



Protection of Women Against Incidents of Sexual Violence in War Areas from an International Humanitarian Perspective

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Abstract. The journal entitled “Women’s Protection for Sexual Violence in War Areas in an International Humanitarian Perspective” describes the problem of cases of sexual violence against women that keep repeating itself every year in various countries, especially countries of conflict or war. Moreover, these cases of violence are mostly carried out by the military, of course ideally they are the parties who protect civilians and their country. The existence of this case is increasingly worrying when the current conflict area continues to develop to encourage disputes around the area. This is what causes cases of torture and death of women in various countries. In this study, the research method used is the socio-legal legal research method. The final result of this research is a study of international regulations for the protection of women and girls, as well as a study of regulatory conditions and the real conditions that occur, and recommendations for optimizing efforts to enforce and protect the rights of women and girls who experience sexual violence in the region.

Keywords: Women · Sexual Violence · Fulfillment of Rights

1 Introduction

The existence of disputes between countries that lead to the armed conflict until now continues to increase. This is certainly due to various backgrounds that have emerged, one of which is that the settlement through diplomatic channels is considered a failure and does not meet the point of peace. Along with the development of state life and the dynamism of international life, of course, it is more or less the driver of war events and countries that are involved in armed conflict. The occurrence of this armed conflict in its development has also cost many lives, for example, in Russia and Ukraine.

Women became vulnerable after their children were in a state of war. When climate disasters and conflicts strike, now with increasing frequency, research shows that women and children are 14 times more likely to die than men [1]. This shows that women tend to become victims of greater war and require special treatment. Currently, there is data stating that 80% of the victims were women and children. The percentage of victims of sexual violence certainly has very large number compared to the number of war

victims from the military apparatus. In particular, children are one of the parties who are assumed to have no legal capacity to commit criminal acts considering the conditions and nature that still depend on adults, the age level of physical, mental, moral, and spiritual development is immature [2].

Women as part of legal individuals who certainly have human rights, constitutional rights, and legal obligations are important to protect. Considering that rape of women is currently considered a weapon in the implementation of war, this is due to the stigma of degrading, influencing opposing countries, oppressing women, and making it a war tactic. It is this crime that is considered a violation of humanitarian law and becomes a form of state failure and intransigence to protect its citizens involved in the war. In general, the existence of an international legal instrument that provides accommodation for liability for the parties to a dispute to accommodate legal obligations that must be applied is directly related to the protection measures afforded to women as intended and contained in the Geneva Conventions of 1949 and the Additional Protocol of 1977. This is important considering that the state as the main party to the implementation of state life must provide guarantees for human rights, protect, and enforce them in their respective countries including women's rights from sexual violence, especially in conditions of war or conflict. So there is a need for protection and guarantee of the implementation of the law on this matter as a manifestation of the protection of women by the state and the international constitution.

The protection is contained in the 1949 Geneva Conventions on the protocol, in addition, particularly those contained in Article 51 Paragraphs 1–3. This article provides a statement that individual civilian residents must receive general protection against dangers that may arise from military operations. So that the individual civilian population should not be subjected to attacks. Furthermore, further arrangements for this are also contained in the articles contained in the supplementary protocol I of 1977, whereby the article provides for the protection of women in armed conflict, namely Article 76 that women need to have a special respect for rape, coercive prostitution and all forms of indecent attacks.

The existence of this protection for women is also affirmed in Article 27 Alinea Second convention which states that women should be protected against any attack on their honor, in particular against rape, forced prostitution, or any form of attack that violates decency. This certainly confirms that all attacks, both military and related to the use of military weapons targeting women, and non-military acts committed by military personnel in the form of sexual violence against women. This act of sexual violence has also been regulated based on the above arrangements, it can be seen that the implementation of legal protection for women's guarantees against sexual violence is two actions that are not allowed to be carried out by the parties to the dispute. Some things are prohibited from committing acts/deeds in the form of attacks on women's honor, especially against forced rape and prostitution, and are not allowed to carry out any attacks that violate decency against women [3]. However, in its current application, there are still problems that must be immediately addressed and immediately overcome either by the application of new, more specialized legal rules or through continuous supervision from international parties.

