

WAR CRIMES FROM THE PERSPECTIVE OF ISLAMIC LAW AND INTERNATIONAL LAW

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Abstract: War is the highest form of conflict between humans that involves the use of weapons. War is a human tragedy that causes death and priceless losses. War always gives rise to various economic, political and social consequences that degrade human values. As a form of awareness of the consequences and consequences of war, it was agreed to establish International Humanitarian Law. In line with the Preamble to the 1945 Constitution of the Republic of Indonesia, Indonesia is one of the countries that has ratified the international convention on International Humanitarian Law. Conceptually, Islamic law, national law and international law regulate the conditions of war. However, in practice, the terms of the war were not implemented consistently and consistently until the war turned into a war crime. The aim of this research is, firstly, to examine and analyze Islamic law, national law and international law regarding war crimes, secondly to examine and analyze forms of efforts to enforce national law and international law regarding war crimes. The research method uses a type of normative research which places law as a system of norms, the subject of the study is conceptualized in the norms that apply in society, this type of research is taken through literature, which means legal research by examining library materials or documents.

Keywords: War Crimes, Islamic Law, International Law.

Introduction

War is an act or action of a physical or non-physical nature that aims to fight for something that is clearly important for the participants in the war. Strictly speaking, this means that a person is in a state of hostility between two groups of people with different views, giving rise to conflict, to such an extent that war is declared between the two groups of society to resolve the problem or to resolve the problem. conflict, and pain and suffering still exists. Huge loss of life between the two warring groups (Kereh, 2019).

Throughout the history of human civilization, there have been many conflicts involving one person and another, one group and another. History also records that many conflicts end in war, which is a way to resolve conflicts or disputes between the parties involved. War is as old as human history. In the past, war was illustrated by massacres between warring factions. War is also a form of human defensive instinct, both in dealing with other people and between nations or countries (Mochtar, 1968).

In armed conflict, of course, there are acts of cruel war crimes and violations that result in several losses. War crime is an act of violation within the scope of international law. To deal with war crimes in international law, there are several rules such as those regulated in International Humanitarian Law (IHL), where there are various scopes within these regulations,

namely: the Geneva Convention, the Hague Convention, and along with jurisprudential agreements and there are provisions or regulations which exists to combat crimes that are considered a serious threat to humanity for crimes that occur with the need for a rule, namely International Criminal Law.

In a hadith narrated by Imam Muslim from Abdullah ibn Abi Awfa, the Prophet stated, “Do not hope to meet the enemy, and pray to Allah for peace. But if you meet an enemy, face it with patience. This hadith shows that peace is the main principle in Islam, while the use of armed force is a necessity to maintain that peace. In other words, Islam directs the principle “don't look for enemies, but if you meet an enemy, Muslims should never run away from him”.

Based on the verses of the Qur'an and the history of the life of the Prophet Muhammad SAW, Ali Wahbah concluded that there are three groups that can be fought in Islam, namely:

1. It was the polytheists who started the war against Muslims;
2. The party who cancels the agreement unilaterally;
3. The enemies of Islam who entered into an alliance to destroy Islam and its people, as happened in the Ahzab war (Khandaq War).

Literature Review

1. War Crimes

War is a large-scale struggle, a continuation of politics in a different form. Therefore, war has a very broad meaning, both in physical form (use of force/violence/power/strength) and in non-physical form (soft power). (Carl, 2007).

War is called Qitaal in Arabic. In Islam there is a more general term, namely jihad. Three synonyms for the words Qitaal, Harb and Ghazwah (battle, war and expedition) are topics discussed among Fiqh scholars, namely. H. jihad in the specific sense of war against the enemy is often discussed.

Little is known about humanitarian law because it is widely known and has become a reference in regulating armed contacts/armed conflicts between countries in the world. The word "international" in conjunction with the term "humanitarian law" indicates that humanitarian law is subordinate to the norms of international law.

