

WAR BOOTY IN THE PERSPECTIVE OF INTERNATIONAL HUMANITARIAN LAW: A SIDE EFFECT OF ARMED CONFLICT AFGHANISTAN

¹Lia Yulia, ²Zurria Sakinah, ³Danial¹Faculty of Law, Universitas Terbuka^{2,3}Faculty of Law, Sultan Ageng Tirtayasa University, Serang, BantenCorrespondent email: bontobangun@gmail.com

Article History	:	
Submission	:	23 Sep 2024
Last Revisions	:	04 Des 2024
Accepted	:	20 Des 2024
Copyedits Approved	:	30 Des 2024

Abstract

War booty is a valuable object including military equipment taken forcibly from the opposing party during the war. The purpose of conducting war booty is to weaken the opposing party. The problem is first; What is the status of means of war as war booty in armed conflict based on the 1907 Hague Convention? Second; What are the side effects of the Taliban's actions in seizing American weapons after the armed conflict in Afghanistan? The method used is normative juridical, with a legal principles approach. While the data analysis is qualitative juridical analysis, which analyzes problem identification based on secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials. The results of this study are: First, the status of means of war as spoils of war in armed conflict based on the 1907 Hague Convention on Means of War as spoils of war which as long as the spoils are movable objects belonging to the state that can be used for military operations and not civilian objects then the spoils are the property of the military authorities occupying the area of conflict before there is a peace agreement from the warring parties; Second, that the side effect of the spoils of war by the Taliban against military vehicles, helicopters, drones, weapons and night goggles is compensation, while against objects that still exist must be returned in the event of a peace agreement, this is regulated in Article 53 of the Hague Convention 1907 Jo Article 54 paragraph 2 and 4 Additional Protocol 1 of 1977.

Keywords: Side Effects, International Humanitarian Law, Armed Conflict, War Booty.

A. INTRODUCTION

Booty of war is valuable objects including military equipment that are forcibly taken from the opposing party during war, the booty itself includes looting which means the act of stealing, or taking goods by force, in the midst of certain circumstances, one of which is war. Regarding means of war and booty of war, the ICRC in its glossary states "Booty of war designates generally armament, equipment, vehicles, or other goods taken from the enemy in time of war.

The 1899 and 1907 Hague Conventions on means (tools) and methods and also the regulation of means of war set out in the Lieber Code or Instructions for Government of Armies of the United States 1863 both of which contain detailed rules on all stages of land warfare, proper conduct of war, treatment of the civilian population, treatment of certain persons such as prisoners of war, wounded persons, and so on. However, it does not regulate in detail the spoils of war (Arlina Permanasari dkk, 1999).

The spoils of war are then clearly regulated by the provisions of international law that prohibit acts of plunder in war. Article 33 Fourth Geneva Convention: "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited.

The meaning of Article 33 of the Geneva Convention IV of 1949 on the protection of Civilian population above explains several provisions that the act of war booty "War Booty" or can be said "Pillage" includes acts that are opposed by international law, no protected person can be punished for an offense that he did not personally commit, all acts of intimidation or terrorism are prohibited. Looting is prohibited. Retaliation against protected persons and their property is prohibited. International customs governing both plunder and looting in war are organized by the International Committee of the Red Cross (ICRC). The Customary IHL Database contains research on common customs that have been accepted as law by states (Protokol Tambahan, 1977).

"Rule 52 Non-international armed conflicts 'Pillage' is prohibited under Additional Protocol II. Under the Statute of the International Criminal Court, 'pillaging a town or place, even when taken by assault,' constitutes a war crime in non-international armed conflicts. And rule 122 Customary 'pillage of personal belongings of persons deprived of their liberty is prohibited' from IHL databases ICRC.

The meaning of Article 52 of Additional Protocol II of 1977 on non-international conflicts above can be interpreted that looting is a war crime and is prohibited. The two general customs are considered a custom that must be implemented by the state in a state of war, and have been practiced by several countries that show the application of the three general customs in the military manuals of several countries.

In the case of the conflict in Afghanistan involving the Afghan government, the Taliban group and the United States Army, the civilian population, hospitals and educational institutions that resulted from the attacks of the conflicting parties were one form of violation of international humanitarian law. These attacks also happened to children and women where the attacks took the form of violence, harassment and intimidation.

Based on data obtained from the United Nations in Afghanistan (UNAMA), there were 2,177 civilians killed and 3,822 injured between January 1 and September 30, 2020. And this figure shows a 30% reduction in civilian casualties compared to the same period in 2019 (Amnesty International, 2020).

The casualties to Afghan civilians and the looting of U.S. war materiel by the Taliban were caused by a U.S. military offensive that began on October 7, 2001 and continued for several months, using ground-based bombers such as B-1, B-2 and B-52, carrier-based fighters such as F-14 and F/A 18, and Tomahawk cruise missiles launched from U.S. and British ships and submarines that resulted in the defeat of Taliban-controlled Afghanistan. The actions of the United States are considered to violate international law and make the position of the United States more solid as a superpower entity. Such an image is then exacerbated by the number of civilian casualties that have fallen as a result of mistargeting, and according to reports from the Taliban whose victims reach thousands of people.

