

# The Existence of Distinction Principle in Preventing Victims of Armed Conflicts Based on the International Humanitarian Law

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## ABSTRACT

Parties involved in armed conflict are forbidden to commit murder, torture, rape, and punishment outside the legal method. However, in various armed conflicts, many people, who are not involved in the conflict, became the victims, wounded, sick, killed, and lost their property. This circumstance is because the parties involved in the war did not apply the distinction principle, distinguishing the targets of violence against combatants and civilians. Therefore, it is interesting to study the existence of the distinction principle in an armed conflict. This article aims to explain the existence of the distinction principle in an armed conflict, and to discuss why this principle is often alienated in an armed conflict. Many armed conflicts today have put a lack of attention to the distinction principle to prevent casualties or minimize victims of the conflict, especially civilians. Actually, the commanders and soldiers of each party must hold the distinction principle clearly and firmly to avoid unnecessary victims, but in practice, this principle is often ignored. Besides, the related parties experienced difficulties in implementing the distinction principle because the community and combatants are mixed in armed conflict circumstances.

**Keyword:** *distinction principle, prevent, victims*

## 1. INTRODUCTION

Armed conflict will inevitably result in many victims, both the civilian and the military. The victims suffer from various violence during the armed conflict, such as persecution, rape, and even murder. Supposedly, those involved in the conflict must prevent unnecessary victims by distinguishing the civilians and the military.

Victim prevention is closely related to the principle of distinction between the civilians and the military or combatants. This principle is crucial to use as the basis for implementing targeted war, as demanded by the humanitarian law, the applicable law in an armed conflict.

The Geneva Convention of 1949 regulates the protection for war victims, yet it does not explicitly regulate the principle of distinction. Instead, it only establishes the provision related to the protection of combatants and civilians in Article 3 of the Geneva Convention. The parties involved in armed conflict are prohibited from murdering, torturing, raping, and punishing outside the law so that victims of the armed violence can be avoided. However, armed conflicts usually lead to many casualties.

Victims in armed conflicts are often occurred due to the ignorance towards human values and applicable legal provisions or because of the inexistence of strict legal sanction to the crime perpetrators. However, the acts of violence towards the victims violates the law. Thus, such

actions must be stopped or minimized for the safety of the civilians in the armed conflict areas.

In this circumstance, it is crucial for those involved in the conflict to apply the principle of distinction, distinguishing the targets of war violence. It is to avoid the casualties among innocent civilians who usually become the victims of armed conflicts. That occurs because combatants do not employ the principle of distinction in carrying out their duties to differentiate the war targets, that should be between fellow combatants instead of civilians. Therefore, it is interesting to study the existence of the distinction principle in an armed conflict. The consequences of the principle of distinction in armed conflict should be major attention, and why the distinction principle is not implemented effectively in armed conflicts will be elaborated.

## 2. METHODS

The data in this study was secondary data related to the provisions of the law, reference books, and other scientific works gathered by library research. Besides, field research was conducted to obtain primary data.

### 3. DISCUSSION AND RESULT

#### 3.1. *The existence of the principle of distinction in an armed conflict*

Armed conflict is a political consequence of a country or government that raises different political views from other parties or certain groups of people. The differences that cannot be resolved peacefully will lead to tension and resolution by armed forces. This method of settlement has tremendous disadvantages for human values as it causes many victims of civilians.

Differentiating the combatants and non-combatants in an armed conflict is paramount, because armed conflicts always result in victims, including victims from the parties involved in the conflict and those who are not involved (Adwani, Protection of Combatants and Civilians in Non-International Armed Conflicts in Indonesia, 2014). The principle of distinction is one of the fundamental principles used in the international humanitarian law to distinguish the combatants and the civilians sharply. This distinction is essential to identify who may be the target of violence and who should not or who should be protected.

The humanitarian law principally distinguishes generally the combatants and non-combatants. Based on this principle, the population in an armed conflict area is divided into the armed forces and the civilians. Each party has rights and obligations during an armed conflict, and it is impossible for everyone to be a member of both parties simultaneously (Tucker, 1957). The main objective of the humanitarian law is protecting and assisting those who suffer or who are the victims of war, including people actively participating in the conflict or the combatants.