2 Research Methods

Wheeler and Thomas state that socio-legal studies are an alternative approach aimed at testing doctrinal studies of law. That is why a researcher who uses socio-legal methods uses social theory as an analytical goal, researchers do not have the goal of paying special attention to sociology or other social sciences but only to the law and its legal studies [4]. The socio-legal research approach is a combination of approaches that focus on the family of social sciences such as political science, economics, cultural sciences, historical sciences, anthropology, communication sciences, and several other sciences, which are further combined with approaches used in law, such as learning about the principles, doctrines, and hierarchy of legislation that includes it [5]. Furthermore, the socio-legal research method has two characteristics, namely: (a) socio-legal studies conducting textual studies through articles on laws and regulations, policies, and studies of judges' decisions can be critically analyzed and explained their meaning and implications for legal subjects [6].

This method is used to analyze the existence of a relationship between the conditions that occur (*Das sein*) and the existing juridical arrangements (*Das sollen*). It is this relationship that will provide answers and the results of the analysis that of course national law and international law that accommodate the protection of the human rights of citizens are part of the comparison and basis for the formation of the ideal concept. With the socio-legal method applied, it will certainly encourage the results of appropriate analysis, the recommendations given, and the existence of the ideal concept produced.

3 Discussion

3.1 Cases of Sexual Violence in War

The existence of cases of sexual violence against women can certainly occur anywhere and anytime, one of which is to occur in areas of conflict or war that are in the international spotlight. This is important considering that with the conditions of war or conflict, of course, the condition of the state and its society is instability and threatened. But on the other hand, there is still sexual violence against women as one of the targets.

The incidence of sexual violence against women in this war area seems to have been repeated. Several incidents of sexual violence in the past have also occurred today, where this is seen in several cases of armed conflict in the world, including those in the Asian region which also experienced armed conflict as part of colonization and military aggression. The Japanese occupation was an occupation with great sexual violence in the past, where during its occupation in World War II in various parts of Asia such as countries in the Pacific Islands, Indonesia, Taiwan, the Philippines, and so on have known women who became sexual slaves and raped, better known as *Jugun Ianfu*. It is estimated that the number of *Jugun Ianfu* during World War II reached 20,000 to 30,000 women [7].

The incident happened again to a Ukrainian woman with a sexual abuser, a Russian military soldier. Furthermore, 9 women out of 25 Ukrainian women raped by Russian soldiers tested positive for pregnancy. In this incident of sexual violence, the Moscow army gave a stab to the women and required the women not to have relations with

Ukrainian men. It was intended that the children born to the women who were raped were purely Russian (bloody) people [8]. This is certainly in the spotlight of the international community about the heated conflict between Russia and Ukraine. Another thing that is also in the spotlight is related to the existence of this ethnic purification background, which is the tendency of the international world to reject and strongly condemn it. In addition, a repeat of this sexual assault case also occurred in the conflict region of Ethiopia in 2021, where based on medical records and testimonies of survivors shared with CNN, women were gang-raped, drugged, and held hostage. In one case, a woman's genitals were entered by stones, nails, and plastic [9].

3.2 The Concept of Ideal Legal Protection Against Sexual Violence Against Women in War Areas Based on International Humanitarian Law

The high incidence of sexual violence that continues to experience repetition in each conflicting country certainly encourages international parties consisting of various international bodies, various countries, and international citizens to protect each other and give full attention to the problem of sexual violence against women in conflict and war areas to protect women. The things that can be done to optimize the implementation of international rules, regulations, and functions include:

3.2.1 Establishment of International Gender Unit

The existence of international gender understanding and mainstreaming is the most important part to be optimized because this is directly related to the existence of gender-based *violence* that continues to occur and develop to this day. Gender-based violence is caused by the inequality of power that exists in society, especially in one particular gender as part of the existence of this wrong gender assumption. Gender-based violence can take the form of rape, domestic physical violence, torture of girls, prostitution, violence in the form of pornography, forced sterilization, covert violence, and violence against women committed by society itself.

