



## Roles and Actions That Should Be Taken by The Parties In The War In Concerning Wound and Sick Or Dead During War or After War Under The Geneva Convention 1949

Dewa Gede Sudika Mangku<sup>1</sup>

<sup>1</sup> Universitas Pendidikan Ganesha. E-mail : [sudika.mangku@undiksha.ac.id](mailto:sudika.mangku@undiksha.ac.id)

### Info Artikel

Masuk: 2 Desember 2020

Diterima: 15 Januari 2020

Terbit: 5 Februari 2021

### Keywords:

Role of the disputing parties; war; wounds and pain; Geneva Convention

### Abstract

*Modern international humanitarian law consists of two historical streams: The Law of The Hague which in the past was referred to as the law of war proper, and Geneva Law or Humanitarian Law. The two schools are named after the venue for the international conferences drafting treaties on war and conflict, especially the Hague Conventions 1899 and 1907 and the Geneva Conventions, which were drafted for the first time in 1863. Both Hague Law and Geneva Law are branches from jus in bello, namely international law regarding acceptable practices in the conduct of war and armed conflict). The result of the writing of this article is that basically the scope of the First Geneva Convention in the context of scale provides protection in international and non-international conflicts, but the basis for non-international protection is not specifically explained in this convention, because in this First Geneva Convention. Non-international conflicts are only included in the General Provisions Chapter, and will be further clarified in Protocol II. This non-international scope is described in accordance with the First Geneva Convention Chapter I - General Provisions Article 3 regarding armed conflicts that are not international (non-international) taking place within the territory of one of the High Contracting Parties so that each Party to the conflict is obliged to implement the provisions applicable. The roles and actions that must be taken by the disputing parties during the war or not for the wounded and sick or dead cannot be separated from Human Rights, which must care for fellow human beings and please*

**Kata kunci:**

Peran pihak – pihak sengketa; peperangan; luka dan sakit; Konvensi Jenewa

**Corresponding Author:**

Dewa Gede Sudika Mangku, E-mail: sudika.mangku@undiksha.ac.id

---

*help regardless of ethnicity, religion, race, gender, age and skin. But in the Geneva convention only provides actions that should be done, there are no sanctions imposed if we ignore or do not comply with this Geneva convention. The method used in this research is normative juridical.*

---

**Abstrak**

Hukum Humaniter Internasional modern terdiri dari dua aliran sejarah: Hukum Den Haag yang pada masa lalu disebut sebagai Hukum Perang yang utama (*the law of war proper*), dan Hukum Jenewa atau Hukum Humaniter. Kedua aliran ini dinamai berdasarkan tempat diadakannya konferensi internasional yang merancang perjanjian-perjanjian mengenai perang dan konflik, terutama Konvensi-konvensi Den Haag 1899 dan 1907 dan Konvensi Jenewa, yang untuk pertama kalinya dirancang pada tahun 1863. Baik Hukum Den Haag maupun Hukum Jenewa adalah cabang dari jus in bello, yaitu hukum internasional mengenai praktik-praktik yang dapat diterima dalam pelaksanaan perang dan konflik bersenjata). Hasil dari penulisan artikel ini ialah Bahwa pada dasarnya ruang lingkup Konvensi Jenewa Pertama ini dalam konteks skala, memberikan perlindungan dalam konflik internasional maupun non-internasional, tetapi dasar perlindungan non-internasional tidak terlalu spesifik di terangkan dalam konvensi ini, kerana di Konvensi Jenewa Pertama ini konflik non-internasional hanya dimasukkan kedalam Bab Ketentuan Umum, dan akan lebih di perjelas dalam Protokol II. Lingkup Non-Internasional ini dijelaskan menurut Konvensi Jenewa Pertama Bab I - Ketentuan Umum Pasal 3 tentang sengketa bersenjata yang tidak bersifat internasional (non-internasional) yang berlangsung dalam wilayah salah satu dari Pihak Peserta Agung agar tiap Pihak dalam sengketa itu diwajibkan untuk melaksanakan ketentuan ketentuan yang berlaku. Peran dan Tindakan yang harus dilakukan oleh pihak-pihak yang bersengketa pada saat perang berlangsung atau tidak terhadap yang luka dan sakit atau mati tidak lepas dari Hak Asasi Manusia atau Human Rights yang dimana harus peduli terhadap sesama manusia serta tolong menolong tanpa memandang suku, agama, ras,

---

gender, umur, dan kulit. Tetapi dalam konvensi jenewa hanya memberikan tindakan yang seharusnya dilakukan tidak ada sanksi yang diberlakukan jika kita mengabaikan atau tidak menuruti konvensi jenewa ini. Metode yang digunakan di dalam penelitian ini ialah yuridis normatif.

