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Moral Dilemmas in The War of Ethical Analysis Against Violations of Humanitarian Law by State and Non-State Actors

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ABSTRACT

International Humanitarian Law (*IHL*) exists as a normative guide aimed at limiting suffering during armed conflict, especially by establishing rules on the protection of individuals who do not take part in combat, such as civilians, medical personnel, and prisoners of war. The purpose of this study is to identify the positive legal provisions that govern the legal issues under review, the legal principles or *juridical* principles that are relevant in analyzing the legal issues under study, and to determine the *juridical* interpretation of laws and regulations related to these legal issues. *Normative* legal research methods are used. The results of this study indicate that, with proper and consistent interpretation, humanitarian law can be internalized into the national legal system and become the basis for enforcing justice against offenders, as well as protecting victims from abuse of power and violence.

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INTRODUCTION

War always carries complex humanitarian consequences, where moral dilemmas often arise from the tension between military objectives and ethical obligations to the protection of civilians. According to (Khawarizmi, 2021) International Humanitarian Law (HHI) exists as a normative guide aimed at limiting suffering during armed conflict, especially by establishing rules on the protection of individuals who do not take part in combat, such as civilians, medical personnel, and prisoners of war. However, in practice, violations of this law often occur, both by state and non-state actors. According to (Sandra, 2019) These violations raise a profound moral dilemma because they question the validity of the moral claims of the parties to the war, as well as raise questions about who is to blame, how the principles of justice can be upheld, and whether ethics can be maintained in the midst of systematic violence.

State actors, such as national militaries involved in armed conflicts, often justify aggressive actions on the grounds of maintaining sovereignty, national security, or the fight against terrorism. In the process, military operations often cause civilian casualties and damage to civilian infrastructure, such as hospitals and schools. According to (Putra et al., 2022) In modern armed conflict, the use of drones and precision airstrikes are often used to target the enemy, but it is not uncommon to cause additional innocent casualties. Although these actions are often justified on the basis of military necessity, from an ethical point of view, they remain a sharp debate because they involve the principles of proportionality and discrimination two of the main pillars of humanitarian law (Sudarso, 2023). In many cases, the state has covered up these violations on the grounds of military secrecy or national security, thus hindering accountability and justice for the victims.

Non-state actors such as rebel groups, armed militias, and terrorist organizations are also the main perpetrators of violations of humanitarian law. They often do not have a clear

command structure and are often not subject to the rules of war. Many of these armed groups deliberately target civilians, use children as soldiers, or use civilian facilities as shields to avoid attacks (Permanasari, 2018). These actions not only violate international law, but also cause immense suffering to civil society. From an ethical point of view, violations by non-state actors create a dilemma because they often operate on the basis of claims of struggle for justice or liberation from oppression, but instead pursue methods that are contrary to universal moral principles (Ayomi, 2020).

The moral dilemma is further complicated when both sides in a conflict, both state and non-state, accuse each other of being lawbreakers, while ignoring their own transgressions. This situation creates a vicious circle that is difficult to break because each side feels that they have moral legitimacy for their actions. According to (Giovanny et al., 2021) In many cases, civilians are caught up in this conflict and fall victim to the never-ending logic of reciprocal violence. Another challenge is how to enforce justice after a violation has occurred. International tribunals such as the International Criminal Court (ICC) have a role to play in prosecuting war criminals, but the implementation of the law is often hampered by global political interests. According to (Putu et al., 2020) many major countries reject the ICC's jurisdiction or are uncooperative in handing over criminals from their side. This suggests that international justice is often uneven, reinforcing the perception that the law is only enforced on the losing side or has no political power. As a result, public trust in the international legal system is weakened, and universal moral principles lose their authority.

The international community needs to strengthen monitoring, accountability, and law enforcement mechanisms so that violations of humanitarian law do not become normal in war. This includes strengthening agencies such as the United Nations, ICRC (International Red Cross), as well as the involvement of civil society organizations in reporting and advocacy (Amini & Pebrianto, 2022). Restorative approaches such as reconciliation and acknowledgment of the victim's suffering are also important in rebuilding trust and preventing similar violence in the future. The principle of justice is not only about punishing the perpetrator, but also providing space for the victim to be recognized and his rights restored.