Gender-based cases in this conflicted environment continue to develop. Harvard University stated that the gender gap in 174 countries in the world was found in countries with the highest percentage of gender gaps, namely in countries most prone to war. This shows that women have significant potential in both conflict negotiations and post-conflict reconciliation and development. However, although the role of women is essential in peace negotiations, from 1992–2011 the number of women who became mediators only reached 2%, and those who became negotiators were only around 9% [10].

This mainstreaming of gender protection has also been listed in *The Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) in General recommendation No.19 on Violence against Women. In addition, the protection of women is also mandated in Resolution 1325 of 2000 of the UN Security Council. Resolution 1325 emphasizes that the government recognizes the role of women in conflict handling and resolution, especially in negotiations and decision-making. It states that each UN member state is required to make rules to prevent ongoing gender-based violence.

The establishment of this international gender unit will later become part of mainstreaming war or conflict dispute resolution operations both through diplomatic and military channels. The existence of women's representation in all aspects of the United Nations or other international institutions as well as all levels of decision-makers, military observers, military apparatus, United Nations staff, human rights representatives, and world peace officers. With this accommodation, there will be an international gender unit consisting of several women's representatives who can later form advisors in the peacekeeping operations department and become representatives in terms of conflict resolution and distribution of humanitarian aid.

In the formation of gender units, international I will be placed in various areas that have conflict coverage areas such as operating areas, surveillance areas, and peace border areas. Furthermore, this international gender unit has main duties and functions, one of which is in the form of receiving reports and complaints about sexual violence experienced by women in all countries, especially for women who experience sexual violence in war or conflict areas. This will certainly be a quick and efficient enforcement effort to prevent more massive acts of sexual violence in the region and provide protection to women in the region. Another task that must be carried out by this international gender unit is the implementation of training on legal and gender issues given to all peacekeepers who are in conflict areas and have direct contact with women in war areas, especially in international bodies under the auspices of the United Nations.

In addition, this international gender unit will also be a party that assists the law enforcement process for sexual violence that occurs in war areas with the enforcement of procedures and efforts to improve and enforce disciplinary actions on all members of the military, especially humanitarian law with acts of sexual violence against women and girls. The provision of a form of legal responsibility to members of the military or peace who violate the law can later be in the form of sanctioning the code of ethics and by the law of human rights violations contained in the *Universal Declaration of Human Rights* which begins with an investigation to the publication of the results of case decisions and reporting to the UN secretariat general as part of an international evaluation related to enforcement international human rights. The UN explains that sexual violence and rape committed by military forces are acts of crimes against humanity by the world which are accommodated in article 7 paragraphs (1) and (9) as well as war crimes in article 8 paragraph (2) point (e)(vi) in the Rome Statute.

This gives the assurance that the state is obliged to ensure that equality must be carried out in both the private and public sectors. The implementation of this implementation will not only be emphasized on individuals or individuals, but also the need for guarantees and verification of the existence of systems and institutions that are currently considered weak to be improved optimally. So that the obligations of each country to ratify and be incorporated in CEDAW can provide a link or bridge between international standards and national laws in force in that country. This task will also become a supervisory task ranging from the prevention of sexual violence incidents to the enforcement of cases that occur. Furthermore, it becomes a task that is no less important and becomes a very crucial part, namely the recovery and protection of victims of sexual violence, in this case, women and girls. This recovery can be carried out in the form of counseling and restitution to be given.

3.2.2 Optimization of the International Court of Justice (ICJ) and the International Criminal Court (ICC) as Permanent Judicial Bodies in Sexual Violence

The International Court of Justice (ICJ) is the main judicial organ of the United Nations (UN). The ICJ was established under the UN Charter in June 1945 and began its activities in April 1946. The court has a dual role: first, to resolve, by international law, legal disputes brought to it by the State (its decisions have binding force and without appeal to the relevant parties); and, secondly, to provide advisory opinions on legal questions referred to by authorized UN bodies and system bodies. The existence of ICJ is a body that adjudicates and resolves disputes between member states that also provides advisory opinions to official organs and special bodies under the United Nations.

