Indonesia Law Collage Association Law Journal (ILCA Law Journal)
ISSN : 2963-3621 (online) **VOL 2 NO 1 JUNE 2023**

Introducing International Humanitarian Law

Kushartoyo BS
Rector of Gunung Jati Law School
kushartoyo@yahoo.com

Abstract

Humanitarian Law, as a branch of Public International Law, is not widely known by the general public. Likewise, if we look at the name, it causes a lot of confusion because it is a bit misleading. In order to eliminate doubts or misunderstandings, it is necessary to have an explanation or 'confirmation' on matters that fall under humanitarian law. This paper will explain the meaning of International Humanitarian Law (hereinafter abbreviated as IHL) and what its scope is. Several important international conventions are included in this paper to emphasize the existence of this IHL in International Law. Existing international conventions indicate a change in the term of this law, namely from the law of war to the law of armed conflict, and finally to international humanitarian law, so it cannot be denied that actually international humanitarian law is another name for the law of war.

Keywords: Law of War, International Humanitarian Law, Law

INTRODUCTION

International Humanitarian Law or commonly called Humanitarian Law, as a branch of Public International Law has not been widely known by the public, even among academics. Likewise, the name causes a lot of confusion because it is a bit misleading. Not many think that Humanitarian Law is a new name from what was formerly known as the Laws of War.

To eliminate doubts or misunderstandings, regarding what humanitarian law is, it is necessary to have an explanation or 'affirmation' about the things that are included in Humanitarian Law, which can be explained as follows.

1. Change of terminology
   There is a change in terms from the Law of War to the Law of Armed Conflict and then to International Humanitarian Law (applicable in armed conflict)
2. Humanitarian Law does not question or discuss "why" wars occur.
   Humanitarian law does not question 'why' a country takes up arms. The reasons or motives for going to war are not important/relevant to Humanitarian Law.
3. Humanitarian Law does not decide who is right or wrong and does not provide judgment.
   Judgments as to the lawfulness of a conflict or war are discussed elsewhere in International Law. There is one section of International Law that discusses the doctrine of 'just war'. The teaching divides Humanitarian Law into two parts, namely:
   a. *Ius ad bellum*, namely the law of war;
   b. *Ius in bello*, namely the law that applies in time of war.
   Ius ad bellum discusses 'when' or under 'under what circumstances' a country is justified in using war to resolve its problems with other countries. There are many theories related to this, but in general it is said that a state is justified in going to war if the following conditions are met:
   a. Just Cause;
   b. Right Authority;
   c. Right Intent;
   d. Proportionality;
   e. Last Resort
   If there is a war that meets these conditions, then what happens is what is called a "Just War". Meanwhile, *ius in bello* are the provisions that apply in time of war, especially the rules regulated in Humanitarian Law, in particular the 'main' sources of Humanitarian Law, namely:
   a. The Hague conventions–1907, called the Hague Laws;
   b. The Geneva conventions – 1949, called the Geneva Laws;
   c. Additional protocols – 1977.
   The rule that we usually learn is *Ius in bello.*
4. The main objective of humanitarian law is to provide protection and assistance to those who suffer/become victims of war, both those who are actually/actively involved in hostilities (combatants), as well as those who do not participate in hostilities (civilian population).
5. Humanitarian law only regulates 'armed conflict', does not regulate other forms of conflict/war other than armed conflict, for example “economical” conflict/war or psychological warfare.
6. Humanitarian law applies at the time of war/armed conflict.
7. Humanitarian law regulates armed conflicts, both international and non-international.
8. Humanitarian law does not prohibit war. There are other provisions in International Law which are interpreted to prohibit war, namely:
   a. Article 2, paragraph (4) of the UN Charter, and Article 2 paragraph (4) of the UN Charter which reads as follows.

