
RESEARCH ARTICLE

Implementation of Humanitarian Law in Military Operations to Support the Achievement of the Indonesian Armed Forces Main Duties

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ABSTRACT

In the effort to eradicate terrorism, the security dimension is thick in the policy of eradicating terrorism. Civil society is worried about the material of the 2018 Law Number 5 concerning the Eradication of Criminal Acts of Terrorism; it is considered that the Act can reduce the level of state compliance with respect, protection, and fulfillment of human rights in eradicating terrorism in addition to the effectiveness of the method of eradicating terrorism. The purpose of this study is to provide an overview and analysis of the form of the threat that has undergone a shift that requires the army as the main component of the defense system to reposition itself by placing itself in the right position in the midst of the dynamics of developing threats. The method in this research is normative juridical through a comprehensive study by taking sources from regulations and laws, while empirical juridical research is a study based on observations on threats involving the TNI. The theory used is the Theory of Authority and Theory of Rule of Law as the theoretical basis for the analysis of the main problems regarding the change of the army from a conqueror to a professional soldier. The military does not intervene in politics, and conversely, there is no political intervention in the military. Law of 2004 Number 34 concerning the TNI states that the Indonesian National Army was built and developed professionally according to the country's political interests, referring to the principles and values of democracy, human rights, civil supremacy, provisions of national and international laws that have been ratified.

KEYWORDS

Human Rights, Indonesian National Army, Terrorism, Papua

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1. Introduction

The Indonesian National Army (TNI) has a role as a tool of the State in the field of defense; this statement is contained in article 5 of Law Number 34 of 2004 concerning the Indonesian National Army. In carrying out its role as a tool of the State in the field of defense, the TNI has three main tasks, namely upholding state sovereignty, maintaining the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the Constitution of the Republic of Indonesia of 1945, and protecting the entire nation and all Indonesian blood from threats and interference to the integrity of the nation and state. The three main tasks of the TNI are carried out through military operations, which include military operations for war. Military operations for war are carried out based on the policies and political decisions of the State, which also have legal dimensions.

The problem of this research, now and in the future, military operations for war in the form of armed disputes (warfare) will not run alone but will always be accompanied by disputes and lawsuits (lawfare) from the parties to the dispute. Each party will prove to each other that their actions are legally reasonable and blame the actions of their opponents as unlawful in an armed dispute. The warring parties in an armed conflict will conduct warfare and lawfare at the same time continuously. For example, in the armed conflict between Azerbaijan and Armenia in the fight over the Nagorno Karabakh region, each side accused the other of violating humanitarian law by attacking the civilian population. This they do in order to legalize and maintain the legitimacy of military operations for the war they are conducting. The ultimate goal of their action is to not only win the battle on a narrower scale but also to win the war in a broader sense.

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2. Methodology

This research is conducted with normative juridical research methods by conducting a comprehensive study sourced from laws and regulations and also empirical juridical research that conducts assessments based on observations of handling acts of terrorism in Indonesia involving the TNI.

This research is legal research that uses several approaches to answer the problems studied, namely: 1) statute approach, 2) conceptual approach (conceptual approach), 3) comparative approach (comparison approach), and 4) historical and philosophical approach (historical approach) and (philosophy approach).

The data required in this study is secondary data. Secondary data is obtained by conducting a study of the document:

- a. Primary legal materials, namely legal materials that are binding in the form of the Constitution to the laws and regulations under it and other legal documents;
- b. Secondary legal materials that provide explanations of primary legal materials, namely research results related to the main theme of this research and the results of discussions in various other scientific forums;
- c. High-quality legal materials or supporting legal materials such as dictionaries, encyclopedias, and other materials that complement research data.

Data processing is done qualitatively. Written legal materials that have been collected are then systematized in accordance with the problems studied. Furthermore, the legal material is studied and elaborated in accordance with the problem using the relevant theoretical foundation. To answer the problem, the legal material that has been combinated is then assessed so that it can appropriately answer the meaning and position, and legal implications of the State Direction in the Indonesian state system.

