

# The Urgency of War Crimes Regulation in Indonesian Criminal Law

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## The Urgency of War Crimes Regulation in Indonesian Criminal Law

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### Abstract

Indonesia's Law Number 26 of 2000 concerning the Human Rights Court aligns with the principles of the Rome Statute but does not address war crimes, which are specifically regulated by the Rome Statute. Given that war crimes do not have an expiration date, they must be prosecuted at any time. This research aims to explore how war crimes provisions are articulated within humanitarian law and international criminal law and why their regulation is essential in Indonesian criminal law. Utilizing a normative juridical approach with qualitative descriptive analysis, the findings reveal that war crimes are governed by humanitarian law through instruments such as the 1907 Hague Convention, the 1949 Geneva Convention, the Declaration on the Protection of Women and Children in Emergencies (1974), and Additional Protocol II of the Geneva Convention (1977), while international criminal law addresses the responsibilities 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 incorporating war crimes regulation into Indonesian law is underscored by four factors: Indonesia's ratification of the 1949 Geneva Convention, the absence of specific regulations in the 2023 Criminal Code, Indonesia's role as part of the international community, and the unresolved cases related to armed conflict law enforcement within the country.

## A. Introduction

Numerous countries have adopted a stance of war avoidance; however, many remain embroiled in conflicts at both international and domestic levels.<sup>1</sup> When wars erupt, the parties involved often appear indifferent to applicable legal frameworks<sup>2</sup>, including humanitarian law<sup>3</sup> and the law of armed conflict.<sup>4</sup> In addition to humanitarian law, international law explicitly delineates actions that are impermissible during wartime, aiming to render warfare "more humane" and to mitigate excessive casualties. Nonetheless, such limitations are frequently disregarded once hostilities commence, resulting in far greater victimization than the warring parties had anticipated. Furthermore, modern warfare technology enables widespread harm to both human beings and the environment.<sup>5</sup>

For instance, the ongoing conflict between Russia and Ukraine is rooted in a complex political history.<sup>6</sup> Like many contemporary wars, this conflict has resulted in significant casualties. Estimates indicate that approximately 100,000 Russian and 100,000 Ukrainian troops have either been killed or injured, alongside an estimated 40,000 civilian deaths attributed to the

<sup>1</sup> Muhammad Khairani, Fadrijin 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, 227, <https://doi.org/10.15294/jils.v1i01.16565>.

<sup>2</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>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://ejurnalunsam.id/index.php/jhsk/article/view/95>.

<sup>4</sup> Muhammad Ikhsan 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>5</sup> Antonius Janga, "Kejahatan-Kejahatan Perang Dalam Hukum Internasional," *Studia Philoshopica 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>.

conflict.<sup>7</sup> In light of the extensive toll, Amnesty International has accused Russia of committing war crimes in Ukraine, particularly in the Kharkiv region.<sup>8</sup> Similarly, the Independent International Commission of Inquiry established by the United Nations corroborated these claims. Based on their investigations, which involved visits to 27 cities and settlements and interviews with 191 victims and witnesses, the Commission found evidence of war crimes committed by Russian forces, including mass executions, forced deportations, enforced disappearances, arbitrary detention, torture, inhumane treatment, rape, and other forms of sexual violence.<sup>9</sup>

War crimes, such as those observed in the ongoing conflict between Russia and Ukraine, can be understood through both narrow and broad definitions. The narrow definition pertains specifically to violations of the laws and customs of war.<sup>10</sup> When these violations occur during armed conflict and result in significant casualties, they are classified as war crimes under international humanitarian law.<sup>11</sup> In contrast, the broader definition encompasses not only violations of wartime laws and customs but also

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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/c3gjn0p1ryo>.

