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# Legal Protection of Children in Armed Conflict in the View of International Humanitarian Law

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## ABSTRACT

In an armed dispute, the protected persons include combatants and the civilian population. Combatants who have *hors de combat* status must be protected and respected in all circumstances. Combatants who fell into enemy hands gained the status of prisoners of war. Protection and rights as prisoners of war are regulated in Geneva Convention III of 1949. Meanwhile, civilians are entitled to protection as regulated in Geneva Convention IV of 1949. The legal protection given to children is more focused on the consequences of armed disputes that will affect or affect the child. As part of the civilian population, children who do not participate in hostilities receive general protection without any adverse distinction based on ethnicity, nationality, religion, or political opinion, and are intended to alleviate the suffering caused by war.

## KEYWORDS

*Legal Protection; Children's Rights; International Humanitarian Law*

## 1 INTRODUCTION

Various parties have often made efforts to achieve world peace. But of all the efforts that have been made, war or armed conflict is still a feature of the culture of human

civilization. The use of weapons is an alternative in resolving conflicts or differences of opinion that arise from socializing between countries.

The Law of War was originally used to state a rule of war between countries, but due to the trauma of World War II which claimed many victims among the civilian population, efforts were made to avoid and even eliminate war. However, despite efforts to avoid using war as a method of dispute resolution, wars continue to occur in various parts of the world.

World Wars I and II have indeed ended, but it cannot be denied that today there are still many conflicts raging around the world. Every day we see broadcasts about the atrocities committed on the battlefield. Women and children were brutally tortured and killed, some of them were evicted from their homes, lost their jobs, lost their homes, women were raped and young people were forced to carry weapons. So cruel are the actions carried out in the name of war, which of course violates human rights.

War or armed disputes, which we know of today still occur in various parts of the world, are a form of events that are almost as old as human civilization on earth in human history ([Permanasari, 1999: 12](#)). By definition war or armed conflict is the highest conflict between humans. In the study of international relations, war has traditionally been defined as the use of organized violence by political units, in the international system war will occur when countries in situations of conflict and conflict with each other feel that their exclusive goals have not been achieved, except by means of -violence, and in a broad sense war involves concepts such as crisis, threat, use of violence, guerrilla action, conquest, occupation and terror ([Ambarwati, et.al, 2010: 2-3](#)).

War is also called armed conflict, in which armed disputes have two forms, namely, international armed disputes and non-international armed disputes. The difference between international armed disputes and non-international armed disputes under international humanitarian law lies in the nature and number of countries that are parties to such armed conflicts. An international armed dispute is described as a war between two or more countries, whereas a non-international armed dispute is a battle or war involving a state that is fighting non-state armed groups (rebels).

Thus, if the state is fighting with rebel groups, the situation is still considered a non-international armed dispute even though the fighting takes place outside the country's territory ([Ambarwati, et.al, 2010: 53](#)). Armed conflicts that have occurred in various parts of the world have actually exploited and had a bad impact on children.

Since World War II children have been involved in active participation by enlisting them in the regular armed forces. The active participation of children in hostilities has attracted the attention of the international community.

## 2 METHOD

The research used in writing scientific papers is included in normative legal research. Normative legal research includes research on legal principles, legal systematics, legal synchronization levels, legal history, and legal comparisons (Soekanto, 1986: 51). The approaches that the author uses in this scientific paper are the statute approach, the case approach, and the conceptual approach. The statutory approach examines and analyzes all the rules in international humanitarian law, in particular the Geneva Conventions of 1949 IV concerning the Protection of Civilians and its Additional Protocols of 1977, as well as the 1989 Convention on the Rights of the Child. The conceptual approach is to examine the concept -concepts and theories relating to legal arrangements regarding the protection of children in armed conflict. The sources of legal materials used in this research are primary legal materials consisting of the Convention of the Right of the Child, the 1989 Hague Convention, the 1949 Geneva Conventions and the 1977 Additional Protocol and provisions derived from international law, legal materials. secondary which consists of literature books on international law related to research, on research methods, journals or articles related to research, expert opinions who are competent with the writing of the research carried out, and tertiary legal materials consisting of Indonesian dictionaries, dictionaries English, and a legal dictionary (Soekanto & Mamudji, 2003). The technique of collecting legal materials used is the document study technique, where the collection of legal materials through literature sources that are relevant to the issues discussed are then grouped systematically related to the problems in the study. The legal material analysis technique used in this research is descriptive technique where the description is what it is about a legal event that occurs in a certain place at a certain time in order to obtain a comprehensive and systematic picture of the events proposed in the study.

