

SKRIPSI

LEGAL PROTECTION OF INDONESIAN HOSPITALS IN PALESTINE FROM THE ISRAELI DEFENSE FORCES (IDF) AN INTERNATIONAL HUMANITARIAN LAW PERSPECTIVE



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**INTERNATIONAL LAW DEPARTEMEN
TFACULTY OF LAW
HASANUDDIN UNIVERSITY
MAKASSAR
2024**



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Submitted as The Requirements to Achieve Bachelor's Degree In The
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MAKASSAR**

2024



PENGESAHAN SKRIPSI

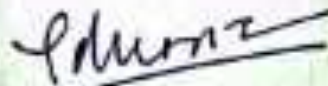
**LEGAL PROTECTION OF INDONESIAN HOSPITALS IN PALESTINE FROM THE
ISRAELI DEFENSE FORCES (IDF) AN INTERNATIONAL HUMANITARIAN
LAW PERSPECTIVE**

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AN INTERNATIONAL HUMANITARIAN LAW PERSPECTIVE**

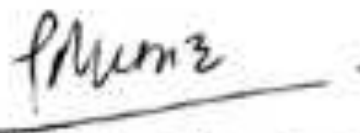
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Major : Legal Study

Stating truly that the writing of a thesis entitled

LEGAL PROTECTION OF INDONESIAN HOSPITALS IN PALESTINE FROM THE ISRAELI DEFENSE FORCES (IDF) AN INTERNATIONAL HUMANITARIAN LAW PERSPECTIVE is truly my own work. As for what is not my work in writing this thesis, it is given a citation mark and shown in the bibliography.

If in the future it is proven that my statement is not true, I am willing to accept sanctions in accordance with the regulations of the Minister of National Education of the Republic of Indonesia Number 17 of 2010 and the applicable laws and regulations.

Makassar, July 2024

Stated by,



Muhammad Rizal Al Munawir

NIM. B011201362



FOREWORD

All praise and gratitude are due to Allah SWT for all His lessings, love and grace so that the author can compile and complete the thesis which is a requirement to complete the study period and obtain a Bachelor of Law Study Program, Department of International Law, Faculty of Law, Hasanuddin University.

With all humility, the author would like to dedicates and express deepest gratitude to the author's parents, H. Muhammad Nawir, S.E and Hj. Eni Yuliatin, S.M who have cared for, raised, prayed for, and provided endless support to the author so that he could complete this thesis. The author would also like to thank the author's siblings, Muhammad Rapli Al Munawir, S.E

On this occasion the author also would like to express gratitude and respect to the main-supervisor of this thesis, Prof. Dr. Abdul. Maasba Magasing, S.H., M.H. who gave authors valuable guidance and knowledge to the author. As well for the main examiner of this thesis, Dr. Birkah Latif S.H., M.H., LL.M and the assistant examiner Dr. Kadaruddin, S.H., M.H. CLA who also provide knowledge and advice during the process of this thesis.

The author would also like to express his gratitude to:

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3. Dr. Muh. Ilham Arisaputra, S.H., M.Kn. as the Head of the Bachelor of Law Study Program, Faculty of Law, Hasanuddin University.
4. Dr. Birkah Latif, S.H., M.H., LL.M. as the Head of the International Law Department, Faculty of Law, Hasanuddin University, and Dr. Kadaruddin, S.H., M.H., CLA as the Secretary of International Law Department, Faculty of Law, Hasanuddin University.
5. All Lecturers of the Faculty of Law, Hasanuddin University, who cannot be mentioned one by one, who have provided quality knowledge and insight to the author during his education.
6. ILSA Chapter UNHAS and *Himpunan Pengusaha Muda Indonesia (HIPMI) PT UNHAS* as the place for the authors to experiencing organizational world to make the authors much more discipline and doing things with such structural ways.
7. Friends of International Class 2020, consist of Yayat, Hisyam, Winda, Fitri, Niscut, Sansan, Rifqi. Thanks for being a great classmate for the past more less 4 years on my college era. Hopes your future ahead would be great and will meet again on the reunion when we will be successful than ever.



Family, RITA stands for Rizal, Iboo, Tata, Alief. These 4 people
ege will be the pile of the future cluster. We will indeed write many

engraved memories, but all in line with success.