Therefore, the defeat of the Taliban group that controlled the Afghan government was then utilized by the United States and its allies to form a new government in Afghanistan which ruled from 2001 to 2021. Then the Afghan government formed by the United States collapsed when the Taliban captured Kabul on August 15, 2021. The Taliban invaded the capital city of Kabul and took over the presidential palace. The takeover was in line with the Taliban's rapid progress in which the Taliban seized all but the Provincial Capitals of Afghanistan and Border Crossings.

Furthermore, the Taliban seized a \$6 million US Blackhawk Helicopter with various US equipment and captured a Russian helicopter as it was about to travel to Afghanistan. A series of videos shared on social media showed militants flying a Kremlin-made MI-17 aircraft around Kandahar city. Due to the ongoing power struggle by the military, there are concerns that the Taliban have taken American-made Blackhawk helicopters.

Research on armed conflict in Afghanistan was researched by Rendi Prahara Septiawedi in 2012. This researcher from Padjadjaran University discussed the Protection of International Prisoners of Terrorism in International Humanitarian Law; Case Study of the Detention of Taliban and Al-Qaeda Members by the United States in Afghanistan. The result of the research is that the armed conflict that occurred in Afghanistan is an international armed conflict so that humanitarian law must be applied. Against violations of humanitarian law committed by the United States to members of Al-Qaeda and Taliban in Afghanistan must be enforced through mechanisms that already exist in international law.

Furthermore, in 2017 Listya Saraswati from Andalas University discussed the Targeted Killing Policy by the United States (US) in Afghanistan as the Implementation of the Principle of Self-Defense reviewed from the perspective of International Law. The result of her research is that Self-defense is basically not customary international law because the elements have not been fulfilled to be recognized as customary international law.

Self-defense may only be carried out in urgent circumstances in response to an armed attack and the only way to defend the country's territory. Therefore, the US targeted killing policy in Afghanistan is not in accordance with the implementation of the principle of self-defense according to International Law. Targeted killing by the US using drones on the principle of self-defense is actually not self-defense because it does not fulfill the elements. Attacking Afghanistan first using drones without an armed attack is not self-defense, but a form of pre-emptive strike. This doctrine is not recognized in international law.

So, what distinguishes the two studies above from the research that the author is doing is that this research focuses more on War Booty after the war in Afghanistan. The problems in the author's research are as follows: First, What is the status of means of war as war booty in armed conflict based on the 1907 Hague Convention? Second, What are the side effects of the Taliban's actions in seizing American weapons after the armed conflict in Afghanistan?

B. RESEARCH METHODS

Research is a scientific activity related to analysis and construction that is carried out methodologically, systematically, and consistently. Methodological means in accordance with certain methods or methods. Systematic is based on a system, while consistent means the absence of conflicting things in a certain order (Soerjono Soekanto, 2010). This research uses normative juridical methods or library legal research. Normative juridical research is a legal research method conducted by examining library materials or secondary materials (Henny Muctar, 2015).

The data source used in this research is using secondary data, considering that the research technique used is Juridical-Normative. Secondary data itself is data obtained by means of library research or through document study activities related to this topic. The secondary data used by researchers consists of primary legal materials, secondary legal materials and tertiary legal materials.

One of the important processes in research is data collection using library research. Library study itself is a data collection technique from written materials. This method is used to collect secondary data, especially those related to the object of this research by examining or reading literature books and laws and regulations as well as other collections that have to do with the above problems, and in order to support research.

The data analysis used by researchers is qualitative. According to Soerjono Soekanto, a qualitative approach is actually a research procedure that produces descriptive data. This research was also conducted by comparing statutory regulations, provisions, and reference books (Amiruddin, 2012). Then it is analyzed qualitatively which provides an overview of the legal aspects and finally draws conclusions (Sukardi, 2008).

The research locations that the author uses in making this research include: Sultan Ageng Tirtayasa University Library; Sultan Ageng Tirtayasa University Faculty of Law Library; Banten Provincial Regional Library; and the National Library of the Republic of Indonesia

C. RESULTS AND DISCUSSIONS

Status of Means of War as War Booty in Armed Conflict Based on The Hague Convention 1907

The development of science and technology in the field of warfare has actually made humanitarian law increasingly burdened in terms of regulating restrictions on means of war, this relates to the tools allowed in conducting war and targets that are allowed to become targets of war or military objects.

So, the means and methods of war in International Humanitarian Law become objects that have an urgency to have concrete regulatory provisions and can coordinate the reality of war in the field related to means and methods of war. In the dictionary "not unlimited" and "excessive injury / unnecessary suffering" are often interpreted subjectively by countries at war. In fact, the 1907 Hague Convention has concretely regulated this matter.

Articles 22-28 of the 1907 Hague Convention on the means and methods of warfare state that the right of the belligerents to use means to injure the enemy is not unlimited. Furthermore, in addition to the prohibitions provided by specific Conventions, it is specifically prohibited to: Using poison or poisonous weapons; Killing or cruelly wounding persons or soldiers of the enemy; Killing or wounding an opponent who has laid down his arms, or who no longer has means of defense, or who has surrendered and so on.

