

LEGAL PROTECTION OF MEDICAL OFFICERS IN ARMED CONFLICT IN THE PERSPECTIVE OF INTERNATIONAL HUMANITARIAN LAW

Dewa Gede Sudika Mangku
Ni Putu Rai Yuliantini
I Dewa Ayu Nyoman Alit Mahardini
I Wayan Lasmawan

ABSTRACT

This study aims to know and analyze law protection given to medical staffs during an armed conflict in Gaza and the effort to solve cases shooting of Medical Staff Razan Al Najjar in Gaza based on International Humanitarian Law. This study is normative law research using a statutory, conceptual, and case approach. Primary, secondary, and tertiary law obtained materials were analyzed to get the relevant conclusion to the problems stated in this study. The results show that law protection for medical staffs is regulated in International Humanitarian Law, especially in Geneva Conventions I, II, III, IV in 1949 and Additional Protocols I and II in 1977. The attack on the medical staff, Razan Al Najjar was included in gross violation in Additional Protocol I on International Armed Disputes and included crimes against humanity according to the 1998 Rome Statute. Therefore, in this case, Razan Al Najjar has not received the protection and respect by the applicable law. The soldiers of Israel have violated the regulations of International Humanitarian Law in particular Geneva Conventions and their Additional Protocols. Then, the efforts to resolve cases based on Article 33 of the United Nations (UN) Charter of the disputing parties can resolve the problems that occur through advance mediation efforts. However, if this effort cannot be achieved, then the effort that can be taken is to bring the case to the International Court. The UN Security Council can propose the case to the International Criminal Court as the regulation in Article 33 of the 1998 Rome Statute.

Key words: Armed Conflict, Medical Staffs, Law Protection

INTRODUCTION

Humanitarian law is the overall principles, rules and international provisions both written and unwritten that cover the law of war and human rights, which aims to ensure respect for one's dignity during armed conflict. The main purpose of humanitarian law is to provide protection and assistance to those who suffer or become victims of war, both those who are actually or actively participating in hostilities (combatants), as well as those who do not participate in hostilities (civil population = civil population) (Haryomataram, 2005: 03).

Armed disputes by type consist of international and non-international armed disputes (Bambang, 1997). International armed disputes are described as wars between two or more countries, whereas non-international armed disputes are battles or wars involving states that are fighting non-state armed groups (Ambarwati, et.al, 2010: 53). One international armed conflict that has not been muted so far is the conflict between Israel and Palestine. The land now known as Gaza has been fought over from time to time for centuries. Starting from the Israeli attack on Gaza since July 8, 2018 has killed at least 180 Palestinians. The attack also injured about 2,000 other residents. Starting from the Jews who spread in various countries returned and gathered to the Palestinian territories. Since the state of Israel was established on May 14, 1948, the Palestinian territories, especially the Gaza Strip, continued to flare up.

When the demonstration certainly caused many victims to fall and suffered injuries even not a few demonstrators were injured to death. In such dire circumstances medical staff are certainly needed to help the injured victims. So that at the time of the demonstration there was a medical team that helped treat the injured demonstrators while carrying out a demonstration in the Gaza Strip (Puspita, L. 2017).

When performing their duties, medical personnel must be respected and protected in all circumstances. As stated in the Geneva Conventions I Chapter IV Article 24 of Members of the Health Service which states that members of the health service, administrative staff of health units, and health buildings, as well as clergy serving in the army, must be respected and protected in all circumstances. Likewise in Additional Protocol I of 1977 Article 12 paragraph (1), states that health units and transports must be respected and protected at all times and may not be the object of attack.

Although there are already regulations governing the legal protection of medical personnel in armed conflict, there are still many cases of violations of the 1949 Geneva Conventions and 1977 Additional Protocols. One of the violations that occurred was the shooting of a medical officer during the conflict in the Gaza Strip. A 21-year-old female medical officer named Razan Al Najjar was shot dead by Israeli soldiers in the Gaza Strip on June 1, 2018. Razan is a nurse who works voluntarily for the Palestinian Medical Relief Society (PMRS), a non-governmental health organization in Palestine (Pieret, Jean. 1985).