<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.



includes other egregious acts<sup>12</sup> such as 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>

An illustrative example of contemporary war crimes is the conflict between Russia and Ukraine, which has resulted in thousands of deaths. Historical precedents exist, such as during World War II, when war crimes led to the deaths of millions. Notably, Hideki Tojo, the General and Prime Minister of

<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: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 Dauly," *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 International," *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/jihd.v11i2.766>.

Japan, was held responsible for war crimes that contributed to the deaths of approximately four million Chinese individuals.<sup>19</sup>

The data concerning war crime victims highlights the severe and often underappreciated impact of such atrocities. Consequently, the international community has deemed war crimes to be heinous acts that are prohibited universally. The prohibition of war crimes has deep roots in international criminal law, tracing back to the establishment of the Geneva Conventions in 1949.<sup>20</sup> Over time, this prohibition has been reaffirmed and is currently articulated in the 1998 Rome Statute.<sup>21</sup> Despite this legal framework, war crimes continue to occur in modern conflicts, as evidenced by the Russia-Ukraine war.

In Indonesia, legal provisions regarding war crimes remain inadequate. The Indonesian Criminal Code, which evolved from Dutch law (*Wetboek van Strafrecht*), includes regulations related to certain forms of war crimes. However, these provisions do not specifically aim to protect victims of war or uphold human rights; instead, they focus primarily on political crimes that threaten state interests. Similarly, the Military Criminal Code (*KUHPM*) addresses war crimes but does not align with the concepts established in international law. The war crimes defined in the *KUHPM* are primarily concerned with internal military matters, thus lacking a comprehensive approach to international standards on war crimes.<sup>22</sup>

States have a fundamental obligation to pursue the extradition of individuals responsible for war crimes and to ensure their prosecution and punishment. According to the Rome Statute, participating countries have two primary responsibilities: they must bring every war crime perpetrator to justice and fully cooperate in the enforcement of international criminal law.<sup>23</sup>

<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).

<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>.

However, challenges arise when a country lacks specific regulations regarding war crimes and has not ratified the Rome Statute, as is the case with Indonesia.

Indonesia has enacted Law Number 26 of 2000 concerning the Human Rights Court, which shares many similarities with the Rome Statute. However, this law does not explicitly address war crimes, while the Rome Statute contains detailed provisions on the matter. It is essential to recognize that perpetrators of war crimes should be prosecuted without time limitations, as these crimes are not subject to statutes of limitations. This research aims to address the following questions: How are war crimes defined within the frameworks of humanitarian law and international criminal law? Why is it necessary to incorporate war crimes into Indonesian criminal law?

This study<sup>3</sup> distinguishes itself from previous research, such as that 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*.” While Suwartono’s research focuses primarily on the legal politics surrounding the establishment of the Human Rights Courts, this study will examine war crimes through the lenses of humanitarian law and international criminal law, emphasizing the importance of regulatory frameworks pertaining to these offenses. Furthermore, this research will introduce a novel perspective by analyzing war crimes in the context of Law No. 1 of 2023 concerning the Indonesian Criminal Code, which was ratified in early 2023.

This research employed a normative juridical approach, focusing on legal norms established in regulations related to war crimes. The study utilized a statutory approach to examine relevant legal principles, doctrines, and regulations. The compiled data were analyzed descriptively and qualitatively.

## B. Discussion

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

The conditions of warfare often disregard humanitarian principles, particularly concerning civilian populations, which has led<sup>5</sup> to the establishment of international humanitarian law (IHL). This body of law, also known as the law of armed conflict or the law of war, is divided into two primary branches: Geneva Law and Hague Law.<sup>24</sup> Geneva Law encompasses various conventions aimed at protecting war victims and individuals caught in

<sup>24</sup> Mumtazinur, “Kejahatan Terhadap Kemanusiaan 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.



armed conflicts.<sup>25</sup> In contrast, Hague Law governs the conduct of hostilities and the means and methods of warfar.<sup>26</sup>

When violations occur under Geneva Law or Hague Law, or when crimes are committed during armed conflict, these acts are classified as war crimes. The regulatory framework concerning war crimes can be examined through the lenses of humanitarian law and international criminal law. These two fields serve distinct yet complementary roles in addressing war crimes. Humanitarian law primarily focuses on the protection of victims and civilians during armed conflict, while also outlining the procedures for conducting warfare.<sup>27</sup> Conversely, international criminal law is concerned with the enforcement of accountability for individuals or members of armed forces who bear responsibility for committing war crimes.

