



Legal Protection for Medical Personnel as a Result of the Ukrainian War with Russia

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Abstract

A country will certainly take various ways to defend its sovereignty, in this case conflicts often occur between countries, the worst of which is war. The conflict between Ukraine and Russia has emerged in February 2022, where the war has claimed many victims, especially Ukrainian citizens. As with armed conflicts and wars that have happened before, in every war there are still protocols that must be obeyed. The war between Russia and Ukraine not only killed lives but also had an impact on the economy and other fields. In this case the government must also be present to provide medical assistance in war. Medical assistance is crucial in war because it is a supporting subject. However, their rights as medical personnel are often neglected. This research will discuss Legal Protection for Medical Personnel as a Result of the War between Russia and Ukraine.

Keywords: *Legal Protection; Medical Personnel; War*

Introduction

Armed war is one of the media to solve a problem as a result of a dispute between groups within a country or between countries which in fact cannot be avoided by the emergence of conflicts that cause disputes in armed wars.¹the current issue of armed war is one of the efforts to overcome the problems that are currently occurring between the two camps that have different perspectives and goals so that when the peaceful method no longer solves the problem, the way of war is a solution to determine who is right through the path of war .

¹Knut Dormann, 2003,Elements of Crimes under the Rome Statute of the International Criminal Court, : Cambridge University Press, Cambridge, p.3

The existence of war is actually caused by the first three cases because of economic goals so that it causes control over the economy through war. the second is caused by security and resilience issues that are threatened both within the country and outside the country, then the third is due to political conflict due to propaganda being played which causes an upheaval between groups with different interests.²Based on this, it is important that we look at the causes of the war so that we can see what actually became the motive for the role that hit the two sides that were fighting each other. Between Ukraine and Russia.

Ukraine's conflict with Russia as an event in humanitarian law that occurs in the war record in 2022. This event is a form of sovereignty possessed by each country to defend its country's sovereignty. State integrity. The problem of the war when viewed from the trigger is indeed as a result of Ukraine's foreign policy actions which will join NATO. There are allegations of Ukraine joining NATO by Russia

The problem of the war that occurred between Ukraine and Russia was not only a loss economically but also to the existence of medical personnel who were often victims of war whose true purpose was to provide assistance to the victims of the war. therefore in this paper will examine the legal protection given to medical personnel as a result of the war between Ukraine and Russia in the study of humanitarian law and legal settlement of the victims of these medical personnel.

Formulation of the Problem

Based on the description of the background above, problems arise which will be examined by the author in depth, namely:

1. How legal protection given to medical personnel as a result of the war between Ukraine and Russia in the study of humanitarian law?
2. How Forms of Completion of the Law of War Conflict Between Ukraine and Russia?

Research Methods

This research is categorized into the type of normative legal research, this is based on the issues and or themes raised as research topics. The research approach used is philosophical and analytical, namely research that focuses on rational views, critical analysis and philosophy, and ends with conclusions that aim to produce new findings as answers to the main problems that have been determined.³And will be analyzed with analytical descriptive method, namely by describes the applicable laws and regulations related to legal theory and positive law enforcement practices related to the matter.⁴

Discussion

A. Legal Protection for Medical Personnel in the War between Ukraine and Russia in the Study of Humanitarian Law

In the conflict between Ukraine and Russia, it often ignores the conditions that must be complied with in Additional Protocol I rules that during war it is prohibited to carry out indiscriminate attacks, to carry out attacks on women and children, to carry out attacks outside of the enemy's territory in the war zone, to attack personnel assisting in humanitarian affairs etc. Then non-international armed conflicts in

²Geoffrey Blainey, 1988, *The Causes of War*, 3rd ed, New York: The Free Press, , p. 325.

³Compare, Ishaq, *Legal Research Methods and Thesis Writing*, Thesis and Dissertation, Bandung: ALFABETA, 2017, p. 45

⁴Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada Media Group, Jakarta, 2011, p. 22

the rules of additional protocol II which has become international customary law, one of which is also regulated in additional protocol I is to provide protection for medical personnel and medical assignments in conditions of war.