## 3 RESULT AND DISCUSSION

The idea of children's rights originated at the end of World War I as a reaction to the suffering that arose as a result of the catastrophe of war, especially experienced by

women and children. The League of Nations at that time was moved by the large number of children orphaned by the war. The beginning of the movement of the idea of children's rights stems from the movement of women activists who protested and asked public attention to the fate of children who were victims of war.

In 1959 the UN General Assembly again issued a Statement on the Rights of the Child which was the second international declaration of children's rights. In 1979, when the International Year of the Child was declared, the Polish Government proposed the formulation of a document that laid down international standards for the recognition of children's rights and was legally binding. This is the beginning of the formulation of the Convention on the Rights of the Child.

The Convention on the Rights of the Child was ratified by the General Assembly of the United Nations on November 20, 1989 and entered into force on September 2, 1990. This Convention on the Rights of the Child is an instrument that formulate universal principles and legal norms regarding the position of children. Therefore, this convention on children's rights is an international treaty on human rights that includes civil rights, political rights, economic rights, and cultural rights (Darwan; 2003).

Children are individuals who belong to the civilian population. Thus, in the Geneva Conventions governing child protection, we can see the IV Geneva Convention which contains the protection of civilians. Arrangements based on Additional Protocol of 1977, namely Additional Protocol I which regulates international armed conflict and Additional Protocol II which regulates non-international armed conflict, in these two protocols it also describes the regulation of the involvement of children in armed conflict. Based on the Convention on the Rights of the Child, this convention is an instrument that formulates universal principles and legal norms regarding the position of children (Andrey, 2015). Therefore, this convention on the rights of the child is an international treaty on human rights that includes civil rights, political rights, economic rights, and cultural rights which also define the involvement of children in armed conflict. Arrangements based on the Additional Protocol to the Convention on the Rights of the Child, namely the Additional Protocol of 2000.

This protocol contains 13 articles, and as the name implies, this protocol specifically applies to children who are involved in armed conflict. This protocol also complements and clarifies norms governing the involvement of children in armed conflict. Among the thirteen articles that are important to discuss are Articles 1, 2, 3, 4 and 6. International humanitarian law has provided legal rules relating to armed

conflicts and other related matters, including the recruitment of children into soldiers. International humanitarian law, which in practice aims to humanize war and provide protection for victims of war, in this case international humanitarian law also contains regulations regarding the protection of children who are recruited to be part of the armed forces.

One of the rules in international humanitarian law which contains the protection of children who are recruited into the armed forces in the 1949 Geneva Convention, this four-part convention, in the fourth part, which contains the protection of civilians during war explain who are meant by civilians, how the protection is provided. The convention explains that children are classified as civilians who must also be protected in times of war. So that this Geneva convention has provided protection for children where their status is as civilians. However, this convention does not clearly explain the recruitment of children into child soldiers and their involvement in armed conflict (Risnain, 2014).

Legal Protection for Children recruited into Soldiers under the Geneva Conventions of 1949, the former under the Principle of Discrimination. The principle of differentiation is a principle that divides the population into two groups, namely combatants and civilians (Permanasari, 1999: 73). This distinction is necessary to determine who can be attacked and who should be protected. Based on this principle of differentiation, children are classified into the civilian population who must be protected, but in fact, as happened in countries where there are still disputes and conflicts that children are recruited into child soldiers and ordered to carry weapons, what is the legal status of these children? whether they were classified as civilians or combatants, given the fact that these children were holding guns (Shaw, 2008).

Thus, to determine the legal status of child soldiers, it can be seen from several legal instruments, namely: Articles 1, 2 and 3 of the Hague Convention, Article 13 Geneva Convention I of 1949, Article 43 paragraph (1) and paragraph (2) Additional Protocol I. In 1977, Article 44 paragraph (3) Additional Protocol I of 1977, so that based on this instrument children are classified as combatants, namely when they have a special distinguishing symbol, carry weapons openly and carry out military operations in accordance with international rules and customs, however these instruments only applies to child soldiers who are over fifteen years of age, then the provisions that will apply to child soldiers are the same as those that apply to combatants, because child soldiers who have exceeded the age of 15 according to the Geneva Conventions are classified as combatants. Then the legal protection for combatants will also apply to child soldiers.