The regulation of war crimes through international criminal law and humanitarian law has a rich historical context, and these frameworks can be categorized 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	<p>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>28</sup></p> <p>In the event of the country's domination over another country due to winning a war (occupation), confiscation, destruction, or pollution of cultural</p>

<sup>25</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>26</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>27</sup> Yosua Kereh, "Tinjauan Hukum Tentang Kejahatan Perang Dalam Konflik Bersenjata Menurut Hukum Internasional," *Lex Et Societatis* 7, no. 4 (2019): 95–103.

<sup>28</sup> Janga, Antonius. "Kejahatan-Kejahatan Perang Dalam Hukum Internasional." *Studia Philosophica et Theologica* 2, no. 2 (2002): 159-176.



		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>29</sup>
2.	The 1949 Geneva Convention Concerning the Protection of Civilians in War <sup>30</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>31</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; 2) Torture or inhumane treatment, including biological experiments; 3) Suffering or serious injury to body or health;

<sup>29</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>30</sup> The 1949 Geneva Convention consists of 4 Conventions, consist of:  
a. 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.  
b. 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.  
c. 3<sup>th</sup> Convention Concerning of Geneva Convention relative to the Treatment of Prisoners of War.  
d. 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>31</sup> Aji Wibowo, “Kejahatan Perang (War Crimes) Dan Berbagai Lnstrumen Hukum Lntemasional,” *Jurnal Hukum Humaniter* 4, no. 90 (2015): 68–73.

		4) Widespread destruction and usurpation of property, not justified by military necessity in illegal and unreasonable; 5) Forcing a prisoner of war or another protected person to serve in the troops of an opposing Armed Forces; 6) Consciously depriving a prisoner of war or another protected person of the right to a fair and honest trial; 7) Unlawful deportation or unlawful transfer or detention; 8) Holding hostage.
3.	Charter of International Military Tribunal of Nuremberg 1945 (IMT Charter) <sup>32</sup>	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: <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 (IMTFE Charter) <sup>33</sup>	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 international law are also included in war crimes that violate this charter.

<sup>32</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.

<sup>33</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

5.	1 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>34</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: <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></ul>

against peace, war crimes and crimes against humanity committed during World War II. The trial was held in the Tokyo, Japan. *Ibid.*

<sup>34</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>- 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>35</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><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></ul>

<sup>35</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.V1NO1.1754>.



		<ul style="list-style-type: none"><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>36</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>37</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 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

<sup>36</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>37</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>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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Based on the aforementioned Table of War Crimes Regulations, it is evident that war crimes are governed by both humanitarian law and international criminal law. Within humanitarian law, relevant provisions are found in the 1907 Hague Convention, the 1949 Geneva Convention, the Declaration on the Protection of Women and Children in Emergency Situations (1974), and Additional Protocol II of the Geneva Convention (1977). In contrast, international criminal law delineates the responsibilities of individuals accused of war crimes through various legal instruments, including the Charter of the International Military Tribunal (IMT) of 1945, the Charter of the International Military Tribunal for the Far East (IMTFE) of 1946, the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY) of 1993, the Statute of the International Criminal Tribunal for Rwanda (ICTR) of 1994, and the Rome Statute of 1998.

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

Conceptually, war crimes represent a distinct category of international crimes that are often regarded as foundational in comparison to other types of international offenses. It is not an exaggeration to assert that the concepts of genocide and crimes against humanity are inherently rooted in the framework of war crimes.<sup>38</sup> Consequently, the establishment of regulations pertaining to war crimes is considered urgent.