Furthermore, the *International Criminal Court* is an international court established to investigate, adjudicate, and prosecute persons accused of committing the most serious crimes of concern to the international community as a whole, namely the crimes of genocide, crimes against humanity, war crimes, and crimes of aggression. These two judicial bodies play their respective roles in terms of providing guarantees for the protection of incidents of sexual violence that make women the targets of violence in the world of war. For the first time in international criminal law, the ICC Statute not only lists rape and forced prostitution, but also mentions some specific crimes against humanity and war crimes, namely rape, sexual slavery, forced prostitution, forced pregnancy, and forced sterilization. Furthermore, it also includes the first explicit criminalization of persecution based on gender as a crime against humanity which is an important step towards a more gender-sensitive international criminal law framework by that contained in Article 6(b) of the ICC statute.

In its course, the application of the settlement of sexual violence through the ICC and the ICJ is considered to have not been maximized, which has been two decades after its formation, with one conviction overturned at the appellate level and another currently subject to the banding. The ICC stands with only one final conviction for sexual crimes. Although the success of international tribunals cannot be, and should not be, measured only by the number of its sentences, it is evident that the ICC does not meet the goal of ending impunity for gender crimes under international criminal law as expected by Richard Goldstone and other observers. Sexual assault charges in cases before the ICC have failed for a variety of reasons at all stages of the process. Not all charges originally investigated and indicted in criminal trials will result in an enforceable conviction at the appellate level. Nevertheless, a review of ICC cases shows some specificity about sexual crimes. Some of these things that were deemed to be inadequate were seen in the lack of priority for sexual assault investigations at the first hearing before they were presented at the ICC's main hearing. This is based on the ICC's suspension of investigation and the use of irrelevant evidence as part of the evidence supporting the report.

The optimization efforts that can be carried out are an increase in the stage of investigation and investigation of sexual violence that occurs and reports submitted. What needs to be implemented is the need for investigators who have sensitivity to cultural issues, gender roles, and power dynamics that occur in women's lives, which aims to prevent survivors of sexual violence from stigmatizing and intervention from military forces as the party who does it. Furthermore, it is also necessary to present a complete picture of

the relevant actions and evidence at the beginning of the trial process to prioritize the implementation of the investigation.

Furthermore, in terms of prosecution, there is a need to increase the efforts of public prosecutors to charge gender-based sex crimes as crimes that include genocide, crimes against humanity, and war crimes that will later be charged cumulatively. This needs to be done to provide the greatest punishment for perpetrators of sexual violence in the name of a country's military power and to provide an overview of the very heinous sexual violence committed. It is also explicitly to provide a fair solution and is an attempt to realize that sexual and gender-based crimes should be given the highest priority during investigations and prosecutions.

In addition to relating to enforcement and legal process, in terms of the formulation of the values of sexual violence in the ICJ and ICC, it is important to implement, where it is necessary to consult with civil society organizations, academics, legal practitioners, policymakers, and survivors of sexual violence to develop a comprehensive definition of sexual violence. The Hague principles of the resulting Sexual Violence follow a broad interpretation of sexual violence and refer, for example, to the motivation of the perpetrator, its impact on the sexual autonomy of the victim, sexual orientation, gender identity, or reproductive capacity or autonomy, as well as the use of innuendo or sexual language. In compiling a detailed list of acts of sexual violence, the Principles will certainly contribute to a more nuanced and comprehensive understanding of sexual violence and serve as a guide for future international courts.

4 Conclusion

The existence of cases of violations and humanitarian crimes committed by the army against women in conflict or war areas in the form of sexual violence is something that must be addressed immediately. Given the existence of the Geneva Conventions which provide legal guarantees to women, it must be immediately enforced and implemented properly. This is an urgency to avoid torture and violence that will take a lot of lives. So that with the implementation in the form of the establishment of an international gender unit and the optimization of the ICJ and ICC as international courts and the establishment of international bodies under the United Nations can encourage the application of good law by international goals and ideals and provide good law enforcement to international humanities. So that with this guarantee and protection of women and children as part of humanity can be properly implemented and implemented. In addition, this must be optimized so that later there will be no sexual violence in armed war conflicts in the future and the absence of targeting women as a tool of war again.

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