



## War Crimes In Humanitarian Law And International Criminal Law: The Urgency Of War Crimes Regulation In Indonesian Criminal Law

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### Article Info

### Abstract

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Indonesia has Law Number 26 of 2000 concerning the Human Rights Court or the Law on Human Rights Courts, similar to the Rome Statute. However, this law does not regulate war crimes, while the Rome Statute specifically regulates war crimes. Meanwhile, the perpetrators of war crimes must be tried at any time because those crimes do not know the expiration date. Meanwhile, the perpetrators of war crimes must be tried at any time because those crimes do not know the expiration date. It is the background of this research that the problem will be discussed: How are war crimes provisions in humanitarian law and international criminal law? Why do war crimes need to be regulated in Indonesian criminal law? This type of research is normative juridical research with a statute approach through qualitative descriptive analysis. The results of this study show that the regulation of war crimes is governed by humanitarian law and international criminal law. In humanitarian law, war crimes are regulated in the 1907 Hague Convention, the 1949 Geneva Convention, The Declaration on the Protection of Women and Children in Emergency 1974, and Additional Protocol II Geneva Convention 1977. Meanwhile, international criminal law regulates the responsibility of war crime perpetrators in the IMT Charter 1945, IMTFE Charter 1946, the 1993 ICTY Statute, the 1994 ICTR Statute, and the 1998 Rome Statute. The urgency of regulating war crimes in Indonesian law is due to four aspects: 1) Indonesia has ratified the 1949

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*Geneva Convention. 2) No regulations in Indonesia regulate war crimes, even in the 2023 Criminal Code. 3) Indonesia is part of the international community. 4) Law enforcement armed conflict cases in Indonesia is unresolved.*

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## A. Introduction

Many countries have widely practiced the attitude of avoiding war, but in reality, many are still involved in wars both on an international and domestic scale.<sup>1</sup> However, when a war occurs, the parties involved do not seem to care about the applicable law, such as humanitarian law or the law of war.<sup>2</sup> Besides humanitarian law,<sup>3</sup> international law<sup>4</sup> also clearly limits actions that may not be carried out in war. This is intended to make war "more humane" and reduce excessive casualties. However, the limitation was ignored when the war broke out, and the victims fell in greater numbers than the actors of the war had previously calculated. Moreover, today's war equipment can freely prey on humans and anything else.<sup>5</sup>

Like currently, a war is going on between Russia and Ukraine, which is background from long political history.<sup>6</sup> As generally wars, wars that occur in

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<sup>1</sup> Muhammad Khairani, Fadjriri Wira Perdana, and Sumata Purboyo, Driaskoro Budi Sidarta, "Tinjauan Yuridis Kejahatan Perang Menurut Hukum Internasional," *Jurnal Indonesia Sosial Sains* 2, no. 2 (2021): 230–40, 227, <https://doi.org/https://doi.org/10.15294/jils.v1i01.16565>.

<sup>2</sup> Muhammad Ikhwan Lubis, "The Relationship of International Human Rights Law with International Humanitarian Law in Situations of International Armed Conflicts," *JILS (Journal of Indonesian Legal Studies)* 1, no. 1 (2016): 13–34, 18, <https://doi.org/10.15294/JILS.V1I01.16565>.

<sup>3</sup> Humanitarian law or International Humanitarian Law or the law of war is recognized as a norm for world countries and placed as part of International Law, which is one of the tools and methods that can be used by every country, including peaceful countries and neutral countries to participate in reducing the suffering by individuals (society) as a result of wars that occurred in various countries. Muhammad Iqbal Asnawi, "KONSISTENSI PENEGAKAN HUKUM HUMANITER INTERNASIONAL DALAM HUBUNGAN ANTAR BANGSA," *Jurnal Hukum Samudra Keadilan* 12, no. 1 (September 19, 2017): 111–22, 116, <https://ejournalunsam.id/index.php/jhsk/article/view/95>

<sup>4</sup> International law is basically aimed at regulating the relations of states at the international level. Primarily carried out by the state as a subject of international law. Meanwhile, international law is related to the rights and obligations of countries in carrying out relations between each country. Dina Sunyowati, "TINJAUAN YURIDIS HUBUNGAN KEJAHATAN PERANG DAN HUKUM HUMANITER INTERNASIONAL," *Jurnal Hukum Dan Peradilan* 2, no. 1 (2013): 67–84, 75, <https://doi.org/DOI: http://dx.doi.org/10.25216/jhp.2.1.2013.67-84>.

<sup>5</sup> Antonius Janga, "KEJAHATAN-KEJAHATAN PERANG DALAM HUKUM INTERNASIONAL," *Studia Philosophica et Theologica* 2, no. 2 (2002): 159–76, 174, <https://doi.org/https://doi.org/10.35312/spet.v2i2.157>.

<sup>6</sup> "Kronologi Dan Latar Belakang Konflik Rusia Dan Ukraina," accessed December 13, 2022, <https://www.cnbcindonesia.com/news/20220304134216-4-320044/kronologi-dan-latar-belakang-konflik-rusia-dan-ukraina>.

modern times like today also cause not a few casualties. It is estimated that 100,000 Russian troops and 100,000 Ukrainian troops have been killed or injured in the Ukraine war, and about 40,000 civilians have died due to being caught up in the war.<sup>7</sup> With thousands of victims, Amnesty International accuses Russia committed war crimes in Ukraine, especially in the Kharkiv region.<sup>8</sup> The Independent International Commission of Inquiry formed by the United Nations raised the same thing. Based on the results of the investigation into the Russo-Ukrainian War that they carried out by visiting 27 cities and settlements, then interviewing 191 victims and witnesses. It was found that the Russians committed war crimes such as mass executions, forced deportations, enforced disappearances, arbitrary imprisonment, torture, bad treatment, rape, and other sexual violence.<sup>9</sup>

Then what is a war crime like what happened in Russia and Ukraine? War crimes are known in a narrow and broad definition. The narrow definition of war crimes limits laws and customs of war violations.<sup>10</sup> When there is a violation of the limitation of war as stipulated in international law and humanitarian law, when a war occurs and usually rises much victims, the violation is referred as a war crime.<sup>11</sup> Meanwhile, in broad definition, besides laws and customs of war violations, it includes several other forms of crime,

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<sup>7</sup> “Perang Ukraina: AS Perkirakan 200.000 Tentara Tewas Di Pihak Rusia Dan Ukraina, Moskow Umumkan Mundur Dari Kherson - BBC News Indonesia,” accessed December 13, 2022, <https://www.bbc.com/indonesia/articles/c3ggjn0p1ryo>.

<sup>8</sup> “Amnesty International Sebut Rusia Lakukan Kejahatan Perang,” accessed December 13, 2022, <https://www.cnbcindonesia.com/news/20220614071210-4-346778/amnesty-international-sebut-rusia-lakukan-kejahatan-perang>.

<sup>9</sup> “Investigasi PBB: Rusia Dan Ukraina Lakukan Kejahatan Perang, Seperti Penyiksaan & Perkosaan,” accessed December 13, 2022, <https://www.kompas.tv/article/339636/investigasi-pbb-rusia-dan-ukraina-lakukan-kejahatan-perang-seperti-penyiksaan-perkosaan>.

<sup>10</sup> Customs of war or customary international humanitarian law are a set of unwritten rules derived from common practice recognized as law. This practice is the basic standard of action in time of war which accepted by the world community. Customary international humanitarian law can be applied universally apart from treaty law which based on the practice of world countries. “Customary IHL – Helping to Improve the Protection of Victims of Armed Conflict - ICRC,” accessed December 13, 2022, <https://www.icrc.org/en/doc/resources/documents/interview/2014/07-29-customary-international-humanitarian-law-cihl.htm>.

<sup>11</sup> Ambassador David J. Scheffer, “THE INTERNATIONAL CRIMINAL TRIBUNAL FOREWORD: DETERRENCE OF WAR CRIMES IN THE 21ST CENTURY,” *Maryland Journal Of International Law & Trade* 23, no. 1 (1999): 1–13, 6.

such as<sup>12</sup> genocide,<sup>13</sup> aggression crimes<sup>14</sup>, and crimes against humanity.<sup>15</sup> The international community has recognized war crimes as international crimes<sup>16</sup> and has become one of the jurisdictions of the International Criminal Court (ICC)<sup>17</sup>, regulated in the Rome Statute 1998.<sup>18</sup> This is because the number of dead victims of war crimes in some regions worldwide is fantastic.