The term humanitarian law was previously known as the law of armed conflict or the law of war (Suwardi, 2001). It can be seen that there is a very significant change in terms. This change in terms was conveyed by Stracke that:

The right to wage war has a legal connotation, viz. That is, war is an armed conflict that meets certain conditions, viz. This means that the party at war is a state and there must be a declaration of war, even though in reality there is still an armed conflict that does not involve the state. and is not preceded by a declaration of war, so that parties participating in an armed conflict who do not fulfill these two conditions can enjoy the protection of international law relating to war, such as the Hague Law and Geneva Law. Because the term "military emergency" is associated with certain requirements, a neutral and appropriate term was chosen to protect all parties, namely "law of armed conflict". However, at a later stage of development, the law of armed conflict was integrated into humanitarian principles and the term “law of armed conflict” was replaced with “international humanitarian law”.

2. Islamic Law and International Law

Islamic law is a combination of the words "law" and "Islam". Apart from that, law can be interpreted as a set of rules of human behavior that are recognized by a group of people, developed by people who are authorized by that society and apply and are binding on all its members. If the word "law" is combined with the word "Islam", then Islamic law is a set of

rules based on the revelation of Allah and the Sunnah of the Prophet regarding human behavior, which are recognized and considered binding for everyone who believe in Islam (Amir, 2011).

Allah's will or decree relating to human actions, among ushul experts, is called "syara law", while among fiqh experts, "syara law" is the influence of Allah's decree on human actions. All of God's will regarding human actions is basically found in the Qur'an and its explanation in the Sunnah of the Prophet. Nothing is missing from the Koran. However, the Qur'an is not a book of law in the understanding of fiqh experts because it only contains commandments in the form of commands and prohibitions or other similar expressions; In other words, the Qur'an contains legal norms (Kutbuddin, 2008).

So, Islamic law is law that originates from and is part of the Islamic religion. The concept of Islamic law, its basis and legal framework were established by Allah. This law not only regulates human relationships with humans and objects in society, but also human relationships with God, human relationships with humans and themselves, human relationships with other humans in society, and human relationships with natural objects around them. (Abdul, 1994).

International Law can be defined as the totality of law consisting largely of principles and rules of conduct which states feel themselves bound to obey, and therefore, do generally obey in their relations with each other. (Starke, 2010).

The legally binding power of international law has been repeatedly confirmed by the nations of the world in international conferences. One illustration of this is the Charter for the establishment of the United Nations organization, which was formulated in San Francisco in 1945. This charter is both expressly and implicitly based on the actual legality of international law.

In the current era of globalization, the existence of international law cannot be denied, in fact international law does not only regulate relations between nations, currently international law has developed rapidly to such an extent that state subjects are not limited to just countries as at the beginning of the development of law international.

Method

This research is normative legal research, namely legal research that places law as a building system of norms (Simatupang, 2022). In research, normative law is law that is conceptualized in norms or rules that apply in society and becomes a reference for everyone's behavior (Koto, 2023). Normative research is a type of library legal research, which means legal research by examining library materials or mere documents. The nature of normative legal research is believed to be able to find answers to the problems studied (Perdana, 2024).

Result and Discussion

1. War Crimes in the Perspective of Islamic Law

According to the interpretation of the Al-Quran, Surah Al Baqarah (2): Verse 190, parties to a conflict are prohibited from committing acts that exceed their limits. With regard to prisoners of war, parties are prohibited from treating prisoners inhumanely. Torture or violation of honor is completely contrary to the spirit of this verse. What is meant by "crossing national borders" are prohibited things such as dismembering corpses, looting, killing women and children who are arrested, torturing and killing elderly people who are arrested, and committing inhumane acts against them (sayyid, 1999).

Mistreatment, beatings, sexual harassment and other forms of torture carried out against captives are also contrary to the objectives of Islamic Law as summarized in Maqasid as syari'ah al khomsah, namely (a). Hifz al din: protection of people's religious rights and obligations, (b). Hifz al nafs: protection of human survival, (c). Hifz al aql: protection of the

intellectual potential of people's souls, (d). Hifz al nasl: protection of the integrity of the marriage bond for lasting connection between generations. (e). Hifz al mal: protection of property rights.