The moral dilemma in war is not only a question of right and wrong legally, but also concerns the depth of human values. When humanitarian law is violated by states and non-state actors, the world must not remain silent. According to (Saly, 2019) The ethics of war is not a utopian thing, but an important guideline that must continue to be fought for in the midst of chaos and uncertainty. Because in the end, humanity can only survive if even in the midst of violence, humans are still able to uphold their moral values.

The violation of International Humanitarian Law (IHL) by both state and non-state actors remains a critical issue in contemporary armed conflicts, as evidenced by numerous scholarly studies. Research by Khawarizmi (2021) highlights the normative role of IHL in limiting suffering during conflicts, particularly in protecting civilians, medical personnel, and prisoners of war. However, violations persist, with state actors often justifying actions under the guise of national security, while non-state actors, such as rebel groups, operate outside legal frameworks (Permanasari, 2018; Ayomi, 2020). Previous studies, such as those by Sandra (2019) and Putra et al. (2022), have explored these violations but often focus narrowly on either state or non-state actors, neglecting the interplay between the two and the systemic challenges in enforcing accountability. This gap underscores the need for a more integrated analysis of how both actors contribute to the erosion of IHL principles.

The urgency of this research lies in the escalating complexity of modern conflicts, where asymmetric warfare and advanced technologies, such as drones, blur the lines of accountability (Geovanie et al., 2022). The lack of consistent enforcement mechanisms, as noted by Giovanny et al. (2021), exacerbates impunity, leaving victims without redress and perpetuating cycles of violence. Furthermore, international tribunals like the ICC face political

resistance, undermining their efficacy (Putu et al., 2020). This research addresses these gaps by examining the juridical and ethical dimensions of IHL violations, offering a holistic perspective that bridges theoretical norms with practical enforcement challenges. The novelty of this study lies in its comparative analysis of state and non-state actors, coupled with a focus on the interpretative methods (grammatical, systematic, teleological) that can strengthen IHL application in diverse conflict scenarios.

The implications of this research are significant for policymakers, legal practitioners, and international organizations. By identifying systemic weaknesses in IHL enforcement, the study advocates stronger monitoring mechanisms and restorative justice approaches, as suggested by Amini & Pebrianto (2022). It also contributes to the academic discourse by proposing a framework for integrating sociological and historical interpretations into legal analyses, ensuring that IHL remains responsive to evolving conflict dynamics (Astuti, 2021). Ultimately, this research aims to reinforce the moral and legal foundations of IHL, fostering greater accountability and protection for conflict-affected populations.

METHOD

The *normative* legal research method was an approach used to study law as a system of norms that applied in society. This research focused on the study of legal principles, both written and unwritten, with an emphasis on the analysis of laws and regulations, legal doctrines, legal principles, and relevant court decisions. The purpose of this method was to find clarity of norms, consistency between regulations, and *juridical* arguments in answering the legal issues being studied. Commonly used approaches in *normative* legal research included the *statute approach*, the *case approach*, the *historical approach*, the *conceptual approach*, and the *comparative approach*.

This research was qualitative and used primary legal materials such as laws, as well as secondary legal materials such as literature or legal journals. In the context of preparing a thesis or legal scientific paper, the *normative* method was very useful for formulating systematic and logical arguments about a legal problem, without having to involve direct observation of people's behavior as in *empirical* research. Thus, this method placed law as an autonomous and rational system, which could be analyzed in depth through literature study and legal interpretation.

RESULTS AND DISCUSSION

Positive laws governing violations of international humanitarian law by state and non-state actors rely on a number of international and national legal instruments designed to protect victims of armed conflict and enforce responsibility for serious violations. Within the scope of international law, the provisions of humanitarian law are regulated in the 1949 Geneva Convention and Additional Protocols I and II (Daniati et al., 2020). The Convention affirms that in armed conflicts, both international and non-international, all parties involved including state actors and non-state armed groups are obliged to adhere to basic principles such as the protection of the civilian population, the prohibition of attacks on civilian facilities, and the humane treatment of prisoners of war. Gross violations of these provisions, such as mass killings, torture, systematic rape, and forced expulsion of civilians, are categorized as war crimes and crimes against humanity, and are subject to international criminal liability (Zagoto et al., 2023).

