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LEGAL PROTECTION OF CHILD VICTIMS OF ARMED CONFLICT IN THE PERSPECTIVE OF INTERNATIONAL HUMANITARIAN LAW AND ISLAMIC LAW

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Abstract: This study aims to determine the legal protection of children victims of war according to humanitarian law and Islamic law. The occurrence of armed conflict destroys the rights that the state should give to its people, especially to children. In this case the state is unable to create peaceful conditions for children to exercise their rights.The type of research used is normative legal research, with the type of statutory approach, case approach and conception approach. The source of legal materials used is inseparable from the existing rules in international law by specializing in regulations governing International Humanitarian Law. The technique of collecting legal materials carried out is by exploring normative frameworks and document study techniques using legal materials that discuss international humanitarian law theories, especially the 1949 Geneva Conventions. The results showed that the protection of child victims of armed conflict has been regulated in international humanitarian law in the form of Additional Conventions and Protocols and in Islamic law. Islam teaches noble behavior held in warfare, among other things it is forbidden to kill children.

Keywords: Child, Armed Conflict, International Humanitarian Law, Islamic Law

Introduction

The war in Gaza between Hamas and Israel has caused heavy civilian casualties. The non-governmental organization *Save the Children* said 3,760 children out of a total of 9,061 people killed in the Gaza Strip and 36 children died in the West Bank. Child mortality also occurs in various international wars among them, in the ongoing Russian-Ukrainian war. Among the fatalities were 510 children killed according to the *Children of War* website, as well as Iraq according to a UNICEF report has a fairly high data on child deaths due to war, namely from 2008 to the end of 2022 the number of children killed was 3,119 children. That means more than one child is killed every two days. Since the start of the war in 2011, 12,000 children have been killed. This means that there are almost three children every day. And some other countries are involved in conflicts

The protection of the rights of children in armed conflict under the 1989 Convention on the Rights of the Child is provided for in Article 38, paragraph 4, i.e. in accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all appropriate measures for the protection and care of children affected by armed conflict. (Hamin, Tangkere, & Voges, 2022)

Literature Review

1. Understanding Children

Children according *to the World Health Organization* (WHO) are the age from being in the womb to the age of 19 years. Article 1 of the Convention on the Rights of the Child states that children are all persons under the age of 18, unless otherwise stipulated by the laws of a country. Then in Article 2 states, Children's rights apply to all children without exception. The child must be protected from any kind of discrimination against him or her discrimination resulting from the beliefs or actions of his parents or other members of his family. According to the Convention on the Rights of the Child (CRC), a child is any person under the age of 18 including a child who is still in the womb. The CRC regulates the various rights of the child but leaves it up to the State to decide who is meant by a child and at the same time nourishes the State to determine the age of majority in the child.

2. Armed Conflict

Armed conflict is an event full of violence and hostility between warring parties.

3. International Humanitarian Law

International Humanitarian Law (*International Humanitarian Law*) also known as the laws of war (*The Law of War*) and armed conflict (*The Law of Armed Conflict*) is the part of public international law governing armed conflicts, both international and non-international in nature. (Suryadi, 2019).International Humanitarian Law applies to armed conflicts, both international armed conflicts and non-international armed conflicts that cause casualties.

4. Islamic Law

As quoted from the journal Mardani, that the word Islamic law is not found at all in the Qur'an and legal literature in Islam. What is in the Qur'an is the word shari'ah, fiqh, the law of Allah and its roots. The words of Islamic law are translations of the term "*Islamic Law*" from Western literature. In the explanation of Islamic law from Western literature is found the definition of Islamic law, namely: the entire book of Allah that governs the life of every Muslim in all its aspects. From this definition the meaning of Islamic law is closer to the understanding of sharia. (Mardani, 2008)

Method

This paper uses normative legal research methods, which focus on legal norms. The type of research used in this writing is library research. Library research means that research uses written documents as data, and the data sources used in this study include primary legal materials and secondary legal materials. Primary legal materials are legal materials that bind or make people obey the law, including legal products that are subject to study and legal products as a tool for criticism. Secondary legal materials include explanations of primary legal materials in the form of expert doctrines found in books, journals and on websites.