The conflict between Ukraine and Russia is actually regulated in the law of war which has actually been regulated by the 1949 Geneva Convention which is one of the legal aspects that must be adhered to in carrying out an armed war. We know that armed war is not only automatically that warring parties may do anything in war, but there are aspects that are important to pay attention to, especially regarding medical personnel who are one of the aspects that must be protected because they are not as subjects involved in war but they are has an important role to save lives and even treat the injured parties as a result of the war. because of their existence they often become victims who must be targeted by the opposing camp and vice versa.⁵This is unavoidable in a state of war. Conflict between Ukraine and Russia. The opposing party could target medical personnel from the opposing camp to then attack. Because of this, in order to provide legal protection for medical personnel, legal regulations were issued, namely Additional Protocols I and II of 1977. The birth of these legal products was a form of effort to protect medical personnel who often became victims of armed wars, so both parties in the war were obliged to comply with the rule of law that medical personnel are not one of the parties involved in the war.

Conflicts between Ukraine and Russia, where medical personnel are often involved, become victims, which are very vulnerable to occur, because of the applicable provisions of International Humanitarian Law regulated in the 1949 Geneva Convention I concerning the Improvement of the Condition of Wounded and Sick Members of War on the Ground Battlefield and the 1977 Additional Protocol. on the Protection of Victims of International and Non-International Armed Conflicts.⁶Because of this, the legal basis for medical personnel can be seen in the provisions of the 1949 Geneva Convention I Chapter IV Article 24 that members of the Health Service personnel who are assigned duties and functions are employed to search for, collect injured, sick victims or to prevent internal medicine. taking care of these victims and special staff who are employed for health and spiritual duties must be given protection and respect for their existence and other similar health workers who also have the same rights in order to provide legal protection.⁷S

Legal arrangements regarding medical personnel are also regulated by Article 19 which reads that permanent buildings and Health Units must be given protection and respect for the existence of the parties to the dispute and further Article 21 that these permanent buildings and Health Units become does not apply when used outside of humanitarian obligations, and Additional Protocol II 1977 article 11 paragraph 1 for non-international disputes that medical personnel are given protection and respect because medical personnel are not the object of attack. On the other hand, along with health facilities. So not only are medical personnel legal subjects, but all forms of facilities that are used for health purposes may not be damaged or expropriated in any form. So that all forms of violations that occur will result in legal consequences for these violations. where often the violations committed against medical personnel are acts of murder, intentional persecution that causes death and even severe forgetfulness.⁸

In the provisions of the Geneva Convention I 1949 it is explained that Article 50 related to serious violations is an act that is inhumane for the violation committed, including an act of murder with a plan especially against medical personnel who are one of the parties who often become victims of the actions of armed parties who usually carried out by the opposing party with the aim that the opposing

⁵Sylvain Vite, 2009, Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations, International Review of the Red Cross, p. 76

⁶*Ibid.* Thing. 82

⁷Knut Dormann. Op. Cit. Hal. 43

⁸*Ibid.* Thing. 46

party who is the victim lacks medical personnel to overcome the problem of violations committed by the opposing party, therefore it is often a way for the opponent to finish off medical personnel who are truly respected and protected.

Based on the above, the events in the war between Ukraine and Russia against medical personnel are like one side of a coin that cannot be separated. In these war crimes, the condition is that there are aspects that have been violated in accordance with the provisions of their existence. Furthermore, in the provisions of additional protocol I 1977 in the provisions of Article 44 and Article 45 which regulates victims who experience injuries from opposing victims or against Health service workers or religious services who are given protection along with Health units or Health worker transportation which is also a space the scope must be given protection. which is the object of attack by the opposing party.⁹

B. Forms of Completion of the Law of War Conflict Between Ukraine and Russia

As for the form of settlement in the law of war between Ukraine and Russia in the provisions of the UN charter, it can be carried out peacefully in the provisions of Article 33 (1), namely through negotiations, through mediation, investigation, then conciliation, arbitration or according to law through a self-chosen body such as a criminal court. International Criminal Court (hereinafter referred to as ICC).