9. Andi Nurul Aqilah Anka, who has been the light in every step I take. Within every page of this thesis, there is your unwavering support, love, and sincerity. Thank you for being my pillar when I am weary, and my inspiration when my spirit wanes. Your presence is the greatest gift that makes every struggle worthwhile. With love and gratitude, this work is also for you .

10. REPLIK 2020, which the author cannot mention one by one who have accompanied from the first day of entering as a student, and other opportunities in the framework of the orientation.

The author realizes that this thesis has many shortcomings and is far from perfect. For this reason, the author hopes for input in the form of constructive criticism and suggestions so that this paper will be much better in the future, as well as useful for readers and able to contribute to the development of science, especially in the field of law.

Makassar,

2024



Muhammad Rizal Al Munawir

ABSTRAK

MUHAMMAD RIZAL AL MUNAWIR (B011201362), dengan judul **"Perlindungan Hukum Terhadap Rumah Sakit Indonesia di Palestina dari Pasukan Pertahanan Israel (IDF) dalam Perspektif Hukum Humaniter Internasional"** di bawah bimbingan Abdul Maasba Magasing selaku Dosen Pembimbing.

Penelitian ini bertujuan untuk mengetahui pelanggaran kemanusiaan dalam serangan Israel terhadap rumah sakit Indonesia di Palestina dalam perspektif hukum humaniter internasional.

Metode penelitian yang digunakan dalam penelitian ini adalah penelitian hukum normatif dengan menggunakan pendekatan kasus dan pendekatan perundang-undangan. Kemudian, sumber bahan hukum yang digunakan adalah peraturan perundang-undangan, buku-buku, jurnal, serta pandangan dari beberapa ahli yang nantinya akan dianalisis secara menyeluruh dan dijelaskan dari suatu perspektif.

Hasil penelitian menunjukkan bahwa (1) perlindungan hukum terhadap rumah sakit Indonesia di Palestina dari tindakan Pasukan Pertahanan Israel (IDF) menghadirkan tantangan yang kompleks yang berakar pada hukum humaniter internasional, hubungan diplomatik, dan dinamika geopolitik. (2) perlindungan hukum terhadap rumah sakit Indonesia di Palestina dari tindakan Pasukan Pertahanan Israel (IDF) merupakan masalah kemanusiaan yang kritis yang membutuhkan perhatian mendesak dan upaya bersama di tingkat nasional, regional, dan internasional.

Kata kunci: Rumah Sakit Indonesia, Hukum Humaniter Internasional, Pasukan Pertahanan Israel.



ABSTRACT

MUHAMMAD RIZAL AL MUNAWIR (B011201362), with the title *"Legal Protection of Indonesian Hospitals In Palestine From The Israeli Defense Forces (IDF) An International Humanitarian Law Perspective"* under the Guidance of **Abdul Maasba Magasing** as the Supervisor.

This research aims to determine the humanitarian violations in Israel's attacks on Indonesian hospitals in Palestine from an international humanitarian law perspective.

The research method used in this research is normative legal research using a case approach and a statutory approach. Then, the sources of legal materials used are statutory regulations, books, journals, as well as the views of several experts which will later be analyzed thoroughly and explained from a perspective.

The results of the research show that (1) the legal protection of Indonesian hospitals in Palestine from actions by the Israeli Defense Forces (IDF) presents complex challenges rooted in international humanitarian law, diplomatic relations, and geopolitical dynamics. (2) the legal protection of Indonesian hospitals in Palestine from actions by the Israeli Defense Forces (IDF) is a critical humanitarian issue that requires urgent attention and concerted efforts at the national, regional, and international levels.

Keywords : Indonesian hospitals, International Humanitarian Law, Israeli Defense Forces.



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CHAPTER I

INTRODUCTION

A. Problem Introduction

In the conception of modern science. The meaning of knowledge is bound to boundaries appropriate to position ontology from this science. These limitations are subject to the style of positivism which has the theoretical implication that every science is different from other branches of science. And in determining these boundaries, a definition is needed to gather all the substance of this science, so that it can explain the position of that science. However, if we look into the realm of legal science, the question of the definition of a legal science is a topic of debate to this day among legal science researchers. Achmad Ali provides various definitions presented by legal experts, one of which departs from the view of Hans Kelsen who states that: ¹

"Law is coercive order of human behavior, it is the primary norm which stipulates the sanction. (Law is a compelling order for human behavior. Law is a primary norm that determines sanctions)".