According to humanitarian law, the existence of regulations governing state involvement in armed conflict is not intended to condone war crimes; rather, it seeks to emphasize the humanitarian aspects of warfare and to regulate conduct during armed conflict. These regulations aim to protect all individuals, regardless of their involvement in hostilities, and to mitigate the suffering that results from war crimes. In contrast, criminal law generally operates on the premise that crimes have identifiable perpetrators. This is particularly pertinent in armed conflicts, where the potential for war crimes often overlooks humanitarian considerations. Thus, criminal law bears the responsibility of ensuring that war criminals are tried fairly and justly.<sup>39</sup>

<sup>38</sup> Siswanto Arie, *Hukum Pidana Internasional* (Yogyakarta: Andi Offset, 2015).  
<sup>39</sup> Kereh, “Tinjauan Hukum Tentang Kejahatan Perang Dalam Konflik Bersenjata Menurut Hukum Internasional.”

The Dutch Colonial Government initially articulated war crimes in the Dutch East Indies through *Staatblad* Number 44 of 1946, following Indonesia’s declaration of independence. These provisions subsequently formed the legal basis for prosecuting war crimes in the region. Additionally, *Staatblad* Number 45 of 1946 established formal legal provisions concerning war crimes within Dutch East Indies territory. Unfortunately, these regulations were not integrated into Indonesia’s national legal framework. According to Law Number 1 of 1946, the applicable criminal law in Indonesia is that which was in effect as of March 8, 1942. The Indonesian Criminal Code, derived from the Dutch *Wetboek van Strafrecht*, addresses various forms of war crimes; however, it primarily focuses on political offenses that threaten the state’s military interests rather than protecting the rights of war victims.<sup>40</sup>

The establishment of comprehensive regulations concerning war crimes in Indonesia is both necessary and urgent for the present and the future. The need for such regulations can be categorized 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>41</sup> In addition, this ratification also has implications for Indonesia’s obligation to comply with and implement international humanitarian law. <sup>42</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.

<sup>40</sup> Suwartono, “Pengaturan Tindak Pidana Kejahatan Perang Di Indonesia: Politik Hukum Undang-Undang Nomor 26 Tahun 2000 Tentang Pengadilan Hak Asasi Manusia.”

<sup>41</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>.

<sup>42</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>.



		<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>43</sup></p>
2.	No Regulation 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> <p>War crimes are also formulated in the provisions of the Military Criminal Code (<i>KUHPM</i>). But the provisions in the <i>KUHPM</i> have not touched the concept of war crimes as international crimes. The war crimes referred in the <i>KUHPM</i> are still aimed at internal military purposes only.<sup>44</sup></p>

<sup>43</sup> House of Representatives United States of America, “War Crimes Act of 1996,” 1996, <https://www.congress.gov/bill/104th-congress/house-bill/3680>.  
<sup>44</sup> Yustina Trihoni Nalesti Dewi, *Kejahatan Perang Dalam Hukum Internasional Dan Hukum Nasional*.



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>45</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>46</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>47</sup> Even law enforcement against several cases of human rights violations has not really been completely resolved. The National Human Rights Commission ( <i>Komnas HAM</i> ) noted that there were 12 cases of human rights violations have not been resolved to date. <sup>48</sup> Including the law enforcement of armed conflicts such as the

<sup>45</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>46</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.v11i03.p01.I>.

<sup>47</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.