Hugo Grotius in his work *De Jure Belli ac Pacis Libri Tres* states that the use of force must be limited by military interests, excessive force to achieve a military goal cannot be justified. Emeric de Vattel also stated that the State goes to war with the limited purpose of defeating the enemy's armed forces: "Devastations and destructions and seizures motivated by hatred and passion ... are clearly unnecessary and wrong (Joshua E. Kastenber, 1997) .."

So based on the expert opinion above, the military interest is only limited to paralyzing the opposing armed forces for the purpose of winning the war. The Hague Convention has also regulated how the provisions of military occupation and control. Article 42 of The Hague Convention stipulates: "A territory is declared occupied when it is actually under the control of enemy forces. Occupation applies only to those territories over which the powers of the sovereign described above can be established and exercised." Article 43 further provides:

"The authority of the legitimate authorities has actually passed into the hands of the Occupying Power which shall take all measures within its competence to ensure and promptly restore public order and security, with due respect for the laws of the country."

This indicates that military control and occupation is permissible in the territory of a warring state with the aim of restoring public order and security with respect for the laws of that state. Although this is very difficult in practice because usually the country at war the population that belongs to the army (not the army) is mixed with civilians who do not belong to the army.

So that the 1907 Hague Convention does not stop there in terms of regulating the spoils of war, in article 53 regulates:

"The occupying army may only take possession of cash, funds and securities which are the direct property of the state, weapons depots, means of transport and storage warehouses, and generally all movable objects belonging to the state which can be used for military operations.

All equipment, whether on land, at sea, or in the air, which is produced from the transmission of news or for the transport of people or goods, which is specifically regulated by maritime law, weapons warehouses, and generally all types of war equipment may be confiscated, even if the goods belong to individuals; however, the goods must be returned and compensation must be returned in time of peace".

The provisions in Article 53 answer the question of the Status of War Facilities as War Booty in Armed Conflict Based on the Hague Convention of 1907, namely as long as the booty is movable objects belonging to the state which can be used for military operations and not civilian objects, then the booty is the property of the military authorities occupying the conflict area before there is a peace agreement from the warring parties. Damaged and destroyed objects can be compensated, while objects that still exist must be returned if a peace agreement is reached. In other words, these objects may be destroyed even though they are spoils of war because there is a compensation mechanism.

Article 54 paragraph 2 of Additional Protocol 1 of 1977 emphasizes the prohibition to attack, destroy, move or damage objects and facilities that are absolutely necessary for the survival of the civilian population, such as food in various forms, agricultural areas that produce food, crops, livestock, drinking water installations, irrigation and other primary needs of the civilian population. Furthermore, Article 54 paragraph 4 of Additional Protocol 1 emphasizes that these objects and facilities may not be used as targets for retaliation for a military action.

This regulation implicitly regulates war booty, namely what is a military target and may be seized and what is an object of war and is prohibited from being attacked and seized unless there is a connection with defending the territory (Arief Yulianto.2002).

"Military" in English "military" is "the soldiers; the army, the armed forces" which in Indonesian can be interpreted as soldiers or soldiers; army; armed forces (consisting of several forces, namely land, sea, and or marines and air). In a modern nation state, what is called the military is the armed forces which usually consist of 3 or 4 armed forces, namely land, sea, air and/or marines. While the police, although given the authority to hold weapons, are not included in it'.

From this definition it shows that military objects are the means and infrastructure used by the armed forces during an armed conflict, Article 52 paragraph 2 of Additional Protocol I defines military targets as "military targets are limited to objects which by their nature, location, purpose or use make an effective contribution to military action which if destroyed in whole or in part, captured or neutralized, in the circumstances prevailing at the time, provide a definite military advantage. There are two criteria for identifying military targets (Anicee Van Engeland, 2011):

1. The nature, place, purpose, or use of the object must effectively contribute to military action;
2. The object's destruction, capture, or neutralization and has an effective contribution to military action. In case of doubt about whether an object is a civilian or military object.

In the development of International Humanitarian Law regulations, there are several provisions of international law that prohibit acts of plunder/looting in war, including (I Gusti Agung Putra Trisnajaya, 2012):

1. The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949. Article 33 clearly states that "pillage is prohibited";
2. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1997. Several provisions in the Protocol also explain the act of "pillage" as an act that is contrary to international law in an internal conflict;
3. Rome Statute of the International Criminal Court. Article 8 states that "pillaging a town or place, even when taken by assault" is a war crime.

The above international regulation uses the term "Pillage/Pillaging" which in Black's Law Dictionary is defined as: "the forcible seizure of another's property, especially in war", namely the seizure/plundering of someone's property in a state of war. So it can be said that the act of seizure/plunder is a war crime. The seizure and looting in question are against civilian objects, not military targets.

The concept of the principle of distinction in international humanitarian law emphasizes the protection and limitation of the use of violence in armed conflict against: First, those who do not or are no longer directly participating in hostilities; Second, the limitation of the number of means used, solely to achieve the objectives of the conflict, namely to weaken the enemy's military potential (Geoffrey, 1991).