Legal protection for children recruited into Soldiers under the Additional Protocols to the Geneva Conventions 1977. Protection under Additional Protocol I article 77:

1. Children must be protected from indecent behavior and warring parties must provide the assistance and care they need;
2. The parties to the dispute must take all measures and keep children away from any recruitment of the child into the army.
3. But in training children who are fifteen years old but have not yet reached the age of eighteen, they must give priority to those who are the oldest.
4. The special protection given to these children is applied whether they are in a detention status or not; If children are arrested/detained, or exiled because of matters related to armed conflict, they must be placed in a separate place from adults, unless the adults are their relatives.
5. Children should not be put to death.

The principle of discrimination is a fundamental principle in the law of war, where this principle distinguishes civilians from combatants. This distinction needs to be made to determine who can participate in hostilities and who cannot, and to determine who can / can be the object of violence and who should be protected. Based on this principle, children are classified into the civilian population who must be protected in accordance with the mandate of the 1949 Geneva Convention. However, cases that occur in conflicting and disputing countries are that children are recruited into child soldiers and directly involved in fighting, then what is the status of the child? Is he still classified as a civilian who must be protected or he is classified as a combatant, given that these children are holding weapons.

In several articles in the convention, it has been explained when the children can be said to be combatants, namely when they have a special distinctive symbol, carry weapons openly and carry out military operations. As well as children whose status is still in doubt must be considered as civilians. Since child soldiers who have exceeded the age of 15 are classified as combatants under the provisions of the Geneva Conventions, the legal protection for combatants will also apply to these children. Additional Protocol I of 1977, in article 77 has explained the protections provided to children, one of which is that the parties to the dispute must make every effort so that children who are not yet fifteen years old do not take part in warfare, so that we can note that, this protocol does not provide a clear and clear explanation of the legal protection of child soldiers.

However, this protocol describes what protections are given to children who



are directly involved in fighting or the recruitment of children into armed conflict. Additional Protocol II applies to situations of non-international conflict, at first glance the contents are almost the same as the provisions in Additional Protocol I, but Additional Protocol II provides more lax limitations regarding the age limit. The 1989 Convention on the Rights of the Child does not directly explain child soldiers, but this convention provides an explanation of the protection of children's rights, one of which is the involvement of children in armed conflict as stated in article 38.

Therefore, it can be concluded that the convention on children's rights is a general provision regarding children in armed conflict. The Convention on the Rights of the Child is also complemented by an Additional Protocol, namely the Additional Protocol of 2000, this protocol was made specifically to discuss the involvement of children in combat. This protocol provides protection for children who have been recruited into child soldiers to be released from their duties as child soldiers. There are several other regulations governing the involvement of children in armed conflict, namely as mentioned above. So that the international world has provided protection for children's rights in such a way, because based on international law, especially international humanitarian law, children may not be used as a means in the battlefield, thus children may not be recruited into child soldiers, but rather that children this child must receive full protection.

#### **4 CONCLUSION**

International law is sufficient to regulate the protection of children in armed conflict, both involving the direct and indirect involvement of children in hostilities and also the protection of children as victims of armed conflict. However, in order for the provisions of international law to be effective, they must be included in the national legal arrangements of each country. The legal protection provided to children is more focused on the consequences of armed disputes that will affect or affect the child. As part of the civilian population, children who do not participate in hostilities receive general protection without any adverse distinction based on ethnicity, nationality, religion or political opinion, and are intended to alleviate the suffering caused by war. Apart from the general civilian population who must receive protection, there are several categories that also need protection, namely foreigners, including children in occupied territories. Apart from foreigners, another category of civilian population is those who live in occupied territories. The last category are those belonging to the civilian population.

## 5 DECLARATION OF CONFLICTION INTERESTS

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## Quote

“Because evil exist,  
some warfare is  
inevitable and a nation  
must be galvanized into  
mustering arms to  
protect civil liberties.”

**Kilroy J. Oldster, *Dead Toad Scrolls***