As mentioned above, an example of a war crime case currently being hotly discussed is the war between Russia and Ukraine which killed thousands of lives. Then in the past, war crimes have also killed millions of lives, as happened in World War Two. As General and Prime Minister of Japan, Hideki

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<sup>12</sup> Evi Deliana HZ, "PENEGAKAN HUKUM HUMANITER INTERNASIONAL DALAM HAL TERJADINYA KEJAHATAN PERANG BERDASARKAN KONVENSI JENEWA 1949," *Jurnal Ilmu Hukum: Fakultas Hukum Universitas Riau* 2, no. 1 (2011): 255-270, 260, <https://doi.org/DOI:http://dx.doi.org/10.30652/jih.v2i01.485>.

<sup>13</sup> Genocide regulated in Article 6 of the Rome Statute with the definition of an act carried out systematically with the aim of destroying all or part of a nation, ethnicity, race or group. Nimas Masrullail Miftahuddini Ashar, "Hukum Internasional Tentang Genosida Dalam Perspektif Fikih Dauli," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 4, no. 01 (April 1, 2014): 1–24, 9, <https://doi.org/10.15642/AD.2014.4.01.1-24>.

<sup>14</sup> In the Draft Code of Crimes Against and Security of Mankind, the definition of aggression is defined as: Any individual who acts as a leader or organizer, actively participates or orders to plan, prepare, initiate or carry out aggression by a State must be responsible for aggression crime. Thalís Noor, "Agresi Dan Kejahatan Terhadap Perdamaian," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 3, no. 1 (June 1, 2014): 34–46, 40, <https://doi.org/10.14421/SH.V3I1.1946>.

<sup>15</sup> Conceptually, in international human rights law, crimes against humanity are among the most serious crimes as international community. Meanwhile, within the framework of normative law in Indonesia, crimes against humanity fall within the scope as known gross human rights violations. R Herlambang Perdana Wiratraman, "Konsep Dan Pengaturan Hukum Kejahatan Terhadap Kemanusiaan," *Jurnal Ilmu Hukum Yuridika* 23, no. 2 (2008): 1–21, 4.

<sup>16</sup> International crime is an act universally recognized as a crime. This international recognition is due to the fact that the crime is a very big problem and concern to the international community. Indah Sari, "KEJAHATAN-KEJAHATAN INTERNASIONAL (TINDAK PIDANA INTERNASIONAL) DAN PERANAN INTERNATIONAL CRIMINAL COURT (ICC) DALAM PENEGAKAN HUKUM PIDANA INTERNASIONAL," *JURNAL ILMIAH HUKUM DIRGANTARA* 6, no. 1 (May 21, 2018): 38-65, 37, <https://doi.org/10.35968/JH.V6I1.114>.

<sup>17</sup> The International Criminal Court (ICC) is a permanent, independent and international-scale judicial court to try crimes of genocide, crimes against humanity, war crimes and crimes of aggression as international crimes. Widiada Gunakaya, "PERANAN DAN PROSPEK 'INTERNATIONAL CRIMINAL COURT' SEBAGAI INTERNATIONAL CRIMINAL POLICY DALAM MENGANGGULANGI 'INTERNATIONAL CRIMES,'" *Jurnal Wawasan Yuridika* 29, no. 2 (December 7, 2015): 789–836, 789, <https://doi.org/10.25072/JWY.V29I2.66>.

<sup>18</sup> Indah Sari, "Tinjauan Yuridis Hubungan Kejahatan Perang Dan Hukum Humaniter Internasional," *Jurnal Ilmiah Hukum Dirgantara–Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma* 11, no. 2 (2021): 23–43, 27, <https://doi.org/https://doi.org/10.35968/jjhd.v11i2.766>.

Tojo was declared responsible for war crimes that caused the killing of 4 million Chinese people.<sup>19</sup>

The victim data shows that the impact of war crimes cannot be underestimated. So that war crimes have been recognized by the international community as a crime that is heinous and prohibited in any part of the world. The prohibition of war crimes has been carried out for a long time in international criminal law, namely during the world war era with the formation of the 1949 Geneva Convention.<sup>20</sup> Then along with the long history, the affirmation of the prohibition of war crimes is currently regulated in the 1998 Rome Statute.<sup>21</sup> Even so, war crimes still occur to this day when wars between countries occur, such as Russia and Ukraine. Meanwhile, legal provisions related to war crimes are still minimal in several countries, including Indonesia.

The Indonesian Criminal Code, which is the result of a transition from Dutch law *Wetboek van Strafrecht*, actually regulates forms of war crimes. However, the formulation of war crimes is not a war crime intended to protect victims of war or protect human rights. The provisions in the Criminal Code regulate more about forms of political crimes that threaten and harm the interests of the state military. In addition to the Criminal Code, war crimes are also formulated in the provisions of the Military Criminal Code (KUHPM). The provisions in the KUHPM have not touched the concept of war crimes in international law. The war crimes referred to in the KUHPM are only aimed at internal military purposes.<sup>22</sup>

The state is still obliged to carry out extradition for the perpetrators and obliged to guarantee the prosecution and punishment of the perpetrators of this crime. The form of state responsibility according to the Rome Statute is participating countries have two main obligations, namely participating countries must bring every perpetrator of war crimes to court and participating

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<sup>19</sup> “5 Penjahat Perang Paling Keji Yang Diadili & Dapat Balasan Setimpal | Merdeka.Com,” accessed December 13, 2022, <https://www.merdeka.com/dunia/5-penjahat-perang-paling-keji-diadili-dapat-balasan-setimpal.html>.

<sup>20</sup> Chile Eboe-Osuji, “‘GRAVE BREACHES’ AS WAR CRIMES: MUCH ADO ABOUT ... ‘SERIOUS VIOLATIONS’?,” accessed December 13, 2022, <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/827EE9EC-5095-48C0-AB04-E38686EE9A80/283279/GRAVEBREACHESMUCHADOABOUTSERIOUSVIOLATIONS.pdf>.

<sup>21</sup> The Rome Statute is the legal basis for the establishment of the International Criminal Court established at a diplomatic conference in Rome on 17 July 1998 and entered into force on 1 July 2002. Fatma Ratriya Wuri et al., “Perspektif Statuta Roma Dan Doktrin Command Responsibility Dalam Penyelesaian Kasus Penembakan Terhadap Pesawat Terbang Sipil Mh17 Di Ukraina,” *BELLI AC PACIS* 4, no. 2 (February 17, 2020): 57–66, <https://doi.org/10.20961/BELLI.V4I2.39980>.

<sup>22</sup> Yustina Trihoni Nalesti Dewi, *Kejahatan Perang Dalam Hukum Internasional Dan Hukum Nasional* (Jakarta: Rajawali Press, 2013).

countries must fully cooperate in enforcing International Criminal Law.<sup>23</sup> But what if a country doesn't have war crimes regulations and doesn't ratify the Rome Statute like Indonesia does?

Indonesia has Law Number 26 of 2000 concerning the Human Rights Court or the Law on Human Rights Courts, which has many similarities with the Rome Statute. However, this law does not regulate war crimes, while the Rome Statute specifically regulates war crimes. Meanwhile, the perpetrators of war crimes must be tried at any time because those crimes do not know the expiration date. It is the background of this research that the problem will be discussed is: How are war crimes provisions in humanitarian law and international criminal law? Why do war crimes need to be regulated in Indonesian criminal law?

This research differs from previous studies such as research conducted by Rahadian Diffaul Barraq Suwartono titled "Pengaturan Tindak Pidana Kejahatan Perang Di Indonesia: Politik Hukum Undang-Undang Nomor 26 Tahun 2000 Tentang Pengadilan Hak Asasi Manusia". The research conducted by Rahadian focuses more on the legal politics of establishing the Law in Human Rights Courts. In contrast, this research will examine war crimes from the aspects of humanitarian law and international criminal law to illustrate the importance of regulations related to war crimes.<sup>24</sup> In addition, the novelty of this research will also examine war crimes from Law no. 1 of 2023 concerning the Indonesian Criminal Code, which was just ratified in early 2023.

This type of research is normative juridical research. Normative juridical research is carried out by referring to legal norms contained in regulations relating to war crimes. This study uses a statute approach, which examines legal principles, doctrines, and regulations. The data that has been compiled is then analyzed descriptively and qualitatively.