Based on the provisions of the 1907 Hague Convention on war booty, it has been regulated that: in addition to the subject distinction (differentiating the population into combatants and civilians), this principle of distinction also distinguishes objects in a country in conflict into two categories, namely civilian objects and military objectives. Civilian objects are all objects that are not military objects, and therefore cannot be subject to seizure by the disputing parties. On the other hand, if an object falls into the category of military targets, then the object can be seized and becomes the right of the military authorities with certain limitations in accordance with the provisions of Humanitarian Law.

Side Effects of Taliban's Actions in Seizing American Weapons After Armed Conflict in Afghanistan

According to Carl Von Clausewitz, War is a large-scale fight, a continuation of policies in other forms. So that war has a very broad meaning, both physical war (using strength/hard/power/force) and non-physical (soft power). This definition is goal-oriented, everything that has the aim of overthrowing/destroying another group/nation/country/tribe/religion is war (Carl Von Clausewitz, 2007), so this definition is not limited to armed conflict alone. Clausewitz further said "war is nothing but a duel on an extensive scale (Carl Von Clausewitz, 1997) " this statement shows that war is not something that humans need or in other words "nothing" war for Clausewitz is just a fight between 2 parties but on a large scale, so that it seems to be the business of many other parties so that International Law regulates it.

Furthermore, Clausewitz argued that "war therefore is an act of violence intended to compel our opponent to fulfill our will... and there is no logical limit to the application of that force" (Roxborough, Ian, 1994). This opinion shows that war is a means that comes from interests, which uses violent means so that the opponent fulfills the desires of the warring parties, the goal will be achieved without any limitations "there is no logical limit to the application of that force".

Clausewitz saw war as a paradoxical trinity, consisting of violence, hatred and hostility; opportunity and possibility; and elements of subordination (Mahken, Thomas G, 2007). This concept is still used to regulate war strategies today, although in fact Clausewitz never directly attached the 3 elements above to a particular role, but some researchers liken violence, hatred, and hostility to the will of the people to fight, opportunity and possibility come from military strength, elements of subordination come from the government/political policy.

The trinity of war proposed by Clausewitz is a composition of war that explains the relationship between the government, the military, and the people, as factors that determine the success of war (Papaj, C.J, 2008).



Picture 1

Source: DCAF's International Security Sector Advisory Team (ISSAT)

Based on Clausewitz's theory of war, Afghanistan as a country currently involved in war does not have 3 compositions that determine success in war. The United States is the only place Afghanistan depends on in the war against the Taliban, Afghanistan does not have a government that is sovereign enough and able to determine its own destiny, does not have adequate military power, and the Afghan people have no desire to go to war because the beginning of their history of conflict was the Taliban (Al-Qaeda) with the United States which was triggered by the 9/11 tragedy. According to Thomas Lindemann, there are 4 things that motivate war (Thomas Lindemann, 2010):

1. Prestige (Pride);
2. Antipathy (antipathy) which is a very striking difference in identity;
3. Universal dignity (universal self-esteem/honor) which is a war caused by a violation of the universal standards of state sovereignty;
4. Particular dignity (particular self-esteem).

In these points there is no single motivation for war as a way to defend the safety (country/nation/group/religion/tribe) from an attack, the 4 (four) points above are about self-esteem and declaring that they will go to war because of self-esteem, not defending the safety of their group, when a country declares war, the result is a risk that is already known and indirectly accepted by the party that wants to go to war.

The armed conflict between Afghanistan (Taliban Group) and the United States has been going on since 2001 to 2021, resulting in loss of life and property by both parties. Aditya Jaya Aswara in the Kompas daily wrote that (Aditya Jaya Aswara, 2021):

"The beginning of the Afghanistan war can be traced back to 2001, when the US responded to the 9/11 tragedy in New York and Washington, where nearly 3,000 people died. The leaders of "Uncle Sam's Country" identified Al Qaeda and its leader, Osama bin Laden, as the masterminds of the attack. Bin Laden was then in Afghanistan under the protection of the Taliban, who had been in power since 1996. The Taliban refused to hand him over, and the 2003 American invasion of Afghanistan quickly eliminated the militant group."

Aditya's writing above confirms that the American invasion of Afghanistan began with the tragedy of the September 11 attacks, which were 4 suicide bombs claimed to have been ordered by Osama Bin Laden to explode in the United States. The United States claims that Osama Bin Laden was a terrorist based on Islamic teachings with his organization called Al-Qaeda. This resulted in the Afghan government controlled by the Taliban group finally being defeated by the United States and its allies and then the United States formed a new government led by Ghani.