In this definition, it can be understood that Hans Kelsen describes that law is a coercive social system that contains orders and

coercive in nature. Kelsen stated that the existence (form) of law

Ahmad Ali, 2017, *Revealing Legal Theory and Judicial Theory Including*
tion of Laws (Legisprudence) Volume 1 Initial Understanding, Jakarta: Kencana,



can only be found in a country. Therefore, with this argument, it can be concluded that the essence of the state is only found in a coercive social system, so that the meaning of the Kelsen view of law and the state is assumed to be a simultaneous relationship (there is no law without the state and there is no state without law).² Moving on from the arguments in the previous paragraph, Hans Kelsen's views can be linked to a concept regarding the rule of law which was first introduced by a prominent philosopher in Classical Greece, namely Plato, and then his ideas were developed explicitly by Aristotle.³ The idea regarding this matter began with Plato who stated his opinion that

"good state administration is based on good (legal) arrangements"

which he called *after*. Over time, the idea of a rule of law emerged again in the 17th century, which was caused by socio-political conditions in Europe which were dominated by the political style which *absolutism*.⁴

In Plato's view, the idea of a legal state has the implication of a state based on law and justice for all its citizens. And if linked to Hans Kelsen's view which states that the essence of the state is only found



²Hans Kelsen, 2019, *Introduction to Legal Theory*, (translated by Siwi Sri), Bandung: Nusamedia, p. 150-152.

³Ni'matul Huda, 2005, *Rule of Law, Democracy, and Judicial Review*, Jakarta: UII Press, p. 13.

⁴Tutik Quarterly Point, 2015, *Construction of Indonesian Constitutional Law Post Independent to the 1945 Constitution*, Jakarta: Prenadamedia, p. 61.

in a coercive social system, so that a state is a legal system in which several instruments of government are established, each of which carries out division of labor and creates norms that form the legal system in a country. Both arguments touch on the idea of the rule of law. Based on this statement, the final conclusion is that the idea of a rule of law also means that all authority possessed by government instruments must be based on law. This is of course a basic postulate and is solely to achieve justice for the lives of citizens.

International law in the global era also no longer only focuses on States as the dominant main actor, but also International Organizations not only as complementary. However, it has become an important role in solving various problems that have occurred in various countries of the world. Since then, various International Organizations and Regimes have begun to focus on new issues in the study of International Relations.⁵ International organizations born from international relations, one of which is *the United Nations* (UN). The United Nations is the largest international organization in the world.

Israeli Defence Forces (IDF) units stormed and surrounded Al-Shifa Hospital in the Gaza Strip, with operations continuing in the West wing of the building. The hospital was cut off from internet
ice and electricity supply shortly before the Israeli attack.



Edy Suryono dan Moenir Arisoendha, 1986, *Hukum Diplomatik dan Konsuler*, Angkasa, p. 13.

Journalists present near the hospital building were later detained by Israeli soldiers. The reason Israel attacked the hospital was because it believed that Hamas was using the hospital building as its base. Apart from attacking hospitals, Israel also bombarded places of worship in Gaza, Palestine. At least 60 mosques have been destroyed since the attack on October 7, 2023. According to Wafa, the damage to mosques continued to grow after Israel launched an airstrike that destroyed al-Salam Mosque in the Sabra neighborhood, north of Gaza City. Israel also previously fired missiles and destroyed Khalid bin Walid and Al-Ikhlâs Mosques in Khan Younis.

Meanwhile, humanitarian aid that wants to enter Gaza is also stalled, because it has to pass strict checks by the Israeli side until it can get to the front door of Rafah, the Egyptian border with Gaza. Israeli Energy Minister Katz said that no electricity switches will be turned on, no water hydrants will be opened, and no fuel trucks will enter Gaza, until the hostages are released, on October 13. Israel's attacks on hospitals and places of worship, as well as making it difficult for humanitarian aid to enter Gaza, Palestine, have certainly violated International Humanitarian Law.⁶ Related to that the first issue there are legal basis regarding the violations against the destruction of Indonesian hospitals facilities in Palestine by Israeli Defense Forces



Asep Darmawan, 2005, *Prinsip Pertanggungjawaban Pidana Komandan Dalam Humaniter Kumpulan Tulisan*, Jakarta: Pusat Studi Hukum Humaniter dan HAM Hukum Universitas Trisakti, , p. 51.

