

*Conceptual Article***Russian Conflict On Ukraine Based On Humanitarian Law Perspective**Yuanda Winaldi^{1*}, Joko Setiyono²¹Master of Law Program, Faculty of Law, Universitas Diponegoro, Indonesia²Faculty of Law, Universitas Diponegoro, Indonesia

*winaldy10@gmail.com

ABSTRACT

Russia's conflict with Ukraine which has lasted for a long time has resulted in world commotion and disorder. This problem is certainly an important legal issue to be researched. Based on this, this study aims to examine and analyze the humanitarian law arrangements against Russia's armed attack on Ukraine. The research conducted in this paper is a type of doctrinal research. The conclusion is that based on international humanitarian law arrangements such as the Geneva Conventions, Additional Protocol I 1997 provides protection for civilians and civilian objects in times of war. Russia's act of armed attack is a violation of international humanitarian law. It is hoped that proactive actions from the United Nations will be neutral by carrying out a peaceful settlement. However, if it fails to produce a decision that resolves the conflict, strict sanctions are needed against the violator in accordance with the applicable international humanitarian law regulations.

Keywords: *International Humanitarian Law; Conflict; Rule of Law.*

A. INTRODUCTION

Russia's intervention in Ukraine began with the Euromaidan Movement at the end of November 2013. The 2010 Presidential Election of Ukraine which was won by President Viktor Yanukovich took place in Kiev. On February 22, 2014, the National Legislature removed Viktor Yanukovich from office on the grounds that he was unable to carry out his duties. On March 4, 2014, Russian President Vladimir Putin, said that the deployment of military forces to Crimea, Ukraine, was the last resort to be taken. Putin also said that Russia has the right to exercise the option to protect Ukrainian citizens who incidentally are 60% of Russian descent who are terrorized in Ukraine (Said, 2014). He argued that

the uniformed troops without the national emblem who had been accused of being Russian soldiers and seen wandering in Crimea were local self-defense forces. This attitude of Vladimir Putin poses a threat in the economic and security fields not only for the two countries, but also for the whole world. This is what underlies the author's desire to analyze the legal rules that apply to the international community regarding the intervention carried out by Russia against Ukraine.

On Thursday, February 24, 2022, the conflict between the two countries heated up again, marked by Russia carrying out armed attacks against Ukraine, and resulting in at least 1,335 civilians being victims of the Russian-Ukrainian war. A total of 474 of them died and 861 were injured (Sefriani, 2022). The United Nations

Human Rights Commission says more than 2,000 people have been victims of war. Russia argued that its attack on Ukraine was at the request of Russia's newly recognized independence countries, namely Donetsk and Luhansk which were under attack from the Ukrainian military, so that for that matter Russia, which had entered into a security treaty alliance with Donetsk and Luhansk, stated that the security agreement was wrong. If one alliance country is attacked by another country, it can be likened to attacking other alliance member countries. The impact of Russia's attack on Ukraine had an impact on various sides, both from Russia, Ukraine and countries that have bilateral relations with the two countries. The impact of the armed attack on Russia was economic sanctions from western countries, not only economic sanctions for all Russian businessmen who have assets in other countries, but also all of their assets were confiscated by the country. Besides, Russian sports teams also received sanctions from all world sports federations in all fields which prohibits Russian involvement in the sport (Petrus, 2022).

This is what underlies the author's desire to analyze the legal rules that apply to the international community regarding the armed attack carried out by Russia against Ukraine and also its impact on the international community.

Even though it is known that humanitarian law's main principles are the principle of military necessity, meaning that the parties to the dispute are justified in using violence to subdue their

opponents in order to achieve the goals and success of the war (Yuliantiningsih, 2009), there is also the principle of humanity (humanity). Based on this principle, the disputing parties are required to pay attention to humanity. They are prohibited from using violence that can cause excessive injury and unnecessary suffering (Suwardi, 2018). Then there is also the principle of chivalry (chivalry). This principle implies that in war, honesty must be prioritized (Simarmata, 2018). The use of dishonorable tools, various tricks and treasonous means is prohibited (Dremluiga, 2020). There is also the principle of humanitarian law that must be adhered to during war, namely the principle of distinction (distinction principle). This principle of distinction distinguishes between combatants and civilians in the territory of a country that is at war (Gisel, Rodenhauser, & Dormann, 2020). Combatants are residents who are actively participating in hostilities and may be used as targets for war, while civilians are residents who are not actively involved in war so that they may not be targeted by war. The principle of proportionality is a principle in that the parties to the war must pay attention to the principle of proportionality or balance. This principle aims to balance the interests of the military and the risks that will harm the civilian population. The principle of limitation is related to three things. The first is limiting the opponent's target, meaning that only the opponent can be attacked by seeking minimal violence. The second is restrictions on target areas. The third is prohibition on destroying

