

Study of International Legal Protection of Medical Personnel in Times of War

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Abstract

This research aims to discuss *the status quo* of medical personnel in war and comprehensively analyze legal protection policies for medical personnel on the battlefield. The research carried out there is in the normative juridical realm, which includes analysis of written law, jurisprudence and norms that apply in society. The approach is descriptive-analytical, intended to collect systematic, factual and accurate data regarding a problem based on applicable laws and regulations and legal norms. The results of this research show that medical personnel are neutral parties who carry out their duties in the name of humanity, so they must be respected and receive comprehensive legal protection. Violations of IHL, especially attacks on health facilities and medical personnel, are serious crimes (war crimes), so the perpetrators must be dealt with firmly. Policies for legal protection for medical personnel include: the use of special symbols, increasing the understanding of the wider community, especially the military, regarding the legal protection of medical personnel, as well as strengthening the integrity and political will for the legal protection of medical personnel on the battlefield.

Keywords: Medical Personnel, War, IHL, ICRC, Geneva Convention

1. INTRODUCTION

Chinese military strategist Sun-Tzu stated " the highest art of war is to conquer the enemy without fighting" (art war highest is conquer enemy without war). War costs a lot of money and causes huge losses. Armed conflict must be avoided as much as possible because it brings destruction to many parties, ranging from social, economic, environmental losses, to loss of life. That in the modern era which upholds the fulfillment of human rights, it has a big influence on the world of war, one of which is respect for innocent people such as civilians and medical personnel. Various international conferences and agreements have been formed to protect human rights in war, one of which is the International Committee of the Red Cross (ICRC) which regulates guarantees for the safety of war victims and medical personnel in conflict areas (Additional Protocol 1977). International Humanitarian Law (IHL) aims to provide protection and assistance to individuals who experience suffering or become victims in war situations, either directly or indirectly in the context of armed conflict. On the battlefield, medical personnel continue to carry out their duties in the name of humanity. Therefore, medical personnel must receive protection and must not be attacked. However, in many wars, medical personnel often become victims. At the end of September 2015, the number of medical workers killed in the civil war in Syria reached 679. Johns Hopkins Bloomberg School of Public Health's Center for Public Health and Human Rights stated Syria is the most dangerous place in the world for become a doctor. Temporary that, based on Gaza Government Media Office report cited from *kompas.com*, mentioned Since October 7, 2023, Israel has attacked the Gaza Strip result 193 deaths medical, 45 ambulances damaged, 113 facilities health experience damage heavy, as well closure of 18 houses sick and 40 centers health. Medical staff, on duty in effort search, collection, or maintenance towards injured victims or sick, or in prevention disease, as well staff involved in administration unity and management facility health, you must respected and protected in every situation in accordance with Article 24 of the Convention Geneva I 1949. Personnel from the Red Cross, Red Crescent and other neutral organizations have equal rights. This provision is reaffirmed in Additional Protocol I of 1977. Article 12 paragraph (1) emphasizes the need to respect and protect health units and transportation on an ongoing basis, and prohibits them from becoming targets of attack. Attacking medical personnel is a serious violation because it is not in accordance with the basic principles of IHL and the Geneva Conventions. Apart

from generating strong international criticism, attacks on medical personnel and health facilities can increase the risk of conflict because these objects are points of security and health for people affected by war. Deliberate attacks on medical personnel, health facilities and medical transportation are a form of war crime. International legal protection of medical personnel in times of war is an important issue in the context of human rights, health and international justice. Although various regulations have been established to protect medical personnel carrying out their duties in war, they are still difficult to implement. Strong *political will and joint commitment from all parties* is needed to ensure the fulfillment of legal protection for medical personnel on the battlefield.

