, must be treated with humanity without any adverse distinction based on ethnicity, color, religion or belief, sex, ancestry or wealth or other similar criteria. For this purpose, the following actions are prohibited and will continue to be prohibited against the above persons at any time and place:

1. Violence against body and soul, especially every kind of murder, bullying, cruel treatment, and persecution
2. Hostage.
3. Rape of personal honor, especially insulting and degrading treatment.
4. Punish and carry out the death penalty without a decision first handed down by a court that is formed regularly, which provides all judicial guarantees that are recognized as mandatory by civilized nations. The wounded and sick must be collected and cared for.

By taking into account the provisions in the mini-convention mentioned above, at least that is the obligation of the state that must be carried out in a non-international armed conflict which if it is not carried out, it will create state responsibility which is the state's obligation to provide answers to state actions that are considered contradictory with international obligations.

Conclusion and Suggestion.

If we think about it more deeply, what is stated in the mini-convention is closely related to non-derogable rights in human rights, namely human rights that must be granted in all circumstances which include the right to life, the right to not be persecuted, the right not to receive treatment that degrades human rights dignity, the right to a fair trial, the right not to be punished for an act which when committed is not a legal act, the right to have a belief and religion, the right not to be penalized for failure to carry out a civil contract.

As described above, the role of the state becomes very important in carrying out the norms and principles in international law that form a country as a civilized country or as stated in article 38 paragraph 1 of the United Nations Charter as one of the sources of international law. General Principle of Law Recognized by Civilized Nations and everything depends on the state to position itself as a civilized country by complying with the values and principles of international law.

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