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations".

b. Kellogg–Briand Pact, or Paris Pact–1928.
The Kellogg–Briand Pact or PARIS Pact of 1928 was formulated as follows:
Article I
The High Contracting Parties solemly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.
Article II
The High Contracting Parties agree that the settlement or solution of all disputes of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.
Although neither the United Nations Charter nor the Kellogg–Briand Pact explicitly forbid war. However, by some experts, the two provisions are interpreted as a prohibition for war.

RESEARCH METHODS

In this study, the authors used a normative juridical research type. According to a legal expert, Soerjono Soekanto, normative juridical is a legal research activity that is carried out by examining library materials or secondary materials so that research is carried out by examining library materials.[1]This research is intended to find outlaw enforcement efforts carried out by the police against online gathering managers who commit criminal acts of fraud.

In this study, the authors used three sources of legal materials, namely primary legal materials and materialssecondary law as well as tertiary legal materials. Primary legal material is legal material that has authority such as legislation, official records, or treatises in making laws and judges' decisions.[2]Secondary legal materials are legal materials that provide explanations of primary legal materials, such as expert opinions, textbooks, legal journals, and comments on judge decisions.[3] Tertiary legal materials are supporting materials in the sources of legal materials.[4]

RESULT AND DISCUSSION

In the last decade a new term has emerged in International Law. The term in question is International Humanitarian Law. Regarding this term there is no agreement on the most appropriate use because the term is still (relatively) new, it is not surprising that there are still many people who do not know what is meant by International Humanitarian Law, as well as legal experts, there are still many who do not know it.

This paper will explain the meaning of International Humanitarian Law (hereinafter abbreviated as IHL) and what is its scope. To make it easier to understand, this paper will begin with a description of the development of the term laws of war to IHL and be serialized in order to achieve a comprehensive understanding.

War, like most other fields of human activity, today is regulated and contained by a body of laws, as once written by Morris Greenspan (Morris Greenspan, 1959:4). The law governing war is called the Law of War (laws of war, Kriegsrecht, Oologsrecht and so on). The

[1]Soerjono Soekanto & Sri Mamudji, Normative Legal Research, A Brief Overview, Jakarta: PT. RajaGrafindo Persada, 2006, page 13.
[2]Mukti Fajar & Yulianto Achmad, Dualism of Normative and Empirical Legal Research, Yogyakarta: Learning Library, 2010, p. 157.
[3]Ibid., p. 67
[4]Soerjono Soekanto & Sri Mamudji, Op.Cit., p. 67.

Laws of War are part of International Law and today are mostly written laws. Kunz argues that the Law of War is the oldest part of International Law and the first to be codified; half of the Laws of War are written laws. The bulk of these written laws of war are contained in the Four Geneva Conventions of 1949, which in total consist of 427 articles. This convention is also known as the Red Cross Convention because it was initiated by the International Committee of the Red Cross (ICRC).

There are several scholars who try to explain the meaning of the Law of War. Lauterpacht briefly said: Laws of war are the rules of the law of nations respecting warfare (H. Lauterpacht, 1955:226).

A longer definition is given by Starke: The laws of war consist of the limits set by International law within which the force required to overpower the enemy may be used, and the principles there under governing the treatment of individuals in the course of the war and armed conflict (J.G. Starke, 1977:585).

Prof. Mochtar Kusumaatmadja did not provide a definition. He only gives the division of the laws of war, which are as follows.

1. Jus ad bellum, namely the law on war, namely the law that regulates how the state is justified in the use of force (of arms).
2. Jus in bello, namely the law that applies in war. This law is further divided into two, namely:
   a. the laws governing the conduct of war, which are usually called the Hague Laws
   b. laws governing the protection of people who are victims of war, which are usually called Geneva Laws (Prof. Dr. Mochtar Kusumatmajda, 1979:12)

What is the purpose of the laws of war? Inside the U.S. The Army Field Manual of the law of Landwarfare describes some of the objectives of war, namely:

1. protect both combatants and non-combatants from unnecessary suffering;
2. guarantee certain human rights of people who fall into enemy hands;
3. allow the return of peace;
4. limit the power of the belligerents (The Law of Landwarfare, 1969:3).