Razan was shot while running towards the border fence where he was trying to help the wounded victims of the tear gas attack by Israeli soldiers. During the incident Razan wore a white vest bearing the crescent and red cross, and the symbol of the Palestinian Medical Relief Society (PMRS) which indicated that he was part of the medical team (Manik, K.N. H, et al. 2016). Aside from

that, Razan had raised his hands very clearly to let him know that he was a medical team but that the Israeli army continued to fire until Razan was killed. Razan became the victim especially the 119th medical officer killed in the demonstration which began on March 30, 2018 which had turned into bloody violence on the Gaza-Israel border (Anis. 2014).

The shooting of Medical Officer Razan Al Najjar is a violation incident and is against humanitarian law. The reason is Razan is a medical officer who has used an identification sign that Razan is a non-combatant who must not be attacked or injured. But in reality the Israeli army does not care about that. Whereas in international humanitarian law, especially in the 1949 Geneva Convention along with the two Additional Protocols regulating the protection of medical personnel when an armed conflict occurs (Mangku, D. G. S; 2010).

Reflecting on the case, the disputing parties should guarantee that health units are placed in such a way that attacks on military objects do not jeopardize their safety. In other words, medical staff must be respected and protected. Based on the background above the author intends to conduct research on the problem, the title of the research was appointed as follows, "Legal Protection of Medical Officers in Armed Conflict in the Perspective of International Humanitarian Law (Case Study: Shooting of Medical Officer Razan Al Najjar in the Gaza Strip)" with the purpose of knowing and reviewing the legal protection of medical officers who were shot during armed conflict in the Gaza Strip in the perspective of International Humanitarian Law and efforts to resolve cases of shooting of medical officers in armed conflict in the Gaza Strip based on International Humanitarian Law.

METHOD

In this study the object of research was a medical officer who was shot to death in the Gaza Strip named Razan Al Najjar. The method used is normative legal research. Normative legal research is research conducted by reviewing the laws and regulations that apply or are applied to a particular legal problem. Normative research is often referred to as doctrinal research, namely research whose object of study is the regulatory documents and library materials (Soejono, 2003: 56). The type of approach used is the statutory approach (statue approach), case approach (case approach) and conceptual approach (conceptual approach). The legislative approach is carried out to examine and analyze the provisions regarding legal protection of medical officers in international humanitarian law (I Made Pasek. 2016). In addition to using the statute approach, this study uses a case approach aimed at finding out the chronology and consequences of the case so that it can find out how to resolve the case and use a conceptual approach aimed at to understand the views / doctrines that develop in the science of law, especially international humanitarian law to build a legal argument (Soerjono and Sri Mamuji. 2015).

The source of legal material used to analyze in this study is primary legal material which is legal authoritative which means it has authority. In this study the author examines the provisions derived from international law, namely, the 1949 Geneva Convention and the 1977 Supplementary Protocol and other provisions derived from international law. Secondary legal material, defined as legal material that is not binding but explains the legal material which includes literature, legal journals, research results and legal articles relating to the main problems in the preparation of research (H Abdurahman, 2003). Tertiary legal materials or non-legal materials are materials that provide additional guidance or explanations to primary and secondary data sources consisting of the Legal Dictionary, the English Dictionary, the Large Indonesian Dictionary (KBBI). The technique of collecting legal materials is by examining the provisions regarding the legal protection arrangements for medical officers in international humanitarian law then analyzing the existing legal materials using analysis techniques and providing researchers' arguments for the situation according to existing legal materials through argumentation techniques namely evaluation because evaluations must based on reasons that are legal reasoning.

RESULTS AND DISCUSSION

Legal Protection of Medical Officers Shot During Armed Conflict in the Gaza Strip

Conflict between Israel and Palestine is still happening today and have not found the word peace between the two countries, although many peace efforts have been made but have not found a bright spot. The Israeli military invasion of the Gaza Strip further strengthens doubts about peace between Israel and Palestine. An armed conflict does not rule out the possibility of casualties and injuries even to death. The conflict in the Gaza Strip has claimed many victims. One of the recent cases was the shooting of a medical officer named Razan Al Najjar.

