

Analysis of violations of international law in the conflict between the United States and Afghanistan

Jedra Sudirman¹

¹(Defense Management, University of Defense of the Republic of Indonesia, Indonesia)

ABSTRACT: *In life between nations, there must be joys and sorrows, good and bad relations, friendship and hostility, mutual cooperation, conflict and so on. In this case we can see the relationship between the United States and Afghanistan. Currently, the two countries have a bad relationship, in other words, there is a conflict between them. Seeing this incident, the researcher is interested in analyzing how international law is violated in the conflict. Because as far as researchers have observed so far, whenever there is a conflict, there is always a gap in international law enforcement. And usually violations of international law start from a strong state. Surprisingly, after the powerful country violated international law, in fact the country is not sanctioned for the enforcement of international law. So, whoever is strong, then that is in power and he does not obey the rules of international law that have been made and agreed upon. However, international law applies to weak countries. This research method uses library research methods with a qualitative approach. The results obtained from this study are that the United States is analyzed to have violated International Law against Afghanistan in the form of sacrificing civilians in its conflict, carrying out military invasions that have no legality and carrying out torture of prisoners of war. but international law applies to weak states. This research method uses library research methods with a qualitative approach. The results obtained from this study are that the United States is analyzed to have violated International Law against Afghanistan in the form of sacrificing civilians in its conflict, carrying out military invasions that have no legality and carrying out torture of prisoners of war. but international law applies to weak states. This research method uses library research methods with a qualitative approach. The results obtained from this study are that the United States is analyzed to have violated International Law against Afghanistan in the form of sacrificing civilians in its conflict, carrying out military invasions that have no legality and carrying out torture of prisoners of war.*

KEYWORDS-*Analysis, International Law, United States-Afghanistan conflict, violations*

I. INTRODUCTION

The order of life between nations and countries is a system of international community life that complements each other, shares, needs each other and sometimes conflicts between them in various fields, situations and conditions. In the 21st century, the sensitivity of the situation is very vulnerable to the direction of conflict, various rapid advances in all areas of human life have become a means for competing forces. State power becomes something that determines where the direction of political policy is achieved, and war is one of the last ways for a country to be able to achieve the goals and desires it wants. In principle, many people expect peace from war, countries that claim to be civilized countries have also laid down their commitments to be able to realize world peace. This embodiment can be seen from the conventions that were born and the adaptation of these conventions into the national law of a country. All countries in the world should be willing to join hands and commit to continue calling for and realizing world peace.

The issue of conflict and war has become a hot topic in relations between countries, coupled with the emergence of human casualties as a result of these events, both from the civilian side and from the military side. The thought that has emerged so far is that in an armed conflict, casualties from the military are considered as a consequence of the war that took place. While civilian casualties are seen as something that should not happen, unarmed civilians who are not involved in the conflict should be the free party and their safety protected. But ironically, the conditions in question are rarely found for the sake of achieving a strategic and political goal by ignoring their rights and safety. International law was born as an attempt to balance the needs of the military and the need for respect for human nature. The 1949 Geneva Conventions are a positive international law that is part of the rules of international law, the average countries in the world do not deny its existence, because the 1949 Geneva Conventions are intended to humanize war. International law is indispensable to meet human needs in the midst of situations of war and armed conflict. The International Committee of the Red Cross, known as the ICRC, exists as a third party and acts as a non-state in a conflict.

Based on the description above, the researcher will focus on discussing the problems that will be discussed in this paper, namely how is the violation of international law in the conflict between the United States and Afghanistan? The purpose of this study is to find out and analyze how the forms of violations of international law against the United States and Afghanistan conflicts have been made and mutually agreed upon by the countries in the world.

II. RESEARCH METHODS

This research method uses the library method with a qualitative approach. According to Sugiyono (2017: 291), said that literature study is a search for sources or expert opinions on a matter related to the research objectives. (Sugiyono, 2017). While the qualitative approach, according to Hardadi and colleagues, said that in qualitative research, the researcher is the main instrument in collecting and interpreting data, and other tools if any, and even then only as a tool for researchers (Hardani, et al., 2020). So, here the researcher uses data and information from books, articles, journals, papers, news, internet and other social media, as well as from experts and informants relevant to this research. Meanwhile, the researcher here is the key instrument in collecting and interpreting the data, which is then processed and analyzed so that the results of processing the data and information can be drawn in the form of conclusions and suggestions or recommendations.