places of worship, cultural heritage, science and areas that are not defended, hospitals, markets and others (Mawdsley, 2020) The principle of limiting the target situation, acts of war are prohibited each party involved in a war from committing treason in the sense of acts of temple feigning or trapping an opponent and inflicting excessive injury. Humanitarian principles are legal principles that have legally binding power and in the context of law positivism is categorized as hard law (Roisah, 2018). These principles require a full compliance by the parties to an armed conflict

Seeing the gap between the empirical facts of the Russian-Ukrainian war on the principles and principles of humanitarian law, the problems that the writer will discuss in this article are as follows: 1. What is the perspective of international humanitarian law on armed attacks Russia against Ukraine?; 2. How is the protection for victims of the war and how to resolve the conflict between Russia and Ukraine according to international law?

The theories used in this article were as follows; Theories of international armed conflict. These theories state that both parties have the same legal status because both are countries. While in the "non-international armed conflict", the status of the two parties is not the same. One party has the status of a state while the other party is a non-state entity (Marpaung, 1994).

Theories of international armed conflict (international armed conflict) contained in the Commentary Geneva Convention I 1949, which

reads "Any difference arising between two states and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place" (Pictet, 2002). It can be considered an international armed conflict and this is the same as an inter-state war whose subjects are countries (Agus, 1997).

This article has differences from previous research articles. One of the previous articles is an article entitled Escalation of Tensions between Russia and Ukraine. This article discussed the relationship between Russia and Ukraine after Russia's intervention in Crimea, Ukraine and how NATO and its allied countries reacted (Hidriyah, 2022); The second article on Russian Intervention in Ukraine in the Perspective of International Law discussed the factors behind the occurrence of Russian intervention in Ukraine and how the legality of Russian intervention in Ukraine from the perspective of international law (Abi, Landra, & Utari, 2015); The third article, entitled the Legality of Russian Military Intervention Against The Autonomous Republic Of Crimea, Ukraine, discussed Russia's intervention in Crimea, Ukraine (Mamfaluthy, 2015). The fourth article discussed Humanitarian law against the armed attack of the Sulu Sultanate on Malaysian Sabah region and how to resolve the dispute over the Sulu Sultanate in the Malaysian Sabah region based on international law (Ilyasa, 2015); and the fifth article, Regulation of War and Armed Conflict

in International Humanitarian Law, discussed how to regulate international humanitarian law in war and armed conflict (Sulistia, 2021). These articles still focus on the background of the conflict between Russia and Ukraine, especially after Russia's intervention in Crimea and the reaction of NATO and allied countries, and this threatens the world peace. The distinguishing part of this article from the previous articles is that it focuses more on the protection of victims of the conflict between Russia and Ukraine and efforts to resolve the conflict based on international law. This research is different from previous research that discussed the war between Russia and Ukraine. A national research conducted by Connie Rahakundini Bakrie, Mariane Olivia Delanova, Yanyan M Yani discussed the effect of the war between Russia and Ukraine on the economies of countries in Southeast Asia. The study concluded that the war between Russia and Ukraine greatly affected the economies of Southeast Asian countries because both countries are the largest suppliers of food ingredients in the world (Bakrie, Delanova, & Yani, 2022). Furthermore, a research conducted by Rizky Widiassa discussed the conflict between Russia and Ukraine which ended with the release of the Crimea region. The study revealed that an identity shared by a country with other countries can be used as a crucial issue to justify unilateral actions against other countries (Widiassa, 2018). Another research has also been carried out by Achmad Syaroni and Arinto Nugroho which discussed the application of international

humanitarian law and forms of cyberattack dispute resolution in the conflict between Russia and Ukraine according to international law. The study concludes that the form of cyberattack regulation in international law uses international conventions, namely Additional Protocol II to the Geneva Conventions, jurisprudence, namely the ICJ decision in the *Martin Clause* case, customary international law, namely UN General Assembly Resolution Number 53/70, and the related doctrine is International Humanitarian Law. The Challenges of contemporary armed conflicts is issued by the ICRC. The form of dispute resolution carried out is through an international organization, namely the United Nations and through an international court, namely the International Criminal Court (ICC). The ICC has advantages over other dispute resolution options because it has an independent statute and a permanent court nature. The ICC also has binding decisions as well as imprisonment and fines (Syaroni, & Nugroho, 2019).