On June 1, 2018 a Palestinian nurse named Razan Al Najjar, a 21-year-old woman, was shot dead by one of the Israeli army (IDF) troops. Razan was shot while running to the border fence to provide assistance to the wounded during a demonstration by Palestinians on the border fence in the Khan Younis dean area, Gaza. This incident caused deep sorrow not only for Palestinians but also for the international community who strongly condemned Israel's actions against medical officers, because this was included in the category of violations of international humanitarian law. Razan Al Najjar is a nurse who works as a volunteer or works voluntarily for the Palestian Medical Relief Society (PMRS). PMSR itself has been given recognition or has been known by two parties, namely Israel and Palestine as one of the groups whose task is to help victims during the war.

On the day Razan Al Najjar was on duty and shot by Israeli soldiers he wore a white shirt and white vest containing the red crescent and red cross symbols, and it was discovered that while running to save the victim, Razan Al Najjar ran while raising both hands to give a sign that he is a harmless person and his duty is only to provide assistance to the injured victims at that time. Based on international reports such as CNN and BBC reported that there were witnesses who were in the same place as Razan Al Najjar stated that shortly before Razan was shot, he was with other medical officers and they all clearly used medical vests marked with

the Red Crescent symbol. and the International Red Cross. The shooting of Razan Al Najjar caused deep injuries to Palestinians and even the international community, considering that the incident was a violation of international humanitarian law. In addition, many criticisms were given to Israel, considering that an event like this was the umpteenth time Israel had violated the provisions of international humanitarian law, specifically the 1949 Geneva Convention, specifically the protection of medical personnel and their additional protocols, namely Additional Protocol I on International Armed Disputes and Additional Protocol II on Disputes Armed Non-International in 1977.

The Israeli and Palestinian conflict is an international armed dispute which involves two countries, namely Palestine and Israel, both countries have ratified the Geneva Conventions of 1949 and its Additional Protocols so that both countries are required to respect and uphold the applicable International Humanitarian Law. One of the most highlighted subjects of International Humanitarian Law concerning legal protection is medical officers, be they members of the armed forces of Israel or from the Palestinian Parties, medical personnel and health workers incorporated in humanitarian agencies or aid agencies for victims of war, medical personnel and health workers who are members of the international red cross (ICRC), the red crescent, as well as the UN agencies.

Members of the health service, staff employed specifically in the health sector, and ministers on duty must be respected and protected. While carrying out their duties, the members of the health service and staff employed often have to go directly to the area of armed conflict to be able to quickly deal with victims. They are required to assist each victim from any party and provide physical health assistance. In addition to caring for the victim's physical condition, the victim's mental or spiritual condition must also be considered, this is an important task of a clergyman

When an armed dispute occurs, it will surely cause many victims considering the war is a battle between the parties to the dispute. War victims generally consist of civilians, combatants who are no longer at war because of injuries and prisoners of war. The victim must get help and treatment from medical personnel. People who care for the health of victims of war, both physical and spiritual, can be divided into three groups, namely (Kusumaatmaja, 2003: 52);

1. Members of the armed forces health service parties to the dispute (Geneva Convention I Article 24)
2. Health helper personnel (Geneva Convention I Article 25)
3. Voluntary assistance organizations from neutral countries that assist one party in a dispute (Geneva Convention I Article 27)

Civilians or civilians must receive protection in all situations relating to human rights, such as the right to life, ideology, honor, the right to obtain health services and others. They must get humane treatment in all circumstances. No robbery, theft of property, torture, coercion, physical or spiritual coercion, causing physical suffering, intimidation, terror, retaliation, shooting, holding hostage and many more protection must be given.

In addition to the general protection provided to civilians there are also special protections for certain civilians such as people who are members of social organizations carrying out humanitarian missions to help civilians in situations of armed conflict, such as members of the International Committee of the Red Cross (ICRC) , The National Red Cross, medical officers, army doctors or soldiers serving in the field of health, journalists or war journalists, clergy and other voluntary rescue members (Ambarwati, et.al. 2010). When carrying out their duties, these parties are usually equipped with special facilities and special buildings and given special symbols, so that when they do their work they are obliged to be respected and protected their rights, must not be attacked and injured in carrying out their social duties while did not take part in hostilities or in the war.