Regarding this issue, all parties involved in armed conflicts must differentiate between the combatants and civilians, known as the principle of distinction (Ambarwati, 2012). This principle is one of the critical principles in international humanitarian law, distinguishing the people who are fighting as the combatants and non-combatants (Dkk, 1999) This principle is vital to explain the boundaries to exclude the non-combatant from the combatants. The confusion in distinguishing the two groups will threaten the protection of the civilians that are guaranteed by humanitarian law (Detter I., The Law of War, 2000)

The government, through the Indonesian Armed Forces, is responsible for implementing the law, including the humanitarian law distinguishing the combatants and the non-combatants in war as well as excluding the civilian out of military objects. The principle of distinction aims to protect civilians. Besides, the combatants are obliged to distinguish themselves from civilians to identify them as those who are eligible to participate in the war (Rusman, 2006)

The distinction between civilians and combatants is also the demand of the era development. It aims to guarantee the best protection to residents or people who are not involved in the armed conflict (Istanto, 2000). To respect and protect the civilians, the parties involved in the conflict must distinguish the civilians and combatants at

all time (Kalshoven, 2000). Lieber Instruction has explicitly established the difference between the civilians and non-combatants. It aims to protect the population, including their property and honor. It concerns with the protection for the people who are not involved in armed conflicts (Istanto, Non-International Armed Disputes in International Humanitarian Law, 2000).

This general principle should be further elaborated into several implementation principles (Dkk, Introduction to Humanitarian Law, 1999), namely:

- a. The parties involved in the conflict must conduct all reasonable precautions to save the civilians, or to reduce the accidental loss or damage to the least possible extent.
- b. The parties involved in the conflict must at all times, distinguish between combatants and non-combatants to protect civilians and civilian objects.
- c. Acts or threats of violence to mainly spread terror for civilians are prohibited.
- d. Only the members of the armed forces who are entitled to attack and detain the enemy

The obligation to separate the combatants from the non-combatants by the involved parties is fundamental in an armed conflict. It is closely related to the prevention principle to prevent acts of violence against any innocent people (Kusumaatmadja, 2005)

Violation prevention aims to protect both citizens and foreigners. Thus, foreigners must also be protected or appropriately treated in armed conflict areas. Concerning this issue, there are two principles for treating foreigners. First, if those rights are violated, the country of the offender is responsible. Second, a foreigner must be entitled to the same rights and guarantees as to the local citizens and not less than the fundamental human rights stipulated by the law (Yudha Bhakti A., 2003)

Article 3 of the Common Article of the 1949 Geneva Convention does not explicitly determine the difference between the protection for the combatants and non-combatants or civilians. This article only stipulated that the provisions apply and regulate the security for the parties who do not participate in the conflict.

### 4. THE ADVANTAGES OF DISTINCTION PRINCIPLE PREVENTING VICTIMS OF AN ARMED CONFLICT

Armed conflict includes international, non-international, and internationalized the armed conflict. The armed conflict occurred due to political problems between countries and internal conflicts within a country (for example, Moro in the Philippines and the Free Aceh Movement in Aceh, Indonesia).

In other countries, the arrangement concerning the issue of armed conflict has been conducted based on the regulations in the 1907 Hague Convention on peace and neutrality, as well as the 1949 Geneva Convention on the

protection of war victims. These regulations emphasize the distinction between combatants and civilians in an armed conflict to avoid casualties among the innocent parties. Adhering to this principle, those involved in the conflict are obligated to distinguish the combatants and civilians in carrying out their military duties, or that the military actions should only apply against the combatants. Thus, the acts of violence in the armed conflict are only allowed against the enemy combatants, not the civilians. If this method is implemented appropriately by the combatants or soldiers, there will be no casualties among innocent people.

If there is a confusion in distinguishing these two groups, the protection guaranteed by humanitarian law will be threatened. The principle of distinction is crucial to identify the boundaries differentiating the civilians or non-combatants from the combatants (Detter I., 2000). This distinction is required to identify who can be the objects of violence and who should be protected. Regarding this issue, one of the principles adopted by humanitarian law is the distinction between the combatants and non-combatants or civilians (Haryomataram, 2005). Hence, it is vital to differentiate the combatants and the civilians, to identify the people who can participate in armed conflict (Adwani, Protection of Combatants and Civilians in Non-International Armed Conflict in Indonesia, 2014).

The realization of the distinction principle in armed conflict areas is crucial to be conducted by the combatants based on the order of the commander in charge. However, this principle does not seem to be applied by the combatants or members of the armed forces in conducting their military duties. Therefore, this issue is interesting and important in relation to the armed conflict that occurred in Aceh several years ago or before the 2005 Helsinki MOU, that caused many casualties among the civilians. These casualties were due to the absence of distinction principle implementation.

The total number of victims was 25,969 people, including 15,315 the non-combatant or civilians victims during the Military Operation Area (Daerah Operasi Militer/DOM) to Civil Emergency in the Military Operation Area Period between 1989 – 1998, and 4,808 after the Military Operation to December 2002.

The data shows that the armed conflict in Aceh had resulted in many victims, especially the civilians who were not involved in the conflict. These casualties indicated that the parties involved in the conflict did not apply the principle of distinction in their various military actions.

The distinction principle implementation is fundamental in an armed conflict to prevent civilian victims who are not involved in an armed conflict. In other words, the disputing parties must not aim or shoot innocent civilians. The commander plays an important role in conducting such prevention by ordering his subordinates not to commit violence or shoot civilians as he is in charge of an operation in armed conflict. However, the role of the commander does not function well, or the commander is less concerned with the distinction principle implementation.