In the context of state actors, legal responsibility for violations of humanitarian law can be imposed both individually and institutionally. The state is legally responsible if its military apparatus commits acts in violation of the international convention. According to (Ghoffar & Kusumo, 2021) High-ranking state officials, such as heads of state, defense ministers, or military commanders, can be held accountable based on the principle of command

responsibility, where a superior can be found guilty if he knows or should have known that his subordinates committed a violation, but fails to prevent or punish it. In the 1998 Rome Statute on which the International Criminal Court (ICC) was established, this provision was explicitly stated, and has since become an important part of efforts to uphold international justice against crimes committed by states (Greece, 2019).

Non-state actors such as armed groups, terrorist organizations, or rebels are also subject to obligations to respect international humanitarian law. This is affirmed in Additional Protocol II to the Geneva Conventions, which governs non-international armed conflicts, and also in various UN Security Council resolutions (Suryokumoro & Ikaningtyas, 2020). In practice, challenges arise because non-state actors do not necessarily recognize the legitimacy of international law or operate outside the jurisdiction of the formal justice system. According to (Siahaan & Dewi, 2023) The law still requires them not to target civilians, not to use children as combatants, and to treat prisoners humanely. Several ad hoc international tribunals, such as the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), have sentenced non-state militia or rebel leaders who are proven to have committed war crimes and genocide.

In terms of national law, most countries that have ratified the Geneva Conventions have ratified it in the form of domestic laws that allow law enforcement against perpetrators of violations of humanitarian law, both from the official military and armed groups. In Indonesia, for example, although it is not yet a state party to the Rome Statute of the ICC, several principles of humanitarian law have been adopted in Law Number 26 of 2000 concerning the Court of Human Rights (Astuti, 2021). The law regulates the crimes of genocide and crimes against humanity, including systematic torture, mass killings, enforced disappearances, and sexual slavery. In the case of gross human rights violations in East Timor and the Abepura case, this provision has been used to process a number of military officers and state officials.

The application of positive laws against non-state actors in Indonesia still faces serious challenges, especially related to jurisdictional recognition, identification of perpetrators, and weak protection systems for witnesses and victims. In some cases of armed violence involving separatist groups or domestic terrorists, law enforcement processes often focus on ordinary criminal aspects such as terrorism or treason, without considering the dimensions of international humanitarian law as a whole (Gabriella et al., 2017). This shows the gap between international norms and their implementation at the national level, especially when countries have not yet adopted a comprehensive legal framework that is responsive to the context of armed conflict.

The principle of universal jurisdiction also provides opportunities for other countries to prosecute perpetrators of violations of humanitarian law, regardless of the nationality of the perpetrator or the location of the crime. This principle was applied in the case of Eichmann in Israel and the case of Hissène Habré in Senegal, which showed that international crimes know no limits of conventional jurisdiction (I. Sari, 2021). In this case, international positive law provides a global accountability mechanism that can be activated when the perpetrator's home country fails to enforce the law. Positive legal provisions, both international and national, have expressly stipulated that violations of humanitarian law by state and non-state actors are serious crimes that must be dealt with legally (Ardhiansyah, 2022). Although in practice there are still implementation constraints, such as weak law enforcement capacity, political conflicts of interest, and limited resources, the direction of legal development shows a global commitment to strengthening accountability. Enforcement of humanitarian law is not only an issue of justice, but also part of efforts to maintain peace, prevent the recurrence of armed violence, and build respect for human dignity in even the most extreme situations (Mukhopadhyay, 2022).

In analyzing violations of humanitarian law by state and non-state actors, a normative approach is needed that relies on legal principles or juridical principles that have been

recognized internationally and nationally. These principles not only form the moral and juridical basis in the practice of international law, but also serve as a key benchmark in assessing the legality of actions taken in the context of armed conflict (Scott, 2019). Some of the relevant legal principles include the principle of legality, the principle of individual responsibility, the principle of non-discrimination, the principle of proportionality, the principle of protection of non-combatants, and the principle of command responsibility.

The principle of legality (nullum crimen sine lege, nulla poena sine lege) is a fundamental principle in international criminal law, including humanitarian law. This principle affirms that no act can be punished unless it has been predetermined in law as a crime (Mardiatiwi, 2019). In the context of violations of humanitarian law, this means that acts such as torture, mass killing, the use of chemical weapons against civilians, or rape in armed conflict, can only qualify as gross violations if they have been specified in legal instruments such as the 1949 Geneva Convention and the Additional Protocol, the Rome Statute, or the national law that adopts those provisions. Thus, the principle of legality guarantees that any punitive action against war criminals is carried out fairly, based on the law in force in advance, and not on the basis of a law made after the incident took place (Ho Hengkyo, 2019).