2. METHODOLOGY

The legal research carried out is a type of normative juridical research, which examines written law, jurisprudence and norms that apply in society. The approach used is descriptive-analytical with the aim of obtaining structured, factual and accurate data regarding a problem based on applicable laws and norms in statutory regulations. Data collection was carried out through library studies, namely the process of obtaining information by researching library materials or secondary data, including primary and secondary legal materials such as statutory regulations, books, articles and scientific journals, as well as other sources such as dictionaries, magazines, letters, news, and articles related to law in higher education.

3. RESULTS AND DISCUSSION

Status Quo of Medical Personnel in War

IHL is an international legal instrument as a means of reducing the suffering and losses of war victims which continue to occur to this day. Protection is provided by IHL to individuals who are victims of war or involved in armed conflict, namely: (1) People whose duties must be respected and must not be attacked are given protection (2) Combatants, directly involved in combat, also receive protection (3) Protection is also provided to the civilian population. Paragraph 12 Paragraph 1 of the 1977 Additional Protocol I states that health units must always be respected and protected, and must not be attacked in a war situation. In armed conflict, objects that can be targeted are military facilities and combat zones. Schools, hospitals, places of worship, and residential areas, along with infrastructure and other vital objects, should not be targets of attack. Health units and transport must always be respected and protected in accordance with the 1949 Geneva Convention I and Additional Protocol II, and must not be attacked under any circumstances. Medical personnel must receive protection in all situations, including individuals tasked with medical work such as searching for, collecting, transporting, diagnosing, and treating injured, sick people, and preventing disease. They include doctors, nurses, medics, delivery people, and people permanently or temporarily assigned to administer or operate medical units or medical transportation. Attacking medical personnel is a serious violation because it is not in line with the basic principles of International Humanitarian Law and the 1949 Geneva Conventions (Additional Protocols I and II 1977). Attacks on medical personnel, health facilities and medical transportation constitute war crimes. Article 50 of the 1949 Geneva Conventions states that serious violations are violations involving acts namely: Treatment carried out against individuals or property protected by the Convention (including medical personnel), intentional killing, acts of torture or inhumane treatment, including biological experiments that resulting in suffering to health, widespread destruction and confiscation of property that is not justified and carried out against the law. UN Security Council Resolution Number S/RES/2286 (2016) and Number S/RES/2401 (2018) *in conjunction with* UN General Assembly Resolution Number A/RES/39/119, *in conjunction with* Number A/RES/73/137, are several resolutions which calls on every country to respect IHL, including protecting medical personnel in war. Rules regarding the protection of medical personnel and the obligation to comply with them are related to jus cogens norms as the highest hierarchy among other principles, so they must be obeyed (*peremptory*) and cannot be abolished (*non-derogable*). The following are several factors for non-compliance with IHL, namely: (1) The application of IHL to situations where the stability and security of a state is threatened is inappropriate (2) The concept and structure of IHL is difficult to understand in general because of its complexity and its formation involving diplomats (3) Some IHL provisions are difficult to implement in accordance with applicable regulations, such as direct enforcement of IHL violations to provide punishment to perpetrators of violations. Violations of IHL, especially the 1949 Geneva Conventions and the 1977 Additional Protocol relating to the protection of medical personnel in international armed conflicts, are not only caused by weaknesses in the legal system. But it is also due to the unwillingness of the parties involved in the conflict to comply with IHL, as well as other internal factors that cause them to ignore protection for medical personnel.

Legal Protection Policy for Medical Personnel on the Battlefield

That any type of action against medical personnel that is not in accordance with the provisions of the convention is a serious violation. IHL as an international legal instrument is binding and must be respected by

participating countries. Legal protection policies for medical personnel on the battlefield can provide a sense of security and balance in carrying out their duties, as well as help medical personnel to achieve optimal results in carrying out humanitarian missions. The legal protection policies in normative regulations for medical personnel in war conditions include:

