

CHAPTER ONE

INTRODUCTION

A. Background of Research

The use of chemical weapons has becoming a repeated violation in the Syrian civil war.¹ However, the use of chemical weapons is not limited only to the Syria conflict because the use of chemical weapons has long been used in warfare before the Syrian war occurred. In the war against Iran and Iraqi Kurds region in northern Iraq in 1988, the President of Iraq Saddam Hussein used mustard and *sarin* gas causing thousands of people killed. The use of chemical agents as a weapon was happened again in 1995, by the Japanese cult member Aum Shinrikyo who used *sarin* gas in a terrorist attack on Tokyo subway. That attack was causing the death of thirteen people and over 6000 people injured.²

Furthermore, in 2006 and 2007, al Qaeda in Iraq used chlorine in vehicle bombs against the United States and Iraqi troops. The Taliban also has reportedly used chemical agents in attacking schools in Afghanistan.³

¹ The 7th Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UNHRC. 2014, A/HRC/25/65 paras 127 et seq (sarin); 8th Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UNHRC. 2014, A/HRC/27/60, paras 115-118 (chlorine).

² Kjølsv Egeland, 2015 “Longing for Armageddon”, *Ilpi Weapons of Mass Destruction Project*, Background Paper No. 16, Oslo, International Law and Policy Institute, published on <http://nwp.ilpi.org/?p=3670> accessed on February 5th, 2019 at 5:42 PM.

³ *Ibid.*

Other chemical materials in many explosive types of equipment were also reported being used on numerous incidents.⁴

All of those phenomena reflected that human life could not be separated from the existence of conflict, or it can be said that war is inevitable. This opinion was reflected in several studies which stated that in humans, there is an instinct to hurt or attack others.⁵ Therefore, war is something familiar to human in this world that makes war or armed disputes as a form of event that is almost as old as the civilization of life on earth.⁶ There is also a term which stated that "armed conflict is as old as humankind itself."⁷ It means the war was born together with the existence of human, which made war is inevitable until now.

Due to the inevitability of war, legal regulation is made to regulate a war which can be carried out by paying attention to humanitarian principles that recently known as International Humanitarian Law.⁸ Humanitarian law is not only regulating the means and method used in warfare through the Hague Convention of 1899 and 1907, but also regulating the protection of victims of war through the Geneva Convention 1949. Further arrangements are contained in Additional Protocols 1977. Thus, Humanitarian law has several

⁴ Anonymous, 2007, "Iraq: The Fear Factor in Chlorine Bombs", published on <https://worldview.stratfor.com/article/iraq-fear-factor-chlorine-bombs> accessed on February 28th, 2019 at 5:54 PM.

⁵ Ambarwati, *et. al*, 2009, *Hukum Humaniter Internasional dalam Studi Hubungan Internasional*, Jakarta, Rajawali Press, p. 43.

⁶ Arlina Permanasari, *et. al*, 1999, *Pengantar Hukum Humaniter*, Jakarta, International Committee of the Red Cross, p. 12.

⁷ International Committee of the Red Cross, 2010, "War and International Humanitarian Law", published on <https://www.icrc.org/en/doc/war-and-law/overview-war-and-law.htm>, accessed on January 31st, 2019 at 2:42 PM.

⁸ *Ibid.*

principles in regulating warfare, one of which is humanitarian principles that contained in the Hague Convention and Geneva Convention.

In the Hague Convention, the principle of humanity is reflected in the prohibition on the use of certain weapons which might capable in causing excessive injuries or unnecessary suffering, one of them is the use of chemical weapons.⁹ Meanwhile, in the Geneva Convention, the principle of humanity is reflected in the protection given to the prisoners of war¹⁰, as well as to civilians who do not involve in warfare.¹¹

Warfare is carried out with various purposes and objectives. Among them is with the intention of self-defense to defend life, honor, or defend the nation, also in maintaining the ideology of a nation. Besides that, there were also wars which were carried out to seize, colonize, or controlling the territories of another state because of the interest in the abundance of natural resources owned by the state. The use of weapons in an armed conflict is usually done in order to achieve a victory. Various states in the world are trying to defend themselves from various external attacks by arming themselves and improving the quality of their weapons technology.

Lately, there have been many types of weapons used in warfare, as in the Syrian conflict which has been going on for more than five years. Since 2011, the war began with the presence of parties who were dissatisfied and opposed to the state's government under the leadership of President Bashar al-

⁹ Article 23 of the Hague Convention IV 1907.

¹⁰ Article 13 of the Geneva Convention III 1949.

¹¹ Article 3 of the Geneva Convention IV 1949.