Discussions of prisoners of war in Islamic law are often found in classical legal books which are placed as a subtopic discussion of jihad, so they seem global and lack detail. One of the contemporary studies regarding the treatment of prisoners of war in the Koran is Kushartoyo Budi Santoso's work entitled *The Laws of War in Islamic Law*. In this article he only briefly discusses the treatment of prisoners of war. This book emphasizes that Muslims may treat prisoners of war in accordance with the behavior of the enemy. Excessive bloodshed is also prohibited, so that it can be interpreted that the prisoners of the defeated enemy must not be killed or tortured without cause (Santoso, 1997).

Islam commands Muslims to treat prisoners kindly and gently and not to torture or harm their honor. In certain circumstances, good treatment even takes the form of forgiveness, unconditional release, treatment of sick prisoners, and so on. During the Battle of Badr, Islamic forces captured around 70 Quraysh polytheists. Of these, only two people were executed because of the enormity of the war crimes they committed. The two were Nadhr bin Harith and Uqbah bin Abu Mu'ais. The rest were freed by saving property or teaching the children of Medina to read and write. Some were even released unconditionally if they could not provide compensation in the form of property or be taught to read and write.

2. War Crimes in International Law Perspective

The customs and legal norms governing the relationship between kings and kings are currently regulated by state law. This national law broadly regulates relations between residents of a country or nation. Ideally, war crimes are a type of international crime that is more dangerous than other types of international crimes. The term war crimes itself is the cause of genocide or crimes against humanity. War crimes and the consequences of war crimes are regulated in international law which comprehensively regulates international humanitarian law and international criminal law.

Referring to the provisions of article 8 paragraph 2 (c) and (e) of the Rome Statute, which article is subject to the limitations provisions stipulated in article 8 paragraph 2 (d) and (f) which are not elements of a crime. The elements of war crimes under article 8 paragraph 2 of the Rome Statute must be interpreted taking into account the framework that has been developed in international law on armed conflict which covers them as appropriate. With regard to the last 2 (two) elements contained in each crime, there are 3 (three) main points, namely that it does not require requirements for legal evaluation by the perpetrator regarding the existence or status of the armed conflict or its character as national or international; In this context, there is no need to require awareness of the perpetrators regarding the facts that determine the character of the conflict as national or international; And there is only a requirement regarding awareness of the real situation or circumstances that cause or determine the existence of an implicit armed conflict.

International humanitarian law (IHL) is a set of rules that for humanitarian reasons seeks to limit the effects of armed conflicts. Humanitarian law protects people who have not, or are no longer taking part in combat and limits the means of war (Sumaryo, 2005). The term first known in the military was the Law of War or the Law of Armed Conflict, while among the Red Cross and Red Crescent it was known as Humanitarian Law (HPI). The term Armed Dispute Law has undergone another change, namely being replaced by the term International Humanitarian Law which applies in armed disputes and is hereinafter (Arlina, 1999).

Several Principles of International Humanitarian Law are considered very fundamental principles, namely the Limitation Principle, the Necessity Principle, the Prohibition Principle

of causing unnecessary suffering, the Humanitarian Principle, and the Marten's Clause. Each of the principles of International Humanitarian Law is not only based on one type of source of international humanitarian law but also from various sources. All parties involved in an armed conflict must distinguish between participants (combatants) and civilians. Thus, one of the provisions of International Humanitarian Law is known as the principle of distinction. Therefore, every combatant must distinguish himself from civilians, because civilians must not be attacked and must not participate directly in combat. As for the line of distinction between combatants and civilians, in the development of International Humanitarian Law it is still debated. Parties with great strength and complete equipment always want a clear definition of differentiation, and a clear identification of combatants, while the weaker side expects the option to use additional human resources flexibly.

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