## **B. Discussion**

### **1. War Crimes Regulations in Humanitarian Law and International Criminal Law**

Conditions of war tend to ignore humanity, especially the civilian population, then encourage the formation of war or international humanitarian laws. International humanitarian law, which later became known as the law of armed conflict or the law of war, has 2 branches: Geneva Law and Hague

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<sup>23</sup> Fadil Muhammad, Luh Putu Sudini, and I Nyoman Sujana, "Penegakan Hukum Pidana Internasional Dalam Kejahatan Perang Terhadap Kemanusiaan," *Jurnal Preferensi Hukum* 1, no. 2 (2020): 88–92, 92, <https://doi.org/10.22225/jph.1.2.2381.88-92>.

<sup>24</sup> Rahadian Diffaul Barraq Suwartono, "Pengaturan Tindak Pidana Kejahatan Perang Di Indonesia: Politik Hukum Undang-Undang Nomor 26 Tahun 2000 Tentang Pengadilan Hak Asasi Manusia," *Jurnal Lex Renaissance* 6, no. 4 (2021): 649–63.

Law.<sup>25</sup> Geneva law consists of various conventions that regulate the victims of war protection or people trapped during armed conflict.<sup>26</sup> Meanwhile, the law of the Hague regulates the procedures for fighting and the tools that should be used during a war.<sup>27</sup> Then when there is a violation of the Geneva Law and Hague Law or a crime during the war, it is referred to as a war crime.

The regulation related to war crimes can be seen according to humanitarian and international criminal laws. These two branches of knowledge have different roles in the context of regulating war crimes which humanitarian law places more emphasis on protecting victims or civilians during war and regulates the procedures for fighting. Meanwhile, international criminal law emphasizes law enforcement for parties or the members of their armed forces who should be responsible when war crimes occur.<sup>28</sup> The regulation of war crimes based on international criminal law and humanitarian law has a long history. These can be grouped as follows:

Table 1. Regulation of War Crimes under Humanitarian Law and International Criminal Law

No	Regulation	War Crimes Description
1.	The 1907 Hague Convention	The 1907 Hague Convention contains thirteen conventions, which contain provisions related to prohibitions during the war so that when belligerents carry out the prohibition, it is referred to as a war crime. The convention contains prohibitions on war, including the prohibition to kill or injure fraudulently people who are members of enemy troops, the prohibition against killing and injuring enemies who no longer have the means to defend themselves, the prohibition to use weapons that result in massive losses; the prohibition against destroying the property rights of people who are outside the necessity of war. <sup>29</sup>

<sup>25</sup> Mumtaznur, "KEJAHATAN TERHADAP KEMANUASIAAN DAN PELANGGARAN HUKUM HUMANITER INTERNASIONAL (Konvensi Jenewa 1949) Studi Kasus: Pelanggaran HAM Berat Untuk Bekas Negara Yugoslavia," *Dusturiyah: Jurnal Hukum Islam, Perundang-Undangan Dan Pranata Sosial* 8, no. 2 (2019): 117–28.

<sup>26</sup> Adwani Adwani, "PERLINDUNGAN TERHADAP ORANG-ORANG DALAM DAERAH KONFLIK BERSENJATA MENURUT HUKUM HUMANITER INTERNASIONAL," *Jurnal Dinamika Hukum* 12, no. 1 (January 15, 2012): 97–107, <http://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/109>.

<sup>27</sup> Andrey Sujatmoko, "KONVENSI DEN HAAG 1907 MENGENAI ALAT DAN CARA BERPERANG," *TerAs Law Review : Jurnal Hukum Humaniter Dan HAM* 1, no. 1 (2005): 1–19, <https://doi.org/10.25105/TERAS-LREV.V1I1.5393>.

<sup>28</sup> Yosua Kereh, "TINJAUAN HUKUM TENTANG KEJAHATAN PERANG DALAM KONFLIK BERSENJATA MENURUT HUKUM INTERNASIONAL," *Lex Et Societatis* 7, no. 4 (2019): 95–103.

<sup>29</sup> Janga, "KEJAHATAN-KEJAHATAN PERANG DALAM HUKUM INTERNASIONAL."

		In the event of the country's domination over another country due to winning a war (occupation), confiscation, destruction, or pollution of cultural objects from the occupied territory may not be considered as spoils of war. This prohibition is regulated in Article 56 of the Fourth Hague Convention of 1907. The Article states that any damage to objects intended for religious, humanitarian, educational, artistic, and scientific purposes, whether intentional or not, is prohibited. If damage occurs, legal action will be taken. With this prohibition, the arbitrariness of those who occupy a country is limited, so any action in the form of destroying, confiscating or taking cultural objects is considered a war crime. <sup>30</sup>
2.	The 1949 Geneva Convention Concerning the Protection of Civilians in War <sup>31</sup>	Actions classified as war crimes regulated in the 1949 Geneva Conventions, both Convention 1 (Article 50), Convention 2 (Article 51), Convention 3 (Article 130), and Convention 4 (Article 147). <sup>32</sup> These provisions were later accommodated in the ICTY Statute and the 1998 Rome Statute. Those classified as acts of war crimes regulated in the 1949 Geneva Convention consist of: 1) Murder;

<sup>30</sup> Nuswantoro Dwiwarno Fadil Hidayat, Joko Setiyono, "ASPEK-ASPEK HUKUM PERLINDUNGAN SITUS BUDAYA DALAM PERSPEKTIF HUKUM HUMANITER INTERNASIONAL (STUDI KASUS PERUSAKAN KOTA KUNO PALMYRA OLEH ISIS).," ed. G. Balint et al., *Diponegoro Law Journal* 6, no. 1 (February 24, 2017): 1–12, <https://doi.org/10.2/JQUERY.MIN.JS>.

<sup>31</sup> The 1949 Geneva Convention consists of 4 Conventions, consist of:

1. 1<sup>st</sup> Convention Concerning of Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
2. 2<sup>nd</sup> Convention Concerning of Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea.
3. 3<sup>th</sup> Convention Concerning of Geneva Convention relative to the Treatment of Prisoners of War.
4. 4<sup>th</sup> Convention Concerning of Geneva Convention relative to the Protection of Civilian Persons in time of War

Rafika Mayasari Siregar, Abdul Rahman, and Arif Arif, "TINJAUAN YURIDIS KONVENSI JENEWA IV TAHUN 1949 TERHADAP NEGARA-NEGARA YANG BERPERANG MENURUT HUKUM INTERNASIONAL," *Journal of USU International Law* 1, no. 3 (October 4, 2013), <https://jurnal.usu.ac.id/index.php/jil/article/view/4956>.

<sup>32</sup> Aji Wibowo, "Kejahatan Perang (War Crimes) Dan Berbagai Instrumen Hukum Internasional," *JURNAL HUKUM HUMANITER* 4, no. 90 (2015): 68–73.



		<p>2) Torture or inhumane treatment, including biological experiments;</p> <p>3) Suffering or serious injury to body or health;</p> <p>4) Widespread destruction and usurpation of property, not justified by military necessity in illegal and unreasonable;</p> <p>5) Forcing a prisoner of war or another protected person to serve in the troops of an opposing Armed Forces;</p> <p>6) Consciously depriving a prisoner of war or another protected person of the right to a fair and honest trial;</p> <p>7) Unlawful deportation or unlawful transfer or detention;</p> <p>8) Holding hostage.</p>
3.	Charter of International Military Tribunal of Nuremberg 1945 (IMT Charter) <sup>33</sup>	<p>War crimes in the IMT Nuremberg Charter are regulated in Article 6. Based on this regulation, war crimes are defined as violations of war customs which are classified as one of the sources of international law. The types of violations mentioned in this rule, but not limited to:</p> <ul style="list-style-type: none"> <li>- Murder;</li> <li>- Arbitrary destruction of cities and villages;</li> <li>- Bad treatment;</li> <li>- Looting of public or private property;</li> <li>- Deportation for forced labor;</li> <li>- Killing or ill-treatment of war prisoners;</li> <li>- Hostage killing;</li> <li>- Destruction is not justified by military necessity.</li> </ul>
4.	Charter of the International Military Tribunal for the Far East 1946	<p>In the IMTFE Charter, war crimes are only mentioned briefly in Article 5 as one of IMTFE's jurisdictions. War crimes in this regulation are considered conventional war crimes, defined by various acts that violate the laws and customs of war. In other words, the IMFE Charter confirms that violations of humanitarian law and customs of war according to</p>

<sup>33</sup> The IMT Charter is the legal basis for the establishment of the International Military Tribunal of Nuremberg 1945 or IMT Nuremberg. The Nuremberg IMT was a court that tried cases related to war crimes committed by key members of the political, military and economic leadership group of Nazi Germany. Radityo Fikri Morteza, Joko Setiyono, and Nuswantoro Dwiwarno, "Pertanggungjawaban Komando (Command Responsibility) Dalam Kejahatan Perang Oleh Batalyon Aidar Di Ukraina," *Diponegoro Law Journal* 5, no. 4 (2016): 1–20.