(IDF) attacks. In **Article 18 of the Hague Convention on the Laws and Customs of War on Land (1907)** states that:

“Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever Church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.”

This article prohibits attacks on hospitals, medical establishments, and medical personnel collecting, treating, and evacuating the wounded and sick in armed conflict. And also in **Article 3 of the Fourth Geneva Convention (1949)** states that:

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

b) taking of hostages;

c) outrages upon personal dignity, in particular humiliating and degrading treatment;

d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2) The wounded and sick shall be collected and cared for.



An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.”

Indonesia, the world's largest Muslim-majority country, has maintained a strong stance in support of Palestine's quest for self-determination and independence. As part of its solidarity efforts, Indonesia has established hospitals and medical facilities in Palestine to provide much-needed healthcare services to the Palestinian people. However, the presence of these hospitals has not shielded them from the actions of the IDF, which has been accused of targeting medical facilities during military operations in the region.⁷ From a legal standpoint, the protection of hospitals and medical personnel in conflict zones is governed by various international humanitarian laws and conventions. One of the most fundamental instruments in this regard is the Geneva Conventions of 1949 and its Additional Protocols. These treaties establish the legal framework for the protection of civilians and medical personnel during armed conflicts and occupation.⁸



Gary D. Solis, 2016, *The Law of Armed Conflict: International Humanitarian Law* Cambridge University Press.
Emily Crawford and Alison Pert, 2019, *International Humanitarian Law: A Comprehensive Introduction* Routledge.

Specifically, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War outlines the obligations of occupying powers towards civilian populations under their control. Article 18 of the Fourth Geneva Convention emphasizes the duty of the occupying power to ensure the proper functioning of civilian hospitals and medical services, including granting them the necessary protection and facilities.⁹ Furthermore, the Additional Protocols to the Geneva Conventions, particularly Protocol I, reinforces and expands upon the protections afforded to medical facilities and personnel. Article 12 of Protocol I reaffirms the immunity of civilian hospitals from attack and prohibits any act of hostility directed against such establishments. Additionally, it mandates the parties to the conflict to respect and protect medical personnel, allowing them to carry out their duties without fear of harm or interference.¹⁰

In addition to international humanitarian law, customary international law also plays a significant role in protecting hospitals and medical personnel in armed conflicts. Customary international law, derived from state practice and accepted as binding, recognizes the principle of medical neutrality, which prohibits the targeting of hospitals and medical personnel under any circumstances. Indonesia, as a party to the Geneva Conventions and their Additional Protocols,



⁹GPH Haryomataram, 2012, *Pengantar Hukum Humaniter*, Jakarta: PT. Raja Persada, p. 1.
¹⁰Pietro Verri, 1992, *Dictionary of International Law of Armed Conflict*, Geneve: 34.

has a legal obligation to ensure the protection of its hospitals and medical personnel operating in Palestine. Moreover, as a member of the United Nations, Indonesia is bound by the Charter of the United Nations, which emphasizes the respect for human rights and the principle of non-intervention in the affairs of sovereign states. Despite the existence of these legal frameworks, Indonesian hospitals in Palestine continue to face threats and attacks from the IDF. Reports and testimonies from various sources document instances of IDF soldiers targeting hospitals, ambulances, and medical personnel, thereby endangering the lives of patients and hindering the delivery of essential medical services.¹¹

To address these challenges and enhance the protection of Indonesian hospitals in Palestine, it is imperative for Indonesia to leverage diplomatic channels and international mechanisms. Indonesia can engage with relevant United Nations bodies, such as the Security Council and the General Assembly, to raise awareness about the violations perpetrated by the IDF and to call for concrete actions to ensure compliance with international law.

In conclusion, the legal protection of Indonesian hospitals in Palestine from the Israeli Defense Forces (IDF) requires a concerted effort at both the national and international levels. By invoking the

Denny Ramdhany et.al. , 2015, *Konteks dan Perspektif Politik Terkait Hukum Internasional Kontemporer*, Jakarta: Rajawali Pers, p. 255.



principles of international humanitarian law, Indonesia can assert its rights and obligations as a responsible member of the global community and advocate for the safety and well-being of its hospitals and medical personnel operating in conflict zones. Only through collective action and unwavering commitment to humanitarian values can the lives of innocent civilians be safeguarded amid the turmoil of war and conflict.¹²

B. Research Question

Based on the problem introduction above, it comes to the research question which is:

1. How does the law apply concerning the violations against the destruction of Indonesian hospitals facilities in Palestine by Israeli Defense Forces (IDF) attacks?
2. How does the responsibility for the destruction of Indonesian hospitals facilities in Palestine by Israeli Defense Forces (IDF) attacks?

