

## Women and International Humanitarian Law

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### Abstract

*This article aims to describe the extent to which women's human rights and the progress made in protecting women under human rights law will impact international humanitarian law. This study uses a qualitative method with an explanative pattern. The analysis shows that the topic of women and human rights is currently receiving increasing respect as separate areas of international law. The hope is that recognition of women's rights in international humanitarian law will take into account the recognition of women's experiences in armed conflict.*

**Keywords:** *International humanitarian law, human rights, women's rights, gender*

### Introduction

International Humanitarian Law (IHL), which is often referred to as the law of armed conflict (international humanitarian law), is the body of law that includes the Geneva Conventions and The Hague Conventions and the treaties, jurisprudence, and international customary law that follow them (ICRC, 1995). IHL defines the behavior and responsibilities of states at war, neutral countries, and individuals involved in warfare, that is, towards each other and protected persons, usually civilians. IHL is mandatory for countries that are bound by the relevant agreements in the law. There are also a number of customary unwritten war rules, many of which were explored at the Nuremberg War Trials. In a broad sense, these unwritten rules also impose a number of permissive rights as well as a number of conduct restrictions for states at war when they deal with irregular troops or with non-signatory parties. Violation of international humanitarian law is called a war crime. IHL also regulates the position of women in the realm of human rights, especially in conflict areas where their rights are often suppressed.

The developments in the last 50 years of the principles of human rights law have had a profound impact on IHL and international law in general (Robertson, 1984). In recent years, the movement for the recognition of women's equal rights

has had an impact on human rights law (Chinkin, 1997). In 1979, for example, the international community adopted the Convention on the Elimination of All Forms of Discrimination against Women / CEDAW, of which 155 countries are now members. Government and non-government organizations are increasingly focused on women's human rights. As a result, the study results recommend various aspects related to women and international human rights.

However, so much of the human suffering in the world today takes place in situations of armed conflict, where most human rights are at stake, leaving individuals dependent only on the protections offered by international humanitarian law (Dinstein, 1995). In this situation, women are the main victims (Guisan, 1995). War exacerbates inequality that exists in different places, forms, and levels in society, and women make up 70 percent of the world's population living in poverty. Moreover, they are generally disadvantaged in terms of education and are much less mobile because of their traditional role in caring for others (ICRC, 1995). Perhaps a large proportion of women are excluded from access to power structures and participation in decision-making regarding the armed conflict. They are therefore unable to pay attention to the special difficulties in conflict situations and are not given the opportunity to recommend preventive measures.

From the above background, this article will describe the extent to which women's human rights and the progress made in protecting women under human rights law will have an impact on international humanitarian law. As will be seen, this impact can be seen particularly in developments regarding the criminalization and punishment of sexual violence against women in armed conflict.

## **Literary Review**

### ***Fundamental Rights for Women in Conflict Situations***

Human rights are rights that every human being has because he, male or female, is a human being. Human rights aim to guarantee the dignity of every person. Human rights provide moral strength to guarantee and protect human dignity based on law, not based on a particular will, condition or political tendency. In essence, these human rights are fundamental rights inherent in human nature

itself, namely the most basic rights of aspects of human nature as human beings and have the following characteristics: inalienable, universal, are interconnected and cannot be separated (indivisible) (UNIFEM, 2004).

Women's human rights, namely the rights possessed by a woman, either because she is a human being or as a woman, can be found in human rights law in various legal systems concerning human rights. This system includes various legal instruments and legal system implementation instruments at the national, regional and international levels (Sri Wiyanti, 2007).

Recognition of women's rights as human rights is rooted in the General Declaration of Human Rights which emerged in 1947 and ratified by the General Assembly of the United Nations on December 10, 1948. This declaration was the beginning of the codification of standards for the recognition of human rights, which included women's rights. In its development, several rights specifically regulated by women are the right to equality with men, the right to reproductive health services, the right to be prioritized in emergencies and assistance (LBH-Apik, 2001).

Thus, there are two kinds of fundamental rights of women whose protection must be fulfilled, the first is rights that are general in nature and cannot be distorted under any circumstances, and special rights that only women have such as the right to be prioritized in emergencies and assistance, rights due to reproductive health, namely giving birth and breastfeeding and the right to an equal position with men.