Boris N. Mamlyuk, in his research that specifically discussed the Russia and Ukraine war, said that the cold war will have an impact on many countries in the world (Mamlyuk, 2019). Another international research that also discussed the Russian-Ukrainian conflict was conducted by Agnieszka Szpak who concluded that the Russian-Ukrainian war has violated the provisions of humanitarian law (Szpak, 2017). Based on the comparison with previous studies that discussed the Russian-Ukrainian war, it can be stated that there has been no research that specifically

addresses the problems discussed in this study, so this research has a novelty value.

B. DISCUSSIONS

1. International Humanitarian Law Perspectives Against Russian Armed Attacks Against Ukraine

After the Crimea crisis, the dispute in Russia-Ukraine relations continued until February 2022. The crisis started when NATO was trying to expand its membership to Eastern Europe by attracting Ukraine as a target. President Putin did not let Ukraine off the hook because he considered this a threat and a violation for Russia.

All countries in principle have full sovereignty to regulate and protect their territorial areas from any threats, both coming from within their own country and from outside. The government of a country will always try to maintain the security of its country by establishing good relations with neighboring countries (Bohara, Mitchell, & Mittendorff, 2004). However, life in the international community is often ignited by unavoidable conflicts. Until the need for the establishment of rules for war procedures through various international conventions or what is often known as international humanitarian law (Awoah, 2016).

In essence, the purpose of humanitarian law is to humanize war. Therefore, the development of the law of war into the law of armed conflict and then into humanitarian law is actually inseparable from the objectives to be achieved by the humanitarian law, namely

(Hidayat, 2017): To provide protection to combatants and civilians from *unnecessary suffering* and to guarantee the very fundamental human rights of those who fall into the hands of the enemy. Combatants who fall into enemy hands must be protected and cared for and have the right to be treated as prisoners of war. Another objective is to prevent the conduct of war ruthlessly without knowing boundaries. The most important thing here is the principle of humanity.

The attitude of the Russian state intervention towards Ukraine, which is a sovereign state, has harmed the principle of non-intervention as one of the basic foundations in international law which is closely related to the principle of state sovereignty. This principle is the *antithesis* of the attitudes of the state that wants to take an action to control a country from various existing state aspects (Abi, Landra, & Utari, 2015).

Article 2 paragraph 4 of the United Nations Charter states that all members in international relations shall abstain from threatening or using violence against the territorial integrity or political independence of another country or in any way that is contrary to the objectives of the United Nations. This provision explains that each UN member state in conducting international relations with other countries is not allowed to take any form of action that threatens the territorial integrity or political independence of other countries (Christmas, & Setiyono, 2019). This was also reinforced by United Nations General Assembly Resolution A/RES/25/2625 (XXV) issued on

October 24, 1970, which was later accepted as the General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Inter-State Cooperation. With the United Nations Charter, every sovereign country must comply with international law and must not violate the sovereignty of other countries (Rudy, 2006).

Therefore, for the reasons behind the Russian armed attack on Ukraine, it is clear that it has violated the principles of international humanitarian law because Russia has injured the sovereignty of the Ukrainian state and has even carried out armed attacks against the sovereign state (Mahfud, 2015).

According to Article 38 of the Statute of the International Court of Justice, the rules of International Humanitarian Law (IHL) do not have to be sourced from international treaties alone, but can also from customary international law and legal principles recognized by nations, decisions of international organizations and expert opinions. The international agreements are the two main Conventions of International Humanitarian Law, namely the *Hague Convention* and *Geneva Convention*.

Although international humanitarian law cannot accommodate all acts of international warfare, the parties involved in the war must respect and guarantee the fundamental principles of international humanitarian law such as the Humanitarian Principles, Military Interest, Proportion, Distinction, international humanitarian law regarding the prohibition of causing suffering

which should not be, and the separation between *ius ad bellum* and *ius in bello*.

Based on the aforementioned description of the perspective of international humanitarian law on the Russian armed attack on Ukraine, the Russian armed attack against Ukraine clearly has violated the principles of international humanitarian law because Russia has injured the sovereignty of the Ukrainian state. This is a violation of the principles and principles of humanitarian law.

