

Legal Study of Legal Treatment of Prisoners of War in the Perspective of Humanitarian Law

Tiarsen Buaton, Edwin, Tri Agus Suswantoro, Ahmad Jaeni

tiarsen.buaton@sthm.ac.id

Military Law College, STHM "AHM-PTHM"

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Abstract

Background: Enforcement prisoner wars waged on every country are inseparable from provisions of humanitarian law. Every country involved in the origination convention subject to the established rules even has been implemented well. **Aims:** From the background that has been described above, then writer interested in raising this material in the creation of a journal with the title "Treatment Against Prisoners of War Under Humanitarian Law". **Method:** research method used is the method study Library Research is a series of activities related to methods library data collection, reading and taking notes as well as processing research materials that utilize source library. As well as Internet Searching which is a technique data collection through the assistance of technology in the form of tool or machine internet search where all information such as writing, data, pictures and so on from various eras available inside it. **Result:** A prisoner war entitled on treatment as a prisoner war When the status as prisoner war Already fulfilled. Treatment to prisoner war has set up in terms and conditions law humanitarian. Provisions of Humanitarian Law the set up in Convention Geneva III 1949 on treatment to prisoner war. **Conclusion:** Violation law carried out by prisoners war must still processed in accordance applicable law However during the legal process walk a prisoner war must still get right his as prisoner war with the provisions that have been set, then from That every country must own copy convention geneva the sentence inside it convention mentioned understood by a person prisoner war.

I. Introduction

Humanitarian law, or what is commonly known as the law of war or the law of conflict/armed conflict, is a set of rules are part of public international law that regulate about: 1) The rights and obligations of the parties to the dispute in carrying out military operations and establish limitations about determination target , usage tools and methods used in warfare (Law on Hostilities or Hague Law), 2) Protection for military personnel who are no longer take part in the war and people who are not actively involved in the war that is resident civil (Law on protection or Geneva law).

Terms and Conditions the application of international law in principle namely The Hague Law is a provision that regulates about methods and tools war, Geneva Law is a provision that regulates about protection of war victims, as well as the Convention on the rights and obligations of neutral states, which regulates about state neutrality in war land and also ocean. Treatment to prisoner war is regulated by the laws of protection which are part of international legal provisions. Law on protection consists of from: 1) Convention Geneva I,II ,III and IV in 1949, 2) Protocols I and II of 1977, 3) Protocol III 2005.

Enforcement prisoner wars waged on every country are inseparable from provisions of humanitarian law. Every country involved in the origination convention subject to the established rules even has been implemented well. From the background that has been described above , then writer interested in raising this material in the creation of a journal with the title " Treatment Against Prisoners of War Under Humanitarian Law".

2. Research Method

Research method used is the method study *Library Research* is a series of activities related to methods library data collection, reading and taking notes as well as processing research materials that utilize source library. As well as *Internet Searching* which is a technique data collection through the assistance of technology in the form of tool or machine internet search where all information such as writing, data, pictures and so on from various eras available inside it.

3. Results and Discussion

According to the Big Indonesian Dictionary, prisoners war is soldier captured enemy, captured here is a basic word from prisoner, meaning of the word prisoner is a person who is taken prisoner (arrested, detained). For example: prisoner war, other meanings from prisoner is plunder. Captivity has 3 meanings. Captivity comes from from the root word captive. Captive is a homonym because It means own same spelling and pronunciation but the meaning different. Prisoners have a meaning in noun class so that prisoner can state the name of a place or all objects and everything that is made into

objects.¹ According to Armina Permanasari, Prisoner of war own definition as A designation for soldiers imprisoned by the enemy during or quick the end conflict armed. Combatants who have status *hors the combat* (Unmanned combatants Can do attack on the party enemy Good sick, injured or of course has surrender) must protected and respected in on purpose condition.²

Based on opinion of F Sugeng Istanto, Prisoner of war is prisoner from ruler the enemy in charge on handling prisoner war in condition whatever, prisoner war entitled on treatment humanity and respect on himself and his honor and remains own ability civil completely.³ According to convention Geneva III 1949, prisoners war are prisoners of the enemy Power , not prisoners of individuals or military units which have taken them prisoner . Apart from any individual responsibility which may exist, the Detaining Power responsible for the treatment given to them. According to The Hague Convention IV of 1907 Laws and Customs of War on Land in Article 4, Prisoners of war are those who are in the power of Government enemy, not in power individuals or groups who captured them. The prisoners The war must be treated humanely. All property prisoner's personal belongings war, except for weapons, horses, or military documents , will remain their property.

In general prisoner The war is a soldier who was captured during the war. But it is not only soldiers who participate in war or conflict. there are militia members and corps volunteer others, including members of the movement resistance organized, which is part of one of the parties to the conflict and is obliged to meet the conditions as following:

1. Ordered by a person who is responsible for his subordinates;
2. Has a distinctive permanent mark that can be recognized from distance;
3. Bring weapons in the open
4. Doing operations in accordance with law and customs war.

At the Convention Geneva III of 1949 regulates the criteria for what constitutes a prisoner war , this criterion becomes a must somebody will get the same treatment should be in accordance with the provisions of international law. These criteria are stated in Article 4 Paragraph A, prisoner war in the sense of this convention, are persons who belong to one of the group following, who have fallen in power enemy: ⁴

1. The members of the force war from the disputing parties, members of the militia or corps volunteering which is part of force the war;
2. Other militia members, including the movement organized resistance movement belonging to one party to the conflict and operating within or outside their territory, even if that territory is occupied , and fulfills the following requirements:
 - a. Led by a person who is responsible for his subordinates;

¹The Great Dictionary of the Indonesian Language lektur.id was accessed on Wednesday, September 27, 2021 at 08.00

²Arlina Permanasari , et al. , 1999, Introduction to Humanitarian Law , Jakarta: ICRC

³F. Sugeng Istanto, International Law, Yogyakarta, Atma Jaya University, 2014.