As stated above, the law of war can be mostly found in various Treaties and Conventions. Considering the number of Conventions, only a few important ones will be mentioned, namely:

1. Declaration of Paris, 1856, governing war at sea;
2. Red Cross Convention, 1864, which improved the conditions of wounded soldiers on the battlefield.

Furthermore, it is worth mentioning some of the conventions produced at the Peace Conference in the Hague in 1907, namely as follows.

1. Convention for the Pacific Settlement of International Disputes. (Convention I).
2. Convention relative to the Opening of Hostilities (Convention III).
3. Convention respecting the Laws and Customs of War on Land (Convention IV).
   This convention is very important because it regulates all aspects of warfare on land. This Convention has an annex, known as the Hague Regulations
4. Convention relative to the Rights and Duties of Neutral Powers and Persons in case of War on Land. (Convention V).

Conventions VI to XII generally regulate the problem of ships, warships. Thus, the convention addresses issues relating to war at sea.

There are several conventions that specifically prohibit the use of certain weapons, for example:

1. Declaration of St. Petersburg, 1868 (Declaration Renouncing the use in war of certain explosive projectiles), yang melarang any projectile of less weight than four hundred grammes, which is explosive;
2. Declaration the Hague IV, 2–1899 (Prohibiting use of expending bullets (dum-dum));

3. Declaration the Hague IV, 3 – 1907 (Prohibiting use of gases);
4. Declaration the Hague XIV – 1907 (Prohibiting discharge of projectiles and explosives from balloons);
5. Protocol Jenewa, 1925 (Protocol for the prohibition of poisonous gases and bacteriological method of warfare).

As a result of the development of the laws of war after the Second World War, it should be noted that the Geneva Conventions of 1949, numbering four, are:

1. Geneva Convention I : For The Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949
2. Geneva Convention II : For The Amelioration of The Condition Of Wounded , Sick And Shipwrecked Members of Armed Forces At Sea of 12 August 1949
3. Geneva Convention III : Relative to the Treatment of Prisoners of War of 12 August 1949
4. Geneva Convention IV : Relative to the Protection of Civilian Persons in Time of War of 12 August 1949

In 1977, two protocols were agreed, namely : Protocols additional to the Geneva Convention 1949. The two protocols are entitled:

1. Protocol I: Protocol relating to the protection of victims of International Armed Conflicts.
2. Protocol II: Protocol relating to the protection of victims of Non-International Armed Conflicts.

It can be added that until now Indonesia has not ratified the two protocols.

The next convention was issued in 1980. The convention has the title Convention on prohibitions or restrictions on the use of certain conventional weapons, which may be deemed to be excessively injurious or to have indiscriminate effects. The convention is accompanied by three protocols, namely:

1. Protocol I = Protocol on non-detectable fragments.
2. Protocol II = Protocol on prohibitions or restrictions on the use of mines, booby traps, and other devices
3. Protocol III= Protocol on prohibitions or restrictions on the use of incendiary weapons.

A series of conventions and declarations have been submitted, both those dating from 1856 and those that were agreed in 1980. The matters stated above are only part of the written laws of war.

The First World War turned out to bring tremendous misery to mankind. Millions of people, both military and civilian, became victims. Losses in the form of assets are difficult to calculate. Given that war waged with more modern weapons would result in even greater catastrophe, it is not surprising that mankind is doing its utmost to abolish war, or at least minimize the possibility of war. Such an atmosphere of war boredom exists, especially in countries that have just finished war.

The efforts made to abolish war, among others, are carried out as follows.