3. Results and Discussion

Policy decisions and political decisions to conduct a military operation for war must be justified and in accordance with applicable law. Decision-making to carry out military operations for wars that are not legal can be categorized as a crime and does not meet the principle of "legality of military operations" this is reinforced by the definition of military operations for the war itself. Military operations for war according to the explanation of Article 7 paragraph (2) letter a law No. 34 of 2004 concerning the TNI is any form of deployment and use of TNI force to counter the military forces of other countries that commit aggression against Indonesia and/ or in armed conflict with another country or more, which is preceded by a declaration of war and subject to international war law.

In the implementation of military operations for the war, the TNI must be guided or comply with all legal rules stipulated in international war law or commonly also called humanitarian law. After a military operation, especially a military operation for war, all soldiers' actions, tactics used, and use of force must comply with the rules of restrictions that practice in warfare or known as "Conduct of hostilities." In military operations for war, the use of force is unlimited. TNI's non-compliance as an institution or TNI soldier as an individual to the rule of law contained in humanitarian law is not only contrary to national laws and regulations but also contrary to internationally applicable law. The obedience of a military operation for war to humanitarian law is also to avoid the failure of military operations for the war itself so that the military operation for the war does not experience what is called "winning the battle but losing the war" or winning the battle but losing the war. The inability to conduct military operations for war certainly affects the TNI's ability to carry out its main duties.

Whether or not a military operation is legal for war is strictly determined by applicable law. Not only do we need the law to ensure the legitimacy and legitimacy of a military operation for war, but we also need to ensure responsibility for the use of force of arms by units and soldiers on the ground. Special military operations for war, both within the scope of domestic armed disputes (Non-international Armed Conflict) and international armed conflict (international armed conflict), the dominant law that applies is the law of war or humanitarian law. For this reason, it is very important for the TNI as an institution and TNI soldiers as individuals to have knowledge about humanitarian law.

3.1 The enactment of humanitarian law in Indonesia.

TNI acts as a tool of the state in the field of defense in carrying out its duties based on state political policies and decisions. Concretely obliged in terms of the responsibility of the state regarding human rights to realize by protecting the human rights of every individual from the abuse of state power, ensuring the existence of human rights of every individual in the provisions of law and in its implementation, and also obliged to protect (protect), guarantee (ensure)) and fulfilling the ham. Human rights are part of national law and have legal procedures in place to defend and protect these rights. So that in implementing human rights must meet the following requirements:

- a. Human rights should be used as a positive law;

- b. there must be legal procedures to maintain and protect such human rights;
- c. there must be the independence of the court as the holder of free and independent judicial power.

The enforcement of human rights law, in addition to being contained in the 1945 Constitution explicitly contained in Chapter XA in Articles 28 A to Article 28J, is also regulated in Article 2 of Law No. 39 of 1999 on Human Rights, which states that the state of the Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights that are naturally inherent to and inseparable from humans, It must be protected, respected, and upheld for the remembrance of human dignity, well-being, happiness, and ingenuity and justice. The existence of human rights has gained legal recognition by the Indonesian state, so the denial of human rights will certainly have implications for violations of the law; this is because human rights are legal rights whose fulfillment becomes the responsibility of the state. Human Rights Law includes laws regulated in various national legislation including conventions or covenants on human rights and are universal and international that have been ratified, including:

- a. The International Covenant on Political Civil Rights (ICCPR);
- b. The International Covenant on Socio-Economic, Social and Cultural Rights;
- c. International Covenant on the Elimination of All Forms of Racial Discrimination of 1965;
- d. Covenant on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1981;
- e. Convention Against Torture, Treatment or Other Cruel, Inhuman, and Degrading Punishment (CAT) of 1984;
- f. Convention on the Rights of the Child 1990;
- g. United Nations Resolution No. 34/169 of 1988 on Ethics of Conduct for Law Enforcement
- h. United Nations Resolution No. 43/174 of 1988 on the Principle of Protection of All Persons in All Forms of Detention or Imprisonment;
- i. United Nations General Assembly Resolution No. 37/194 of 1982 on The Principle of Medical Ethics in Protecting Prisoners;
- j. General Assembly Resolution Perikatan Bangsa Nation No. 45/110 of 1990 on Minimum Standards for Non-Detention Measures ("Tokyo Rule");
- k. United Nations Minimum Standards Regulation of 1985 for the Conduct of Juvenile Justice;
- l. Declaration on the Principle of Justice for Victims of Evil and Abuse of Abuse in 1985;
- m. Declaration on the Elimination of Violence Against Women in 1993;
- n. Declaration of Human Rights Defenders of 1989;
- o. Prevention and Investigation of the Effective Effects on the Implementation of the Death Penalty Outside the Legal Process, Arbitrary and Sumir (1989/65, May 1989);
- p. Universal Guidelines for the Restoration of The Rights of Victims of Gross Human Rights Violations (United Nation Basic Principle and Guidelines on the Rights to a Remedy and Reparation for Victims of Basic Violations of International Human Rights Law and Serious Violations of International Humanitarian Law) Year 2005;
- q. United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement in 1980; and
- r. Optional Protocol of the Convention on the Rights of children concerning The Involvement of Children in Armed Conflicts of 2000 (Optional Protocol to the Convention on The Rights of the Child on the Involvement of Children in Armed Conflict) which has been passed by The Republic of Indonesia Law No. 9 of 2012.

The purpose of Humanitarian Law is to provide protection and assistance to those who suffer and become victims of war, whether real or actively participating in hostilities or not participating, or in other words providing protection to combatants or civilians from unnecessary suffering, ensuring very fundamental human rights for those who fall into the hands of the enemy, and prevent War is cruel without knowing the limits. The application of Humanitarian Law shall be implemented in accordance with the following principles:

- a. humanity(Humanity);
- b. Military necessity;
- c. unnecessary suffering;
- d. balance (Proportionality); and
- e. Distinction (Distinction).

The organization and understanding of Humanitarian Law to TNI personnel can be carried out with materials that include:

- a. The Hague Convention was produced in two (two) International Peace Conferences in 1899 and 1907;
- b. The Geneva Conventions of 1949, which have been ratified by Law No. 59 of 1958 concerning the participation of the State of the Republic of Indonesia in all Geneva Conventions of 12 August 1949, consisting of:
 - 1) Geneva Convention I on Improving the Condition of Wounded and Sick Soldiers in Land Battles;
 - 2) Geneva CONVENTION II on Improving the Condition of Wounded, Sick soldiers and shipwreck victims at sea;

- 3) Geneva Convention III on the Treatment of Prisoners of War; and
- 4) Geneva IV Convention on the Protection of Civilians in Times of War.
- c. San Remo Manual on the Law of War at Sea (San Remo Manual on International Law Applicable to Armed Conflicts at Sea) 1994;
- d. Guidelines and Instructions for the Military on Environmental Regulations at the Time of Armed Affairs (Guidelines for Military Manuals and Instructions on the Protection of the Environment in Time of Armed Conflict) ICRC/UNGA 1994;
- e. The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and Their Destruction products and Transfers in 1999 (Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and On Their Destruction) has been passed by Law No. 20 of 2006; and
- f. International Customary Law is an international convention on Humanitarian Law that has been accepted as law and applied by the international community.

In a war, the party directly involved in it is not an individual as an individual or as a citizen, but in his capacity as a soldier representing his country. Therefore, when one of the disputing parties has laid down arms, his status is no longer as an enemy but as a human being that no one has the right to take his life. International humanitarian law (or commonly written humanitarian law) that has been known and studied today is one of the branches (branches) of international law. It is no surprise that humanitarian law has the same characteristics as international law. For example, the source of humanitarian law is the same as the source of international law, which refers to Article 38 paragraph (1) of the Statute of the International Court of Justice. The sources of such laws are international treaties (treaty), customary international law (Customary international law), general principles recognized by civilized society (general principles of law), jurisprudence (judicial decisions), and doctrine (doctrine). or the opinions of scholars who have recognized their expertise. Historically the term humanitarian law was a further development of the terms laws of war and the laws of armed conflict. The term is due to the psychological factors or atmosphere of the world's trauma after world war I and II that cause fatalities and loss of treasures so large that people avoid and traumatize with the word war or war. The term law of war is no longer frowned upon, but on the other hand, it is still considered necessary to have provisions governing armed disputes, even if the dispute is no longer called war. In lieu of the term law of war, the term laws of armed conflict are used.