*@Copyright 2021.*

---

## **A. PENDAHULUAN**

The history of the Geneva Conventions begins in 1862, Henry Dunant published his book, *Memoir of Solferino (Memoirs of Solferino)*, on the inhumanity (atrocities) of war. Dunant's experience of watching the war inspired him to propose (Rina Rusman,2009):

1. Establishment of permanent aid associations to provide humanitarian assistance during wartime, and
2. An intergovernmental agreement is formed which recognizes the neutrality of the association and allows it to provide assistance in a war zone.

The former led to the creation of the Red Cross, while the second led to the creation of the First Geneva Convention. For these two achievements, Henry Dunant in 1901 became one of the recipients of the Nobel Peace Prize which was awarded the first time. The ten articles of the First Geneva Convention were adopted for the first time on 22 August 1864 by twelve countries. Clara Barton played an important role in campaigning for the ratification of the First Geneva Convention by the United States, which finally ratified the convention in 1882. In 1906 the First Geneva Convention was amended to provide greater protection for victims of war on land, and the following year the entire provision was expanded. with battles at sea (Second Geneva Convention) (Jean-Marie; 2005;23).

Respect for the Geneva Conventions and operations led by the International Committee of the Red Cross played a vital role in saving lives and preventing undue suffering in World War I (1914-1918). However, the magnitude of human suffering resulting from war has increased the confidence of the international community that the Geneva Conventions are strengthened.

In the roughly 50 years since the adoption of the Geneva Conventions of 1949, humanity has experienced an alarming number of armed conflicts. These armed conflicts occur on almost all continents. During this period, the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 provided legal protection for persons who did not or no longer participate directly in hostilities (i.e. wounded, sick, shipwrecked, persons detained in connection with with armed conflict, and civilians). However, during the same period there have also been many violations of these international treaties, resulting in suffering and death tolls that could have been avoided if International Humanitarian Law (IHL) were better respected.

The general view that exists is that violations against IHL are not caused by the inadequacy of the rules referred to in the law, but rather due to unwillingness to respect them, by inadequate means available to enforce them, by uncertainty about the application of the law in under certain circumstances, and by the lack of knowledge of political leaders, commanders, combatants and the general public about the law (Sugeng; 1992;12).

The International Conference on the Protection of Legal Victims of War held in Geneva in August-September 1993 discussed specifically ways to address IHL violations but did not propose the adoption of a new international treaty. However, in its Final Declaration, adopted by consensus, the Conference reaffirmed the "need for effective implementation of IHL" and called on the Swiss Government to "convene an open group of intergovernmental experts with the task of conducting studies on practical ways of increasing full respect. and compliance with IHL and compiling reports that need to be presented to States and to the next International Conference of the Red Cross and Red Crescent. "

The Intergovernmental Group of Experts on the Protection of War Victims met in Geneva in January 1995 and adopted a number of recommendations aimed at increasing respect for IHL, particularly by taking preventive steps that could ensure that IHL would be better recognized and implemented more effectively. Recommendation II from the Intergovernmental Expert Group is: that the ICRC needs to be asked to prepare a report on the rules of IHL originating from customary law and can be applicable in international and non-international armed conflicts, with the assistance of IHL experts from various geographic areas and various the legal system and in consultation with governments and international organizations, and to circulate the report to States and competent international institutions.

In December 1995, the 26th International Conference of the Red Cross and Red Crescent agreed to the recommendation and formally mandated the ICRC to compile a report on IHL rules that stem from customary law and can apply in both international and non-armed conflict. international.

Nearly ten years later, namely in 2006, following extensive research and extensive consultations with experts, this report, which is now known as the Study on Customary International Humanitarian Law, was published.

Formulation of the problem, the problems that the author raises in writing this paper are as follows: 1. What are the Scope and Objects of Protection in the First Geneva Convention? 2. What is the role and actions that the parties to the conflict should take in relation to the wounded and sick or died during the war or after the war based on the 1949 Geneva Conventions?