1. Efforts made by the League of Nations.
   In order to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war…
   Furthermore, Article 12 of the Covenant of the League stipulates that The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council. In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.
2. Another effort was the formation of the Kellogg – Briand Pact or also often called the Paris Pact in 1928. Officially this Pact was called the Treaty for the renunciation of war. The

> treaty was signed by Germany, the United States, Belgium, the United Kingdom, France, Italy, Japan, Poland and the Czech Republic. In the preamble it was stated that they rejected or did not recognize war as a national political tool, and they agreed to change relations between them only by peaceful means.
> This statement is reaffirmed in Articles 1 and 2 as follows.
> Article 1
> The High Contracting Parties solemnly declare, in the names of their respective peoples, that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another.
> Article 2
> The High Contracting Parties agree that the settlement or solution of all disputes or conflicts, of whatever nature or whatever origin they may be, which arise among them, shall never be sought except by pacific means.
> According to experts, the Kellogg–Briand Pact did not abolish war. Lauterpacht, for example, argues that the effect of the Pact is not abolish, even for its signatories the Institutions of war (Lauterpacht ...: 183).
> Another scholar, Kunz, said the following, The Pact of Paris does not outlaw or abolish war: It only contains a renunciation of war as an instrument of national policy a phrase which never has been interpreted satisfactorily (Joseph Kunz, 1968:845).

From the foregoing, it is clear that neither the League of Nations nor the Kellogg-Briand Pact abolished or prohibited war.

This anti-war atmosphere had an impact on various fields. One of them is the law of war. Since people do not want war or war to arise, the term war is avoided as far as possible. By itself the term law of war is also not liked. The result of this view is the abandonment of efforts to study or develop the laws of war. In the first session of the International Law Commission from April 12 to June 9, 1949, for example, the discussion of the law of war was listed as the 25th topic, which is the last. Even a review of the laws of war was not held for the following reasons.

> "It was suggested that, war having been outlawed, the regulation of its conduct had ceased to be relevant.
> It was considered that … public opinion might interpret its action as showing lack of confidence in the efficiency of the means at the disposal of the U.N. for maintaining peace" (Joseph Kunz, 1968:840).

In other fields the atmosphere also has a big influence. Although at that time there were various armed conflicts, which from a military point of view deserved to be called wars, the warring parties did not want to call the conflict a war. They are afraid of being labeled as aggressors. As a substitute for war, the term Mansuria incident was used, or the Chinese invasion, or in Indonesia we know the term clash I and II when the Dutch wanted to re-occupy Indonesian territory.

Those who oppose the study of the laws of war put forward the following reasons.

1. The laws of war cannot be drawn up, because war cannot be regulated; war can only be abolished.
2. The laws of war do not need to exist because in practice they will inevitably be violated.
3. War has been abolished. Therefore, the laws of war no longer exist.
4. Since war has been declared outlawed, discussing the laws of war is illogical, and it is as if we do not believe in the progress that has been made in trying to abolish war.

From the description above, it can be concluded that the term or understanding of war and the law of war is no longer preferred. However, it is undeniable that armed conflict still exists. The question arises, namely what is the name of such a conflict, and what is the name of the law that regulates it. At that time a new term was introduced, namely: laws of armed

conflict. Regarding this, Edward Kossoy said the following : "The term armed conflict tends to replace, at least in all relevant legal formulations, the older notion of war" (Edward Kossoy, 1976:34). Furthermore Kossoy said as follows : "On purely legal consideration the replacement of "war" by "armed conflict" seems more justified and logical" (Edward Kossoy, 1976:34).

The term armed conflict, as a substitute for war, is widely used, both in international conceptions and in resolutions. We can find this in the 1949 Geneva Conventions, article 2 is stated as follows : "In addition to the provisions which shall be implemented in peace time, the present Conventions shall apply to all cases of declared war or of any armed conflict."

Another example is the 1954 Hague Convention which regulates the Protection of Cultural Property in the event of Armed Conflict. Furthermore, Protocols I and II which add to and improve the 1949 Geneva Conventions are entitled Protocol relating to the protection of victims of international Armed Conflict (Protocol I), and Protocol relating to the protection of victims of Non-international Armed Conflict. (Protocol II).