The term laws of armed conflict have been better known as humanitarian law since the Conference of Government on the Reaffirmation and Development in Armed Conflict in 1971. In 1974, 1975, 1976, and 1977, the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applied in Armed Conflict was held. According to the International Committee of the Red Cross (ICRC), Humanitarian Law is an international rule of law, established by international treaties or customs, specifically, expected to address humanitarian problems that arise directly from international and noninternational armed disputes and for humanitarian reasons, limit the rights of international and non-international disputes. Parties to the conflict use their preferred methods and tools of war or to protect the people and property of those who may be affected by the conflict. Formally, humanitarian law is written in the Hague Conventions of 1899 and 1907, the Geneva Conventions I, II, III, and IV of 1949, the additional Protocols I and II of 1977, the Chemical Weapons Convention of 1993, and other international conventions relating to the use of weapons in armed conflicts. Humanitarian law does not necessarily apply formally juridically in Indonesia. The implementation of humanitarian law in Indonesia is carried out through the mechanism of ratification and accession. Indonesia has accessed all four Geneva Conventions 1949 through Law No. 59 of 1958 concerning the participation of the Republic of Indonesia at the fourth Geneva Convention on August 12, 1949. The enactment of the 1907 Hague Convention in Indonesia, according to Professor Sugeng Istanto, is based on the principle of concordance. At the time of the signing of the Hague convention of 1907 by the Kingdom of the Netherlands, Indonesia was still named the Dutch East Indies, which is a colony of the Kingdom of the Netherlands so that the ratification established by the Kingdom of the Netherlands with the Law of July 1, 1909, and the decision of the King (Koninklijk Besluit) dated February 22, 1919, also applies to the Dutch East Indies. Then based on Article II of the transitional rules of the Constitution of the Republic of Indonesia 1945, all Dutch heritage regulations still apply to the Republic of Indonesia before the new regulations are held.

Thus all provisions contained in the Hague Convention 1907, the Four Geneva Conventions 1949, and all international conventions that have been ratified by Indonesia, which contain procedures for the start of the war, legal tools and methods of war, protection for victims of war both on land and at sea, protection for prisoners of war and protection for civil society and other provisions on armed disputes apply also to all citizens. Indonesia, especially for TNI soldiers. In other words, humanitarian law is juridically formally applicable in Indonesia. Humanitarian law does not intend to negate or prohibit the occurrence of war because, from the perspective of humanitarian law, war is an unavoidable reality. According to Mohammed Bedjaoui, the purpose of humanitarian law is to humanize war.

The objectives of humanitarian law in various literature are: providing protection to combatants and civilians from unnecessary suffering; guaranteeing fundamental human rights to those who fall to the enemy; preventing cruel war without knowing the limits. The most important thing here is the principle of humanity. Therefore, humanitarian law is very important to be applied in a military

operation, especially military operations for war, both in the stages of planning, preparation, implementation, and implementation of military operations for the war.

3.2 Application of Humanitarian Law in Military Operations for War.

A military operation for war generally begins with a stage of operation planning; preparation of operations is continued with the implementation of operations and ends with the stage of ending operations or consolidation. In each stage of military operations for the war, it is necessary to pay attention to aspects of the enactment of humanitarian law. In the planning stage of the operation, a commander will carry out the military decision-making process (MDMP). MDMP is an analytical mechanism used to solve problems that apply among the military, including making or compiling estimates of the circumstances and plans of operations. The ultimate goal of the MDMP process is to produce a clear, concise, and comprehensive operating plan.

The MDMP process consists of the stages of acceptance of the main task, the analysis of the principal task, the development of the way of acting, the analysis of how to act, the comparison of how to act, and the end with the issuance of the operating order. In all stages of the MDMP, especially in the stage of development of the way of action and expenditure of operating orders must strictly comply with humanitarian law so that the operating orders issued do not conflict with humanitarian law. A commander must ensure that the military target/object he wishes to attack or seize, as well as the tools and methods to be used in seizing such targets as outlined in the operating order he issued, must be in accordance with the contents of the conventions of the convention in humanitarian law. The failure of military commanders to comply with humanitarian law in the planning stages of military constellations for war may result in the failure of the military operation itself. One way that elements of humanitarian legal consideration have been included in the making of the operating order is to add legal attachments to the operating order. A legal annex is a military product that describes the legal aspects of an operating plan (RO) or operations order (PO) to be a guideline for the commanders of the units involved in the operation in taking action or decision.

