

CHAPTER I

INTRODUCTION

A. BACKGROUND

The protection of Journalists in armed conflicts has an important role in conducting journalistic tasks.¹ Some of the Journalistic tasks are written in the form of news reports and writings on submit or fit in the mass media. Those reports can be published in mass media such as newspapers, television, radio, magazines, documentary film, or internet. The journalistic tasks are very dangerous, especially in the time of armed conflict. The role of Journalist is one manifestation of public freedom to obtain information in the form of news or electronic that is guaranteed by human rights. The Journalists, to perform the activities, need legal protection especially in covering news in an armed conflict.

In World War II showed that the civilian population, especially reporters had less protection during armed conflicts.² There is no Law in Indonesia which fully gives legal protection to Journalists in covering the news or in the exercising of duty.³ Nevertheless, the Press Act has provided a bit regulation on this issue as set in article 8 which is read as follows: “In performing his profession, the reporter has a legal protection”. Yet, the article 8 Law of the Press has not reached how is the protection

¹ Law No. 40 of 1999 on Press Article 1 Sub-Article (4)

² Titus Hapsara, 2001, *Perlindungan Hukum Humaniter Internasional terhadap Wartawan dalam Situasi Konflik Bersenjata*, *Jurnal Ilmiah Ilmu Hukum, PRANATA*, Vol.1, No.3. p. 36

³ *Ibid*, p. 39.

in detail against the journalists who are running the duty especially in armed conflicts.

The explanation in article 8 is the definition of legal protection is guaranteed the protection given by Government to Journalists in carrying out the functions, rights, obligations, and the role in accordance with the provisions of applicable legislation. Therefore, according to the efficient author, the protection of Journalists need to get a more perfect setting which includes both in work in the country and abroad, and also in internal conflict/tension in the uprising in a country or a war between countries.⁴

With respect to the above things, if we look at the rules of journalists protection in International Humanitarian Law or the Law of War, that belong to the Geneva Conventions of 1949 and the Additional Protocols of 1977⁵, have become references in the customs and practices the countries at war. The Geneva Convention of 1949⁶ were hinting that Journalists can be categorized as the civilian. This is because the existence of the Book IV of the Convention governs on the Protection of the Civilian population.⁷ However, that provision only provided protection to the civilian

⁴ Ibid, p. 39

⁵ Protocol I: Protocol Relating to the Protection of Victims of International Armed Conflicts.

Protocol II: Protocol Relating to the Protection of Victims of Non-International Armed Conflicts.

⁶ I. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949.

II. Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea of August 12, 1949.

III. Geneva Convention relative to the Treatment of Prisoners of War, August 12, 1949.

IV. Geneva Convention relative to the Protection of Civilian Persons in Time of War, August 12, 1949.

⁷ Mochtar Kusumaatmadja. 2002, *Konvensi-konvensi Palang Merah 1949 Mengenai Perlindungan Korban Perang*, Bandung, Binacipta. p.103

population who are in power enemy. General protection to the civilian population, especially due to the hostility of the Journalists has not been sufficiently regulated.

This matter got the attention of the International Committee of the Red Cross/ICRC,⁸ one of the institutions during the situation gave care and attention to victims especially journalists in armed conflict both in International and Non-International. Therefore, when the International Conference organized by the Red Cross, that topic always got attention.⁹

On the basis of the principle of distinction in International Humanitarian Law, Journalists belong to the category of civil or non-combatants. It means that the Journalists must be treated humanely and should not become objects of attack by the parties in conflict. However, in reality, it often happens that the violence against journalists. For example, we can see in international conflicts such as the Israel Palestine conflict due to attack by the army of Israel blindly that raises a lot of Journalists injured and the death during the ensuing in the Gaza Strip.¹⁰

Then, one of the instances of Non-International armed conflicts, like in Indonesia, is in the conflict between the Free Aceh Movement (Gerakan Aceh Merdeka/GAM) and the Indonesia National Army (Tentara Nasional Indonesia/TNI)

⁸ ICRC was born in the battlefield, in Solferino (Northern Italy) in 1859, when Henry Dunant, a witness in the battle between the forces of Italy-France with the army of the Kingdom of Hungary-Australia, come save the soldiers who were injured. When returning to their hometown, Geneva, Dunant and four citizens of Switzerland founded the ICRC in 1863. ICRC clearly see terrible impact of a war on the victims of armed violence, as up to now also at spot by 80 countries.

⁹ Haryomataram, 1994, *Sekelumat tentang Hukum Humaniter*, Surakarta, Universitas Sebelas Maret, p. 117

¹⁰ Julie Webb-Pullman, *Gaza Media Demand Action on Othman Case*, <http://gaza.scoop.ps/2012/05/gaza-media-demand-action-on-othman-case/>, accessed on May 2012.

in the village of Alue Mature Aron, East Aceh on December 29, 2003. There found a Journalist, Ersu Siregar, was killed by a shot. Chief of Staff of The ARMY (TNI), Jenderal Rymizard Ryacudu, acknowledged that the bullet which killed Ersu was the TNI's bullet. But so far the murderers have not been on trial.¹¹ While the reporter cameraman, Ferry Santoro, a close friend of Rajawali Citra Televisi Indonesia/RCTI (National Private Television in Indonesia) who participated with Ersu Siregar, should be detained for 325 days in GAM prisoners¹². This problem could result in harm to himself as well as the news.