It can also be mentioned that two resolutions, one of the General Assembly and the other of the ICRC, in which the term armed conflict is used. In Resolution No. 2675 of 1970, among others, is stated as follows :

> Affirms the following basic principles for the protection of civilian populations in armed conflict without prejudice to their future elaboration within the framework of progressive development of the international Law of Armed Conflict (Mushtaq Hussein, 1977:11).
>
> Further Resolution No. 13 of the 1969 Istanbul Conference stated :
>
> The Resolution fully confirming the views of the ICRC underlines the necessity and urgency of reaffirming and developing humanitarian rules of international Law applicable in armed conflict of all kinds etc (First Seminar on Humanitarian Law, 1978).

The term law of war is no longer in favor, but on the other hand it is still deemed necessary to have provisions governing armed conflict, even if the dispute is no longer called war. As a substitute for the term laws of war, the term laws of armed conflicts is used.

The replacement or change of this term provides several advantages, namely as follows:

1. Psychologically, with the change the words of war or the laws of war that are no longer favored have been removed.
2. The scope of application of the law is greatly expanded, because the law applies, whether a war breaks out or an armed conflict occurs.

Thus, the term laws of wars has changed to laws of armed conflict. In line with the tendency to abolish the term laws of war, and then replace it with the term laws of armed conflicts, other developments could be signaled. At the beginning of the 20th century the laws of war attempted to regulate the manner of war. One of the most famous conventions at that time was the Hague Convention IV, with its famous Annex entitled Regulations respecting the laws and customs of war on land. These annexes are usually called the Hague Regulations, which seek to regulate war.

After the Second World War, efforts to regulate war were eclipsed by an effort to protect people from the atrocities of war. In the preparation of the following conceptions the principle of humanity has a very large influence. The magnitude of this influence can be seen in UN resolutions, conferences convened for this purpose, and also in expert opinion. Here are some examples :

1. In General Assembly resolution No. 2444 of 1968, the Assembly recognized the need to apply humanitarian principles in all armed conflicts. With this resolution, it is recognized that the principle of humanity must be respected, both in times of peace and in the event of armed conflict.
2. In the 1969 session, the General Assembly included in its agenda as one of the topics, namely Respect for Human Rights in Armed Conflicts.
3. In Resolution no. 2675 of 1970, among others, is stated as follows :

Recalling further its Resolution 2444 (XXIII) of 19th December 1968, on respect for human rights in armed conflicts, bearing in mind the need for measures to ensure the better protection for human rights in armed conflicts in all types,

And further stated as follows :

Fundamental human right, as accepted in international law and laid down in international instruments, continue to apply fully in situation of armed conflicts (Mushtaq Hussein, 1977:11-12).

The opinions of experts regarding this matter can be expressed in the following examples :

1. Rosenblad stated: this humanitarian approach has turned out to be highly essential when drafting new treaty rules applicable in future armed conflict (Esbjom Rosenblad, 1979:4).
2. Regarding this, Starke stated that one of the prominent developments in the last decade was: the importation of human rights rules standards into the law of armed conflicts (J.G. Starke, 1977:587).

In connection with developments such as the above, it is not surprising that the term laws of armed conflict has also changed. Several resolutions and conferences featured a new term, namely International Humanitarian Law applicable in Armed Conflict.

In 1971 a Conference of Government Experts was held on the reaffirmation and development of International Humanitarian Law Applicable in Armed Conflicts. Likewise, conferences were held in 1974, 1975, 1976 and 1977, the official name of which was the Diplomatic Conference on the reaffirmation and development of International Humanitarian Law applicable in Armed Conflicts.

Thus, as a substitute for the term law of Armed Conflicts, a new term appears that shows the influence of humanitarian principles in the preparation of laws governing Armed Conflicts, namely the International Humanitarian Law applicable in Armed Conflicts. This term is apparently considered too long, so it is often shortened to International Humanitarian Law. This abbreviated term in Indonesian is usually shortened again to Humanitarian Law.

Thus, the history of the changing of the term laws of war to laws of armed conflicts has been explained, and finally to international humanitarian law.

Is the scope of humanitarian law the same as the scope of the law of war? There are three groups of expert opinion on this matter. The first opinion gives a widely scope, the second opinion gives a narrow scope, while the last opinion is in between the two previous opinions.