2. Protection for Victims of War and Settlement of The Conflict Between Russia and Ukraine According to International Law

According to The United Nations High Commissioner for Human Rights (OHCHR) in his report, the armed conflict between Russia and Ukraine that has occurred since February 24, 2022 has killed more than 550 Ukrainian civilians who were not guilty. The open war between the two countries has also forced more than 2.5 million Ukrainians to flee to neighboring countries. This armed conflict has caused damage on a massive scale to a number of civilian and military infrastructures in Ukrainian territory (Juanda, 2022).

Initially, the regulation related to humanitarian law gave more attention to the law of war based on the Hague convention and the Geneva convention. However, after World War II the international community realized that most of the war victims came from the civilian population (80%). Based on the fact in World War I that more than 80% of war victims were civilians, the

provisions of the law of war began to pay attention to the protection of the civilian population as victims of war. Therefore, special arrangements were made to regulate the civilian population during the war. The protection of the civilian population from the battlefield apparently has not provided security guarantees for the civilian population as regulated in the 1949 Geneva Conventions. Thus, to accommodate the weaknesses and shortcomings in the regulation of the protection of the civilian population, member states of the international community have agreed to make additional arrangements that are accommodated in Additional Protocol I of 1977.

The Additional Protocol of 1977 is a very important treaty for the life of the international community and the most comprehensive humanitarian rules governing the protection of the civilian population. In part IV of the Protocol for the civilian population, Article 48 regulates the basic rules of distinguishing principle in humanitarian law. In order to ensure respect and protection for the civilian population and civilian objects, the parties to the conflict must be able to distinguish the civilian population from combatants and between civilian objects and military targets and should therefore direct their operations to military targets only.

The provisions of Article 51 paragraph (1) of Additional Protocol I of 1977 stipulates that the civilian population and individual civilians must receive general protection against dangers arising from military operations. Further arrangements are regulated in Article 51 paragraph (2) of

Additional Protocol I of 1977, namely that civilians may not be the target of attacks. Attacks that do not differentiate between targets are also prohibited as regulated in Article 51 paragraph (4) of Additional Protocol I of 1977. Article 52 also stipulates that civilian objects may not be the target of attacks or restrictive measures. Civilian objects are all objects that are not military targets as defined in paragraph (2) which states: Attacks must be strictly limited to military targets. As far as objects are concerned, military targets are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action which, if totally or partially destroyed, captured or neutralized, under the prevailing circumstances at the time, provided a definite military advantage.

Concerning the arrangements related to the protections for civilians and civilian objects above, the attack carried out by Russia against Ukraine by killing the victims of the civilian population and destroying some of Ukraine's infrastructure has violated the applicable international humanitarian law arrangements that put forward the principle of distinction and protection against civilians and civilian objects.

Regarding the protection of victims of war in the 1977 Additional Protocol, article 60, a *civil defense organization*, an organization that carries out humanitarian tasks, aims at protecting the civilian population against a natural disaster and the consequences of fighting and endeavoring to restore it immediately to its original state and take other steps deemed necessary for the survival of

the civilian population (Gisel, Rodenhauer, & Dormann, 2020).

The main tasks of the *members of the Civil Defense Organization* are described in Article 60 of the Additional Protocol of 1977 as follows (Farbol, 2021): Carrying out warnings; Carrying out evacuations; Building shelters; Carrying out actions to extinguish lighting; Performing assistance; Performing health services including first aid and religious assistance; Fire suppression; Detecting and giving signs -signs of dangerous areas; Performing decontamination measures and other similar protective measures; j. Seeking to provide emergency shelter and supplies; Carrying out emergency assistance in the restoration and maintenance of order in disaster-affected areas; Carrying out emergency repairs of public facilities which are urgently needed by the civilian population; Conducting emergency funerals for people who died; Helping save the objects that are very important for survival; Carrying out other complementary activities to carry out the above tasks including but not limited to planning and organizational tasks.

In carrying out their duties within the scope of the duties of the *Civil Defense Organization*, the members of this organization will receive special protection (Waskito, 2018). This is because a member of the *Civil Defense Organization*, in addition to carrying out humanitarian tasks, may be able to carry out military duties, so that they can also be classified as a combatant instead of a civilian. With the *Civil*

Defense Organization there is an independent organization that protects civil rights from the international community (Kalinowski, 2020) .