	(IMTFE Charter) <sup>34</sup>	international law are also included in war crimes that violate this charter.
5.	The Declaration on the Protection of Women and Children in Emergency 1974	War Crimes in this declaration are mentioned in point 5, which states that “all forms of oppression, cruel and inhumane treatment of women and children including imprisonment, murder, torture, shootings, mass arrests, rape, destruction of homes, and forced evictions are committed in warfare as part of a military operation or the occupation of a territory is considered an act of war crime.” Based on this declaration, the United Nations through the General Assembly as the institution issued this declaration with role to apply sanctions to parties who violate the rules. This is in accordance with the provisions in Article 39 of the UN Charter which states that the Security Council has the authority to determine what actions must be taken in the event of peace violation. So that if there is a violation of the declaration, it must be fully accounted for following the provisions of International Criminal Law. <sup>35</sup>
6.	Additional Protocol I dan II Geneva Convention 1977	Additional Protocol II of 1977 completes regulation regarding internal armed conflicts that provide many protections to civilians, including journalists and humanitarian volunteers such as the ICRC. The 1977 Additional Protocol is one of the international agreements countries have accepted as a complement to the 1949 Geneva Convention. In other words, this protocol emphasizes the protection of civilians when armed conflict or war occurs, when an action threatens civilians or journalists during a war, so war crimes have occurred. As for the forms of action that may not be carried out during war against civilians according to the 1977 Additional Protocol, which is also mentioned in the ICTR Statute, namely:

<sup>34</sup> The IMTFE Charter is the legal basis for the establishment of the International Military Tribunal for the Far East or IMTFE which was held on May 3, 1946. The aim of the IMTFE was to try the leaders of the Japanese empire for three categories of crimes namely crimes against peace, war crimes and crimes against humanity committed during World War II. The trial was held in the Tokyo, Japan. *Ibid.*

<sup>35</sup> Nuswantoro Dwi Warno Indah Rizki Restuningtias, Soekotjo Hardiwinoto, “Analisis Yuridis Perlindungan Tawanan Anak Dalam Perspektif Hukum Humaniter Internasional,” *Serambi Hukum* 6, no. 02 (2015): 1–13, [https://www.academia.edu/34113996/EKSISTENSI\\_HUKUM\\_KONTRAK\\_INNOMINAT\\_DALAM\\_RANAH\\_BISNIS\\_DI\\_INDONESIA](https://www.academia.edu/34113996/EKSISTENSI_HUKUM_KONTRAK_INNOMINAT_DALAM_RANAH_BISNIS_DI_INDONESIA).

		<ul style="list-style-type: none"> <li>- Violence against the life, health and physical or mental.</li> <li>- Murder and cruel treatment such as torture, mutilation, or corporal punishment.</li> <li>- Collective punishment.</li> <li>- Hostage.</li> <li>- Terrorism.</li> <li>- Humiliating and degrading treatment of personal dignity.</li> <li>- Rape forced prostitution, and all forms of indecent assault.</li> <li>- Looting.</li> <li>- The imposition of sentences and the implementation of executions without prior court decisions.</li> <li>- Threats to perform any of the above actions.</li> </ul>
7.	Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) 1993 <sup>36</sup>	<p>The form of the action is as previously mentioned. War crimes based on the ICTY Statute are regulated in Article 2 and Article 3. Article 2 of the ICTY Statute states that the form of war crime is a gross violation of the 1949 Geneva Convention. At the same time, Article 3 of the ICTY Statute states that a form of a war crime is a violation of the laws or customs of war. Based on Article 3 of the ICTY Statute, states that the ICTY has jurisdiction to prosecute anyone who violates the customs of war as a source of international law. This form of violation is also stated in Article 3 of the ICTY Statute but is not limited to the following actions:</p> <ul style="list-style-type: none"> <li>- Use of poisoned weapons or other weapons that cause suffering;</li> </ul>

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<sup>36</sup> The 1993 Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) is the legal basis for the establishment of the ad hoc ICTY Court by the United Nations. The ICTY Court was tasked carrying out law enforcement in the conflict in the former Yugoslavia in 1990. The ICTY has jurisdiction over several forms of crimes committed in the territory of the former Yugoslavia since 1991, namely gross violations of the 1949 Geneva Convention or war crimes, violations of war laws, genocide, and crimes against humanity. Desia Rakhma Banjarani, Abdul Muthalib Tahar, and Desy Churul Aini, "Studi Perbandingan Kelembagaan Dan Yurisdiksi International Criminal Tribunal for the Former Yugoslavia (ICTY) Dan the International Criminal Tribunal for Rwanda (ICTR) Dengan International Criminal Court (ICC)," *Cepalo* 1, no. 1 (September 12, 2017): 41–56, <https://doi.org/10.25041/CEPALO.V1N01.1754>.

		<ul style="list-style-type: none"> <li>- Arbitrary destruction of towns and villages, or destruction in any form not justified for military purposes;</li> <li>- Assaulting and bombing of any kind against cities, villages, or buildings;</li> <li>- Confiscation, destruction or intentional destruction of institutions dedicated to religion, charity, education, art, science, historical monuments and works of art;</li> <li>- Plunder of public or private property.</li> </ul>
8.	Statute of the International Criminal Tribunal for Rwanda (ICTR) 1994 <sup>37</sup>	The 1994 ICTR Statute does not directly mention war crimes, but Article 4 states that one of the jurisdictions of the ICTR violates Article 3 of the Geneva Convention and Additional Protocol II. Furthermore, the ICTR confirms that the ICTR has the power to prosecute people who commit or order to commit serious violations of Article 3 of the 12 August 1949 Geneva Convention concerning the Protection of War Victims and Additional Protocol II 1977. The forms of these violations are as previously mentioned in the table Additional Protocol II 1977 above but are not limited to those measures.
9.	Rome Statute 1998 <sup>38</sup>	War crimes in the Rome Statute are regulated in more detail and broadly than the previous regulations. Based on Article 8 of the Rome Statute, the forms of war crimes are “serious violation of the 1949 Geneva Conventions; Other serious violations of laws and customs applicable to international armed conflict; Serious violations such as violence against persons

<sup>37</sup> The Statute of the International Criminal Tribunal for Rwanda (ICTR) 1994 is the legal basis for the establishment of the ad hoc ICTR Tribunal by the United Nations. The ICTR Tribunal was tasked with carrying out conflict law enforcement in the country of Rwanda in 1994. The jurisdiction of the ICTR is genocide, crimes against humanity, and war crimes. Adama Dieng, “Building Efforts of the ICTR: A Different Kind of Legacy Capacity-Building Efforts of the ICTR: A Different Kind of Legacy,” *Northwestern Journal of International Human Rights Capacity* 9, no. 3 (2011): 403–22, <http://scholarlycommons.law.northwestern.edu/njihr/vol9/iss3/5>.

<sup>38</sup> The 1998 Rome Statute is the legal basis for the establishment of a permanent International Criminal Court agreed upon by various countries in the world. The jurisdiction of the Rome Statute is not only limited to serious crime to the international community concern as a whole in the form of genocide, crimes against humanity, war crimes and aggression as provided in Article 5. Daley J. Birkett, “Twenty Years of the Rome Statute of the International Criminal Court: Appraising the State of National Implementing Legislation in Asia,” *Chinese Journal of International Law* 18, no. 2 (2019): 353–92, <https://doi.org/10.1093/chinesejil/jmz014>.