Results and Discussion

1.Protection of Child Victims of Armed Conflict in the Perspective of Humanitarian Law

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Armed conflict (*armed conflict*) a situation that is familiar in the international world. Almost all humans experience armed conflict with a very large number. Armed conflict tends to wreak havoc, destruction and misery on human life, both to combatants and non-combatants. (Riza, 2016)

The current armed conflict is in Palestine between Hamas and Israel. This conflict has actually been going on for a long time, but what needs to be known is that armed conflict is not a place of war for children. Because children are innocent, and sometimes children do not know the root of the problems that occur, and even worse people who do not participate in war become victims of violence, intimidation, murder, imprisonment, and torture. As if violence against children seems to have become a habit in society. Violence against children is considered a worthy act to do, especially when children make mistakes. Acts of violence include being carried out in the form of torture, and some lead to death. Sometimes violence against children is not done alone but also in groups. (Nursariani & Abduh, 2020)

It is clear that the occurrence of armed conflict can destroy the rights that should be given by the state, especially to children. In particular, the Convention on the Rights of the Child groups children's rights into 4 categories, which are as follows

1. The right to survival, the rights of children to defend life and the right to the best possible health and care.
2. The right to growth and development, that is, the right to education, and to a decent standard of living for the physical, mental, spiritual, moral and social development of children.
3. The right to protection, namely protection from discrimination, violence and neglect for unmarried children and for refugee children.
4. The right to participate, including the right to express an opinion in all matters affecting the child.

Child protection is an effort for social justice, so that child protection is carried out in various fields of state and community life, child protection activities have legal consequences. (Hidayat, 2022)

The following legal arrangements and regulations protect the rights of children in areas of armed conflict:

1. Geneva Conventions of 1949
2. General Assembly Resolution 2444 approving the resolution of the 12th International Conference of the Red Cross (ICRC) in Vienna
3. Convention on the Rights of the Child

Legal protection for children victims of war is protection in the form of a decent life, such as getting adequate food, clothing and medical care and adequate shelter which has been clearly stated in Geneva Conventions IV 1949 (*Geneva Conventions IV 1949*) on "Protection of Civilians in Time of War. Article 27 of the 1949 Geneva Conventions states that protected persons have the right to respect individuals in all circumstances, respect family rights, religious beliefs and good customs and customs. Therefore, innocent children or civilians must

always be treated humanely and receive special protection from all forms of violence or threats of violence.

Then based on the Geneva Convention Additional Protocol, namely Article 77 on the protection of children that children in this case must be protected and respected for their rights as human beings, while although the convention on the rights of the child affirms that it is the State that has obligations in the protection of children's rights and in carrying out the protection of children's rights is the obligation of all parties.

Protection of children during war/armed conflict is also regulated in the *Optional Protocol on Involvent of Children in Armed Conflict* 2000. The 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict is generally more protective than the previously mentioned instruments.

The arrangements for the protection of children in armed conflict are quite clear about the obligation of States parties to the Convention to provide protection to children in times of war or armed conflict. However, countries in the world, both from parties to the relevant Convention or parties involved in armed disputes / conflicts still seem to have not cared about the provisions regarding procedures for treating in protecting victims when war / armed conflict occurs as evidenced by the large number of casualties, especially children.

The armed conflict that took place in Palestine involved most children experiencing mental stress because they continued to live in conflict conditions. Not to mention, there is mistreatment of children. The Israeli army will not hesitate to arrest and torture small children.

Legal protection provided to children is more focused on the consequences of armed disputes that will befall or affect children. 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 is intended to alleviate the suffering caused by war (Narwati & Hastuti, 2008)

2. Protection of Child Victims of Armed Conflict in the Perspective of Islamic Law

The war has been going on for a long time, even starting from the time of Qabil and Habil. In the larger case, mentioning war is a natural basis for problem solving and also an important thing to do. If a country fails in its diplomatic efforts to resolve conflicts or in achieving its interests, war becomes an important path to take. In Islam war is defined as *Qitalu al Kuffari fi sabilillahi li i'lai kalimatillah*, i.e. "fighting the unbelievers in the way of Allah in order to exalt the word of Allah". Islamic teachings contained in the Qur'an and Hadith actually have a fairly deep and broad relationship about the correlation between humans and nature / environment. (R, 2007)(Harahap, 2015)

Therefore war is only permissible in very forced circumstances. As outlined earlier, Islam as the name implies, is a religion of peace and seeks to bring man in His peace, well-being and mercy. This peace depends on man's willingness to submit and obey His teachings contained in Islam. Anyone who goes before Him and expects His guidance will surely be given with peace, happiness and perfection. (Zulfikar, 2016)