The principle of individual accountability is a key principle in the modern international legal system that emphasizes that individuals, including high-ranking state officials as well as leaders of non-state armed groups, can be held personally accountable for violations of humanitarian law (Rahmadani & Svinarky, 2023). This principle marks a paradigm shift from a system oriented towards state responsibility to one that emphasizes the individual as the subject of international law. In many cases, such as the trial of Slobodan Milošević in the ICTY or Charles Taylor in the Special Court of Sierra Leone, individual accountability is upheld to ensure that there is no impunity for perpetrators of serious crimes, regardless of their political or military status.

The principle of non-discrimination plays an important role in ensuring that all victims of conflict, both civilians and wounded combatants, receive humane treatment without distinction of race, religion, nationality, political status, or other differences. This principle is explicitly contained in all Geneva Conventions and forms the basis for the implementation of humanitarian assistance (Ananda & Kusniati, 2022). In armed conflict, violations of this principle are often seen in the form of systematic violence against certain ethnic or religious groups, which are then categorized as crimes of genocide or crimes against humanity. The principle of non-discrimination also serves as an ethical and juridical parameter in assessing violations of humanitarian law.

The principle of proportionality is a key principle in regulating the use of military force during conflicts. This principle requires that military strikes must be balanced and not excessive to the expected military advantage. For example, in carrying out an attack on a legitimate military target, the warring party is still prohibited from taking actions that result in substantial losses to civilians if the military benefit from the attack is not significant (Khairani et al., 2021). Violations of the principle of proportionality can be seen in the use of high-explosive bombs in densely populated areas, or the siege of areas that systematically obstruct access to food and medicine. This principle is very relevant in distinguishing legitimate military actions from actions classified as war crimes.

The principle of protection of non-combatants or civilians is also one of the main principles in humanitarian law. Humanitarian law expressly protects those who are not or are no longer directly involved in hostilities, such as civilians, medical officers, prisoners of war, and wounded victims. Attacks directly directed at them are considered serious violations (Ahmad et al., 2023). In practice, non-state armed groups often ignore this principle, either because of their strategies of intimidation of the population or ignorance of humanitarian law. Likewise, state apparatus in situations of internal conflict uses a repressive approach to civil

society. In this case, the principle of protection of non-combatants is an important benchmark in assessing violations of humanitarian law by both sides.

The principle of command responsibility is a principle that states that a military commander or civilian leader can be held accountable for crimes committed by his subordinates if he knows or should have known about the crime and fails to take the necessary steps to prevent or punish it (Sunga, 2023). This principle is important because in the military command system, the authority and influence of a leader is very large on the actions taken by his subordinates. The application of this principle aims to prevent any evasion of responsibility by high-ranking officials by claiming that they are not directly involved in the violation. In practice, this principle is used in various international courts, including in cases of gross human rights violations committed by state armed forces and non-state armed groups (Pratama et al., 2021).

The juridical interpretation of laws and regulations related to violations of humanitarian law by state and non-state actors is an important step in understanding the meaning and scope of legal norms that govern behavior in armed conflict. According to (Hengky, 2019) International humanitarian law, otherwise known as the law of war, is a part of public international law that aims to protect people who do not or no longer participate in hostilities and limits the means and methods of warfare. In the context of Indonesia and the international community, juridical interpretation of this regulation is carried out using legal interpretation methods, such as grammatical, systematic, historical, teleological (objective), and sociological interpretations, to ensure its application in accordance with the applicable principles of law and justice (D. L. Sari, 2017).

Grammatical interpretation is carried out by understanding the literal meaning of the norms contained in legal instruments, such as the 1949 Geneva Convention, Additional Protocols I and II, the 1998 Rome Statute, and Law Number 26 of 2000 concerning Human Rights Courts in Indonesia. For example, the term "gross violation of humanitarian law" grammatically includes acts such as arbitrary killings, torture, enforced disappearances, rape, and attacks on civilians. This literal interpretation is important to ensure that law enforcement officials, courts, and human rights institutions do not deviate from internationally agreed normative boundaries (Udit et al., 2021).