However, after the formation of a new government in Afghanistan by the United States and its allies, it did not weaken the spirit of the Taliban group to retake the Afghan government under Ghani's leadership. Poltak Partogi Nainggolan in his writing in the DPR R Expertise Agency Journal said that (Poltak Partogi Nainggolan, 2021):

"The presence of the US military in Afghanistan has created a high dependence on the new government in all matters. The capacity of the Afghan military to be able to maintain the security of its country from the Taliban group that has been eliminated remains weak. Realizing the futility of this with the increasing losses, Biden continued Trump's decision, immediately withdrawing his troops, without notification to the Ghani government. Trump's negotiations with the Taliban were initiated from the start without the approval and presence of the Ghani government. Trump's decision was not purely to achieve peace by fulfilling the conditions put forward by the Taliban, leaving the country. Because, it is not the tradition of the US to submit to the demands of its enemies. However, because he wanted to reduce the cost of longer US military operations in Afghanistan. More than US \$ 88 billion (Rp. 1.26 quadrillion) has been spent by the US for Afghanistan's security."

In the span of 20 years, America and Afghanistan have continued to face resistance from the Taliban without any peace efforts from either party, which eventually led to the Taliban successfully launching an offensive attack and retaking Kunduz, Kandahar, and Mazhar-i-Sharif, a symbol of the success of US retaliation for 9/11. Afghanistan's dependence on the United States shows that so far the Ghani government has only been used as a symbol of war between groups in one country by the United States, so that it seems that the war is between the Taliban and Afghanistan.

The capital, Kabul, was captured by the Taliban in just one day, because Ghani, instead of desperately defending Kabul, fled to the United Arab Emirates (UAE). The statement to prevent bloodshed is just an excuse, as a reflection of disappointment with the US, a patron who is increasingly aware that his allies only obey the US dollar and direct military action. Ghani's government had recalled civilian militia groups to form a national defense, accompanied by anxiety, because the peace offer to share power with the Taliban on April 28, 2021, was not responded to. He knows that his country has inherited a long history of violence. Mohammad Najibullah, the last Soviet-aligned ruler, was tortured by the Taliban before being executed on September 26, 1992.

So what kind of dignity does the Ghani government want to maintain in the Taliban-Afghan war, which the United States is willing to use to attack Al-Qaeda, which violated universal standards of state sovereignty in the 9/11 suicide bombings. The United States has spent billions of dollars supplying the Afghan military with the tools to defeat the Taliban, but the rapid fall of Kabul and other major cities has left much of that equipment in the hands of the insurgents.

“The withdrawal of US troops has been followed by NATO and other US allies in Afghanistan, namely Australia. Meanwhile, Germany has withdrawn its military long before. The withdrawal of all US troops marks the end of the presence of the superpower's troops on Afghan soil after almost 20 years of operation to destroy the Taliban regime after 9/11, because it was considered to have colluded in the Al-Qaeda attacks (Poltak Partogi Nainggolan, 2021)”.

Between 2002 and 2017, they gave the Afghan military around US\$28 billion (\$39 billion) in weapons and military equipment. Those weapons are now being brandished on Taliban social media as fighters pose with American-made rifles and vehicles are seen loaded with heavy weapons and mounted with artillery.

In the 2020-2021 period, the insurgents inspected long lines of vehicles and opened crates of new firearms, communications equipment and even military drones. Here are some of the war booty left behind by Afghan soldiers as they fled, surrendered or defected to the Taliban, including:

a. Military Vehicles

A U.S. official told Reuters that while there are no exact figures, the current intelligence assessment is that the Taliban are believed to control more than 2,000 armored vehicles, including U.S. Humvees worth about \$308,000 each. Forbes reported that in June alone, the Taliban captured 700 trucks and Humvees from Afghan security forces as well as dozens of armored vehicles and artillery systems.

b. Helicopters and Drones

The U.S. provides Afghan forces with 208 aircraft, according to the U.S. Government Accountability Office. These include Blackhawk helicopters, scout attack helicopters, ScanEagle military drones, light attack aircraft, and military transport aircraft, but not all of them are behind. In the past week, many of those aircraft have been used by Afghan pilots fleeing the Taliban. One U.S. official said that between 40 and 50 of the aircraft have been flown to Uzbekistan by Afghan pilots seeking refuge.

c. Guns and Night Vision Goggles

Since 2003, the United States has provided Afghan forces with at least 600,000 infantry weapons including M16 assault rifles, 162,000 pieces of communications equipment, and 16,000 night vision goggles. Videos have circulated of Taliban fighters trading in AK-47s for US-made rifles such as the M16. Body armor, communications equipment, shoulder-mounted grenade launchers, and even military drones are also believed to be among the looted items.

According to the author, the spoils of war belonging to the United States are closely related to military interests or military operations. So the Taliban's spoils in the form of military vehicles, helicopters, drones, weapons, and night vision goggles are objects that the Taliban are allowed to control because they have succeeded in occupying and controlling the military area of conflict. This is also in accordance with the provisions of the Hague Convention and is not included in civilian objects and therefore included in military targets.

The above is in line with the definition of war booty, namely in the form of movable objects owned by the state that can be used for military operations and not civilian objects, then the booty is the property of the military ruler in this case the Taliban who occupy the conflict area. Before there is a peace agreement from the warring parties, the Taliban has the right to control based on the 1907 Hague Convention. Damaged and destroyed objects can be replaced, while objects that are still there must be returned if a peace agreement is made, in other words, these objects may be destroyed even though their status is war booty because there is a compensation mechanism.