Arrangements regarding the protection of medical personnel in armed conflict are regulated in the Articles of the Geneva Conventions of 1949 and the Additional Protocols of 1977. As mentioned in Article 24 of the Geneva Conventions I Chapter IV concerning Health Service Members which reads, "Members of the health service who are specifically employed to search or collecting, transporting or caring for the injured and sick, or to prevent disease, and staff employed specifically in the administration of health units and buildings as well as the clergy serving in the army must be respected and protected in all circumstances ". Likewise in Article 26 which reads: "Members of the National Red Cross association and members of other voluntary auxiliary associations recognized and approved duly by their government, who may carry out the same obligations as members of the health service referred to in Article 24, have the same position "Like members of the health service referred to in this article, as long as members of these associations are subject to military laws and regulations". Then in Article 36 of Geneva Convention II Chapter IV on Personnel from the Religious, Health and Hospital Services states: "Personnel of the religious, health and hospital services of health vessels and health vessel crews must be respected and protected; they must not be held prisoner while on duty in a health ship, even if there is no injury or illness on the ship ”.

Article 20 Geneva Convention IV Chapter II concerning the General Protection of the Population from Certain War Effects, states that "Persons who regularly carry out the work and administration of civilian hospitals, including employees in charge of searching, removing and transporting and caring for persons civilians and the wounded and sick, weak and pregnant women, must be respected and protected "(Geneva Convention 1949). Not only that in Additional Protocol I Article 12 paragraph (1) concerning protection of health units states that, "Health units must always be respected and protected at all times and must not be the target of attacks", Article 15 paragraph (1) concerning protection for members of the civil health service and the security service stating "members of the civil health service must be respected and protected". It is stated in Additional Protocol II Chapter III concerning injuries, illnesses and shipwrecks in Article 9 paragraph (1) concerning protection for members of the health and religious services stating

that "Members of the health and religious services must be respected and protected as well as provided all assistance in carrying out their obligations. They must not be forced to carry out tasks that are not in accordance with their humanitarian mission. "

Seeing the provisions mentioned above, it can be concluded that members of the health service are highly considered in International Humanitarian Law and have also been regulated in the 1949 Geneva Convention along with the 1977 Additional Protocol on the protection of medical personnel so that members of the health service must be respected and protected in all respects. circumstance (Additional Protocol 1977).

The case of a Palestinian medical officer named Razan Al Najjar during the conflict in the Gaza Strip is an unfortunate event, considering that Razan is a medical officer who must be respected and protected in all circumstances. When carrying out humanitarian tasks, Razan clearly used a white shirt and a white vest containing the International Red Cross (ICRC) symbol and the Red Crescent symbol to indicate that he was a medical officer. Before being shot by the Israeli army Razan had waved his hand to give instructions or warnings that he was a medical officer and was neutral which did no harm but the Israeli army ignored that and continued to shoot Razan Al-Najjar.

All medical personnel, including Razan Al Najjar who served in the Gaza Strip, display and use identification tags in accordance with those stipulated in the Convention. The symbols of humanity were created and created so that medical personnel can show that a person or entity is a medical officer or medical entity who must always be protected and respected by the parties in dispute. Each member or equipment or vehicle that uses the symbol of humanity has a neutral nature so that even if the symbol is used in a combat vehicle even though all parties should respect due to the nature of the symbol. Symbols that are known and recognized in conflict areas are listed in Chapter VII.

In addition, failing to respect medical personnel during armed conflict and targeting them is a form of war crimes according to Article 8 paragraph 2 (b) (xxiv) of the 1998 Rome Statute which states intentionally showing attacks on buildings, materials, units and transport and medical personnel which uses a clear badge of the Geneva Conventions in accordance with International Law. Based on the provisions of the aforementioned Article, states which have ratified the Geneva Conventions of 1949 are required to issue a national law which provides effective criminal sanctions to anyone who commits gross violations of the convention.

