

Distinction Principle in International Humanitarian Law Related to Civilian Objects and Military Objects

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Abstract: This research examines the state's obligation to apply the distinction principle of international humanitarian law for separation of civilian objects and military objects in Indonesia. The government may be not interested in dividing these two objects, such as military headquarters in the midst of urban areas, public facilities categorized as civilian objects, as well as airports located in a military base categorized as military object. In addition, this research also describes the aspects of international humanitarian law in relation to efforts required from states to implement a distinction principle. Under international humanitarian law, the state has an obligation to separate civilian objects and military objects during peacetime for the protection of human dignity and the limitation of sufferings from war. This research applied the normative method with legislation approach which was done by reviewing all laws and regulations related to the handled legal issues. In addition, data used were primary legal materials, such as international legislation and conventions and secondary law materials, for instance literatures relating to international humanitarian law. Data collection employed in this research was by conducting literature study to obtain primary and secondary legal materials for the legislation approach.

1 INTRODUCTION

In various regions of Indonesia, civilian objects and military objects are adjacent, in general, and tend to not be separated by the state. With rapid development in various areas, buildings and houses of citizens built on the ways leading to military base are now integrated with military base. Such military base is used to be in sparsely populated area. Due to the rapid development in various area, civilian activities and civilian objects are together with military base. Furthermore, public facilities are combined between civilian and military objects, for example, existing airports in some areas in Indonesia utilised by civil aircraft which also used by military aircraft. Although the consequences may not be obvious, this can actually endanger the security of a country and civilians in the event of war or armed conflict.

According to Geneva Conventions Article 48 of 1977 Additional Protocol 1, to ensure respect and protection of civilians and civilian objects, the conflicted parties must be distinguish between civilians and combatants as well as between civilian

objects and military objects. The conflicted parties have to direct their operations only against military objects. This is intended to ensure the safety and protection of civilians when an armed conflict or war occurs. It is also a preventive step for the country to embark upon during peace time preparation to avoid or minimise civilians casualties during war. The distinction must be done in a peacetime.

Many countries ratify but some do not ratify this provisions. Although the state does not ratify the provisions for the separation of civilian objects and military objects, the provisions in humanitarian law are international norms, standard, and value that should be adhered by states. Briefly, even when a state does not ratify this provisions, conscious and consistence efforts must be made to separate military objects and civilian object. The separation of civilian objects and military objects is a preventive effort against attack on civilians and its objects during armed conflict. Thus, it is necessary to review the extent of the country's attention to the provisions of this Geneva Convention.

2 DISCUSSION

International humanitarian law is a branch of international law provided the protection and restrictions use of violence in armed conflict against: (Handerson, 2009) firstly, those who do not or no longer participating directly in hostilities; secondly, a restrictions on the number of facilities used to achieve the goal of the conflict, which is weaken the potential of enemy's military. It can be conclude that the basic principles of international humanitarian law, including: (Blanning, 2005) the difference between the civilians and combatants; a prohibition to attack those who are hors de combat; a prohibition which cause an unnecessary suffering; the necessity principle and the proportionality principle.

Humanitarian law not only governs conditions of war but it also regulates matters relating to war. Humanitarian law regulates conditions of war, activities before and after war. In essence, humanitarian law gives space for countries to fight by keeping in mind human values.

Rules in humanitarian law contained in their conventions are international customs which are then codified in the form of written agreements. This warring provision is a custom originating from western countries where development of humanitarian law originates. From this custom, a law of war was formulated and was set forth in The 1907 Hague Law and the 1949 Geneva Law. This clearly shows that war is not forbidden but concern more on how to fight justly and protect victims from war (Danial, 2016).

In the current era of globalization, the state no longer thinks of anything related to conflict or war, but prioritizes to take care of its economic condition. Development of infrastructure, buildings, and other suggestions supporting the economy in a country are intensified in order to pursue the economic goals of a country.

Table 1: The differences between civilian objects and military objects.

Civilian Objects	Military Objects
Based on Article 52 (1) of Additional Protocol I 1977:	Based on Article 52 (2) of Additional Protocol I 1977:
All objects which are not military objectives	Objects which by their nature, location, purpose, or use:

<ul style="list-style-type: none"> • make an effective contribution to military action and • those total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.
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During peacetime, the state must anticipate war or armed conflict with another country. Conscious and continuous separation of military objects and civilian objects is necessary during peacetime. With such separation, the state make efforts for both military and civilians to survive during war. The only purpose is to prepare when war is imminent and unprepared since war may not be expected by community. Current inter-state rivalries in all aspects can potentially lead to friction among countries. Therefore, with such separation during peacetime and in the event of war, the state is prepared with all the suitable conditions military to engage a war and all the suitable conditions for efforts to protect civilians.

In Article 37(2) of Additional Protocol 1 specifically deems camouflage, a common method for disguising a military object as a civilian object, a permissible ruse of war: "Such intended ruses act mislead an adversary or to induce him to act recklessly, but there is no applicable international law rule for infringe in armed conflict. It is not categorized as perfidious because they do not invite the confidence of an adversary with respect to protection under that law." The following are examples of such ruses: the use of camouflage, decoys, mock operations and misinformation. Heller (2015) states that the point of camouflage is to make a military object, such as artillery piece or a tank, appearing to be a civilian objects whether natural, such as foliage, or artificial, such as a building.

2.1 The Nature of Implementation of Distinction Principle Related to Civilian Objects and Military Objects Based on Humanitarian Law

In addition to distinction between civilians and military, the distinction between civilian objects and

military objects also requires to be adopted. When conflict or war occurred, military object, as target, can be legitimately attacked. Disabling military object is the aim of the conflicting parties. Civilian objects and civilians should not be targeted or victimized. During armed conflict, warring parties will aggressively attack their enemies. Civilians and civilian objects in the vicinity of military or military objects will be a part of such attack as a consequence. Hence, distinguish between military objects and civilian objects during peacetime is necessary. Otherwise, civilians and civilian objects will be avictim of military attack.