However, grammatical interpretation alone is not enough. Systematic interpretation is used to see the relationship between a norm and another norm in a legal system. In the case of humanitarian law, it is necessary to pay attention to the relationship between international humanitarian law, international criminal law, and human rights law. For example, violations committed by state actors in internal conflicts, such as military operations in civilian areas, should be viewed not only from the perspective of humanitarian law, but also in relation to the provisions of national law on the use of force by the military, as well as human rights principles in the 1945 Constitution and human rights instruments ratified by Indonesia such as the International Covenant on Civil and Political Rights (ICCPR). With systematic interpretation, legal provisions are not read partially, but rather within the framework of the entire national and international legal system (Geovanie et al., 2022).

Historical interpretation is carried out to understand the background of the composition of the norms of humanitarian law, including the intention and spirit behind it. The Geneva Conventions, for example, were born out of the terrible experiences of World War II and aimed to prevent similar atrocities in the future (Innocenti et al., 2022). By understanding their historical context, legal norms are not only seen as rigid texts, but as living instruments aimed at protecting human dignity in extreme situations. This historical interpretation is important when dealing with new situations such as asymmetric wars between states and non-state armed groups, in which the classical military structure no longer applies, but the principles of protection must still be upheld (Aviantara, 2019).

Teleological interpretations or interpretations based on the purpose of legal norms are also very relevant. The main objective of humanitarian law is to reduce human suffering resulting from armed conflict and to guarantee respect for the law and humanity (Purnamasari, 2022). With this approach, law enforcement officials must interpret every relevant law and regulation by paying attention to the principles of protection, humanity, and justice. For example, in the face of abuses by non-state armed groups such as militias or terrorist organizations, a teleological approach would reject the disproportionate use of force, even though there is no explicit national law that directly governs the actions of such groups. As long as the act violates the universal principles of the protection of civilians and proportionality, it remains within the scope of violations of humanitarian law that must be acted upon (Suryokumoro & Ikaningtyas, 2020).

Sociological interpretation also plays an important role, especially in the context of the application of humanitarian law in countries experiencing internal armed conflict or high socio-political tensions. This interpretation considers the social, cultural, and political developments that occur in society. For example, in the context of domestic armed conflict where ethnic or religious differences are a major factor, law enforcement officials need to understand the social context behind acts of violence and violations of humanitarian law (Astuti, 2021). With a sociological approach, the law becomes more responsive to social realities and is able to prevent discrimination in its application.

In practice, juridical interpretation of laws and regulations governing violations of humanitarian law also needs to pay attention to the principle of lex specialis derogat legi generali, namely that special laws override general laws. This means that in situations of armed conflict, humanitarian law as a lex specialis can override or regulate more specifically general provisions in national criminal law (I. Sari, 2021). However, this does not mean that national laws are ignored. Precisely within the framework of national law enforcement, the apparatus and judiciary must be able to integrate international legal norms into domestic legal mechanisms, either through ratification, adoption into national law, or the application of the principle of universal jurisdiction to violators.

A comprehensive juridical interpretation of the rules of humanitarian law requires a cross-disciplinary understanding of law and an awareness that protection for victims of conflict is not only legally formal, but also substantial moral. In this context, judges, prosecutors, and policymakers have a strategic role to play in ensuring that legal norms do not stop at text, but become a tool of transformation that guarantees respect for humanity. With the right interpretation approach, the law can be used as a tool to limit power, protect victims, and remind us of the limits of humanity in armed conflict, both by state and non-state actors (Ardhiansyah, 2022).

CONCLUSION

Juridical interpretation of laws and regulations governing violations of humanitarian law played a crucial role in ensuring fair and consistent application of the law in line with humanitarian principles. A comprehensive approach—incorporating grammatical, systematic, historical, *teleological*, and sociological interpretation methods—offered complementary perspectives for understanding the intent and scope of legal rules in both national and international contexts. Such interpretation not only enforced rules during armed conflict but also functioned as a moral and legal instrument to regulate the use of force by state and non-state actors, with the principle of *lex specialis derogat legi generali* ensuring that humanitarian law was not superseded by general national law. Proper and consistent interpretation allowed humanitarian law to be internalized within national legal systems, providing a foundation for justice and protection against abuse. For future research, it is suggested to examine how digital

technologies and cyber warfare influence the interpretation and application of humanitarian law, especially in addressing new forms of conflict and emerging threats to civilian populations.

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