The form of settlement is through the International Humanitarian Fact-Finding Commission (hereinafter referred to as IHFFC) as a permanent investigative body to investigate facts and evidence related to alleged violations that occurred in cases of international war law. Where the legal basis for IHFFC is regulated in the provisions of the additional protocol to the 1949 Geneva Convention which were refined. So the advantages of the existence of this institution can be used as media to determine the existence of initial allegations and collect all legal facts that can be uncovered by this method of investigation so that they can find out initial allegations regarding a dispute that occurred as a result of violations of international war law.¹⁰The deficiencies in the IHFFC settlement cannot be applied by countries that have not ratified the Geneva convention and health protocol so that the impression that is generated in this settlement will cause a problem when one of the parties to the war does not ratify so that IHFFC legal rules cannot be applied the.

Furthermore, hybrid courts emerged as one of the solutions in criminal cases that arose on the basis of agreement arrangements between the UN and certain countries where the Cambodian state made an agreement with the UN council.¹¹Formation of hybrid courts after the existence of international military courts. The emergence of these courts is a continuation of the settlement of the ICTY and ICTR as a series of settlements before the birth of the hybrid courts where one of the aspects that caused the birth of the hybrid courts was because the national courts were unable to resolve the problem thoroughly in crimes of serious violations, especially related to international war law. This is why it is not surprising when the emergence is referred to as the third generation in order to become a container for settlement in international law.¹²

The negative aspect of legal settlement through hybrid courts is that there is no clear benchmark regarding which national law is used in providing a legal basis for resolving cases that occur where cases that occur in a country have no clear benchmark which national law applies. then it becomes the basis for use, therefore it will have an impact on the existence of legal uncertainty in the legal rules used and the

⁹Barnes, GP (2010). The International Criminal Court's Ineffective Enforcement Mechanisms: The Indictment of President Omar Al Bashir. *Fordham Int'l LJ*, 34, 1584

¹⁰Fred Tanner, 2000, Conflict Prevention and Conflict Resolution: Limits Multilateralism, 83 *International Review of the Red Cross*, pp. 547-556, and International Committee of The Red Cross, 1997, *International Humanitarian Law Answer to your question*, pp. 21-22

¹¹Robert Cryer, et.al., (2010), *An Introduction to International Criminal Law and Procedure* (Cambridge University Press) p. 5-6

¹²Ibid. *Thing*. 11

implementation of the law itself.¹³The settlement of disputes in hybrid courts is focused on the output of the results of the decision where there are two aspects which are the first direction can be light punishment for perpetrators of serious violations or free the perpetrators or it can also apply vice versa as an opportunity to retaliate as a result of actions committed because has committed a serious criminal offence.¹⁴

Based on this, the regulation or legal basis that is used uses the legal rules of the country. advantages in legal settlement through national courts as a form of the presence of the state in resolving a problem of serious violations in its own country which of course will get recognition and appreciation from outside countries means that the country is able to solve internal problems of its own country without involving international courts as a medium to solve a problem that is being faced.¹⁵because of this, the settlement carried out through national law means that the resulting decision provides justice and legal order because there are no parties who object to the settlement that has been carried out.

Conclusion

Conflicts between Ukraine and Russia, where medical personnel are often involved, become victims, which are very vulnerable to occur, because of the applicable provisions of International Humanitarian Law regulated in the 1949 Geneva Convention I concerning the Improvement of the Condition of Wounded and Sick Members of War on the Ground Battlefield and the 1977 Additional Protocol. on the Protection of Victims of International and Non-International Armed Conflicts.

The national court is not surprised that the subjectivity seen in the legal settlement of these serious violations is where the average victim affected is deceived by the provisions and products of the national law of a country so that they are unable to do much in resolving a serious problem in a country by only using national legal perspective. National courts often experience inability to resolve cases of serious violations, which then becomes the forerunner of international courts to provide a sense of justice for victims of these crimes.

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¹³Christina Möller, 'Gerhard Werle, (2004), Völkerstrafrecht (International Criminal Law): Book Review' 5 German Law Journal 425, 427

¹⁴Ivanišević, Bogdan, 2008. 'The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court' (International Center for Transitional Justice). pg 108

¹⁵Christina Möller. Ob. cit. 429



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