## **B. RESEARCH METHODS**

The type of research used in the writing of scientific papers is normative legal research which begins with the scope and object of protection in the First Geneva Convention and the roles and actions that must be taken by the parties to a conflict in relation to being injured and sick or dying at the time. war and after the war based on the Geneva Conventions of 1949 so that the handling is not careless and still pay attention to human rights in order to minimize excessive casualties. The type of approach used is the statutory approach (Statue Approach) and the legal concept analysis approach (Analitical and Conceptual Approach). In writing this scientific

paper the writer uses primary legal materials, secondary legal materials and tertiary legal materials. Legal materials collected by the author are using library research techniques, then analyzed by the author with descriptive techniques, systematization, evaluation, and in the end, using argumentation techniques the writer can draw conclusions.

## **C. DISCUSSION**

### **Scope and Object of protection in the First Geneva Convention**

The first Geneva Convention on the Correction of the Condition of Wounded and Sick Warriors on the Ground Battlefield. The 1949 Geneva Conventions are the fourth updated version of the Geneva Conventions on the injured and sick following those used in 1864, 1906 and 1929. This Convention provides protection for the injured and sick, but also for medical and religious personnel, medical units, buildings and transportation. medical and this convention also recognizes the distinctive symbols that must be protected (Haryomataram,1986;23).

The scope of this First Geneva Convention in the context of scale, provides protection in international and non-international conflicts, but the basis for non-international protection is not specifically explained in this convention, because in this First Geneva Convention non-international conflicts are only included in the Chapter Provisions. General, and will be further clarified in Protocol II. This non-international scope is described in accordance with the First Geneva Convention Chapter I - General Provisions Article 3 regarding armed conflicts that are not international (non-international) taking place within the territory of one of the High Contracting Parties so that each Party to the conflict is obliged to implement the provisions applicable. And seen in the context in which it occurred, the scope of this First Geneva Convention is only for the improvement of the condition of wounded and sick members of the armed forces on the ground battlefield which in general can be said to provide protection for: (1) the wounded and sick; (2) but also for medical and religious personnel; (3) medical unit; (4) buildings and (5) medical transportation and this Convention also recognizes (6) the distinctive symbols which must be protected.

The object of the repairs includes the improvement of the afflicted condition of wounded and sick members of the army on the ground. Providing respect and protection in all circumstances for the wounded and sick, humane treatment without harmful differences based on sex, ethnicity, nationality, religion, or other similar criteria, and giving what obligations must be done in treating war officers , which is described in the First Geneva Convention Chapter II - The Wound and Sick Articles 12-18 (Wallace, 1986;13).

Repair of buildings, units of health (medical) units, Providing protection and respect for mobile health units of the health service under any circumstances must be protected, must not be attacked by the parties to the dispute, and give the authority to the authorities to be responsible for guarantees buildings-and units so that attacks on military targets do not endanger their safety, which is described in the First Geneva Convention Chapter III - Unity and Health Building Articles 19-23.

Repair of members of the health service (army), Providing special protection for members of the health service who are specially employed to find or collect, transport or care for the wounded and sick, or to prevent disease, and staff who are

specially employed in the administration of units and buildings -Health building, as well as clergy who served in the armed forces which is described in full in the First Geneva Convention Chapter IV - Members of the Health Service Articles 24-32.

The repair of the equipment, the mobile medical units of the armed forces which is in the hands of the enemy, shall be provided for the care described in the First Geneva Conventions Chapter V - Buildings and Equipment Articles 33-34.

Improvements in the context of protection against transporting wounds and sickness or medical devices must be respected and protected in the same way as any mobile health unit. As well as with medical aircraft and other health vehicles. All of this is described and regulated in the First Geneva Convention Chapter VI - Health Transport Articles 35-37.

Improvements in the context of protection of special symbols, such as the International Red Cross Committee (PMI) emblem, the Red Crescent, the Lion and the Red Sun, etc. This special symbol must be clear, in the sense that it appears on the flags, handbands, and all equipment used in the health service, besides wearing a uniform identification, so that everyone who belongs to the organization-organizations / associations of a neutral or interested nature can guarantee protection, all of which are regulated and described in the First Geneva Convention Chapter VII - Special Symbol 38-44.