III. DISCUSSION RESULT

The state system that we see and experience today, previously explained by Aristotle in an all-encompassing historical perspective, says that humans are fundamentally social creatures. At each stage of development, humans have needs and desires that cannot be carried out alone, therefore they form social groups. Some of the groups that have been created by humans, as we feel and witness today, namely the existence of tribes, religions, organizations, countries, groups of several countries call it the ASIA group of countries, ASEAN and so on. The state is a unit of relations between nations as well as an actor in society between nations. The state is an organization created and prepared to achieve certain goals through various planned actions. A fundamental problem here is limiting, and determining the best size that fits the goals of the group. Plato and Aristotle discussed this in their analysis of Greek cities. Modern sociologists are concerned about this situation, whether they develop theories about social communication or theories about loyalty and the relationships between ingroups and outgroups. Then the emergence of disharmony in international relations is a matter of concern and must be vigilant in the international system of life. Like what we have recently witnessed is the conflict in Afghanistan, both the conflict within the Afghan state itself, namely the presence of the Taliban as the current ruler of Afghanistan and the conflict between the United States and Afghanistan. Conflict between two or more countries at the highest level will lead to war between countries and even between several groups of countries.

Quoted from Indonesian media, the Taliban has taken back control of the government in Afghanistan on August 17, 2021. This is marked by the control of most of the territory in Afghanistan including Kabul which is the most central region and is the center of the Afghan government. The takeover of government control by the Taliban did not encounter significant obstacles and resistance from the government forces led by President Ashraf Ghani. In other words, the takeover of power was carried out through peaceful means. In fact, this was done in a relatively short time. This also happened in line with the withdrawal of troops by the United States (US) and NATO from the territory of Afghanistan after 20 years of controlling the country. Then, because the US and NATO claim that their counter-terrorism mission there has been completed. The decision of the US and NATO to withdraw their troops from the territory of Afghanistan is certainly a breath of fresh air for the political factions of the Taliban, to try to take back their control of Afghanistan before being invaded by the US and NATO in 2001. However, the return of government control under the rule of the Taliban is certainly This alone raises a number of philosophical, legal and political questions about the status of the Taliban, and they are certainly interesting to analyze. To answer this question, it is important to discuss it in depth starting from observing the history of the military invasion carried out by the US and NATO against Afghanistan in 2001. The overthrow of the Taliban government with a military invasion by the US and NATO, based on the allegation that the Taliban are considered to be protecting Al-Qaeda leader Osama Bin Laden who is accused of masterminding the attack on the twin towers of the WTC, New York on September 11, 2001. Although the accusations cannot be proven, the US with NATO support continued to invade Afghanistan in October 2001 under the name Operation Enduring Freedom and on the basis of war on terror. In practice, the invasion actually violated many provisions in international law and several rules in international legal doctrine, especially in terms of Geneva law and Article 8 of the Rome Statute. Some forms of violations of international law are as follows: Although the allegations could not be proven, the US with NATO support continued to invade Afghanistan in October 2001 under the name Operation Enduring Freedom and on the basis of war on terror. In practice, the invasion actually violated many provisions in international law and several rules in international legal doctrine, especially in terms of Geneva law and Article 8 of the Rome Statute. Some forms of violations of international law are as follows: Although the allegations could not be proven, the US with NATO support continued to invade Afghanistan in October 2001 under the name Operation Enduring Freedom and on the basis of war on terror. In practice, the invasion actually violated many provisions in international law and several rules in international legal doctrine, especially in terms of Geneva law and Article 8 of the Rome Statute. Some forms of violations of international law are as follows:

3.1 Sacrificing the Civilians

The military invasion not only seized the legitimacy and political power of the Taliban over Afghanistan, but also caused collateral damage with the loss of many lives of innocent civilians. At least more than 100 thousand Afghan civilians have been victims of this military invasion. According to United Nations News (2020), the military operation has also caused massive and widespread damage to civilian objects and forced thousands of civilians to flee from Afghan territory. This of course cannot be justified under international law and is a violation of the principle of proportionality in international humanitarian law.