		<p>who not take an active part in the conflict, including members of the armed forces but laid down their weapons and persons who have been placed out of combat due to illness, injury, detention or any other cause; Other serious violations of laws and customs applicable in armed conflict not international, but have been stipulated in international law”.</p> <p>From each of these points, there are forms of actions that are classified as war crimes, which in general include acts of murder, rape, looting, enslavement, destruction, torture, etc., which it can be fully read in Article 8 of the Rome Statute.</p>
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Thus, based on the Table of War Crimes Regulation above, it can be seen that war crimes are regulated based on humanitarian law and international criminal law. In humanitarian law, war crimes are regulated in the 1907 Hague Convention, the 1949 Geneva Convention, The Declaration on the Protection of Women and Children in Emergency 1974, and the Additional Protocol II Geneva Convention 1977. Meanwhile, international criminal law regulates the responsibility of war crimes perpetrators regulated in the IMT Charter 1945, IMTFE Charter 1946, ICTY Statute 1993, ICTR Statute 1994, and Rome Statute 1998.

## **2. The Urgency of War Crimes Regulation in Indonesian Criminal Law**

Conceptually, war crimes are included in the types of international crimes that previously symbolized compared to other types of international crimes. It is not an exaggeration to say that the concept of genocide and crimes against humanity was originally rooted in the concept of war crimes.<sup>39</sup> So the regulation related to war crimes is considered so urgent to be carried out.

According to humanitarian law, the existence of regulation or law which regulates the involvement of a state in an armed conflict is not aimed at supporting war crimes but aims to emphasize the humanitarian aspect, as well as anything that can be used in war or armed conflict. This aims to protect all human beings involved or not involved in a war to reduce the suffering humans should not feel due to war crimes. In contrast to criminal law, generally, it can be said that there are crimes; of course, there are perpetrators or criminals, especially in armed conflicts. This is because there is a possibility that war crimes are not concerned with human aspects when war occurs.

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<sup>39</sup> Siswanto Arie, *Hukum Pidana Internasional* (Yogyakarta: Andi Offset, 2015).

Therefore, criminal law is responsible for war criminals to be tried as fair as possible.<sup>40</sup>

The Dutch Colonial Government formulated the post of Indonesian independence, war crimes in the Dutch East Indies through *Staatblad* Number 44 of 1946. These provisions later became the material law of war crimes in the Dutch East Indies after the proclamation of Indonesian independence. Then through the *Staatblad* of 1946 Number 45, formal legal provisions regarding war crimes were regulated in the Dutch East Indies territory. But unfortunately, these two provisions are not included in the national legal system of Indonesia. This is because, according to Law Number 1 of 1946, the criminal law that applies in the legal system of Indonesia is the criminal law that existed and took effect on March 8, 1942. The Indonesian Criminal Code results from a transition from *Wetboek van Stafrecht* Dutch law, which regulates the forms of war crimes. However, the formulation of war crimes is not a war crime intended to protect victims of war or protect human rights. The Criminal Code provisions regulate forms of political crimes that threaten and harm the interests of the state military.<sup>41</sup>

Therefore, it is necessary to have regulations related to war crimes in Indonesia at present and future. The urgency of forming regulations related to war crimes in Indonesia can be grouped into the following table:

Table 2. The Urgency of Establishing Regulations Related to War Crimes in Indonesia

No	Urgency	Description
1.	Indonesia has ratified the 1949 Geneva Convention ( <i>Pacta Sunt Servanda</i> )	Indonesia has ratified the 1949 Geneva Convention concerning the Protection of Civilians in Times of War and promulgated in Law Number 59 of 1958 concerning the Accession of the Republic of Indonesia to the 1949 Geneva Convention. Based on that ratification, so Indonesia is bound in rights and obligations to comply with Geneva law. This is the norm in international law <i>pacta sunt servanda</i> which means that the state must implement the agreements which have been agreed upon. <sup>42</sup> In addition, this ratification also has implications for Indonesia's obligation to comply with and implement

<sup>40</sup> Kereh, "TINJAUAN HUKUM TENTANG KEJAHATAN PERANG DALAM KONFLIK BERSENJATA MENURUT HUKUM INTERNASIONAL."

<sup>41</sup> Suwartono, "Pengaturan Tindak Pidana Kejahatan Perang Di Indonesia: Politik Hukum Undang-Undang Nomor 26 Tahun 2000 Tentang Pengadilan Hak Asasi Manusia."

<sup>42</sup> I Gede Angga Adi Utama, "ASAS PACTA SUNT SERVANDA DALAM PERSPEKTIF HUKUM PERJANJIAN INTERNASIONAL," *Ganesha Civic Education Journal* 1, no. 1 (April 3, 2019): 37–48, <https://ejournal2.undiksha.ac.id/index.php/GANCEJ/article/view/327>.

		<p>international humanitarian law.<sup>43</sup> Thus, Indonesia must have legal regulations governing the criminalization of perpetrators of war crimes because these provisions are regulated in the 1949 Geneva Convention.</p> <p>As previously mentioned, Article 147 of the 1949 Geneva Convention regulates several acts, included as gross violations during war or war crimes. Then the 1949 Geneva Convention required signatory countries to have laws related to implementing criminalization for convention violators. This is as regulated in Article 146 of the 1949 Geneva Convention.<sup>44</sup></p>
2.	No regulations about war crimes in Indonesia	<p>Indonesia has yet to form detailed regulations and special chapters related to war crimes in Indonesian criminal law. As for efforts to reform criminal law in Indonesia at this time, which to replace the Criminal Code by the Dutch colonialists is Law no. 1 of 2023 concerning the Indonesian Criminal Code. However, the new Criminal Code also does not mention war crimes, which only discusses war-related provisions, such as the definition of war, time of war, enemies, national defense, state treason, sabotage, military betrayal, wartime theft, and warship abuse of authority. Of course, these various provisions are very different from the concept of war crimes known as international crimes.</p> <p>As already mentioned, the source of international law relating to war crimes currently recognized by the international community is the 1998 Rome Statute. In addition, Indonesia has Law Number 26 of 2000 concerning the Human Rights Court or the Law on Human Rights Courts which substantially accommodates the Rome Statute. However, Indonesia does not include war crimes provisions in the Human Rights Court Law and only regulates genocide and crimes against humanity (Article 7 of the Human Rights Court Law).</p>

<sup>43</sup> Eno Prasetiawan and Lina Hastuti, "Penerapan Distinction Principle Dalam Perundang-Undangan Di Indonesia," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 2 (July 31, 2020): 448–63, <https://doi.org/10.24843/JMHU.2020.V09.I02.P16>.

<sup>44</sup> House of Representatives United States of America, "War Crimes Act of 1996," 1996, <https://www.congress.gov/bill/104th-congress/house-bill/3680>.

		War crimes are also formulated in the provisions of the Military Criminal Code (KUHPM). But the provisions in the KUHPM have not touched the concept of war crimes as international crimes. The war crimes referred in the KUHPM are still aimed at internal military purposes only. <sup>45</sup>
3.	Indonesia is part of the international community	As well known, Indonesia is a subject of international law with an active existence as an international community. Indonesia as a member of the international community must pay attention to applicable international norms and actively involved in international efforts to prosecute war crimes. Therefore, Indonesia has a responsibility to criminalize every perpetrator of war crimes. This is because war crimes have been recognized as one of the international crimes that violate the protection and fundamental interests of the international community. So that it is necessary to criminalize the perpetrators of war crimes regulated in Indonesian law. <sup>46</sup> Various other countries in the world also have regulation related to war crimes, both regulated in the Criminal Code and special laws outside the Criminal Code, such as Latvia, Macedonia and Albania. <sup>47</sup>
4.	Unresolved of law enforcement in Indonesia armed conflict cases	War crimes are synonymous with armed conflict and gross human rights violations. Meanwhile, Indonesia is a country that has experienced several armed conflicts accompanied by human rights violations. Based on data from the Institute for Community Studies and Advocacy (ELSAM) stated that there were 12 provinces in Indonesia in the first quarter of 1998 there were 1.629 gross human rights violations. <sup>48</sup> Even law enforcement against several cases of human rights violations has not

<sup>45</sup> Yustina Trihoni Nalesti Dewi, *Kejahatan Perang Dalam Hukum Internasional Dan Hukum Nasional*.

<sup>46</sup> Yurtina Trihoni Nalesti Dewi, "National Legislation on War Crimes in Indonesia," *International Journal of Humanities and Management Sciences (IJHMS)* 3, no. 2 (2015): 102–6.