C. CONCLUSION

Status of Means of War as War Booty in Armed Conflict Based on the Hague Convention of 1907, namely as long as the booty is movable objects belonging to the state that can be used for military operations and not civilian objects, then the booty is the property of the military authorities occupying the conflict area before there is a peace agreement from the warring parties. That the side effects of the Taliban's war booty against military vehicles, helicopters, drones, weapons and night vision goggles are actions that are still permitted in the Hague Convention, because these objects are included in military targets. However, damaged and destroyed objects can be replaced, while objects that are still there must be returned if a peace agreement is reached, in other words, these objects may be destroyed even though their status is war booty because there is a compensation mechanism. This is regulated in Article 53 of the Hague Convention 1907 in conjunction with Article 54 paragraphs 2 and 4 of Additional Protocol 1 of 1977.

BIBLIOGRAPHY

- Abdullahi Ahmed, *Islam dan Negara Sekular*, Mizan Media Utama (MMU), Bandung, 2007.
- Ahmad baharudin Naim, *Hukum Humaniter Internasional*, Universitas Lampung, Bandar Lampung, 2010.
- Ali Muhammad, *Kamus Lengkap Bahasa Indonesia Modern*, Pustaka Amani, Jakarta, 1980.
- Ambarwati, et. all., *Hukum Humaniter Internasional dalam Studi Hubungan Internasional*, Rajawali Press, Jakarta, 2013.
- Amiruddin, *Pengantar Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, 2012.
- Andrey Sujatmoko, *Hukum HAM dan Humaniter*, Raja Grafindo Persada, Jakarta 2015.
- Anicee Van Engeland, *Civilian Or Combatant*, New York: Oxford University Press, 2011.
- Arief Yulianto, *Hubunan Sipil Militer Di Indonesia Pasca Orde Baru*, Ditengah Pusaran Demokrasi, PT Raja Grafindo Persada, Jakarta, 2002.
- Arlina Permanasari dkk, *Pengantar Hukum Humaniter*, Jakarta International Committee of The Red Cross, Jakarta, 1999.
- Bambang Sunggono, *Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, 2007.
- Bruggink J.J.H, *Refleksi Tentang Hukum [Rechts Reflecties, Grondbegrippen uit de rechtsheire]*, diterjemahkan oleh B. Arief Sidharta, PT. Citra Aditya Bakti, Bandung, 1996.
- Carl Von Clausewitz, "What is War?". dalam On War, Hertfordshire, Wordworth Classic of World Literature, 1997.
- _____, *On War*, Terj Michael Howard dan Peter Paret, Oxford University Press, New York, 2007.
- Carter Malkasian, *The American war in Afghanistan : a history*, Oxford University Press, New York, 2021.
- Cholid Narbuko dan Abu Ahmadi, *Metodologi Penelitian*, Bumi Aksara, Jakarta, 1997.
- Frits Kalshoven, *Constraint on the Waging of War*, Second Edition, ICRC, 1987.
- Gary C. Schroen. *First In: An Insider's Account of How the CIA Spearheaded the War on Terror in Afghanistan*, Ballantine Books, New York, 2005.
- Haryomataram, *Hukum Humaniter*, Rajawali Press, Jakarta, 1994.
- Headquarters Department Of The Army, *Units Credited With Assault Landings*, Washington Dc, 25 September 2006.