Attacks on medical personnel are included in the type of grave violations according to Protocol I of the 1977 Geneva Convention. And are included in crimes against humanity according to the 1998 Rome Statute. It also contradicts various international human rights instruments such as the Universal Declaration of Human Rights (UDHR) which outlines a principle that all people enjoy human rights in both peace and war. It is seen in the case of Razan Al Najjar that medical officers serving in the Gaza Strip have not received protection and respect in accordance with applicable law. And the Israeli army has clearly violated the provisions of international Humanitarian Law in particular the Geneva Conventions and their Additional Protocols. Attacks on medical personnel are not justified in international humanitarian law. In this case as long as the medical officer maintains neutrality and treats all patients regardless of their politics, religion or ethnicity, combatants are prohibited from carrying out attacks on medical officers who are on duty and provide assistance to those injured and sick.

Efforts to Settle the Case of Shooting of Medical Officers in Armed Conflict in the Gaza Strip

The Israeli and Palestinian Conflict is an International Conflict which involves two countries, namely Palestine with Israel, both countries have ratified the Geneva Conventions of 1949 along with their Additional Protocols so that both countries are required to respect and uphold International Humanitarian Law. One of the most highlighted subjects of International Humanitarian Law regarding its protection is medical officers both incorporated in the armed forces of Israel and from the Palestinian side, both medical officers who are members of humanitarian agencies or aid agencies for victims of war, medical officers who are members of in the International Red Cross (ICRC), the Red Crescent and the UN agencies. Medical officers are needed in armed conflict, in this case the Israeli and Palestinian conflict, if they are not given protection, more victims will fall in this conflict (Puspita, 2017: 28).

Based on the shooting case of medical officer Razan Al Najjar, the writer can review that Israel carried out the shooting intentionally, the first reason is that Razan Al Najjar had already worn a white vest and medical officer's shirt which contained a red cross and red crescent symbol which was clearly the symbol given protection by the Geneva Conventions of 1949, so based on the provisions of the Geneva Conventions of 1949 which use the symbol must be given protection and must not be attacked, then the second based on witnesses' testimonies, they saw Razan Al Najjar run to help the victim by raising his hand indicating that he was not dangerous and does not intend to carry out attacks on the military or other civilians, its only job is to help the injured in the actions that took place in the Gaza Strip.

The attack on Israel in Palestine violates the provisions of the Geneva Conventions and their Additional Protocols along with the principles in Humanitarian Law itself (Yessenia M. 2017). It is well known that Article 1 of the 1949 Geneva Convention gives an obligation for the great participants to respect and guarantee respect for the convention. This provision was later strengthened by Articles regulating the punishment of those who have committed gross violations of international humanitarian law, such as the persecution of civilians and humanitarian volunteers including violations of international humanitarian law. Namely the Articles contained in Article 49 paragraph (1) convention I, Article 50 paragraph (1) Convention II, Article 146 paragraph (1) Convention IV, which is a concurrent provision (Haryonomataram, 1994: 92).

Every international dispute based on Article 2 paragraph (3) of the Charter of the United Nations must be settled amicably. Peaceful Dispute Settlement according to Article 33 paragraph (1) and the relevant UN Declaration are divided into 2, namely diplomatic settlement of disputes divided into 2, namely diplomatic settlement of disputes without the participation of third parties by way of negotiations. And diplomatic settlement of disputes by third party participation such as mediation. Then the dispute resolution through the law, namely through the international criminal court.

The efforts that can be made in resolving the shooting case of medical officer Razan Al Najjar in the Gaza Strip are as follows:

1. Efforts to resolve cases through mediation

Mediation is a method of settlement through third parties. It can be a country, an international organization such as the United Nations or an individual (politician, legal expert or immigrant). He actively participated in the negotiation process. Usually he with his capacity as a neutral party in the form of reconciling the parties by giving advice on dispute resolution. If the proposal is not accepted, the mediator can still continue the mediation function by making new proposals. Because the mediator's main function is to find various solutions (solutions), identify things that can be agreed by the parties and make proposals that can end the dispute.

Based on the above international organizations such as the United Nations and ICRC (International Committee of the Red Cross) can be mediators in efforts to resolve the shooting case of medical officer Razan Al Najjar. The UN can issue resolutions and sanctions that can be imposed on perpetrators so that this case can soon find the best solution for both countries.