⁴K. Ratnawul 2018, <http://repository.unpas.ac.id/> accessed on November 27 , 2021 at 10:00

- b. Using a permanent, visible identification mark from afar;
 - c. Bring weapons openly;
 - d. Doing its operations are in accordance with laws and customs war.
3. Members of the armed forces war regular which states his loyalty to a a government or authority not recognized by the detaining state;
4. People who accompany force war without actually being a member of it. force that war, like civilian members crew military aircraft, journalist war, suppliers, members of work units or services responsible for welfare force war, as long as they have obtained confession from lift up the war they participated in and equipped themselves with an identification card;
5. Crew commerce including captain, pilot sea, and cadets and crew civil aircraft and the disputing parties who do not receive better treatment according to any provisions of international law;
6. Residents of unoccupied territories, who are currently enemy weapons to fight the troops that came to invade, without having enough time to form up Unity regularly armed, provided they carry weapons openly and respecting laws and customs war.

In addition, there are some people were treated as captive status war when fall into the hands of the enemy mentioned in Article 4 Paragraph B:

1. People who belong to or have belonged to a generation war from the occupied territory, if the country occupying the territory deems it necessary to intern them because that loyalty, even though the country had initially released them temporarily hostility taking place outside the territory occupied by that country, especially if those persons have tried unsuccessfully to rejoin the armed forces. war those involved in battle, or if they do not comply the intended call to them regarding internment.
2. People who fall into one the groups mentioned in this article, which have been accepted by neutral countries or countries which did not participate war within its territory , without prejudice to any more favorable treatment which may be accorded to them by those States under international law , without affect any more favourable treatment which may be accorded them by those States and with the exception of Articles 8, 10, 15, 30 paragraphs fifth articles 58, 67, 92, 126 and if there is connection diplomatic between the parties to the dispute with a neutral country or a country that does not participate to war concerned , articles regarding protective states . Based on Contents The article above confirms that a person can be said to be a prisoner war if you have fulfilled one from those criteria, which have been within the authority of enemy.

Prisoners of war are prisoners of the state, not prisoners of war. troops or individuals. Prisoners of war have the right to treatment and respect according to their type gender, rank, health condition and dignity. Based on Article 17 of the Convention Geneva III 1949 on the treatment of to prisoner war namely Every prisoner war, if asked about In that case, it is only mandatory to provide the family name, first name and rank, date of birth, and army number, regiment, personnel data or main registration number, or if this is not possible, similar information. It means every prisoner war is only mandatory to inform:

1. Name
2. Place and date of birth
3. Rank
4. Soldier number

As for a person prisoner war that has an ID card or identification tag double, object Private property may not be confiscated. Prisoner of war entitled obtain his rights as a prisoner. According to Convention Geneva III 1949 rights of prisoners war among others:⁵

1. Right to Obtain Treatment Human means a person prisoners still get proper treatment as a human being of course in a good, polite and of course manner attention that is all should be like giving a drink when thirsty, give food when hungry and so on.
2. Honorary Rights Dignity and Self-Respect means a person prisoner war is not treated like prisoners do it crimes that sometimes get treatment violence, torture until unreasonable act. Here's the prisoner war is still respected as a person who has dignity and honor as a human being.
3. Right to Care Medical means a prisoner who is injured or of course sick will get attention in the form of maintenance medical care that is truly given for the purpose healing to him.
4. Right to Obtain Fair Treatment means all the needs required by a person prisoner war will be given regardless of who and how a prisoner the war originated.
5. The right to perform religious rituals means that a person prisoner war will still get the opportunity to perform worship according to the teachings he believes in while he has a religion that he adheres to.
6. The Right to Mental and Physical Activity means that a person prisoner war still gets attention to both mental and physical health.
7. Right to Obtain Primary needs means a person prisoner war still gets attention both mentally and physically by providing food, water, clothing even the shelter its worthy used.
8. The Right to Communicate with the Outside World means that a person prisoner war entitled received a visit from the ICRC (International Committee of the Red Cross) which is an international organization in the humanitarian field that is impartial and independent. Aims to provide assistance and protection to the people affected from conflict armed (injured, sick, ship victims shipwrecked, died on the battlefield war and prisoners war).
9. Goods valuable belonging to prisoners of war recorded and stored for return after the period of captivity ended means nothing goods valuables confiscated then after completing the captivity of all the goods from prisoner war returned to its owner.

4. Conclusion

A prisoner war entitled on treatment as a prisoner war When the status as prisoner war Already fulfilled. Treatment to prisoner war has set up in terms and conditions law humanitarian. Provisions of Humanitarian Law the set up in Convention Geneva

⁵ Procedure guidelines carry out fighting in accordance with international humanitarian law was published by the Agency TNI Legal Development

III 1949 on treatment to prisoner war. The treatment received a prisoner war as following:

1. Right to Obtain Treatment Human
2. Honorary Rights Dignity and Self-Respect
3. Right to Care Medical
4. Right to Obtain Fair Treatment
5. The Right to Perform Religious Rituals
6. Mental and Physical Activity Rights
7. Right to Obtain Primary Needs
8. The Right to Communicate with the Outside World means that a person prisoner war entitled get a visit from the ICRC
9. Goods valuable belonging to prisoners of war recorded and stored for return after the period of captivity end.

Refrences

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K. Ratnawul 2018, <http://repository.unpas.ac.id/> diakses pada 27 november 2021 pada pukul 10.00.

Pedoman tata cara melaksanakan pertempuran sesuai dengan hukum humaniter internasional diterbitkan oleh Badan Pembinaan Hukum TNI.