<sup>47</sup> Evin Dwi Nugroho and Joko Setiyono, "The Formulation Policy of War Crimes in the Reformation of Indonesian Criminal Law," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 11, no. 3 (2022): 473–86, <https://doi.org/10.24843/JMHU.2022.v11.i03.p01.I>.

<sup>48</sup> Zunnuraeni, "Politik Hukum Penegakan Hak Asasi Manusia Di Indonesia Dalam Kasus Pelanggaran Ham Berat," *Jurnal IUS Kajian Hukum Dan Keadilan* 1, no. 3 (2013): 356–69.



		really been completely resolved. The National Human Rights Commission (Komnas HAM) noted that there were 12 cases of human rights violations have not been resolved to date. <sup>49</sup> Including the law enforcement of armed conflicts such as the case of East Timor <sup>50</sup> which the settlement incomplete. This case was successfully tried by the court however 18 defendants were acquitted. <sup>51</sup> Besides, another case of armed conflict is the GAM Rebellion (1989-1998). <sup>52</sup> In this case even the Human Rights Court could not find the perpetrators, and until now there has been no continuation in law enforcement for the perpetrators of human rights violations. <sup>53</sup>
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From the table above, it can be seen that the ratification of the 1949 Geneva Convention into Indonesian law shows that Indonesia has an obligation to establish legal regulations related to war crimes and criminalize the perpetrators of war crimes. However, since 1958 the convention was ratified, until now legal regulations related to war crimes in Indonesia have

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<sup>49</sup> CNN Indonesia, “Munir Dan Daftar Kasus HAM Yang Belum Tuntas Sampai Hari Ini,” 2021, <https://www.cnnindonesia.com/nasional/20210909064450-12-691744/munir-dan-daftar-kasus-ham-yang-belum-tuntas-sampai-hari-ini/2>.

<sup>50</sup> The East Timor case in 1999 was a form of non-international armed conflict between Indonesian national army and the civilian population. During this incident, it is suspected that several gross human rights violations occurred in East Timor, such as killings, extermination, enslavement, expulsion and forced transfer as well as other inhumane acts against civilians. Jadmiko Anom Husodo Viddy Firmandiaz, “PENYELESAIAN KASUS PELANGGARAN HAK ASASI MANUSIA BERAT DI INDONESIA OLEH KOMISI NASIONAL HAK ASASI MANUSIA DITINJAU DARI KEWENANGANNYA (STUDI KASUS TIMOR-TIMUR),” *RES PUBLICA* 4, no. 1 (December 23, 2020): 92–105, <https://jurnal.uns.ac.id/respublica/article/view/45695>.

<sup>51</sup> L. R. (Lorraine) Boro, “Jajak Pendapat Timor Timur Dalam Perspektif Perlindungan Hukum Masyarakat Sipil Pasca Konvensi Jenewa 1949,” *Masalah-Masalah Hukum* 43, no. 3 (2014): 380–88, <https://doi.org/10.14710/MMH.43.3.2014.380-388>.

<sup>52</sup> The Free Aceh Movement or GAM rebellion occurred during the 1989-1998 period was a form of non-international armed conflict between Indonesian national army and GAM sympathizers. Indonesian national army and GAM are suspected of committing serious human rights violations such as extrajudicial killings, enforced disappearances, torture, imprisonment, rape, and sexual violence which are carried out systematically and widely which constitute crimes against humanity. According to Amnesty International, 10,000-30,000 people died during the Aceh conflict. L. H. (Lily) Putri and M. (Maya) Permatasari, “Implementasi Pemenuhan Hak Atas Reparasi Bagi Perempuan Korban Konflik Aceh Ditinjau Dari Hukum Internasional,” *Syiah Kuala Law Journal* 2, no. 3 (November 30, 2018): 419–38, <https://doi.org/10.24815/SKLJ.V2I3.12400.1>

<sup>53</sup> Lukman Dwi Hadi and Putra Sriwidodo, “Pertanggungjawaban Negara Dalam Penyelesaian Kasus Pelanggaran Hak Asasi Manusia Yang Berat Di Aceh Melalui Mekanisme Komisi Kebenaran Dan Rekonsiliasi Aceh,” *Jurist-Diction* 3, no. 6 (November 2, 2020): 2261–92, <https://doi.org/10.20473/JD.V3I6.22971.1>

not been formed. Even until the passing of Law no. 1 of 2023 concerning the newest Criminal Code in Indonesia, there are also no provisions related to war crimes. Even though the new Criminal Code is the hope of various parties for the availability of regulations related to war crimes. It is because Indonesia is part of the international community which must pay attention to applicable international norms and actively involved in international efforts to prosecute war crimes. This is all the more necessary considering that law enforcement on human rights violations during the armed conflict that occurred in Indonesia was in fact not completely resolved. So that the urgency for the formation of regulations related to war crimes in Indonesia is increasingly necessary.

The absence of war crimes regulation can be detrimental to national interests because in reality Indonesia often faces problems of armed conflict. It has an impact to district courts losing their guidance to try war crimes cases. This of course will reduce the authority of district court institutions which likely to invite international intervention as shown by international courts in domestic cases such as in ex-Yugoslavia, Rwanda, Sierra Leone, and Cambodia.<sup>54</sup>

Since the 90s, world countries and various international communities continued to push for the establishment of various regulations related to international humanitarian law, from previously in normative dimension to criminalization dimension. This encouragement shows that there is a real need for crimes within the international scope to be regulated more clearly, precisely and specifically in accordance with the principles of criminal law, namely the principle of legality (*nullum crimen sine lege*). Based on this, the criminalization of perpetrators of war crimes is also needed in a country. But this cannot happen without the formation of a strong new coalition of civil society that encourages the criminalization of perpetrators of war crimes. This coalition consist of scholars who promote and develop the concept of law by actively giving theoretical credibility regarding war crimes. As well as the need for support from NGOs that provide public, political, facilities and infrastructure support, and of course government support which is spearheading law-making efforts.<sup>55</sup>

### C. Conclusions

Based on the discussion above, it can be concluded that the regulation of war crimes is regulated based on humanitarian law and international criminal law. In humanitarian law, war crimes are regulated in the 1907 Hague Convention, the 1949 Geneva Convention, The Declaration on the Protection

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<sup>54</sup> Dewi, "National Legislation on War Crimes in Indonesia."

<sup>55</sup> Theodor Meron, "War Crimes Law for the Twenty-First Century," *International Law Studies* 71, no. 1 (September 1, 1998), <https://digital-commons.usnwc.edu/ils/vol71/iss1/11>.

of Women and Children in Emergency 1974 and the Additional Protocol II Geneva Convention 1977. Meanwhile, international criminal law that regulates the responsibility of war crimes perpetrators is regulated in the IMT Charter 1945, IMTFE Charter 1946, ICTY Statute 1993, ICTR Statute 1994, and Rome Statute 1998.

The urgency of war crimes regulation in Indonesian law is due to four reasons: 1) Indonesia has ratified the 1949 Geneva Convention which means that Indonesia has an obligation to establish legal regulations related to war crimes and criminalize the perpetrators of war crimes. However, since 1958 the convention was ratified, but until now legal regulations related to war crimes in Indonesia have not been formed. 2) There are no regulations in Indonesia governing war crimes. Even until the passing of Law no. 1 of 2023 concerning the newest Criminal Code in Indonesia, there are also no provisions related to war crimes. Even though the new Criminal Code is the hope of various parties for the availability of regulations related to war crimes. 3) Indonesia is part of the international community. This means that Indonesia must pay attention to applicable international norms and actively involved in international efforts to try war crimes. 4) Unresolved law enforcement armed conflicts cases in Indonesia. So that the urgency for the formation of regulations related to war crimes in Indonesia is increasingly necessary.