C. Research Purposes

Based on the formulation of the problem above, the purposes of the problem to be achieved are as follows:



Gulfino, " Analisis Hukum Konflik Bersenjata Palestina dan Israel ", accessed ww.repository.unej.ac.id, on February 20th, 2034, 23.45 WITA.

1. For knowing law apply concerning the violations against the destruction of Indonesian hospitals facilities in Palestine by Israeli Defense Forces (IDF) attacks.
2. For knowing the responsibility for the destruction of Indonesian hospitals facilities in Palestine by Israeli Defense Forces (IDF) attacks.

D. Research Usage

1. Scientific Development

This research is useful for improving and developing scholarship, so that it can be used as a reference, contribution of ideas, and reading material for international law and is expected to contribute to the review of international law on the role of humanitarian law, especially through the cases of Israel and Palestine

2. Academically

This research is expected to be able to increase understanding and ability to think academically in seeing the role of international law in the conflict between Israel and Palestine, and is useful to add to the *wealth* of knowledge, especially in the field of law, especially regarding the review of international law on the role of war states and the relationship between the rules of international conventions that apply



E. Research Originality

Name	: Rian Yuliani	
Publications Title	: Konflik Arab Israel: Pengusiran Etnis Palestina dan Diaspora Etnis Palestina	
Publications Category	: Skripsi	
Year Submitted	: 2021	
Institutions	: Universitas Islam Negeri Syarif Hidayatullah	
Description	Previous Research	Research Plan
Issues and Formulation	<ol style="list-style-type: none"> 1. Apa factor yang mempengaruhi pengusiran Etnis Palestina? 2. Dimana saja negara yang menjadi tujuan diaspora rakyat Palestina? 3. Bagaimana kondisi hidup rakyat Palestina di diaspora? 	<ol style="list-style-type: none"> 1. How does the law apply concerning the violations against the destruction of Indonesian hospitals facilities in Palestine by Israeli Defense Forces (IDF) attacks? 2. How does the responsibility for the destruction of Indonesian hospitals facilities in Palestine by Israeli Defense Forces (IDF) attacks?
Research Method:	Normative	Normative
Comparison :	<p>This thesis tends to discuss the factors that influence the expulsion of ethnic Palestinians due to the Israeli Jewish belief that Palestinian land is the land promised by their ancestors for them to live in. Palestinian territory is also a strategic area for international traffic and important natural products such as oranges and avocados. Even in the Diaspora, the life of Palestinians is not good enough. They</p>	
	<p>This thesis tends to discuss humanitarian violations in Israel's attacks on Indonesian hospitals in Palestine.</p>	



are always haunted by Zionist terror. They also have to live a hard life, torture and massacres committed by Israeli Jews.	
--	--



Name	: Ichasul Amal	
Publications Title	: The Future of Israel-Palestinian Conflict: Either One State or Two?	
Category	: Journal	
Year Submitted	: 2021	
Institutions:	Padjajaran University	
Description	Previous Research	Research Plan
Issues and Formulations:	<ol style="list-style-type: none"> 1. The concept of statehood and the legitimacy of Palestine and Israel 2. The role of international law in resolving the conflict between the two countries 3. The impact of the conflict on aspects of the existence of the two countries in the future 	<ol style="list-style-type: none"> 1. How does the law apply concerning the violations against the destruction of Indonesian hospitals facilities in Palestine by Israeli Defense Forces (IDF) attacks? 2. How does the responsibility for the destruction of Indonesian hospitals facilities in Palestine by Israeli Defense Forces (IDF) attacks?
Research Method:	Normative	Normative
Comparison :	<p>In addition to the thesis scientific work above, various other papers also discuss the humanitarian point of view on the Israeli and Palestinian conflict, but more focused on aspects of state science.</p>	
	<p>The research conducted by the author is different, the research conducted by the author is research seen from the point of view of international law and humanitarian law regarding Israel attacks on Palestine.</p>	



To avoid similarities and imitation of scientific works that the author made, the author also conducts a literature study, namely by reviewing and reviewing writings that have been written by previous authors, so that the author can distinguish problems made by others with problems made by the author himself.