Hence, based on the data of International Committee of The Red Cross (ICRC) Regional Delegation in Jakarta reported that every year there reporter/journalist of news media were killed¹³. 39 Journalists were killed during World War II, 45 were killed in armed conflict in Viet Nam, a further 18 people were still listed missing, 5 television journalist were killed in October 1975 in East Timor, then the other Australia's Journalists also were killed during a failed coup in Bangkok in 1985 when they got caught up in the fighting, and more than a hundred reporters were killed in the former armed conflict in Yugoslavia.¹⁴

In the Geneva Conventions, for who categorized as Journalists, under any circumstances, their protection must not be reduced (Article 4A of Convention III,

¹¹Natalia, Maria & Margianto, Heru, *The Murder of Journalists Still Hanging around In This Country*, <http://nasional.kompas.com/read/2012/05/03/13470717/Pembunuh.Jurnalis.Masih.Berkelir.an.di.Negeri.Ini>, accessed on May 9th, 2012 .

¹² Jusuf Suroso, Jaumat Dulhajah, 2006, *the Experience of Fery Santoro between Life and Death, 325 Days with GAM*. Jakarta. Kata Hasta Pustaka.

¹³ Titus Hapsara, op.cit, p. 36.

¹⁴ Ibid, p. 36.

and article 79 of Additional Protocol I of 1977) and it became the responsibility of the State to provide guarantees. Article 49 of the Convention I stated that Precautions, Screening and Action, are the three most important things that are the states' responsibility as the parties involved in an armed conflict against the safety and security of civilians in particular told reporters. Precautions before the onset of conflict, in particular, do conflict such as the spread of Non-International Humanitarian Law to the military forces. This is done to find out their, to know their obligations to distinguish attack targets, especially the protection of civilians during war.

If there are violations committed by military forces against the provisions, then the state enter to do the act of checking to trace the allegation actions and the court national. In addition, according to an expert on International Humanitarian Law in Indonesia, Haryomataram said that the status of Journalists who do their job in armed conflict settings are considered satisfactory or not. While the regulation expects greater protection for Journalists who served in the armed conflict. One the other hand the effort to improve this protection status has not been successfully, because quite a lot of experts argued that the repair status or additional protection will even harm the Journalists themselves.¹⁵

It's what makes the writer motivated to write this thesis. This is because Indonesia has already ratified the Geneva Conventions in 1958 contained in Law No.

¹⁵ Haryomataram, op.cit. part III

59 of 1958.¹⁶ In the Geneva Conventions (Fourth Convention), it sets on the protection of the civilian population. It is included in the protection of Journalists.

Meanwhile, in 2002, the Ministry of Defence has issued Decision No: Kep/02/M/II/2002 on the application of Humanitarian Law and Human Rights Law in Organizing the Defense of State. It indicates that the issue of protection of Journalists are also covered in this ruling, for journalists in the exercise of his duties included in the category of task of the defense of the country.¹⁷ Then, the word of International Humanitarian Law in the implementation of the Decision of the Minister be dismissed that the law can apply in humanitarian as well as in providing the protection against Journalists, in domestic issues such as in the event of an uprising in a country as well as other internal conflicts.

B. RESEARCH QUESTION

Based on the previous background, the author is going to answer two questions:

1. Can International Humanitarian Law be applied in solving Journalist in Indonesian case?
2. What kind of protections should be given to Journalist in Non-International Armed Conflict?

¹⁶ Law No. 59 of 1958 on Indonesian Ratification of Geneva Convention

¹⁷ M.Nur Islami, 2011, *Ringkasan Disertasi Rekonstruksi Hukum Dalam Penyelesaian Terorisme di Indonesia (Studi Eklektisisme)*, Semarang, Universitas Diponegoro.

C. OBJECTIVE OF RESEARCH

Based on the above subject matter, the purposes of this research include:

1. Objective purposes:
 - a. to know about The International Humanitarian Law can be applied in solving Journalist in Indonesian case.
 - b. to know about kinds of protection should be given to Journalist in Non-International Armed Conflict;
2. Subjective purpose is as one of the requirement to obtain the degree of Law Scholar at Faculty of Law Universitas Muhammadiyah Yogyakarta.

D. BENEFITS OF RESEARCH

1. Contributes to the scientists who study the law about the possibility of the application of International Humanitarian Law which provides the protection of Journalists in Non-International armed conflicts;
2. Contributing technical possibility of the application of International Humanitarian Law in providing the protection of Journalists in Non-International Armed Conflict.