## References

- Adwani, Adwani. "PERLINDUNGAN TERHADAP ORANG-ORANG DALAM DAERAH KONFLIK BERSENJATA MENURUT HUKUM HUMANITER INTERNASIONAL." *Jurnal Dinamika Hukum* 12, no. 1 (January 15, 2012): 97–107. <http://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/109>.
- Andrey Sujatmoko. "KONVENSI DEN HAAG 1907 MENGENAI ALAT DAN CARA BERPERANG." *TerAs Law Review: Jurnal Hukum Humaniter Dan HAM* 1, no. 1 (2005): 1–19. <https://doi.org/10.25105/TERAS-LREV.V1I1.5393>.
- Arie, Siswanto. *Hukum Pidana Internasional*. Yogyakarta: Andi Offset, 2015.
- Yustina Trihoni Nalesti Dewi. *Kejahatan Perang Dalam Hukum Internasional Dan Hukum Nasional*. Jakarta: Rajawali Press, 2013.
- Asnawi, Muhammad Iqbal. "KONSISTENSI PENEGAKAN HUKUM HUMANITER INTERNASIONAL DALAM HUBUNGAN ANTAR BANGSA." *Jurnal Hukum Samudra Keadilan* 12, no. 1 (September 19, 2017): 111–22. <https://ejournalunsam.id/index.php/jhsk/article/view/95>.
- Banjarani, Desia Rakhma, Abdul Muthalib Tahar, and Desy Churul Aini. "Studi Perbandingan Kelembagaan Dan Yurisdiksi International Criminal Tribunal for the Former Yugoslavia (ICTY) Dan the International Criminal Tribunal for Rwanda (ICTR) Dengan

- International Criminal Court (ICC).” *Cepalo* 1, no. 1 (September 12, 2017): 41–56. <https://doi.org/10.25041/CEPALO.V1NO1.1754>.
- Birkett, Daley J. “Twenty Years of the Rome Statute of the International Criminal Court: Appraising the State of National Implementing Legislation in Asia.” *Chinese Journal of International Law* 18, no. 2 (2019): 353–92. <https://doi.org/10.1093/chinesejil/jmz014>.
- Boro, L. R. (Lorraine). “Jajak Pendapat Timor Timur Dalam Perspektif Perlindungan Hukum Masyarakat Sipil Pasca Konvensi Jenewa 1949.” *Masalah-Masalah Hukum* 43, no. 3 (2014): 380–88. <https://doi.org/10.14710/MMH.43.3.2014.380-388>.
- Dewi, Yurtina Trihoni Nalesti. “National Legislation on War Crimes in Indonesia.” *International Journal of Humanities and Management Sciences (IJHMS)* 3, no. 2 (2015): 102–6.
- Dieng, Adama. “Building Efforts of the ICTR: A Different Kind of Legacy Capacity-Building Efforts of the ICTR: A Different Kind of Legacy.” *Northwestern Journal of International Human Rights Capacity* 9, no. 3 (2011): 403–22. <http://scholarlycommons.law.northwestern.edu/njihr/vol9/iss3/5>.
- Evi Deliana HZ. “PENEGAKAN HUKUM HUMANITER INTERNASIONAL DALAM HAL TERJADINYA KEJAHATAN PERANG BERDASARKAN KONVENSI JENEWA 1949.” *Jurnal Ilmu Hukum: Fakultas Hukum Universitas Riau* 2, no. 1 (2011): 255–70. <https://doi.org/DOI: http://dx.doi.org/10.30652/jih.v2i01.485>.
- Fadil Hidayat, Joko Setiyono, Nuswantoro Dwiwarno. “ASPEK-ASPEK HUKUM PERLINDUNGAN SITUS BUDAYA DALAM PERSPEKTIF HUKUM HUMANITER INTERNASIONAL (STUDI KASUS PERUSAKAN KOTA KUNO PALMYRA OLEH ISIS).” Edited by G. Balint, B. Antala, C. Carty, J-M. A. Mabieme, I. B. Amar, and A. Kaplanova. *Diponegoro Law Journal* 6, no. 1 (February 24, 2017): 1–12. <https://doi.org/10.2/JQUERY.MIN.JS>.
- Gunakaya, Widiada. “PERANAN DAN PROSPEK ‘INTERNATIONAL CRIMINAL COURT’ SEBAGAI INTERNATIONAL CRIMINAL POLICY DALAM MENGANGGULANGI ‘INTERNATIONAL CRIMES.’” *Jurnal Wawasan Yuridika* 29, no. 2 (December 7, 2015): 789–836. <https://doi.org/10.25072/JWY.V29I2.66>.
- Hadi, Lukman Dwi, and Putra Sriwidodo. “Pertanggungjawaban Negara Dalam Penyelesaian Kasus Pelanggaran Hak Asasi Manusia Yang Berat Di Aceh Melalui Mekanisme Komisi Kebenaran Dan Rekonsiliasi Aceh.” *Jurist-Diction* 3, no. 6 (November 2, 2020): 2261–92. <https://doi.org/10.20473/JD.V3I6.22971>.
- ismail, isplancius. “PENERAPAN KONVENSI JENEWA 1949 DAN PROTOKOL TAMBAHAN 1977 DALAM HUKUM NASIONAL INDONESIA (Studi Tentang Urgensi Dan Prosedur Ratifikasi Protokol

- Tambahan 1977).” *Jurnal Dinamika Hukum* 13, no. 3 (September 15, 2013): 369–78. <https://doi.org/10.20884/1.JDH.2013.13.3.243>.
- Janga, Antonius. “KEJAHATAN-KEJAHATAN PERANG DALAM HUKUM INTERNASIONAL.” *Studia Philoshopica et Theologica* 2, no. 2 (2002): 159–76. <https://doi.org/https://doi.org/10.35312/spet.v2i2.157>.
- Kereh, Yosua. “TINJAUAN HUKUM TENTANG KEJAHATAN PERANG DALAM KONFLIK BERSENJATA MENURUT HUKUM INTERNASIONAL.” *Lex Et Societatis* 7, no. 4 (2019): 95–103.
- Khairani, Muhammad, Fadrijn Wira Perdana, and Surnata Purboyo, Driaskoro Budi Sidarta. “Tinjauan Yuridis Kejahatan Perang Menurut Hukum Internasional.” *Jurnal Indonesia Sosial Sains* 2, no. 2 (2021): 230–40. <https://doi.org/https://doi.org/10.15294/jils.v1i01.16565>.
- Indah Rizki Restuningtias, Soekotjo Hardiwinoto, Nuswantoro Dwi Warno. “Analisis Yuridis Perlindungan Tawanan Anak Dalam Perspektif Hukum Humaniter Internasional.” *Serambi Hukum* 6, no. 02 (2015): 1–13. [https://www.academia.edu/34113996/EKSISTENSI\\_HUKUM\\_KONT\\_RAK\\_INNOMINAT\\_DALAM\\_RANAH\\_BISNIS\\_DI\\_INDONESIA](https://www.academia.edu/34113996/EKSISTENSI_HUKUM_KONT_RAK_INNOMINAT_DALAM_RANAH_BISNIS_DI_INDONESIA).
- Lubis, Muhammad Ikhsan. “The Relationship of International Human Rights Law with International Humanitarian Law in Situations of International Armed Conflicts.” *JILS (Journal of Indonesian Legal Studies)* 1, no. 1 (2016): 13–34. <https://doi.org/10.15294/JILS.V1I01.16565>.
- Meron, Theodor. “War Crimes Law for the Twenty-First Century.” *International Law Studies* 71, no. 1 (September 1, 1998). <https://digital-commons.usnwc.edu/ils/vol71/iss1/11>.
- Morteza, Radityo Fikri, Joko Setiyono, and Nuswantoro Dwiwarno. “Pertanggungjawaban Komando (Command Responsibility) Dalam Kejahatan Perang Oleh Batalyon Aidar Di Ukraina.” *Diponegoro Law Journal* 5, no. 4 (2016): 1–20.
- Muhammad, Fadil, Luh Putu Sudini, and I Nyoman Sujana. “Penegakan Hukum Pidana Internasional Dalam Kejahatan Perang Terhadap Kemanusiaan.” *Jurnal Preferensi Hukum* 1, no. 2 (2020): 88–92. <https://doi.org/10.22225/jph.1.2.2381.88-92>.
- Mumtazinur. “KEJAHATAN TERHADAP KEMANUASIAAN DAN PELANGGARAN HUKUM HUMANITER INTERNASIONAL (Konvensi Jenewa 1949) Studi Kasus: Pelanggaran HAM Berat Untuk Bekas Negara Yugoslavia.” *Dusturiyah: Jurnal Hukum Islam, Perundang-Undangan Dan Pranata Sosial* 8, no. 2 (2019): 117–28.
- Nimas Masrullail Miftahuddini Ashar. “Hukum Internasional Tentang Genosida Dalam Perspektif Fikih Dauly.” *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 4, no. 01 (April 1, 2014): 1–24. <https://doi.org/10.15642/AD.2014.4.01.1-24>.