CHAPTER II

LITERATURE REVIEW

A. International Humanitarian Law

International Humanitarian Law (IHL), also known as the Law of War or the Law of Armed Conflict, is the legal framework that governs the behavior of states and armed parties during armed conflict.¹³ One of the main aspects of IHL is the protection of medical facilities, including hospitals, medical personnel, and civilian patients.¹⁴ This protection aims to ensure that vital health services can continue uninterrupted during conflict, as well as to protect those who are not directly involved in the fighting.

In the context of the Israeli-Palestinian conflict, the protection of medical facilities has become a major concern given the intensity of the conflict and the frequent incidents in which hospitals and other health facilities are targeted for attack¹⁵. According to IHL, medical facilities have a special status that must be respected by all parties to the conflict⁵. The Fourth Geneva Convention of 1949 and Additional Protocols I and II provide a clear legal framework regarding the protection of hospitals and medical personnel during armed conflict.



Roberts, A., & Guelff, R, 2016, *Documents on the Laws of War*. Oxford Press, p. 3.
Droege, C., 2003, *Study On Customary International Humanitarian Law*. International Committee of the Red Cross. p. 121.
Pictet, J. S., 1958, *The Fundamental Principles Of The Red Cross*, Martinus Nijhoff Publishers, p. 45.

Basically, IHL prohibits attacks on hospitals and medical facilities, unless they are used directly for military purposes.¹⁶ Such attacks are considered serious violations of international humanitarian law and can carry serious legal consequences for perpetrators.¹⁷

In addition, IHL also establishes an obligation for parties to the conflict to facilitate safe and unhindered access for humanitarian assistance, including medical assistance. However, in the context of the Israeli-Palestinian conflict, implementation and adherence to IHL provisions are often questioned.¹⁸ Attacks on Palestinian hospitals and medical facilities by the Israeli Defense Forces (IDF) have come under international scrutiny and sparked condemnation from the international community.¹⁹ Although the IDF has repeatedly claimed that the attacks are part of a military operation to counter armed groups in the region, many have alleged that the attacks violate basic principles of IHL.²⁰

As a result, the protection of hospitals and medical facilities in Palestine has become important, especially with international

¹⁶ UNICEF, 2020, *Children bear the brunt of recent escalations in Israel and the occupied Palestinian territory*, Accessed from <https://www.unicef.org/press-releases/children-bear-brunt-recent-escalations-israel-and-occupied-palestinian-territory> on March 9th, 2024, at 21.30 WITA

¹⁷ Henckaerts, J. M., & Doswald-Beck, L, 2005, *Customary International Humanitarian Law: Volume 1, Rules*, Cambridge University Press, p. 87.

¹⁸ Schindler, D., & Toman, J., 2010, *The Laws Of Armed Conflicts: A Collection Of Conventions, Resolutions, And Other Documents*. Martinus Nijhoff Publishers, Page 100.

¹⁹ Amnesty International, 2022, *Israel and Occupied Palestinian Territories*, from <https://www.amnesty.org/en/countries/middle-east-and-north-africa/israel-occupied-palestinian-territories/report-israel-and-occupied-palestinian-territories/>. on March 9th, 2024, at 21.32 WITA

Human Rights Watch, 2023, *Israel/Palestine: Ensure War Crimes Probes*, from <https://www.hrw.org/news/2023/01/31/israel/palestine-ensure-war-crimes-probes> on March 9th, 2024, at 21.33 WITA



participation in humanitarian efforts in the region. Humanitarian diplomacy and advocacy efforts from countries such as Indonesia are also relevant in this context, given Indonesia's role as the country with the largest Muslim population in the world and its long history of supporting the Palestinian independence struggle.²¹ By understanding the IHL legal framework governing the protection of medical facilities during armed conflict and identifying challenges in its implementation in the context of the Israeli-Palestinian conflict, this research aims to explore efforts to protect hospitals and health facilities in Palestine, particularly those run by parties such as the IDF and how Indonesia's role can influence the dynamics of such protection.