<sup>48</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>.

		case of East Timor <sup>49</sup> which the settlement incomplete. This case was successfully tried by the court however 18 defendants were acquitted. <sup>50</sup> Besides, another case of armed conflict is the Free Aceh (GAM Rebellion) (1989-1998). <sup>51</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>52</sup>
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The ratification of the 1949 Geneva Convention into Indonesian law signifies Indonesia's obligation to develop legal frameworks addressing war crimes and to criminalize those who commit such offenses. However, since the ratification in 1958, Indonesia has yet to establish any legal regulations concerning war crimes. Even with the enactment of Law No. 1 of 2023, which introduces a new Criminal Code, there remain no provisions pertaining to war crimes. This absence is particularly concerning, as the new Criminal Code was anticipated by various stakeholders to include regulations related to war crimes. Indonesia, as a member of the international community, is obliged to adhere to international norms and actively participate in global efforts to prosecute war crimes. This necessity is amplified by the fact that law enforcement concerning human rights violations during Indonesia's armed conflicts remains inadequately addressed. Therefore, the urgency for

<sup>49</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>50</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>51</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>52</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>

establishing regulations related to war crimes in Indonesia is increasingly critical.

The lack of specific regulations governing war crimes can undermine national interests, especially given Indonesia's frequent encounters with armed conflicts. This situation has led to district courts lacking the guidance necessary for adjudicating war crimes cases, thereby diminishing the authority of these judicial institutions and potentially inviting international intervention, as seen in cases from the former Yugoslavia, Rwanda, Sierra Leone, and Cambodia.<sup>53</sup>

Since the 1990s, countries and various international communities have consistently advocated for the development of regulations concerning international humanitarian law, evolving from a normative to a criminalization perspective. This advocacy highlights a pressing need for clearer, more precise, and specific regulations surrounding international crimes that align with criminal law principles, particularly the principle of legality (*nullum crimen sine lege*). Consequently, the criminalization of war crime perpetrators is essential within any legal framework. However, this cannot be achieved without the establishment of a robust coalition of civil society that champions the criminalization of war crimes. This coalition should consist of scholars who advance legal concepts by providing theoretical support regarding war crimes, alongside NGOs that offer public and political advocacy, as well as the necessary facilities and infrastructure. Moreover, government backing is crucial to spearheading legislative initiatives aimed at addressing this critical issue.<sup>54</sup>

### C. Conclusions

Based on the discussion above, it can be concluded that the regulation of war crimes is grounded in both humanitarian law and international criminal law. Humanitarian law encompasses provisions found in the 1907 Hague Convention, the 1949 Geneva Convention, the Declaration on the Protection of Women and Children in Emergencies (1974), and Additional Protocol II of the Geneva Convention (1977). In contrast, international criminal law delineates the responsibilities of war crime perpetrators through instruments such as the Charter of the International Military Tribunal (IMT) of 1945, the Charter of the International Military Tribunal for the Far East (IMTFE) of 1946, the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY) of 1993, the Statute of the International Criminal Tribunal for Rwanda (ICTR) of 1994, and the Rome Statute of 1998.

<sup>53</sup> Dewi, Yustina Trihoni Nalesti. "National Legislation on War Crimes in Indonesia." *International Journal of Humanities and Management Sciences* 3, no. 2 (2015): 102-106.

<sup>54</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>.



The urgency of establishing regulations concerning war crimes within Indonesian law is underscored by four key reasons. First, Indonesia's ratification of the 1949 Geneva Convention signifies its obligation to develop legal frameworks that address war crimes and criminalize those who perpetrate such offenses. Despite ratification in 1958, Indonesia has yet to establish relevant legal regulations. Second, there are currently no existing legal provisions in Indonesia that govern war crimes. Even with the enactment of Law No. 1 of 2023, which introduced a new Criminal Code, no provisions related to war crimes have been included, despite expectations that the new code would address this critical issue. Third, as a member of the international community, Indonesia is obligated to adhere to international norms and actively participate in global initiatives aimed at prosecuting war crimes. Lastly, numerous cases involving human rights violations during armed conflicts in Indonesia remain unresolved. This situation further emphasizes the necessity for establishing legal regulations concerning war crimes. Given these factors, the urgent formation of regulations related to war crimes in Indonesia is essential for ensuring accountability and compliance with international legal standards.

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