

CHAPTER ONE

INTRODUCTION

A. Background of Research

Armed conflict is an issue for national and international communities that has been happening for years and experienced by nearly every country in the worldwide. Wars or armed conflicts have taken victims not only the armies but also civilians. In International Humanitarian Law, there is a distinction principle that differentiates between combatants and non-combatants.¹ According to Article 43 Section 2 Additional Protocol 1, combatants are armed individuals of a country organized and have the right to be directly involved in conflicts. Meanwhile, non-combatants are defined as the war of armed conflicts which do not get involved in disputes such as medical and religious personnel. Based on the law of armed conflicts and the moral framework applied to the situation, non-combatants are immune to attacks, whether intentional or non-intentional.²

According to the Article 43 Section 2 of Additional Protocol I, medical personnel are included in the category of non-combatants.³ Medical personnel serves as aids for war victims to maintain fundamental human rights even in the middle of armed conflicts. In other words, medical personal

¹ Shannon E. French, 2018, Distinction and Civilian Immunity, in *The Cambridge Handbook of the Just War*, Cambridge: Cambridge University Press, pp. 152–166.

² Thomas Gregory, 2017, “Civilian Casualties, Non-Combatant Immunity and the Politics of Killing: Review Essay”, *Critical Studies on Terrorism*, Vol. 10, No. 1, pp. 187–196.

³ Daniel Wilkins and C. Dieppe, 2017, “The Non-Combatant Status: Importance and Implications for Medical Personnel”, *Journal of the Royal Army Medical Corps*, Vol. 163, No. 6, pp. 366–370.

performs humanitarian functions founded on moral obligation to provide help for injured people. The victims here include those who are not actively involved in the conflict, such as civilians and combatants who no longer active or hurt.⁴

Therefore, medical personnel and medical aid transportation personnel receive protection from the International Humanitarian Law.⁵ The 1949 Geneva Conventions, the Additional Protocols I and II and the customary rules of the International Humanitarian Law provide protection for medical personnel. International Humanitarian Law forbids any form of attack towards medical personnel without exception. Furthermore, in Article 24 of the 1949 Geneva Convention and Article 9 of Additional Protocol II, write clearly medical personnel “shall be respected and protected.”⁶ Medical personnel need to receive a high level of protection; medical personnel should not be targeted, bullied, or terrorized.⁷ Instead, medical personnel should receive full support and resource grants to help them perform tasks.⁸

Although the law stated that medical personnel should receive adequate protection, there are violations towards the International Humanitarian Law in the real situation.⁹ Many medical personals were arrested, terrorized, attacked, tortured, interrogated, and even killed. Some

⁴ *Ibid* p. 368.

⁵ R. Kolb and F. Nakashima, 2020, “The Notion of “Acts Harmful to the Enemy” Under International Humanitarian Law”, *International Review of the Red Cross*, Vol. 1, No. 1, p. 4.

⁶ Daniel Wilkins and C. Dieppe, *Op. cit.*, p. 369.

⁷ M. Medvedieva and H. Habrelian, 2020, “Protection of Medical Personnel in the Context of Armed Conflict in Ukraine”, *Actual Problems of International Relations*, Vol. 1, No. 142, p. 43.

⁸ G. Gabrelyan, 2019, “Problems of Medical Staff Protection in the Context of Armed Conflict in Ukraine”, *Social Law*, Vol. 1, No. 3, pp. 94–98.

⁹ M. Trelles, B. T. Stewart, and A. L. Kushner, 2016, “Attacks on Civilians and Hospitals Must Stop”, *The Lancet Global Health*, Vol. 4, No. 5, p. e298.

disruptions prevent medical personnel from conducting tasks, including damaging or looting medical supplies and destroying healthcare facilities and transportation modes.¹⁰ According to Surveillance System for Attacks on Health Care by World Health Organization (WHO), from January to August 2020, there had been 150 attacks, 107 deaths, and 168 injuries recorded in 13 countries or zones.¹¹ These attacks impacted healthcare facilities, transportation modes, medical supplies, warehouses, patients, and personnel. These violations have been going on in various countries such as Syria, Palestine, *etc.*¹²

As already mentioned above, medical personnel carry a humanitarian task to provide medical assistance and rescue people who have been injured by war. Therefore, the protection of medical personnel is a crucial issue that must be discussed. The implementation of International Humanitarian Law towards medical personnel in carrying weapons conflicts needs to be re-evaluated because it has recorded a number of violations committed or attacks on medical personnel have significant figure, even has caused many deaths of medical personnel.

The difference between this research and other researches are in the area of dispute settlement mechanism. Medvedieva, M., and Habrelian, in the

¹⁰ R. J. Haar, C. B. Risko, S. Singh, D. Rayes, A. Albaik, M. Alnajar, M. Kewara, E. Clouse, E. Baker, and L. S. Rubenstein, 2018, “Determining the Scope of Attacks on Health in Four Governorates of Syria in 2016: Results of A Field Surveillance Program”, *Plos Medicine*, Vol. 15, No. 4, pp. 1–18.

¹¹ World Health Organization, 2020, “Surveillance System for Attacks on Health Care”, retrieved from: <https://extranet.who.int/ssa/LeftMenu/Index.aspx>, accessed on 1 October 2020 at 8:37 p.m.

¹² M. Heisler, E. Baker, and D. McKay, 2015, “Attacks on Health Care in Syria — Normalizing Violations of Medical Neutrality?”, *New England Journal of Medicine*, Vol. 373, No. 26, pp. 2489–2491.

paper “Protection of Medical Personnel in the Context of Armed Conflict in Ukraine,” and Rohini J. Haar, Casey B. Risko, Sonal Singh, Diana Rayes, Ahmad Albaik, Mohammed Alnajar, Mazen Kewara, Emily Clouse, Elise Baker, Leonard Rubenstein, in the paper “Determining the Scope of Attacks on Health in Four Governorates of Syria in 2016: Results of a Field Surveillance Program”, only mention the protection of medical personnel in armed conflict and the problem faced by medical personnel. While in this research, author describes some other mechanisms to settle the dispute related to the issue.

B. Problem Formulation

From the research background above, the author raises a question that must be discussed, namely, how is the implementation of International Humanitarian Law towards medical personnel protection in the armed conflicts?

C. Objective of Research

The research objective is to understand the concept of protection of medical personnel protection in armed conflicts under International Humanitarian Law, how its implementation.

D. Benefits of Research

There are some benefits of the research, namely:

1. Theoretical Aspect

The research benefits the development of legal science regarding the protection of medical personnel in armed conflicts under International Humanitarian Law.

2. Practical Aspect

The research contributes to International organizations in making a better international organization policy and conflicting parties in resolving the conflicts.