It is widely believed that its main proponent is Jean Pictet. In his book entitled The Principles of International Humanitarian Law, Pictet divides International Humanitarian Law into two major groups, namely :

1. The laws of war, which are further subdivided into:
   a. The law of the Hague;
   b. Geneva law;
2. Human rights.

International Humanitarian Law is defined as follows :

International Humanitarian Law, in the wide sense, is constituted by all the international legal provisions, whether written or customary, ensuring respect for the individual and his well being (Jean Pictet, 1966:10).

Furthermore, Pictet also provides definitions of law of war, law of the Hague, law of Geneva and legislation of Human Rights. From these definitions we can conclude that Pictet uses the term law of war properly so called, namely the law of the Hague. Furthermore, Pictet named Geneva law as properly so-called humanitarian law. As for what is meant by legislation of Human Rights are as follows:

> Legislation of human right has as object to guarantee at all time for individuals the enjoyment of fundamental rights and liberties and to preserve them from social evils (Jean Pictet, 1966:12).

Next Pictet explains five fundamental principles and three common principles.

Pictet's opinion is classified as an opinion that provides a widely scope because in addition to the law of war, which includes the law of the Hague and the law of Geneva, International Humanitarian Law also includes human rights. Not many experts subscribe to Pictet's opinion.

One expert who supports this narrow opinion is Geza Herczegh. According to him, the definition of International Humanitarian Law is only limited to Geneva Law. It says the following :

> "We inevitably come to conclusion that the term international humanitarian law cannot be properly used in other than its stricter meaning, in my view, this term should be restricted to the rules of the so called Geneva Law" (Geza Herczegh, 1977:79).

The reasons put forward by Herczegh related to this opinion are as follows :

1. The law that can truly be said to have an international and humanitarian character is only what is called the law of Geneva. If the laws of the Hague were included, it would only diminish the humanitarian nature that is so prioritized.
2. Human rights are not included because in the legal literature of socialist countries, these human rights are enforced by the state by means of national law.

By Herczegh, the International Humanitarian Law is formulated as follows:

> "Part of the rule of public international law which serves as the protection of individuals in time of armed conflict."
>
> "Its place is beside the norm of warfare it is closely related to them – but must be clearly distinguished from these, its purpose and spirit being different". (Geza Herczegh, 1977:86).

Another expert who also holds a narrow opinion is Esbjorn Rosenblad, but his opinion is not the same as that of Herczegh. Rosenblad said that the law of armed conflict relates to the following issues:

1. the beginning and ending of a conflict;
2. residents of the opposing territory;
3. the relationship between the parties to the conflict with a neutral country.

Rosenblad argues that the law of warfare has a narrower meaning than the law of armed conflict, and this law of warfare includes:

1. methods and means of warfare;
2. combatant status;
3. protection of the sick, prisoners of war and civilians.

In contrast to Herczegh, Rosenblad in International Humanitarian Law, except for Geneva law, is also part of the Hague law, which relates to the methods and means of warfare. According to Rosenblad, this law of warfare is what the ICRC calls international humanitarian law applicable in armed conflicts, and by the United Nations it is called human rights in armed conflicts. It can be concluded that according to Rosenblad, international humanitarian law is synonymous with the law of warfare, and this law of warfare is part of the law of armed conflict.

In addition to the two experts mentioned above, Prof. Dr. Mochtar Kusumaatmadja can also be included in this group. In his lecture on International Humanitarian Law of 26 March 1981, he explained as follows :

> "From the description above, it is clear that the so-called Humanitarian Law is part of the Law of War which regulates the provisions for the protection of war victims in contrast to the part of the Law of War which regulates war itself and everything related to the way of

conducting the war, such as weapons that are prohibited in war" (Prof. Dr. Mochtar Kusumaatmadja, 1980:5).

In addition, Prof. Mochtar also said the following:

"Thus the Geneva conventions are identical or synonymous with humanitarian law or conventions, while the Law of War or the Hague conventions regulate how to conduct war". (Prof. Dr. Mochtar Kusumaatmadja, 1980).