- a. Article 24 of Geneva Convention 1 of 1949 concerning "Improving the Condition of Wounded and Sick Members of the Armed Forces in Land Combat"
Medical personnel assigned to locate, collect, transport, or treat injured or sick persons, or prevent disease, as well as staff responsible for the administration of medical units and health buildings, including chaplains serving in the military, must be given respect and protection in all situations.
- b. Article 25 of Geneva Convention 1 of 1949 concerning "Improving the Condition of Wounded and Sick Members of the Armed Forces in Land Combat"
Military personnel specially trained to serve as hospital guards, nurses, or stretcher lifters, who are tasked with searching for, collecting, transporting, or caring for wounded or sick persons, must also be given respect and protection when carrying out their duties, especially when dealing with the enemy or caught by the enemy.
- c. Article 26 of Geneva Convention 1 of 1949 concerning "Improving the Condition of Wounded and Sick Members of the Armed Forces in Land Combat"
Members of the National Red Cross organization and Members of Voluntary Assistance Associations referred to in article 24 have the same status as members of the health services, provided they comply with military laws and regulations.
- d. Additional Protocol I of 1977 Article 61-Article 79
Protection of civilians also includes individuals serving as rescuers or volunteers, health and medical personnel, journalists, and civil defense personnel. Civilians must be treated with humanity without discrimination based on gender, color, race, religion or belief, political views, national origin, social status, wealth, or other discriminatory factors.
- e. Article 25 Paragraph (3) of the 1998 Rome Statute
Responsibility for acts involving, instructing, facilitating, or supporting international crimes such as genocide, crimes against humanity, war crimes, and aggression may be imposed on individuals and they may be punished for such acts. This responsibility cannot be transferred to the state. Therefore, actions committed by a military personnel who are involved in war crimes will result in responsibility for that individual.

The Rome Statute is a legal instrument that can be used to punish parties (military) who carry out attacks on medical personnel and health facilities. The policy regarding legal protection for medical personnel in armed conflict situations is also explained in Articles 38 to 54 of the 1949 Geneva Convention I, regulating the use of special symbols/signs for medical personnel to distinguish them from other groups (military and civilians). Every personnel, equipment or vehicle that wears the symbol of humanity has a neutral, independent and impartial character, therefore it must be respected and must not be attacked. Symbols power medical in situation war arranged in Regulations about Use Symbol Red Cross or Month Red Crescent by the National Society (approved in Conference 20th International, Vienna 1965 with the Council of Delegates, Budapest 1991), including : Red Cross, Moon Red Crescent, Red Lion, and Red Sun. To ensure full protection for medical personnel carrying out duties in conflict zones, the following policies and actions can be taken, including:

1. Increase the understanding of the wider community, especially the military regarding legal protection for medical personnel on the battlefield;
2. Building strong resources and infrastructure, such as strong health facilities and the effectiveness of medical devices to maintain the quality of medical services ;
3. Strengthening global cooperation with interested parties such as governments (countries), international medical organizations in order to strengthen the legal protection of medical personnel;
4. Building strong information resources, such as data and analysis on IHL violations against medical personnel, and finding solutions to overcome these violations;
5. Strengthening *political will* and integrity in gathering support from countries and international organizations to speak out and defend the legal protection of medical personnel on the battlefield;
6. Supervise and take firm action against states or parties who deliberately violate IHL, especially attacks on medical facilities and personnel;

4. CONCLUSION

That as a neutral party carrying out duties in the name of humanity, medical personnel must receive comprehensive legal protection. Violations of IHL, especially attacks on health facilities and medical personnel,

are serious crimes (war crimes), so the perpetrators must be dealt with firmly. IHL is a legal norm that is *jus cogens* as the highest hierarchy among other principles so that it must be obeyed and cannot be abolished (*non-derogable*). The legal protection of medical personnel in war conditions is expressly regulated in the Geneva Convention. Policies for the legal protection of medical personnel in war conditions include: using special symbols as a distinction, increasing the understanding of the wider community, especially among the military, regarding the legal protection of medical personnel, building strong health resources and infrastructure, supervising and taking firm action against the state or other parties. intentionally violating IHL, strengthening global cooperation, and strengthening the integrity and *political will* of legal protection for medical personnel.

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