This legal annex shall clearly, expressly, and comprehensively list the legal matters related to the operation in question. In addition, it is also necessary to make sublampiran in the legal annex, which contains the rules of engagement (ROE). ROE is an important instrument for regulating the use of force in military operations for war drawn up with due regard to aspects of law, military interests, and political policy. Legal annexes are situational, depending on the military operation to be carried out, the time, and the area of operation concerned. Therefore, it is different between a legal annex for a unit carrying out security duties at the border and a unit assigned to carry out military operations for war in an area of conflict.

In the preparatory stages of the operation, humanitarian law can be internalized into military operations for war through the debriefing of humanitarian law to all soldiers involved in military operations for the war. Explanations of what humanitarian law is, how it is implemented, prohibitions on combat in armed conflicts or wars, and legal aspects in ROE can be conveyed to all soldiers when the legal debriefing is implemented. In addition, in the preparation phase of this operation, it is also necessary to prepare all legal products needed as guidelines for soldiers and commanders in order to ensure the legality of all policies and actions taken in the implementation of military operations for the war. No less important also need to prepare law enforcement devices in military operations in anticipation if there is a need for military judicial process combat or military courts during the ongoing military operations for war. The process of internalizing humanitarian law in military operations for this war not only ceases at the preparation stage of operations but continues continuously until the stage of operation implementation and termination of operations or consolidation. At the stage of operation, there are several aspects of humaniter law that need attention, including the determination of legitimate military targets, the need for the destruction of targets, determination of the ways and tools used in seizing targets, tactics and fighting strategies used, treatment for prisoners of war, protection for civil society in the area of military operations and the application of legal annexes and roe that have been predetermined. It is also necessary to note the balance between the military interests to be achieved and the definite or possible damage to achieve those military interests. In principle, humanitarian law asserts that in the stage of the implementation of military operations avoid unnecessary suffering for all parties involved in the military operation. In a military operation, it must be ensured that the above aspects of the law are subject to humanitarian law.

At the stage of termination of operations or consolidation, the application of humanitarian law can be carried out by identifying and inventorying legal issues arising during the implementation of such military operations. The enforcement of humanitarian law at this consolidation stage with sanctions or punishments for violators of humanitarian law during military operations is also a form of application of humanitarian law in military operations. Sanctions or penalties must also be in accordance with humanitarian law itself and not on the will of military commanders alone. Indeed, the resolution of lawlessness committed by soldiers during military operations can be carried out while the military operation is still ongoing, but this is difficult to do if the armed conflict or war lasts in a relatively short period of time, so it is often carried out when the military operation has ended or is carried out at the consolidation stage.

4. Conclusion

A military operation for war generally begins with a stage of operation planning; preparation of operations is continued with the implementation of operations and ends with the stage of ending operations or consolidation. In each stage of military operations for the war, it is necessary to pay attention to aspects of the enactment of humanitarian law. In the planning stage of the operation, a commander will carry out the military decision-making process (MDMP). In the preparatory stages of the operation, humanitarian law can be internalized into military operations for war through the debriefing of humanitarian law to all soldiers involved in military operations for the war. Explanations of what humanitarian law is, how it is implemented, prohibitions on combat in armed conflicts or wars, and legal aspects in ROE can be conveyed to all soldiers when the legal debriefing is implemented. At the stage of operation implementation, there are several aspects of humaniter law that need attention, including the determination of legitimate military targets, the need for the destruction of targets, determination of the ways and tools used in seizing targets, tactics, and fighting strategies used, treatment for prisoners of war, protection for civil society in the area of military operations and the application of legal annexes and roe that have been determined in advance. At the stage of termination of operations or consolidation, the application of humanitarian law can be carried out by identifying and inventorying legal issues arising during the implementation of such military operations. The enforcement of humanitarian law at this consolidation stage with sanctions or punishments for violators of humanitarian law during military operations is also a form of application of humanitarian law in military operations.

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