Regarding the principle of victim protection in the Russian-Ukrainian conflict, it can be seen that the acts of attack carried out by Russia against Ukraine which consumed civilian victims and destroyed some of Ukraine's infrastructure have violated the applicable international humanitarian law arrangements that prioritize the principle of distinction and protection of the population and civilian object. Russia's actions have violated the principle of protecting war victims.

Conflicts between countries cannot be avoided even though there have been many regulations related to international humanitarian law that regulate it. Therefore, a repressive arrangement was formed to resolve conflicts between these countries. Settlement of disputes carried out peacefully between its members is the goal of international organizations or regional organizations (Suwardi, 2006).

In the UN charter, basically there is no obligation for the state to choose a certain procedure. However, peaceful settlement of disputes is the obligation of the disputing parties. The failure of the parties to reach a settlement as soon as possible obliges them to continue to seek an amicable settlement, consulting each other in mutually agreed ways. The state must try to refrain from all actions that can trigger problems, threaten peace and security, and complicate efforts for a peaceful settlement (Sefriani, 2014)

as for ways to resolve conflicts peacefully through negotiation, consultation, mediation, conciliation, arbitration, and fact-finding as regulated in Article 34 of the United Nations Charter through UNSCOM (*United Nations Special Commission*).

In addition, dispute resolution is also through litigation from the International Court of Justice (ICJ) in this case which consists of 15 *independents* selected from among people who have *high moral character* regardless of nationality. The ICJ was formed under the United Nations Charter (Rabinovich-Einy, & Katsh, 2014).

In an international conflict, there are also non-war resolutions by violence, such as retort, for example, severing diplomatic relations, restricting the movements of diplomatic representatives of the opposing country, and so on. Retort does not contradict/violate international law, but retort violates the rights of the opposing country's interests. This is a characteristic of rhetoric (Suwardi, 2006).

There is also conflict resolution with retaliation or known as *reprisals*. Article 2 paragraph 3 of the United Nations Charter stipulates that member states must refrain from threatening or using force against the territorial integrity or political freedom of a country or in any other manner inconsistent with the objectives of the United Nations. The General Assembly Declaration also states that states are obliged to refrain from reprisal using weapons. Reprisal is generally an illegal act, except when it is intended to defend oneself against armed attacks as

stipulated in Article 51 of the United Nations Charter (Istanto, 2010).

Article 42 of the UN Charter also legalizes a peaceful blockade, namely as one of the actions that can be taken by the Security Council in carrying out its duties to restore and maintain international peace and security. In addition to the security council, the UN instrument that functions to oversee the resolution of other international conflicts is the General Assembly which has very broad powers to discuss all issues that are within the scope of the charter under Article 10 of the UN Charter. The limitations of this assembly are only the ones stipulated in Article 2 paragraph (7) of the United Nations Charter, namely regarding domestic issues (*domestic jurisdiction*). In addition to the authority to discuss issues that are within the scope of the charter, it also has the authority to make recommendations as stipulated in Article 14 of the charter. However, the Security Council is the organ responsible for peace and security primarily. In addition, the resolution of international conflicts can also be resolved through regional international organizations such as ASEAN, EU, and others.

In the conflict between Russia and Ukraine, seeing from the resolution of this conflict, it can be started with a peaceful settlement mediated by the United Nations as an international organization of alliances of countries in the world. However, if it fails to produce a decision that resolves the conflict, strict sanctions are needed against the violator in accordance with the applicable international humanitarian law

regulations. These peace efforts are carried out in order to achieve the main goal of ending the conflict between Russia and Ukraine and avoiding causing more innocent casualties.

C. CONCLUSION

Russia's attack on Ukraine has harmed the principles of international humanitarian law such as the principle of non-intervention and humanitarianism because Russia has injured the sovereignty of the Ukrainian state by intervening the country and has even carried out armed attacks against a sovereign state that claims to live and damage the country's infrastructure as regulated in Additional Protocol I of 1977 which regulates the protection of the civilian population and civilian objects.

According to international law which guarantees the respect and protection of the civilian population and civilian objects, the parties to a conflict must be able to distinguish the civilian population from combatants and civilian objects from military objectives and, therefore, they must direct their operations only to the military targets. There are several alternative solutions to Russia's conflict with Ukraine. The United Nations as an international organization of neutral alliances of countries in the world can carry out a peaceful settlement through mediation, negotiation, and others. However, if it fails to produce a decision that resolves the conflict, strict sanctions are needed against violators in accordance with applicable international humanitarian law.

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