- Noor, Thalís. "Agresi Dan Kejahatan Terhadap Perdamaian." *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 3, no. 1 (June 1, 2014): 34–46. <https://doi.org/10.14421/SH.V3I1.1946>.
- Nugroho, Evin Dwi, and Joko Setiyono. "The Formulation Policy of War Crimes in the Reformation of Indonesian Criminal Law." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 11, no. 3 (2022): 473–86. <https://doi.org/10.24843/JMHU.2022.v11.i03.p01.I>.
- Prasetiawan, Eno, and Lina Hastuti. "Penerapan Distinction Principle Dalam Perundang-Undangan Di Indonesia." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 2 (July 31, 2020): 448–63. <https://doi.org/10.24843/JMHU.2020.V09.I02.P16>.
- Putri, L. H. (Lily), and M. (Maya) Permatasari. "Implementasi Pemenuhan Hak Atas Reparasi Bagi Perempuan Korban Konflik Aceh Ditinjau Dari Hukum Internasional." *Syiah Kuala Law Journal* 2, no. 3 (November 30, 2018): 419–38. <https://doi.org/10.24815/SKLJ.V2I3.12400>.
- Ratriya Wuri, Fatma, Emmy Latifah, dan Rachma Indriyani, and Perspektif Statuta Roma Dan Doktrin Command. "Perspektif Statuta Roma Dan Doktrin Command Responsibility Dalam Penyelesaian Kasus Penembakan Terhadap Pesawat Terbang Sipil Mh17 Di Ukraina." *BELLI AC PACIS* 4, no. 2 (February 17, 2020): 57–66. <https://doi.org/10.20961/BELLI.V4I2.39980>.
- Sari, Indah. "KEJAHATAN-KEJAHATAN INTERNASIONAL (TINDAK PIDANA INTERNASIONAL) DAN PERANAN INTERNATIONAL CRIMINAL COURT (ICC) DALAM PENEGAKAN HUKUM PIDANA INTERNATIONAL." *JURNAL ILMIAH HUKUM DIRGANTARA* 6, no. 1 (May 21, 2018): 38–65. <https://doi.org/10.35968/JH.V6I1.114>.
- . "Tinjauan Yuridis Hubungan Kejahatan Perang Dan Hukum Humaniter Internasional." *Jurnal Ilmiah Hukum Dirgantara–Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma* 11, no. 2 (2021): 23–43. <https://doi.org/https://doi.org/10.35968/jihd.v11i2.766>.
- Sarsito, Totok. "Perang Dalam Tata Kehidupan Antarbangsa." *Jurnal Komunikasi Massa* 2, no. 2 (2009): 112–26.
- Scheffer, Ambassador David J. "THE INTERNATIONAL CRIMINAL TRIBUNAL FOREWORD: DETERRENCE OF WAR CRIMES IN THE 21ST CENTURY." *Maryland Journal Of International Law & Trade* 23, no. 1 (1999): 1–13.
- Siregar, Rafika Mayasari, Abdul Rahman, and Arif Arif. "TINJAUAN YURIDIS KONVENSI JENEWA IV TAHUN 1949 TERHADAP NEGARA-NEGARA YANG BERPERANG MENURUT HUKUM INTERNASIONAL." *Journal of USU International Law* 1, no. 3 (October 4, 2013). <https://jurnal.usu.ac.id/index.php/jil/article/view/4956>.

- Sunyowati, Dina. "TINJAUAN YURIDIS HUBUNGAN KEJAHATAN PERANG DAN HUKUM HUMANITER INTERNASIONAL." *Jurnal Hukum Dan Peradilan* 2, no. 1 (2013): 67–84. <https://doi.org/DOI:> <http://dx.doi.org/10.25216/jhp.2.1.2013.67-84>.
- Suwartono, Rahadian Diffaul Barraq. "Pengaturan Tindak Pidana Kejahatan Perang Di Indonesia: Politik Hukum Undang-Undang Nomor 26 Tahun 2000 Tentang Pengadilan Hak Asasi Manusia." *Jurnal Lex Renaissance* 6, no. 4 (2021): 649–63.
- Utama, I Gede Angga Adi. "ASAS PACTA SUNT SERVANDA DALAM PERSPEKTIF HUKUM PERJANJIAN INTERNASIONAL." *Ganesha Civic Education Journal* 1, no. 1 (April 3, 2019): 37–48. <https://ejournal2.undiksha.ac.id/index.php/GANCEJ/article/view/327>.
- Viddy Firmandiaz, Jadmiko Anom Husodo. "PENYELESAIAN KASUS PELANGGARAN HAK ASASI MANUSIA BERAT DI INDONESIA OLEH KOMISI NASIONAL HAK ASASI MANUSIA DITINJAU DARI KEWENANGANNYA (STUDI KASUS TIMOR-TIMUR)." *RES PUBLICA* 4, no. 1 (December 23, 2020): 92–105. <https://jurnal.uns.ac.id/respublica/article/view/45695>.
- Wibowo, Aji. "Kejahatan Perang (War Crimes) Dan Berbagai Instrumen Hukum Internasional." *JURNAL HUKUM HUMANITER* 4, no. 90 (2015): 68–73.
- Wiratraman, R Herlambang Perdana. "Konsep Dan Pengaturan Hukum Kejahatan Terhadap Kemanusiaan." *Jurnal Ilmu Hukum Yuridika* 23, no. 2 (2008): 1–21.
- Zunnuraeni. "Politik Hukum Penegakan Hak Asasi Manusia Di Indonesia Dalam Kasus Pelanggaran Ham Berat." *Jurnal IUS Kajian Hukum Dan Keadilan* 1, no. 3 (2013): 356–69.
- "5 Penjahat Perang Paling Keji Yang Diadili & Dapat Balasan Setimpal | Merdeka.Com." Accessed December 13, 2022. <https://www.merdeka.com/dunia/5-penjahat-perang-paling-keji-diadili-dapat-balasan-setimpal.html>.
- "Amnesty International Sebut Rusia Lakukan Kejahatan Perang." Accessed December 13, 2022. <https://www.cnbcindonesia.com/news/20220614071210-4-346778/amnesty-international-sebut-rusia-lakukan-kejahatan-perang>.
- "Customary IHL – Helping to Improve the Protection of Victims of Armed Conflict - ICRC." Accessed December 13, 2022. <https://www.icrc.org/en/doc/resources/documents/interview/2014/07-29-customary-international-humanitarian-law-cihl.htm>.
- Eboe-Osuji, Chile. "'GRAVE BREACHES' AS WAR CRIMES: MUCH ADO ABOUT ... 'SERIOUS VIOLATIONS'?" Accessed December 13, 2022. <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/827EE9EC-5095-48C0-AB04->

E38686EE9A80/283279/GRAVEBREACHESMUCHADOABOUTSERIOUSVIOLATIONS.pdf.

House of Representatives United States of America. "War Crimes Act of 1996," 1996. <https://www.congress.gov/bill/104th-congress/house-bill/3680>.

Indonesia, CNN. "Munir Dan Daftar Kasus HAM Yang Belum Tuntas Sampai Hari Ini," 2021. <https://www.cnnindonesia.com/nasional/20210909064450-12-691744/munir-dan-daftar-kasus-ham-yang-belum-tuntas-sampai-hari-ini/2>.

"Investigasi PBB: Rusia Dan Ukraina Lakukan Kejahatan Perang, Seperti Penyiksaan & Perkosaan." Accessed December 13, 2022. <https://www.kompas.tv/article/339636/investigasi-pbb-rusia-dan-ukraina-lakukan-kejahatan-perang-seperti-penyiksaan-perkosaan>.

"Kronologi Dan Latar Belakang Konflik Rusia Dan Ukraina." Accessed December 13, 2022. <https://www.cnbcindonesia.com/news/20220304134216-4-320044/kronologi-dan-latar-belakang-konflik-rusia-dan-ukraina>.

"Perang Ukraina: AS Perkirakan 200.000 Tentara Tewas Di Pihak Rusia Dan Ukraina, Moskow Umumkan Mundur Dari Kherson - BBC News Indonesia." Accessed December 13, 2022. <https://www.bbc.com/indonesia/articles/c3gjgn0p1ryo>.