What do those who are in between the two schools think? Experts who adhere to this flow include Starke. He said that a striking development in the last decade was the inclusion of human rights regulations in armed conflicts. Because of this development, the term law of war was replaced with international humanitarian law. In another part of his book Starke says the following : "As will appear post, the apellation "laws of war" has been replaced by that of "international humanitarian law" (J.G. Starke, 1977:585).

From these two statements, it can be concluded that Starke identifies the law of war with international humanitarian law. So what does Starke mean by laws of war? The definitions given are as follows :

"The laws of war consist of the limit set by international law within with the force required to overpower the enemy may be used, and the principles thereunder governing the treatment of individual in the course of war and armed conflict". (J.G. Starke, 1977-585).

If we read further on the explanation of laws of war, we will see that the so-called laws of war include both the law of the Hague and the law of Geneva. Starke said that the purpose of these regulations was not made to provide a kind of game rules for a game called war, but rather aimed at the benefit of humanity, namely to reduce suffering for each individual.

CONCLUSION

The main issue is the scope of international humanitarian law applicable in armed conflicts. This long term in everyday conversation is shortened to international humanitarian law, which is then translated into humanitarian law in Indonesian. What is Humanitarian Law? Regarding the scope of this Humanitarian Law, an agreement has not been reached among the experts.

Meanwhile, experts include human rights within the scope of humanitarian law. This opinion is not acceptable because there are principal differences between humanitarian law and human rights. This difference is expressly stated by Mario'n Mushkat as follows :

"In general, the difference between humanitarian law and the law of human rights is that the humanitarian law deals with the consequences of conflicts among states or between states and some other specifically defined belligerent, but the law of human rights is concerned with controversles between the government and indiduals inside the states borders" (Mario'n Mushkat, 1978:151).

Therefore, the same author argues that the basis of the Human Rights is first and foremost rooted in the municipal law (Mario'n Mushkat, 1978:159).

Prof. Mochtar Kusumaatmadja also pointed out the difference between humanitarian law and human rights law. In his lecture he said the following :

"It is clear that the overall rules of international law governing human rights are different from the complex of rules and principles governing the protection of victims of war" ..... and so on (Prof. Dr. Mochtar Kusumaat-madja, 1980:8) .

Furthermore, he said that even in English the terms are not the same. For the first type of law, the term international humanitarian law is used, while for the second, international human rights law is used.

Taking into account the description above, a widely interpretation is not acceptable.

Can International Humanitarian Law (applicable in armed conflict) be identified with laws of war? One of the objections raised by those who do not agree with this opinion is that

what is really permeated by humanitarian principles is only the law of Geneva, so that the law of the Hague cannot be included. To answer this objection, we can argue that one of the principles that is very much considered when drafting the rules or regulations of the Hague is the principle of humanity. Thus, it can be said that the law of the Hague is based on humanitarian principles. Rosenblad also shared the same opinion. According to the expert, the distinction or separation of the law of the Hague and the law of Geneva is "artificial" because both are mainly based on humanitarian principles. Indeed, in general, experts are of the opinion that the law of the Hague and the law of Geneva cannot be separated from each other.

In closing, a general conclusion is put forward, namely that International Humanitarian Law (applicable in armed conflict), which is now briefly called Humanitarian Law, is a new name for laws of war. The humanitarian law includes both the law of the Hague and the law of Geneva, with its two additional Protocols.

REFERENCES

Adopted by the General Assembly of the U.N, 1945-1995. International Review of the Red Cross–March 1998, No. 322.

Akehurst, Michael. A modern Introduction to International Law, 1977.

Aldrich, George, H. Perspects for U.S. Ratification of Additional. Protocol I to the 1949 Geneva Conventions.

American Journal of International Law - January 1991 Vol. 85 No. 1 Levie, Howard, S. Protection of War Victims : Protocol I to the 1949 Geneva Conventions Volume 2.