The protection of civilians aims to minimize the suffering of their citizens (Adwani, Protection of Combatants and Civilians in Non-International Armed Conflict in Indonesia, 2014). Based on Convention III of the 1949 Geneva Convention, civilians must not be victims; instead, they must be protected as regulated in Article 3. A similar case applies to the combatants; however, if the victims are the combatant members of the parties involved in the conflict and occur during the conflict, it is considered as a job risk. On the other hand, if the enemy captured the combatant members, they must also be protected against various acts of violence, as established in Convention I of the 1949 Geneva Convention concerning the condition improvement of injured and sick combatants in armed conflicts on land. Fundamentally, the most crucial issue is the protection of the civilians, those who are not involved in the armed conflict. Besides, the civilians are entitled to human rights that must not be violated as they are protected by the international and the Indonesian human rights laws.

Article 27 of the Geneva Convention IV of 1949, concerning Protection of Civilian Persons, states that everyone is entitled to self-respect, family rights, and religious beliefs and practices in all circumstances (Agustianus Supriyanto, 2005). Based on the protection principle, the parties involved in the war must protect every victim and treat them proportionally according to the military, humanitarian, and chivalrous interests. This means that everyone must be treated based on their human rights. They should be free from various acts of torture, violence and even murder, as established in the 1948 UN Universal Declaration of Human Rights and the Law No. 39/1999 concerning human rights.

Hence, each combatant must treat civilians humanely, not conduct reprisal on them and not target them as objects of violence. Members of the armed forces are prohibited from harassing, insulting, kidnapping, and convicting the criminal without a judicial process. The observation of the parties involved in conflicts in some areas, such as in Aceh, shows that many armed forces ignored the principle of distinction, both the combatant members and their commanders in charge.

Specifically, Article 3 of the 1949 Geneva Convention prohibits murder, torture, detention, violations of human dignity, and sanctions outside the court (QC, 2002). These provisions must be obeyed by the military and police and guerrillas.

As understood, the armed conflict is inseparable from the political problems that are not resolved peacefully, and therefore it is settled by armed violence, even alternately. In reality, the resolution of armed violence cannot solve the problem, such as the case in Aceh Indonesia and Syria. The case of Aceh was finally resolved through a political approach by negotiation conducted in Finland that reached a political agreement in 2005.

Considering that armed conflicts result in many innocent victims, the parties involved in the conflict, both the government and the opposing party, must instruct both the commanders and combatants to implement the

principle of distinction in all their actions by not targeting the civilians. In addition to distinguishing civilians and combatants, civilian and military objects should also be differentiated to prevent the victims from innocent people. Those violating or neglecting their duties must also be punished strictly, both the commander and his subordinates, to create a deterrent effect for them.

Thus, the principle of distinction must be applied by the parties involved in armed conflict and must not be overlooked. The principle of distinction provides an understanding of the adherence and important implementation to avoid unnecessary victims or innocent civilians. Hence, the existence of the principle of distinction in the armed conflict is to prevent or eliminate victims among those who are not involved in the conflict, and its implementation becomes vital. However, the principle of distinction is often not applied in an armed conflict.

The civilian population comprises all people who are civilian (13, no year). This circumstance shows that the principle of distinction is to erase or reduce the victims of armed conflict, especially the civilians, as they were the most vulnerable victims in various countries, including Indonesia. Principally, the commander and his subordinates of each party must make a clear and strict distinction so that unnecessary victims can be reduced. However, in practice, this principle is often ignored. Also, the parties involved experience obstacles in implementing the distinction principle because the combatants and the civilians are mixed. They are intermingled, close to one another, and live side by side. Besides, it is also due to the parties involved in the conflict; both the commander and his subordinates have a lack of concern for the principle of distinction.

Hence, the implementation of the distinction principle in an armed conflict is necessary and important to reduce the victims among innocent people or those who are not involved in armed conflict. This is because the casualties of civilians are a bad and useless death as they are innocent people. Consequently, the armed forces must apply the principle of distinction, and severe legal sanctions should be imposed on the perpetrators. However, in reality, these parties ignore the principle of distinction, resulting in the civilian casualties continue to occur to date. The principle of distinction should be implemented to prevent the casualties of civilians or innocent people.

## 5. CONCLUSION AND SUGGESTION

The principle of distinction is a vital principle to apply in armed conflict to avoid the victims among the people who are not involved in the conflict. However, the involved parties do not pay enough attention to the principle, nor they adhere to the principle. They also abuse the principle so that the civilian victims are unavoidable. Hence, the parties involved in the conflict, under the command of the commander, should direct the war violence acts between the fellow combatants only to avoid the civilian victims.

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