- Henni Muchtar, *Analisis Yuridis Normatif Sinkronisasi Peraturan Daerah Dengan Hak Asasi Manusia*, Jurnal Humanus, Vol. 14 No.1 Tahun 2015.
- Husein Umar, *Metode Penelitian Untuk Skripsi dan Tesis Bisnis*, PT. Raja Grafindo, Jakarta, 2002.
- Iwan Hadibroto, et al, *Perang Afghanistan: Di Balik Perseteruan AS vs Taliban*, (Jakarta: Gramedia Pustaka Utama, 2001.
- J. G. Starke, *Pengantar Hukum Internasional 2*, terj. Sumitro L.S Danuredjo, Edisi Ke Sembilan Jilid I, Aksara Persada Indonesia, Jakarta, 1988.
- Jean Pictet, *Development and Principles of International Humanitarian Law*, Martinus Nijhoff Publisher-Henry Dunant Institute, 1985.
- Joshua E. Kastenberg, *The Legal Regime for Protecting Cultural Property during Armed Conflict*, The Air Force Law Review, Vol. 42, 1997.
- Mahken, Thomas G, *Strategic Theory*. dalam John Baylis et.al (ed.). *Strategy in the Contemporary World*, Oxford University Press, Oxford, 2007.
- Malcolm N. Shaw, *International Law*, Fifth Edition, Cambridge University Press, United Kingdom, 2003.
- Mochtar Kusumaatmadja, *Hukum Internasional Humaniter dalam Pelaksanaan dan Penerapannya di Indonesia*, Bina Cipta, Bandung, 1980.
- _____, *Konvensi-Konvensi Palang Merah 1949*, PT Alumni, Bandung, 2002.
- Nils Melzer. *Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law*. ICRC. Geneva, 2009
- Papaj, C.J, *Clausewitz 21st Century Warfare. Strategy Research Project*, U.S. Army War College, Pennsylvania, 2008
- Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Preneda Media Group, Jakarta, 2005
- Rhona K.M. Smith, dkk, *Hukum Hak Asasi Manusia*, Penerbit Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia (PUSHAM UII) Yogyakarta, 2008.
- Ria Wierma Putri, *Hukum Humaniter Internasional*, Universitas Lampung, Bandar Lampung, 2011
- Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkatan*, Raja Grafindo Persada, Jakarta, 2003
- Suardi, *Konflik Bersenjata Dalam Hukum humaniter Internasional*, Jurnal Ilmiah Vol. 2, 2005
- Sudarsono, *Kamus Hukum*, Rineka Cipta, Jakarta, 2007
- Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)*, Liberty, Yogyakarta, 1991
- Sugeng Istanto, *Penerapan Hukum Humaniter Internasional pada orang sipil dan perlindungannya dalam pertikaian bersenjata*, Massma Sikumbang, Jakarta, 1997
- Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*, Alfabeta CV, Bandung, 2017
- _____, *Metode Penelitian Pendidikan Pendekatan Kuantitatif, Kualitatif, dan R&D*, Alfabeta CV, Bandung, 2014
- Sukardi, *Metodologi Penelitian Pendidikan Kompetensi dan Prakteknya*, Bumi Aksara, Jakarta, 2008
- Theodore A. Couloubis & James H. Wolfe, *Introduction to International Relations*, Prentice Hall 1986
- Thomas Lindemann, *Causes Of War : the Struggle for Recognition*, ECPR Press, Colchester, 2010
- Wahyu Wiguna, *Hukum Humaniter dan Hak asasi Manusi, (ed.)*, Lembaga Studi dan Advokasi Masyarakat, Jakarta, 2007

Danial, “Efektifitas Konsep Prinsip Pembedaan Hukum Humaniter Internasional Sebagai Upaya Perlindungan Korban dalam Konflik Bersenjata Modern”, *Jurnal Media Hukum*, Vol. 23 No.2, 2016.

DOI:<https://media.neliti.com/media/publications/114186-ID-revitalisasi-prinsip-pembedaan-distincti.pdf>

Dyan F.D.Sitanggang, “Pengrusakan Tempat Bersejarah Dalam Perang Antarnegara Sebagai Pelanggaran Hukum Humaniter Internasional”, *Lex et Societatis*, Vol.1 No. 2, 2013.

DOI:<https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/1745>

George Wilson, *Grotius*, "Law of War and Peace", *American Journal of International Law*, Vol. 35, 1941.

DOI:<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/grotius-law-of-war-and-peace/91086E1A84B0BCFB5CF0B1029D1D592E>

Grasyela Rosalita Terok, “Penggunaan Senjata Pemusnah Massal Dalam Konflik Bersenjata Menurut Hukum Humaniter Internasional”, *Jurnal Lex Et Societatis*, Vol. 5 No. 7, 2017.

DOI:<https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/18097/17621>

Jean-Marie Henckaerts, “Studi (kajian) tentang Hukum Humaniter Internasional Kebiasaan: Sebuah sumbangan bagi pemahaman dan penghormatan terhadap tertib hukum dalam konflik bersenjata”, *Jurnal Red Cross*, Cambridge University Press, Vol 87 No 857, 2005.

DOI:https://www.icrc.org/en/doc/assets/files/other/indo-irrc_857_henckaerts.pdf

Levina Yustitianiingtyas, “Perlindungan Orang Sipil Dalam Hukum Humaniter Internasional”, *Jurnal Komunikasi Hukum*, Vol 2, No 1, 2016.

DOI:http://repository.umsurabaya.ac.id/5426/1/PERLINDUNGAN_ORANG_SIPIL_DALAM_HUKUM_HUMANITER_INTERNASIONAL.pdf

Poltak Partogi Nainggolan, “Taliban Merebut Kembali Kekuasaan Di Afghanistan”, *Jurnal Badan Keahlian DPR RI*, Vol 13 No. 16, 2021.

DOI:<https://docplayer.info/217302675-Taliban-merebut-kembali-kekuasaan-di-afghanistan.html>

Roxborough, Ian, “Clausewitz and the Sociology of War”. *The British Journal of Sociology*, Vol. 45 No. 4, 1994.

DOI:<http://people.uncw.edu/ricej/SOC490/Clausewitz%20and%20the%20Sociology%20of%20War%20by%20Ian%20Roxborough.pdf>

Ryan J. Vogel, “Drone Warfare and The Law of Armed Conflict”, *Denver Journal of International Law and Police*, Vol 39 No.1, 2010.