Roles and Actions to be taken by the parties to a conflict in relation to those who are injured and sick or die during or after the war based on the Geneva Conventions 1949

#### Article 16 Chapter II

The parties to the dispute should record as soon as possible the person who is injured, sick or dead from the opposing party who falls into his hands, any information that can help to identify him.

These records should include, wherever possible:

- a) the name of the State to which it is subject;
- b) army, regimental, private or NRP number;
- c) family name;
- d) name or minor names;
- e) date of birth;
- f) any other information stated on the card or identification card (identity card or disc);
- g) date and place of arrest or death;
- h) information regarding injuries or illness or cause of death.

The aforementioned statements shall as soon as possible be sent to the Office of Information referred to in Article 122 of the Geneva Convention on the Treatment of Prisoners of War of 12 August 1949, which shall be passed on to the State to which these persons adhere, through the protective powers and the Headquarters of prisoners war.

The parties to the dispute must prepare and send each other through the above office, death certificates or death registers that are duly authorized. They must also collect and mail through the same office half of the double identification, will or other documents important to the immediate family, money and generally any items of intrinsic or centimetric value found on the body. These items, together with any unknown item, must be delivered in sealed packages, accompanied by a statement

which provides all the information necessary to identify the deceased owner along with a complete list of the contents of the package.

### **Article 17 Chapter II**

This article states that the parties to the dispute must ensure that the funeral or cremation is carried out individually as far as circumstances permit, preceded by a medical examination, of the body to confirm the death, establish its identity, and allow a report to be made. In this case, the parties to the dispute are asked to be more concerned about taking care of war victims because war victims may not be from the armed forces but from civilians or noncombatants who do not interfere in war affairs as well as members of the International Committee of the Red Cross, which has an important role in treating the wound.

Half of the double identification card or the identification card itself if the single identification mark must remain on the body. The corpse should not be burned except for reasons of urgent health or religious causes. In the case of cremation, the circumstances and reasons for the burning must be recorded down to the details in the death certificate or on a certified death register.

They must further ensure that the bodies are buried with respect, if possible according to their religious rites, that their tombs are respected, if possible collected according to the nationality of the deceased, are properly cared for and marked so that they can always be found. For this purpose, the parties to the dispute shall organize at the outset of hostilities an official Grave Registration Service to allow for later excavation and to ensure the identification of the remains, wherever the grave is located and the possibility of transport to the country of origin. These provisions also apply to the amount of ashes which must be kept by the Grave Registration Service until it is returned properly according to the wishes of the country of origin.

As soon as circumstances permit and at the latest at the end of hostilities, these services through the Office of Information referred to in the second paragraph of Article 16 shall make an exchange of lists indicating their exact location and the marking of the tombs and their descriptions.

Residents and relief associations, even in the invaded or supported areas, to spontaneously collect and care for the wounded and the sick of any nationality. The civilian population must respect these wounded and sick in particular who must not act violently against them. A person should not be persecuted or punished for caring for the wounded and sick. The provisions of this article do not exempt the resident State from the obligation to provide physical and spiritual care to the wounded and sick.

### **D. CONCLUSION**

The conclusions that can be drawn from the discussion of the above problems are as follows:

1. Whereas basically the scope of the First Geneva Convention is in the context of scale, providing protection in international and non-international conflicts, but the basis for non-international protection is not specifically explained in this convention, because in the First Geneva Convention this is a non-international conflict. only included in the General Provisions Chapter, and will be further clarified in Protocol II.

This non-international scope is described in accordance with the First Geneva Convention Chapter I - General Provisions Article 3 regarding armed conflicts that are not international (non-international) taking place within the territory of one of the High Contracting Parties so that each Party to the conflict is obliged to implement the provisions applicable.

2. The roles and actions that the disputing parties must take during the war or not for the wounded and sick or dead cannot be separated from Human Rights, which must care for fellow humans and help help regardless of ethnicity, religion, race, gender, age, and skin. But in the Geneva convention only provides actions that should be done, there are no sanctions imposed if we ignore or do not comply with this Geneva convention.