### ***Regulation of Women's Fundamental Rights***

1. Convention on the elimination of all forms of discrimination against women (CEDAW). The preamble of the CEDAW Convention states that: despite other instruments, women still do not have the same rights as men, discrimination continues in society. The CEDAW Convention is an international instrument designed to combat the continuity of all forms of discrimination against women that persist throughout women's lives.
2. Geneva Convention Article 3. The Geneva Convention 1949 regulates protection in non-international armed conflicts. Article 3 provides that conflicting parties within the territory of a country are obliged to protect

persons who do not actively participate in the conflict, including members of the armed forces/combatants who have laid down their weapons no longer participate because of illness, injury, detention and other causes. others to be treated humanely or they are prohibited from committing acts of violence against body and soul or punishing without a legal trial. Article 75 Additional Protocol I of 1977 provides basic guarantees for the protection of victims. Protection here implies that every person who does not participate or take part in armed conflicts such as; civilians, health workers, and clergy; as well as those who are no longer actively participating in the war (Hors deCombat), such as; people who are injured or victims of shipwrecks, those who are sick or those who have been made prisoners of war, their rights are protected by international humanitarian law, from all forms of actions and actions which can harm and injure their human rights as people who are victims of war. Acts which are prohibited wherever and whenever, whether committed by civilians or the military are violence against their soul, health, physical or spiritual welfare, which is primarily murder; all kinds of torture, both physical and spiritual; corporal punishment; mutilation; rape of personal honor (humiliating and degrading treatment, forced prostitution and other forms of indecent assault); hostage-taking; collective punishment; other threats to the above actions.

### ***International Humanitarian Law***

In humanitarian law, a situation is said to be a war based on two elements, namely the existence of conflict using armed force in one area and the intensity of the use of armed force which is quite high and organized (Fadillah Agus, 1997). Haryo Mataram distinguishes between international armed conflict and non-international armed conflict. None of the instruments of international law provide an adequate definition of the term “internal disturbances and tensions”. A large number of victims led to the need for a minimum humanitarian rule. Furthermore, it was also emphasized that the term internal tension usually refers to situations of serious tension (political, religious, racial, social, economic, or the result of armed conflict or internal disturbances. In addition, this document also presents a number of characteristics of internal disturbances, namely (Cess de Rover, 2000):

1. Mass arrests
2. Many people were arrested for security reasons
3. Administrative detention, especially for a long period
4. The possibility of abuse, torture, or material or psychological conditions of detention
5. Repressive actions against family members or people with close ties to those who are deprived of their liberty above,
6. Suspension of basic judicial guarantees, either through a declaration of emergency or due to a de facto situation
7. Wide-scale measures that limit the freedom of personnel such as exile, assigned resident or replacement, increased acts of violence (such as confiscation and hostage) that threaten defenseless persons, or spread terror among the civilian population.

Louise Doswald Beck and Sylvein Vite pointed out that there are various patterns of violations of human values in riots, tensions, and domestic disputes. Among the violations were (Doswald-Beck, in *International Review of the Red Cross*, No. 293, 1 March 1993):

1. Children are recruited or engaged in acts of violence, and become objects of violence.
2. Arbitrary deprivation of life.
3. Practices of torture, or cruel, inhuman, or degrading treatment or punishment related to acts of violence.
4. Disputes cause people to leave their homes and belongings. Their freedom of movement is disturbed, they are forced from their homes to places against their will and without any legal justification.
5. The right to organize is revoked, and the legal process is also commonly abused.
6. Women, in war and rioting and tension, become victims of rape. They are even forced to commit acts of prostitution.
7. The assets of civilians, hospitals, schools, religious and cultural buildings were destroyed.

The purpose of the Geneva Conventions and their Additional Protocols is to protect opposing parties "under the control of a party to the dispute" such as prisoners of war, medical personnel, or civilians. The Geneva Conventions I and II of 1949 specifically protect combatants who require protection from the fact that they are injured, sick, or shipwrecked. Geneva Convention III 1949 establishes general rules regarding the status, protection, and treatment of prisoners of war, whether healthy or injured. So the protection in the Geneva Conventions I-III 1949 is only aimed at combatants whether they are wounded in the land, sea wars, combatants who experience illness, surrender, and become prisoners of war.

The Fourth Convention protects civilians in certain categories. which is known as general protection because it regulates the protection of the civilian population as a whole (general principle), and in the 1977 Additional Protocol especially in section IV. This section regulates general protection, assistance to the civilian population (relief in favor of the civilian population), and treatment of civilians who are in the power of the disputing parties (treatment of persons in the power of a party to a conflict ). Then in Additional Protocol I 1977 to part IV also regulates special civil protection, namely for those who are refugees, stateless people, journalists, civilian medical personnel, civil religious personnel, women, and children. Thus there are two protected parties in the conflict, namely combatants who have surrendered, become prisoners or injured in the conflict, and civilians who receive general and special protection.

### **Protection Concept**

Protection in international humanitarian law includes all necessary measures to ensure respect for the rights of every individual based on the content and spirit of human rights, international humanitarian law, and international refugee law, including (Bertrand Ramcharan, 2005) prevention or cessation and/or minimization of acts of persecution and the effect. There are two protected parties in the conflict, namely combatants who have surrendered, become prisoners or injured in the conflict, and civilians who receive general and special protection.