The conflicted must all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives and must not be directed against civilian objects. (Henckaerts, 2005)

The State's obligation to separate civilian and military objects should be exercised in peacetime according to the provisions of Article 48 of 1977 Additional Protocol I. The state should provide protection for its civilians as much as possible and minimize the potential for civilians as victims of war. There may be deliberate or intentional attack on a civil object by an adversary. When distinction between civilian and military objects is not accomplished during peacetime, adversary can claim that such attacks are on the military using civilian as shield or camouflage. Conversely, when separation between civilian and military objects is undertaken during peace time, deliberate attacks on civil objects during war cannot be justified. Nevertheless, it is the obligation of the state to protect its citizens with precautionary measures against attack on civil objects by adversary on pretext of disabling military objects. Such precautionary measures can only be embarked upon during peace time. Provisions for separation and distinction requires to be a part of policy during peace time to safeguard civilians safety and security during war.

2.2 Implementation of Distinction Principle related to Civilian Objects and Military Objects in Indonesia

Indonesia is subjected to international law, in particular international humanitarian law. Moreover, Indonesia ratified the 1949 Geneva Convention and enacted it under Law No. 59 of 1958 relating to the Accession of the State of the Republic of Indonesia to the 1949 Geneva Conventions. It means, normatively, Indonesia acknowledges and becomes

a party to the treaty so it is conferred the rights and bound by obligations to comply with the Laws of Geneva.

In the case of the distinction between civilian and military objects, it is actually regulated in 1977 Protocol Additional 1 which is currently not ratified by Indonesia. The 1977 Additional Protocol complements the 1949 Geneva Conventions; notably the 1949 Geneva Convention on the Protection of Civilians. This means that the 1977 Additional Protocol also provides international protection for civilians in times of armed conflict.

The 1977 Additional Protocol is explicitly established to protect the civilian population. The conflicting parties must all times distinguish between the civilian population including journalists and combatants, between civilian objects and military objectives in accordance with the requirements contained in the Decree of the Principal Deputy of Defence and Security Prime Minister No. MI / A / 72/62 which should direct its operations only on military targets. This provision is in effect an affirmation of the basic principles of international humanitarian law in regulating such long-standing armed conflicts in the 1977 Additional Protocol (Ismail, 2013).

In Indonesia, civilian objects and military targets appear not to have been separated by the government. The military headquarters of the Indonesian National Army (*TNI*) in various areas can be found in the middle of the city; close to residential areas and mixed with public facilities such as airports and hospitals. This is a problem for the future, especially if the Government does not pay attention to the application of the principle of distinction.

There is ratification of the 1977 Additional Protocol that could be a state's reason for not applying the principle of distinction. However, the important thing to be understood is that the 1977 Additional Protocol is part of the 1949 Geneva law categorized as customary international law codification. States constituting to conflicted parties are obliged to ensure that state duties relating to protection of civilians can be exercised in accordance with the provisions of the convention. This means that the country is obligated to act in a manner to ensure compliance for the convention in all circumstances. (Istanto, 1992)

Therefore, Indonesia should remain committed to the principles contained in international humanitarian law because Indonesia is subjected to international law. The most important is that Indonesia is obliged to uphold the protection of

civilians from harm and threat of conflict or war occurred. Humanity is the essence of humanitarian law and the protection of humanity is the highest respect for international law and humanitarian law. Therefore, as a sovereign country, Indonesia should apply the principle of distinction between civil and military objects as a preventive effort to protect their civilians from unnecessary threats, attacks and suffering resulting from war.

3 CONCLUSIONS

The distinction principle is one of the important principles in humanitarian law where its application should be prioritized by the state, especially by Indonesia during peacetime for the future in case of armed conflict. The state is able to protect its civilians from adverse impacts. Although no one expects the war to occur, as a country that upholds human rights, the government should examine to distinguish between civilian and military objects as a preventive effort to uphold humanitarian values in the event of war.

REFERENCES

- Blanning, T.C.W., 2005. *The Culture of Power and the Power of Culture*, Oxford University Journal. Oxford University, Vol. 62.
- Danial., 2016. *Efektifitas Konsep Prinsip Pembedaan Hukum Humaniter Internasional Sebagai Upaya Perlindungan Korban dalam Konflik Bersenjata Modern*, Jurnal Media Hukum. Vol. 23 No. 2 December 2016.
- Handerson, I., 2009. *The Contemporary Law of Targeting*, Martinus Nijhoff Publisher Journal. Leiden-Boston: Hotei Publishing, Vol. 25.
- Heller, K.J., 2015. *Disguising a Military Object as a Civilian Object: Prohibited Perfidy or Permissible Ruse of War?*. Stockton Center for the Study of International Law. U.S Naval War College, Vol. 91.
- Henckaerts, J.M., and Beck, L.D., 2005. *Customary International Humanitarian Law*, Published in the United States of America by Cambridge University Press. New York, Vol. 1.
- Ismail, I., 2013. *Penerapan Konvensi Jenewa 1949 Dan Protokol Tambahan 1977 Dalam Hukum Nasional Indonesia (Studi Tentang Urgensi Dan Prosedur Ratifikasi Protokol Tambahan 1977)*, Jurnal Dinamika Hukum. Vol. 13 No. 3 September 2013. Page 373.
- Istanto, S., 1992. *Perlindungan Penduduk Sipil (Dalam Perlawanan Rakyat Semesta dan Hukum Internasional)*, Andi Offset. Yogyakarta.

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