Islam views the child as a costly gift with a holy status. This expensive gift is a trust that must be maintained and protected by parents in particular, because children are assets of parents and assets of the nation. Islam has paid great attention to the protection of children. Protection

in Islam includes physical, psychic, intellectual, moral, economic, and others. This is described in the form of fulfilling all their rights, guaranteeing their clothing and food needs, maintaining their good name and dignity, maintaining their health, choosing good friends, avoiding violence, and others. (Zaki, 2014)

Islam allows Islamic armies to kill enemy soldiers and capture them, as well as to use deceit as a tactic and strategy to win tricks (khid'ah). Ten noble behaviors held by Islam in war, among others: (Iqbal, 2001)

1. It is forbidden to kill children.
2. It is also forbidden to kill women who did not participate in the war and rape.
3. It is forbidden to kill an old man if the old man does not participate in the war.
4. Does not cut and damage trees, rice fields and fields.
5. Does not damage livestock both cows, sheep and others except for eating.
6. It does not destroy churches, monasteries, and synagogues.
7. It is also forbidden to chop the enemy's corpse, even animal carcasses must not be chopped.
8. It was forbidden to kill priests and workers who did not participate in the war.
9. Be patient, courageous and sincere in conducting war, clearing intentions from seeking worldly gain.
10. Not beyond limits, in the sense of the limits of the rule of law and morals in warfare.

3. Obstacles in Providing Protection to Children in Times of Armed Conflict

The victims of war are not only military or *combatants*, but also civilians, including women and children. In the midst of a turbulent conflict situation, civil society, especially children and women, is a group that is very vulnerable to becoming victims because they do not have weapons to defend themselves from enemy attacks. As a result, they tend to be in situations of fear, confusion and lack of certainty in accessing security information. Children constitute a neutral zone, not part of hostilities and not participants in the war of warring parties. Ideally, safety and protection from various parties are a top priority for children.

International Humanitarian Law regulates the legal protection provisions of children who are victims of war in an international or non-international armed conflict. However, there are many obstacles found in the implementation of protection for children, meaning that it has not been fully implemented properly, this is due to problems that become obstacles or weaknesses in providing this protection. In applying the applicable rules of International Law, not all countries implement these regulations properly or only limited to mutually agreed regulations (Intan & Dony, 2022)

The obstacles in providing protection to the child include; (Hidayat, 2022)

1. Not Implementing the *Distinction Principle* The principle of distinction is an important principle in international humanitarian law. This principle divided the population of the country into two groups, soldiers and non-soldiers in war. This distinction must be made primarily to reveal who can/can be used as objects of violence and who should be protected. So, starting from the principle of separation, it can be known who can be

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involved in conflicts so that they experience violence and who needs protection because they are not involved in conflicts. The purpose of this distinction is to protect civilians, especially children who are not involved in the conflict.

2. Not implementing the *protection principle*. Though the *Protection Principle itself* aims to protect civilians who are in conflict
3. Not paying attention to the principle of *proportionality*. The principle of proportionality is defined as a principle that requires a balance between the principle of military interests on the one hand, and the principle of humanity on the other, for parties involved in armed disputes. This principle of proportionality in International Humanitarian Law has become a key principle that must be considered by parties involved in armed conflict in carrying out attacks on enemy parties, so that efforts to respect humanitarian principles in terms of respect for human dignity and dignity can be maintained. However, some examples of cases of armed conflict such as in Palestine attacks carried out by the Israeli Army are very excessive and not carried out proportionately (unbalanced), can be seen from the use of weapons in attacking a civilian place which causes excessive damage and casualties to civilians including children.

Conclusion

Legal provisions governing the protection of children include: (a) the Convention on the Rights of the Child and the Additional Protocol to the Convention on the Rights of the Child, the Geneva Conventions of 1949, the Additional Protocol II of the Geneva Conventions. Warfare is only permissible in very forced situations. Islam as the name implies, is a religion of peace and seeks to bring people in His peace, prosperity and mercy. This peace depends on man's willingness to submit and obey His teachings contained in Islam. Anyone who goes before Him and expects His guidance will surely be given with peace, happiness and perfection. Although war is inevitable, there are messages that must be heeded. Among other things: Do not kill the elderly, women, or children, do not mutilate, if you have to kill then do it without torture (by) slashing the neck (Q.S. Muhammad verse 4) because it is the fastest way to kill someone's life. In addition, do not cut down trees or tear down buildings or scorch areas.

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