DOI: <https://digitalcommons.du.edu/djilp/vol39/iss1/3/>

Aditya Jaya Iswara, *Taliban Kuasai Afghanistan*, <https://internasional.kompas.com/read/2021/08/10/170744370/kisah-perang-afghanistan-awal-invasi-dan-siapa-taliban?page=all> accessed on February 10, 2022

Amnesty Internasional, *Afghanistan 2020*, <https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/afghanistan/report-afghanistan/> accessed on October 1, 2021, 23.47 WIB

Anonim, *Belanda Diperintahkan Bayar Ganti Rugi Keluarga Korban Perang Kemerdekaan*, *Voa Indonesia*, 11 Maret 2015 <https://www.voaindonesia.com/a/belanda-diperintahkan-bayar-ganti-rugi-2676188.html> accessed on May 12, 2022

- Anonim, *Harta Rampasan Perang di Zaman Rasullullah*, Mas'oem University, Sumedang, 2021, <https://masoemuniversity.ac.id/berita/harta-rampasan-perang-di-zaman-rasullullah.php> accessed on January 28, 2022
- Council on Foreign Relations, *The U.S War in Afghanistan*, <https://www.cfr.org/timeline/us-war-afghanistan>, accessed on October 2, 2021, 00.04 WIB.
- How Does Law Protect in War, *War of Booty*, <https://casebook.icrc.org/glossary/booty-war>, accessed on September 7, 2021, 21.37 WIB
- I Gusti Agung Putra Trisnajaya, *Pengaturan Hukum Internasional tentang Perampasan Harta Saat Perang*, HukumOnline, Rabu 26 Desember 2012, <https://www.hukumonline.com/klinik/a/dasarhukuminternasionaltentang-harta-rampasan-perang-lt4fcf09ca090b9> accessed on January 27, 2022
- ICRC, How does IHL regulate the means and methods of warfare, <https://blogs.icrc.org/ilot/2017/08/13/ihl-regulate-means-methods-warfare/>, accessed on November 18, 2021, 04.48 WIB.
- IHL Data Base Customary, *Rule 122*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter37_rule122, accessed on September 17, 2021, 17.05 WIB.
- IHL Data Base Customary, *Rule 52*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule52, accessed on September 17, 2021, 17.03 WIB.
- International security assistance force (ISAF) : *Key fact anda figures*, NATO international, 4 maret 2011, https://www.nato.int/isaf/placemats_archive/2011-07-26-ISAF-Placemat.pdf, accessed on November 15, 2021.
- Jordan Williams, *GOP Lawmakers Press Administration On Us Weapons Left Behind In Afghanistan*, The Hill, United States, 18 Januari 2022 <https://thehill.com/policy/defense/590170-gop-lawmakers-press-administration-on-us-weapons-left-behind-after-afghanistan> accessed on February 10, 2022.
- Kementrian Pendidikan dan Kebudayaan, *Badan Pengembangan dan Pembinaan*, <https://badanbahasa.kemdikbud.go.id/lamanbahasa/node/2278>, accessed on November 18, 2021, 04.20 WIB.
- Lillian Goldman Law Library. *Laws of War : Laws and Customs of War on Land (Hague IV)*; October 18, 1907. 2008. Diakses dari alamat <https://avalon.law.yale.edu> accessed on January 22, 2022.
- Marcheilla Ariesta, *Taliban Pamer Senjata Rampasan, AS Khawatir Disalahgunakan*, Medcom, 21 Agustus 2021 <https://www.medcom.id/internasional/eropa-amerika/nbwXoe5k-taliban-pamer-senjata-rampasan-as-khawatir-disalahgunakan> accessed on February 20, 2022.
- Muhammad Idris, *Apakah Indonesia Mendapat Ganti Rugi dari Jepang yang Pernah Menjajah?*, Kompas.com accessed on May 17, 2022.
- Richard Norton dan Taylor, *Afghanistan 'falling into hands of Taliban'*, The Guardian, United States, 22 November 2007, <https://www.theguardian.com/world/2007/nov/22/afghanistan.richardnortontaylor> accessed on February 9, 2022.
- The Geneva Convention of 12 August 1949, *Volume IV*, https://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-IV.pdf, accessed on November 10, 2021, 11.29 WIB.
- Tom Pyman, *Air Taliban : Fighters seize \$6million US Blackhawk helicopters alongside tons of American equipment - while taking to the skies in captured Russian choppers as advance approaches outskirts of Kabul*, <https://www.dailymail.co.uk/news/article-9893929/Taliban-fighters-control-skies-Afghanistan-seizing-mi-17-helicopters.html>, accessed on October 2, 2021,

Tommy Patrio Sorongan, *Kabul has Fallen! Taliban Kuasai 'Harta Karun' Rp 43 Ribu T*, CNBC Indonesia, 16 August 2021

<https://www.cnbcindonesia.com/news/20210816123243-4-268761/kabul-has-fallen-taliban-kuasai-harta-karun-rp-43-ribu-t> accessed on February 20, 2022.

Tracey Shelton, *The Taliban's new armoury of US-made equipment includes planes, guns and night-vision goggles*, ABC News, 20 Agustus 2021 <https://www.abc.net.au/news/2021-08-20/taliban-new-us-made-war-chest-afghanistan/100393572> accessed on February 10, 2022.

Yoram Dinstein, *Booty in Warfare*, Oxfrod Public International Law, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e256>, accessed on October 6, 2021,