### **Gender Perspective Law**

In the context of human rights, there are many imbalances between women and men both in terms of regulations and in practice. For example, the right to travel and the right to be guaranteed safety when working, not all women have the right to make contracts. Rights such as social, political, and economic rights are in some ways more difficult for women to have than men (Mansour Fakih, 1997). In the event of armed conflict, it is also women who are vulnerable to becoming victims. These imbalances between women and men will ultimately make women suffer more. Thus there are still many legal rules that are gender-biased and do not yet fulfill the principle of anti-discrimination even though there are already provisions in the form of conventions and laws.

## **Research Method**

This study uses a qualitative method with an explanative pattern. The author analyzes with secondary data to answer the problem formulation. The data sources used are books on the science of international relations that will support conceptual analysis, as well as articles, reports, online sources, and coverage from magazines or newspapers regarding the position of women in international humanitarian law, along with other supporting materials. These sources are processed and selected selectively so that the credibility of the data can be trusted.

## **Findings and Discussion**

There is no doubt that the work of human rights organizations has had a sizeable impact on the approaches taken to protect women in times of armed conflict. The protection of women victims of conflict has always been part of the mandate of the ICRC. Traditionally, women were included in the category of civilians or under the separate category of "women and children".

Over the years, the ICRC has been active in efforts to reduce the horror of conflict for women. For example, efforts were made during the Second World War to ensure the legal treatment of female prisoners of war. In the post-war period, from time to time the ICRC made efforts to ensure that women were treated humanely in conflicts. Although sexual violence against women has occurred. It is this conflict that prompted the international community to take

action and led to the development of humanitarian law due to the growing emphasis on women's human rights such as the inclusion of rape in the system of serious violations.

In 1993, in response to findings of violations of international humanitarian law in the former Yugoslavia, including rape and various forms of sexual violence against women, the Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) to prosecute persons who responsible for the action. One of the issues that must be resolved is the place of rape in the ICTY Statute. In 1992, in the context of gross violations of international humanitarian law, the ICRC (1995) expressed support for acts that deliberately cause great suffering or serious injury to the body or health and are thus punishable as serious offenses.

This is a major development of humanitarian law and it can be attributed to the growing recognition that women's human rights call for the prosecution of crimes of sexual violence committed in armed conflict. Despite these objections, the criminalization of sexual violence against women in armed conflict in the ICTR Statute is an important development. The ICTR Statute reflects this view by stipulating that rape is punishable as a crime against humanity and that its practice falls within the jurisdiction of the Tribunal because, in the same way as forced prostitution and indecent assault, it is specifically designated a crime.

Further developments in humanitarian law related to the enforcement of provisions protecting women from sexual violence have their origins in the Yugoslavia conflict. It has long been recognized in the context of women's human rights that, to be effective, law enforcement regimes that prohibit sexual violence in armed conflict must include procedural reforms. This view is slow how some progress has been made taking into account the particular concerns of women in the prosecution of sexual offenses. Matters such as the anonymity of witnesses and victims in court due to sexual violence and their provision of support and counseling have been handled by the ICTY (UN, 1995). However, these changes have not been accepted easily. For example, there is a perceived conflict between demands for a fair trial and the protection of women as victims and witnesses (AJIL, 1996).

Oversight by human rights groups on sexual violence against women in armed conflict has translated into a new perception that such acts should be handled by bodies dealing with the enforcement of international humanitarian law. The inclusion, in the definition of war crimes and as a serious violation of Article 3 of the Geneva Convention, of several forms of sexual violence against women was considered during the negotiation of the Statute for the International Criminal Court. Other issues that concern women in relation to the law enforcement process, in general, are also discussed in this context, such as the gender balance of the Court, protection for witnesses and victims, and investigation of crimes of sexual violence.

The ICRC has acknowledged the fact that the situation of women in armed conflict poses its own challenges to humanitarian law. In 1993, the Final Declaration of the International Conference for the Protection of Victims of War expressed concern over an increase in acts of sexual violence especially against women and children, and asserted that such acts constitute a grave violation of international humanitarian law (ICRC, 1993). In 1995 the 26th International Conference of the Red Cross and Red Crescent was adopted by consensus on a separate resolution addressing sexual violence against women. It then reiterates that hostile rape is a war crime and highlights the importance of enforcing the relevant provisions. Recent ICRC publications emphasize that armed conflict exacerbates existing inequalities in various forms and to varying degrees in society (ICRC, 1995).

## **Conclusion**

After years on the fringes of human rights law, the topic of women and human rights is currently receiving increasing respect as a separate area of international law. Although women's human rights are very much in their development stage both in terms of framework and substance, every year there is a continuation of the guiding principles of international law. However, a new concern is given to women's human rights and the impact, albeit small, that humanitarian law has so far not led to a general recognition that women's human rights need a special place in the field of international humanitarian law. Maybe it's just a matter of time. The

hope is that recognition of women's rights in international humanitarian law will take into account the recognition of women's experiences in armed conflict.

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