Assad. The city of Aleppo, Syria's biggest war city has become the main stage of the conflict between President Bashar al-Assad which supported by Iran and Russia. Meanwhile, the demonstrators were supported by the United States of America. As a result of the war, the city of Aleppo for several years has been divided into two with government forces in the west and rebel forces in the east. The Syrian conflict is getting worse because of the tendency of the two warring parties to attack each other using chemical weapons with civilian casualties.¹²

In fact on August 25th, a United Nations Security Council mandated investigation team (OPCW Joint Investigative Mechanism (JIM)) concluded that both the Assad regime and oppositional groups had undertaken a chemical attack in Syria in 2014 and 2015.¹³ This is the first time that the United Nations had made an authoritative affirmation of responsibility regarding the use of chemical weapons in the Syrian conflict.

Chemical weapons are prohibited being used in armed conflict because the effects of the use are felt inhuman. Someone who is not directly attacked can be a victim of the use of chemical weapons because chemical weapons can attack through several forms, both in the form of liquids or gases. For example, the effects of *Sarin* causing the sensations of suffocation,

¹² Victor Maulana, 2016, "ISIS Gunakan Senjata Kimia, Lavrov: Ancaman Kian Besar", published on <https://international.sindonews.com/read/1089604/41/isis-gunakan-senjata-kimia-lavrov-ancaman-kian-besar-1456841963>, accessed on February 1st, 2019 at 9:47 AM.

¹³ Anonymous, 2016, "UN Chief Submits Report Related to Use of Chemical Weapons in Syria to the Security Council", 2016, published on <https://news.un.org/en/story/2016/08/537352-un-chief-submits-report-related-use-chemical-weapons-syria-security-council#.V8CdvZOAoko>, accessed on February 1st, 2019 at 9:56 AM.

respiratory struggles, paralysis,¹⁴ and retention of frequent occurrence without victims' awareness of what they are being subjected to, all combine to reinforce the egregious nature of these weapons. Therefore, chemical weapons regulation was already clear and comprehensive in setting out the prohibition on chemical weapons usage.

Discussing chemical weapons, we can relate to the International Humanitarian Law which already regulates the use of chemical weapons although, in fact, the enforcement of the use of chemical weapons is still unclear due to many kinds of interests by many parties. Based on the background above, the author would like to analyze the international humanitarian law perspective on the use of chemical weapons in Syria conflict and find out the factors causing the lack of law enforcement upon the use of chemical weapons in the conflict of Syria.

B. Problem Formulations

Based on the background of research above can be formulated a research problem, namely:

1. How is the international humanitarian law perspective on the use of chemical weapons in Syria conflict?
2. What are the factors which cause the lack of law enforcement on the use of chemical weapons in the Syria conflict?

¹⁴ OPCW, "What is a Chemical Weapon?", Fact Sheet No. 4, published on https://www.opcw.org/sites/default/files/documents/Fact_Sheets/English/Fact_Sheet_4_-_CW_types.pdf accessed on February 1st, 2019 at 10:23 AM.

C. Objective of Research

There are some objectives of research, as follows:

1. To understand the humanitarian legal perspective on the use of chemical weapons in Syria conflict
2. To analyze the factor which causes the lack of law enforcement on the use of chemical weapons in the Syria conflict

D. The Benefits of Research

Based on the objective of research above can be concluded the benefits of research as follows:

1. Theoretical Aspect

The research will give benefits to understand deeply about the International humanitarian law perspective on the use of chemical weapons in Syria conflict.

2. Practical Aspect

The research will provide the state or any individuals as a subject of international law a better understanding to implement a better way of conducting a war based on the principles applied in customary international humanitarian law.

E. Overview of the Chapter

The research consists of five chapters as follows: Chapter I which contains Introduction, Chapter II which contains Literature Review,

Chapter III which contains Research Methodology, Chapter IV which contains Finding and Analysis, and Chapter V which contains Conclusion and Suggestion.

In Chapter I, the author elaborates general matters regarding the issue of the research such as Background, Research Question, Research Objective, Research Benefits, and Overview of the Chapter. The background provides the current condition of Syria and many other violations regarding the use of chemical weapons which not limited only to the Syrian civil war. The author also addresses the research problem, which will be discussed in Chapter II.

Chapter II provides a Literature Review which discusses the related library reviews and theoretical framework regarding Chemical Weapons, Armed Conflict, International Humanitarian Law.

Chapter III discusses the research method, which is used in the research. The discussion is started from the type of research, legal materials, method of collecting data, and method of data analysis. Type of the research is normative legal research. The research applies statute and case approaches. The data were collected from some literature consists of primary legal material, secondary legal material, and tertiary legal material. Furthermore, the data were taken through library research and analyzed systematically by using a qualitative and descriptive method.

Chapter IV provides Finding and Analysis. The chapter elaborates the found facts and discusses the Syrian civil war along with the actual International Humanitarian Law perspective towards the use of chemical weapons in the Syrian war.

Chapter V contains a conclusion which the author summarizes the finding and analysis then concludes the international humanitarian law perspective towards the use of chemical weapons in the Syrian civil war. Suggestions are then given for future implementation in handling the case which happens in Syria.