#### E. SUGGESTION

As for what the authors can suggest related to the above discussion are:

1. For the parties to a dispute at war or not. We must continue to carry out the rules contained in this Geneva convention, even though there are no sanctions that apply if we ignore this rule, but we as living beings created by God who have the best feelings, minds and thoughts among other living beings must do our best to save others. us if someone is injured, sick or dies so that his family will not be too worried and if we experience bad luck there is someone to help us.
2. For those who were injured and sick during the war or after. Immediately ask for help around even though in the opposing area so that the pain and injuries suffered are not too severe and you do not die in vain, be honest with your identity so that it is easy to find where you come from and you are quickly met by your family.

#### Bibliography

- Ambarwati, Denny Ramdhany, Rina Rusman, (2009), *Hukum Humaniter Internasional dalam Studi Hubungan Internasional*, Jakarta : Rajawali Pers.
- Anggreni, I. A. K. N., Mangku, D. G. S., & Yuliantini, N. P. R. (2020). Analisis Yuridis Pertanggungjawaban Pemimpin Negara Terkait Dengan Kejahatan Perang Dan Upaya Mengadili Oleh Mahkamah Pidana Internasional (Studi Kasus Omar Al-Bashir Presiden Sudan). *Jurnal Komunitas Yustisia*, 2(3), 227-236.
- Arianta, K., Mangku, D. G. S., & Yuliantini, N. P. R. (2020). Perlindungan Hukum Bagi Kaum Etnis Rohingya Dalam Perspektif Hak Asasi Manusia Internasional. *Jurnal Komunitas Yustisia*, 3(2), 166-176.
- Henckaerts, Jean-Marie. (2005). *Study on Customary International Humanitarian Law* (Indonesian Translation). Bandung: Nusa Media.
- Henckaerts, Jean-Marie. (2005). *Study on Customary International Humanitarian Law* (Indonesian Translation). Bandung: Nusa Media.
- Istanto, F. Sugeng. (1992). *Perlindungan Penduduk Sipil Dalam Perlawanan Rakyat Semesta dan Hukum Internasional*. Yogyakarta: Andi Offset
- KGPH. Haryomataram, (2005), *Pengantar Hukum Humaniter*, Jakarta : Raja Grafindo Persada.



- Konferensi Internasional Palang Merah dan Bulan Sabit Merah ke-26, Jenewa, 3-7 Desember 1995, Resolusi 1, Hukum Humaniter Internasional: dari Hukum ke Tindakan; Laporan tentang tindak lanjut menyusul Konferensi Internasional Perlindungan Korban Perang, *International Review of the Red Cross*, No. 310, 1996.
- Konferensi Internasional Perlindungan Korban Perang, Jenewa, 30 Agustus - 1 September 1993, Deklarasi Final, *International Review of the Red Cross*, No. 296, 1993.
- Konvensi Jenewa Tahun 1949 Tentang Perbaikan Keadaan Anggota Angkatan Perang Yang Luka dan Sakit Di Medan Pertempuran Darat
- Mangku, D. G. S. (2013). Kasus Pelanggaran Ham Etnis Rohingya: Dalam Perspektif ASEAN. *Media Komunikasi FPIPS*, 12(2).
- Murtokusumo, Sudikno. (1996). *Mengenal Hukum Suatu Pengantar*. Yogyakarta: Liberty.
- Pertemuan Kelompok Pakar Antarpemerintah untuk Perlindungan Korban Perang di Jenewa, 23-27 Januari 1995, Rekomendasi II, *International Review of the Red Cross*, No. 310, 1996.
- Rebecca M.M. Wallace, (1986), *Hukum Internasional*, (London, Sweet & Maxwell:1986)
- Ria Wierma Putri, *Hukum Humaniter internasional* (Bandar Lampung : Universitas Lampung, 2011
- Study on Customary International Humanitarian Law* (Indonesian Translation), Volume 87 Nomor 857 Maret 2005, di unduh dari <http://www.icrc.org/eng/index.jsp>
- Wahyudi, A. N. R., Mangku, D. G. S., & Yuliantini, N. P. R. (2020). Analisis Kejahatan Genosida Yang Terjadi Di Rwanda Antara Etnis Hutu Dengan Etnis Tutsiditinjau Dari Hukum Pidana Internasional. *Jurnal Komunitas Yustisia*, 2(2), 21-30.
- Yuliantini, N. P. R., & Mangku, D. G. S. (2019). Tindakan Genosida terhadap Etnis Rohingya dalam Perspektif Hukum Pidana Internasional. *Majalah Ilmiah Cakrawala Hukum*, 21(1), 41-49.