3.2 Illegal Military Invasion

Invasion is an act of entering another country with the aim of using its armed forces and to attack and control that country. Since its inception, the military invasion that has lasted for more than two decades has created its own controversy and has drawn international condemnation. In international law literature, military invasion has no legality and is a fundamental error. This is confirmed in article 2 (4) of the UN charter which prohibits the use of military force against the territorial integrity or political independence of a country. It is true that the prohibition is not absolute, that is because the UN Charter has itself also provided for two exceptions. There are exceptions to that; the use of force or military force may be possible as a legitimate form of self-defense, either individually or collectively under article 51 of the UN charter or carried out under authorization by the UN Security Council. It should be noted that the peaceful mechanism through dialogue and diplomacy must first be carried out before considering acts of war or other aggressive approaches. While the military

invasion carried out by the US-NATO does not meet these two exceptions, it is a unilateral attitude that overrides the rules of international law and also the role of the United Nations explicitly. The invasion was also only based on the joint resolution of September 18, 2001, which did not form a strong legal rationale. So it can be said that the military invasion is not legal, cannot be justified, and has also exceeded the provisions of applicable international law. Thus, the US-NATO invasion of Afghanistan not only caused an extraordinary humanitarian tragedy and humanitarian crisis in the region. But it is also a form of forcibly taking control of the government from the hands of the Taliban as a legitimate and sovereign ruler. So, it becomes rational if the Taliban then try to regain control of the government in Afghanistan after the US-NATO withdrew its troops from there. The new Taliban Before the US-NATO invasion in 2001, the Taliban effectively controlled most of Afghanistan from 1996 to 2001. But it is also a form of forcibly taking control of the government from the hands of the Taliban as a legitimate and sovereign ruler. So, it becomes rational if the Taliban then try to regain control of the government in Afghanistan after the US-NATO withdrew its troops from there. The new Taliban Before the US-NATO invasion in 2001, the Taliban effectively controlled most of Afghanistan from 1996 to 2001. But it is also a form of forcibly taking control of the government from the hands of the Taliban as a legitimate and sovereign ruler. So, it becomes rational if the Taliban then try to regain control of the government in Afghanistan after the US-NATO withdrew its troops from there. The new Taliban Before the US-NATO invasion in 2001, the Taliban effectively controlled most of Afghanistan from 1996 to 2001.

At that time this political faction received diplomatic recognition from the three countries of the United Arab Emirates, Pakistan and Saudi Arabia. However, the style and concept of government promoted by the Taliban is indeed unpopular, in fact it has received criticism and opposition. This happens because the Taliban government is considered to have committed many acts of human rights violations in a number of areas of Afghanistan, especially against women and minority groups. So it is only natural that the return of the Taliban to control of Afghanistan is not entirely supported by the population. That's because of the speculative view that the Taliban will bring back the concept of government as it was before the military invasion took place. That is by applying very strict rules and also restrictions on the rights of women and minorities. However, it is important to first maintain the conditions of this permanent ceasefire. By continuing to hope that the new Taliban will keep its commitment to bring about change in Afghanistan into a peaceful and just country. The most important aspect is that the Taliban must be able to prove to the world that they are able to get out of their past policies and become more inclusive by providing protection, treatment and fair opportunities to all civilians without exception, including minority groups. This includes immediately setting up a new form of government and immediately establishing international relations and cooperation with other countries in a political or economic context. And immediately participate actively in maintaining regional stability, world peace and security.

3.2.1 Torture of Prisoners of War

The United States military tortured Afghan prisoners of war with harsh interrogation techniques and raped prisoners of war in Afghanistan, of course this violated the provisions of law, namely the provisions of international law or also known as International Humanitarian Law. Related to this, actually the American military can be brought to the ICC, because of the crime of interrogation using harsh techniques, torture, and the treatment of biological experiments on prisoners of war carried out in Afghanistan. This also applies to criminals from any country, whether state parties or non-parties. War crimes are something that cannot be forgiven, especially torturing prisoners of war who actually have rights and obligations according to the 1949 Geneva Convention III.

War crimes according to Article 9 of the Statute include grave breaches of the 1949 Geneva Conventions. These acts as mentioned above are intentional killing, torture or inhumane treatment and biological experimentation, intentionally causing severe suffering. seriousness of the human body or prisoners of war, widespread destruction, unlawful taking of property, forcing prisoners of war or other protected persons

to assist enemy forces, intentionally depriving prisoners of war and protected persons from judicial proceedings honest and regular, unlawful deportation and imprisonment and taking hostages.

The ICC's response to the Committee Against Torture in November 2015, indicated that more than 70 investigations into alleged detainee abuse by US military personnel in Afghanistan. At least 88 people in US custody are being tortured. The impact of improved interrogation techniques, applied over a long period of time, caused serious physical and psychological injuries to the victims. Some victims reported exhibiting psychological and behavioral problems, including hallucinations, paranoia, insomnia, and attempts at self-harm and self-harm.

