

CHAPTER II

LITERATURE REVIEW

A. Protection of Civilian Population

According to the Geneva Convention IV in 1949, Law of Armed Conflict (LOAC) defines civilians as the subject to only very limited protection. Civilians were the object possessing certain rights and a general immunity from attack of belligerent occupation. On other hand, the protection from the exigencies of armed conflict was extended to civilians, on the part of International Committee of the Red Cross (ICRC) and it was due to humanitarian initiatives. Civilians need protection if they fall into enemy forces hand. Enemy forces could not arrest them, harass them, torture them, take over their own property or not provide with some food or medical supplies for keeping the civilians healthy. These situations do not exist when the civilians are involved in armed conflict, but they do when the armed forces come into contact with civilians who owe allegiance to the 'enemy' outside the context of continuous conflict. This situation usually happens outside active 'war zones'. The goals of the law in these cases are to protect civilians from arbitrary conducts by the enemy. Geneva Conventions IV had aims to provide some protection for civilians in armed conflict situations. Civilians also need protection of armed conflict during this armed conflict. Whilst the civilians are not directly under the

control of the enemy armed forces, they may face attacks like a bomb on their own towns or receive damage inflicted upon them by such attacks.⁷

Before 1949, Geneva Conventions concerned only with combatants, but not with the civilians. After the experiences of World War II, Geneva Conventions now more concerned about protection of civilians. Geneva Conventions also states the differences between the situation of foreigners in conflict area and civilians in occupied territory.⁸ Geneva Conventions of 1949 and Additional Protocols of 1977 mentioned, “Civilians and all persons not taking part in combat may under no circumstances be the object of attack and must be spared and protected”.⁹

B. IAC (International Armed Conflict)

IAC or international armed conflict is defined as a declaration a war between two or more states. Even the state who is involved in war is not recognized by the other state. IAC could be classified into two types, Inter-state wars and Wars of national liberation.¹⁰ Article 2 Common to the Geneva Conventions of 1949 states: “*All cases of declared war or of any other armed*

⁷ Robert Kolb and Richard Hyde, 2008, *An Introduction to the International Law of Armed Conflicts*, Oxford, Hart Publishing, pp. 221-222.

⁸ International Committee of The Red Cross (ICRC), 2010, “The Geneva Conventions of 1949 And Their Additional Protocols”, available at <https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>, accessed on November 5th, 2016 at 10.35pm.

⁹ International Committee of The Red Cross (ICRC), 2010, “Protection of the Civilian Population”, available at <https://www.icrc.org/eng/what-we-do/protecting-civilians/overview-protection-civilian-population.htm>, accessed on November 3rd, 2016 at 3.56pm.

¹⁰ Muhammad Naqib Ishan Jan, Abdulrashid Haruna, 2015, *International Humanitarian Law*, Gombak, IIUM Press, pp. 32-33.

conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The convention shall also apply to all cases of partial or total occupation of the territory of contracting party, even if the said occupation meets with no armed resistance."¹¹

In International Armed Conflict (IAC) the parties who have declared a war are between two or more different states with legal armed forces, such as North Korean-South Korean war of 1950.¹²

C. NIAC (Non-International Armed Conflict)

Based on article 3 common to the Geneva Conventions 1949, Non-International Armed Conflicts are declaration of a war involving one or more non-State armed groups. There are 2 requirements or conditions so those situations can be categorized into Non-International Armed Conflict. Firstly, the level of intensity of hostilities from armed conflict must reach minimum level. Secondly, a group of non-governmental element who are involved in the conflict must be considered as "parties to the conflict", or in other words they must organize armed forces. Additional Protocol II of 1977 to the Geneva Convention of 1949 develops article 3 common to the Geneva Convention 1949 without any modified about existing condition of application. It suggests that non-governmental parties are able to carry out sustained and concerted military

¹¹ Article 2 Common to the Fourth Geneva Conventions of 1949.

¹² Anonymous, 2011, "Defining Armed Conflict in International Humanitarian Law", available at <http://www.inquiriesjournal.com/articles/508/defining-armed-conflict-in-international-humanitarian-law>, accessed on November 5th, 2016 at 11.14pm.

operation and to apply this Protocol. Additional Protocol II 1977 can be applied between state armed forces and dissident armed forces or Insurgent of armed conflict. In fact, common article of Geneva Conventions of 1949 does not apply to armed conflict between non-state armed groups.¹³

D. International Humanitarian Law (IHL)

International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict.¹⁴ When there is any armed conflict the law of IHL was activated as the law. The IHL of armed conflicts, concerned about preservation of humanity in the time when they face of the reality of war.¹⁵ International Humanitarian Law protects the civilians and religious military personnel who do not take a part in an armed conflict. The wounded, shipwrecked, sick, and prisoners of war are also protected by International Humanitarian Law.¹⁶

¹³ Glossary, 2012, “Non-International Armed Conflict”, available at <https://casebook.icrc.org/casebook/doc/glossary/non-international-armed-conflict-glossary.htm>, accessed on November 6th, 2016 at 1.37pm.

¹⁴ International Committee of The Red Cross (ICRC), 2014, “What Is International Humanitarian Law?”, available at <https://www.icrc.org/en/document/what-international-humanitarian-law>, accessed on November 7th, 2016 at 2.16pm.

¹⁵ Frits Kalshoven, Liesbeth Zegveld, 2011, *Constraints on the Waging of War: An Introduction to International Humanitarian Law*, New York, Cambridge University Press, p. 280.

¹⁶ Mohd Akram, 2005, *International Humanitarian Law*, Kuala Lumpur, International Law Book Service, p. 4.

The terminology of humanitarian law or international humanitarian law is applicable in armed conflict, at the beginning known as law of war then become laws of arms conflict, and in the end known as humanitarian law. International Humanitarian law is divided into 2 branches, namely:

- a. The Law of Geneva, which is made to protect the military personnel who no longer take part in the battle and people who are not actively involved in the war, namely the civilian population.
- b. The law of Den Haag, which is defined as the rights and obligations of the parties who fought in carrying out military operations and set limits limitation on the means that may be used to harm the enemy.¹⁷

One of the discussions contained in international law is the teaching of the "Just War". Through these teachings, then Humanitarian Law is divided in two parts, namely:

- a. The jus ad bellum means war laws. Jus ad bellum discusses the time execution of the war or set about how a country is allowed to perform armed violence or war.
- b. Provision of the Jus in bello is spelled out again in 2 (two) more provision, such as:
 - a) Provision of choices refers to the method of the war and the tools that were used in the war. This provision is generally referred to

¹⁷Anonymous, 2014, "Hukum Humaniter Internasional", available at <http://www.bahankuliyah.com/2014/05/hukum-humaniter-internasional.html>, accessed on December 13th, 2016 at 6.17pm.

as the law of The Hague or The Hague Laws contained in the Convention-The Hague Convention of 1907.

- b) The provisions governing the protection of those who become victims of war that included both combatants and civilians. This provision is commonly known as the law of Geneva or The Geneva Convention Laws laid out in the Geneva Conventions of 1949.¹⁸

¹⁸ Anonymous, 2015, "Pengertian Hukum Humaniter Internasional Definisi dan Sejarah Perkembangan", available at <http://www.landasanteori.com/2015/10/pengertian-hukum-humaniter.html>, accessed on December 13th, 2016 at 6.34pm.