Bothe, Michael cs. New rules for victims of Armed Conflicts, 1982.

Collected Courses of the Hague Academy of International Law 1979- II.

Commentary Geneva Convention 1, 1949. Jean Pictet (edit). 1952.

Dinstein, Yoram. "The new Geneva Protocols. A step forward or backwards?" The Year Book of World Affairs, 1979.

————. The status of combatants and the question of guerrila warfare. British Yearbook of International Law, 1971.

Draper, G.I.A.D. The Red Cross Conventions, 1958.

Field Manual (F.M) 27 - 10 The Law of Land Warfare, 1956.

Fleck, Dieter. The Handbook of Humanitarian Law Armed in Conflicts, 1995.

Glahn, Gerhard von. Law among Nations–An introduction, Public International law, 1976.

Greenspan, Morris. The modern Law of Land Warfare, 1959.

Haryomataram, S.H. Kuliah Hukum Perang untuk AMN. 1964.

International Instruments of the United Nations. A Compilation of Agreements–Charters–Conventions–Declaration–Principles– Proclamation - Protocols - Treaties.

Kalshoven, F. The Netherlands and International Humanitarian Law Applicable in Armed Conflicts. International Law in the Netherlands, 1980.

_____, Constraints on the Waging of War, 1987.

Lauterpacht, H (Edit). International Law. Vol. II, 1955.

————. The problem of the revision of the law of war, British Yearbook of International Law, 1952.

Law and Contemporary Problems–Duke University School of Law - Vol. 42 - 1978.

Mallison, Thomas, V & Malisson, Sally, V. The Juridical Status of Privileged Combatants under the Geneva Protocols of 1977 concerning International Conflicts.

Law and Contemporary Problems, Duke University School of Law, Vol. 42, 1978. No. 2 Spring 1978.

Mochtar Kusumaatmadja. Konvensi Palang Merah Tahun 1949, 1979.

Oppenheim. International Law - Vol. II, 1951.

Pearce Higgins, A. The Hague Peace Conferences, 1909.

Pictet, Jean et. al. Commentary - Geneva Conventions 1949, 1952.
———— (Edit). Cornmentary First Geneva Convention, 1952.
————. Humanitarian Law and the Protection of War Victims, 1975.
Prof. Mochtar Kusumaatmadja. Konvensi Palang Merah tahun 1949-1979.
Ribeiro, F.F. "International Humanitarian Law: Advancing progressi- vely backwards", The South African Law Journal, Vol. 97, Bagian I. Februari 1980.
Ribeiro, F.F. International Humanitarian Law. Advancing Progressively Backwards.
Ribeiro, F.F. International Humanitarian Law: advancing progressively backwards. The South African Law Journal, Feb. 1980.
Roling. B.V.A., Aspect of the criminal Responsibility for violation of the laws of war. Di dalam buku: The New Humanitarian Law of Armed Conflict, Antonio Cassese (edit), 1979.
Sandoz, Yves - Swinarski, Christopher - Zimmermann, Bruno. Commentary on the Additional Protocol of 1977 to the Geneva Conventions of 1949.
Sandoz, Yves et.al (Editors). "Commentary on the Additional Protocols of 8 June 1977".
Santiago, Miriam–Defensor. "Humanitarian Law in Armed Conflicts. Protocol I–II to the Geneva Conventions". Philipine Law Journal, Vol. 54, Juni 1979.
Schindler - Toman. The laws of armed conflicts, 1981.
Schindler, Dietrich. The Different Types of Armed Conflict according the Geneva Conventions and Protocols.
Schwarzenberger, Georg. International Law as applied by Int. Courts – Vol. II.
————. International law as applied by International Courts and Tribunals - Volume II The Law of Armed Conflict, 1968.
Sejarah Diplomasi Republik Indonesia dari Masa ke Masa Buku II, Periode 1950 – 1960. Departemen Luar Negeri Republik Indonesia. 1996.
Starke, J.G. Introduction to International Law, 1977.
The South African Law Journal - Vol. 97 Part I - Feb. 1980.