IV. CONCLUSIONS AND RECOMMENDATIONS

4.1 CONCLUSION

Power plays an important role in the survival between countries, only the will of the state determines the political nature of an issue to achieve certain goals, for example the country that plays its power for certain purposes is the United States. Because of this, the International Court of Justice is still reluctant to prosecute acts of violation of international law committed by the United States against Afghanistan. This situation will actually lead to conflict at the highest level leading to a war between countries even bigger than that. International law is part of the commitment of countries in the world to be more concerned with humanitarian issues. International law regulates that a war can be carried out with more attention to the principles of humanity, or what is often referred to as the humanization of war. With the super power of a country will easily ignore the application of international law. when power is put forward, justice will be further away, so that the application of international law that has been mutually agreed upon cannot be carried out. Some of the results of the analysis of violations of international law in the United States conflict with Afghanistan are that the United States carried out the killing and expulsion of the civilian population in Afghanistan, the United States carried out an illegal military invasion of Afghanistan and the United States tortured prisoners of war. or what is often referred to as humanizing war. With the super power of a country will easily ignore the application of international law. when power is put forward, justice will be further away, so that the application of international law that has been mutually agreed upon cannot be carried out. Some of the results of the analysis of violations of international law in the United States conflict with Afghanistan are that the United States carried out the killing and expulsion of the civilian population in Afghanistan, the United States carried out an illegal military invasion of Afghanistan and the United States tortured prisoners of war. or what is often referred to as humanizing war. With the super power of a country will easily ignore the application of international law. when power is put forward, justice will be further away, so that the application of international law that has been mutually agreed upon cannot be carried out. Some of the results of the analysis of violations of international law in the United States conflict with Afghanistan are that the United States carried out the killing and expulsion of the civilian population in Afghanistan, the United States carried out an illegal military invasion of Afghanistan and the United States tortured prisoners of war. so that the application of international law that has been mutually agreed upon cannot be carried out. Some of the results of the analysis of violations of international law in the United States conflict with Afghanistan are that the United States carried out the killing and expulsion of the civilian population in Afghanistan, the United States carried out an illegal military invasion of Afghanistan and the United States tortured prisoners of war. so that the application of international law that has been mutually agreed upon cannot be carried out. Some of the results of the analysis of violations of international law in the United States conflict with Afghanistan are that the United States carried out the killing and expulsion of the civilian population in Afghanistan, the United States carried out an illegal military invasion of Afghanistan and the United States tortured prisoners of war.

4.2 RECOMMENDATION

Through this paper, the researcher hopes that in the future International Law will really be implemented according to the laws or rules that have been mutually agreed upon by the countries in the world

by placing justice above everything, not power above everything. Because, if a rule is made but cannot be applied, respected and even unable to achieve justice. In fact, basically formed a rule is to enforce justice. When this is not achieved, then it is the same as the law of the jungle, who is strong wins.

One of the efforts that can be made by Afghanistan against violations committed by the United States is to submit several cases of violations of international law or war crimes to international courts, namely the Ad-Hoc International Criminal Court and the International Criminal Court (ICC), so that they can be tried.

REFERENCE

Rule of law:

- [1] The Hagg Convention I 1899 concerning the Use of Armaments
- [2] The III Geneva Convention of 1929 Concerning the Treatment of Prisoners of War
- [3] The Fourth Geneva Convention of 1949 concerning the protection of combatants and the civilian population from the effects of war
- [4] United Nations Charter

Book:

- [5] Sugiyono. (2017). Quantitative, Qualitative, and R&D Research Methods. Bandung : CV. Alfabeta.
- [6] Ahyar, Hardani, and et al. (2020). Book of Qualitative & Quantitative Research Methods. Yogyakarta: CV. Science Library.

Electronic Reference:

- [7] Juanda, Ogiandhafiz. (2021). The Taliban in International Legal Analysis. Retrieved 17 September 2021, from Mediaindonesia:<https://mediaindonesia.com/opini/430539/taliban-dalam-analysis-law-internasional>
- [8] Latukau, Fikry. (2020). International Criminal Law Enforcement Against Cases of US Military Violence against Afghan Prisoners of War. De Jure Journal of Legal Research, Vol.20 No. 2