2. Efforts to resolve cases through the International Criminal Court (ICC)

If the mediation efforts that have been made cannot be achieved and find a point of reconciliation, the author is of the opinion that the effort that can be carried out is the settlement of the case through an international criminal court. ICC is a permanent international criminal justice institution that has jurisdiction or authority to conduct trials for violations and international crimes as contained in Newreberg's ad hoc judicial principles. The International Court of Justice is a complementary complementary body of national justice.

The author believes that efforts to resolve disputes through the International Criminal Court can be applied to Israel. This can be done because the actions taken by Israel against medical personnel Razan Al Najjar can be interpreted as belonging to the category of war crimes. This is in accordance with Article 8 paragraph (2) (b) (xxiv) of the Rome Statute of 1998. A person who has committed war crimes has actually violated International Humanitarian Law so that he should be punished based on international criminal law principles. The legal problem that occurs is that Israel is not a country that ratifies the Rome Statute of 1998 when referring to the principle of consent to be bound, then the Rome Statute as an international treaty does not burden binding legal obligations towards Israel. But in fact this does not become an obstacle, because based on Article 13 (b) of the Rome Statute, it states that the International Criminal Court enforces its jurisdiction in accordance with the provisions of this Statute where if one or more criminal acts have been previously referred to the prosecutors of the International Criminal Court by the Security Council The United Nations acts under Chapter VII of the UN Charter.

As a court which is a complement to international criminal jurisdiction, the International Criminal Court can take over a case if Israel is unwilling or unable to try the case in his country. Related to legal sanctions against Israel that can be given by the International Criminal Court is the imposition of the principle of individual criminal responsibility and the responsibilities of commanders and superiors.

Individual responsibility based on international law is born because of a criminal act committed by someone where the crime is an international criminal jurisdiction that is a crime of genocide, crimes against humanity, war crimes, and aggression (Article 25 of the Rome Statute of 1998).

Article 28 of the Rome Statute of 1998 (Article 28 (a) of the Rome Statute of 1998) states that a military commander knows that his troops are committing a crime and the military commander fails to take all necessary measures to prevent or stop their conduct or to send the case to the authorities responsible for investigating and prosecuting actually bear command responsibility for the crimes committed by the forces under their control and government. Thus, the act of war crimes committed by a military personnel who are carrying out their duties in the field and the absence of punishment for these crimes presented the failure of superiors in preventing, stopping and punishing criminal acts carried out by their subordinates, which actually gave birth to command responsibility. So that the military commander of military personnel can be held responsible for the criminal acts of his subordinates.

Furthermore, perpetrators may be subject to punishment for compensation to victims including restitution, compensation, and rehabilitation. And can also be subject to a maximum imprisonment of 30 years or life imprisonment by observing the severity of the crime and the personal conditions of the convicted person plus fines and freezing of assets obtained directly or indirectly from crimes committed in accordance with Article 77 of the 1998 Rome Statute.

CONCLUSION

Based on the explanation that has been described the author can draw the following conclusions: When an armed dispute arises, medical staff actually have received legal protection in accordance with what is stipulated in International Humanitarian Law. The attack on medical officers Razan Al-Najjar including serious violations of Additional Protocol I on International Armed Disputes and including crimes against humanity according to the 1998 Rome Statute. Efforts to resolve cases based on Article 33

of the UN Charter of the parties to the dispute can resolve the problems that occur through advance mediation efforts. However, if this method cannot be achieved, then the effort that can be taken is to bring the case to the International Court, the UN Security Council can submit the case to the International Criminal Court as stipulated in Article 13 of the 1998 Rome Statute.

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Dewa Gede Sudika Mangku
Faculty of Law and Social Sciences,
Universitas Pendidikan Ganesha, Indonesia.
Email: dewamangku.undiksha@gmail.com

Ni Putu Rai Yuliantini
Faculty of Law and Social Sciences,
Universitas Pendidikan Ganesha, Indonesia.
Email: raiyuliantini@gmail.com

I Dewa Ayu Nyoman Alit Mahardini
Faculty of Law and Social Sciences,
Universitas Pendidikan Ganesha, Indonesia.

I Wayan Lasmawan
Faculty of Law and Social Sciences,
Universitas Pendidikan Ganesha, Indonesia.
Email: lastone@gmail.com