B. Israel and Palestine Conflict

The Israel-Palestine conflict is one of the most protracted and contentious conflicts in modern history, characterized by territorial disputes, political tensions, and recurrent outbreaks of violence. Understanding the historical context and complexities of this conflict is essential for analyzing the challenges faced by medical facilities and personnel in Palestine, particularly in their legal protection from the Israeli Defense Forces (IDF). The roots of the Israel-Palestine conflict trace back to the late 19th and early 20th centuries, with the rise of

ism and the influx of Jewish immigrants to Palestine, then under

International Committee of the Red Cross, 2004, *Health care in danger: making*
Accessed from [https://www.icrc.org/en/document/health-care-danger-making-](https://www.icrc.org/en/document/health-care-danger-making)
March 9th, 2024, at 21.35 WITA



Ottoman and later British rule.²² The competing nationalist aspirations of the Jewish and Arab populations in the region led to escalating tensions, culminating in the 1948 Arab-Israeli War and the subsequent establishment of the State of Israel. The war resulted in significant displacement of Palestinian Arabs and laid the groundwork for decades of conflict.²³

The territorial disputes between Israel and the Palestinians center around the status of the West Bank, Gaza Strip, and East Jerusalem, territories captured by Israel during the 1967 Six-Day War. The Palestinian territories have since been subject to Israeli occupation, marked by the construction of Israeli settlements, checkpoints, and barriers, exacerbating Palestinian grievances and fueling resistance movements.²⁴ The conflict has had profound humanitarian consequences, particularly for the Palestinian population living under Israeli occupation. Restrictions on movement, access to essential services, and the blockade of Gaza have severely impacted the socio-economic conditions and health outcomes of Palestinians.

²² B'Tselem, 2020, *The occupation's impact on the daily lives of Palestinians*, Accessed from https://www.btselem.org/publications/fulltext/202011_the_occupation_tightens on March 10th, 2024, at 1.35 WITA

²³ United Nations Office for the Coordination of Humanitarian Affairs, 2021, *Occupied Palestinian Territory: Humanitarian Needs Overview 2021*, Retrieved from <https://www.ochaopt.org/content/occupied-palestinian-territory-humanitarian-needs-2021>. on March 10th, 2024, at 1.40 WITA

Amnesty International, 2021, *Israel and Occupied Palestinian Territories*, Retrieved from <https://www.amnesty.org/en/countries/middle-east-and-north-africa/israel-occupied-palestinian-territories/report-israel-and-occupied-palestinian-territories/> on March 10th, 2024, at 1.55 WITA



The Israeli military operations in Gaza, including airstrikes and ground incursions, have resulted in significant civilian casualties and damage to infrastructure, including hospitals and medical facilities

International law provides a framework for addressing the legal dimensions of the Israel-Palestine conflict, including the protection of civilians and medical facilities during armed conflict. The Fourth Geneva Convention and Additional Protocols establish the obligations of occupying powers, such as Israel, to ensure the welfare and protection of civilians under their control, including access to medical care. However, the application and enforcement of international humanitarian law in the context of the Israel-Palestine conflict have been contentious and subject to political manipulation. Reports by human rights organizations and United Nations bodies have documented instances of IDF airstrikes and shelling hitting hospitals and ambulances, resulting in casualties and damage to essential medical infrastructure.²⁵ The deliberate targeting of medical facilities and personnel constitutes a violation of international humanitarian law and may amount to war crimes under the Rome Statute of the International Criminal Court.²⁶



International Committee of the Red Cross. (n.d.). 2024, *The Geneva Conventions of 1949 and their Additional Protocols*, Retrieved from www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm on March 10th, at 2.55 WITA
Shein, O., 2019, *International Law And The Israeli-Palestinian Conflict: A Scaled Approach To Middle East Peace*, Routledge

Palestinian hospitals and medical facilities operate under challenging conditions, compounded by restrictions on movement and access to essential supplies imposed by Israeli authorities. The blockade of Gaza, in particular, has severely constrained the ability of hospitals to provide adequate care, with shortages of medical equipment, electricity, and clean water. The targeting of medical facilities further undermines the provision of healthcare in Palestine, jeopardizing the lives of civilians in need of urgent medical assistance.²⁷ Efforts to address the protection of medical facilities in Palestine have been met with limited success, hampered by the politicization of humanitarian aid and the lack of accountability for violations of international law. Diplomatic initiatives, such as the United Nations Security Council resolutions condemning attacks on medical facilities, have been largely ineffective in deterring further violations. The role of international actors, including states, non-governmental organizations, and international bodies, remains crucial in advocating for the rights of Palestinians and holding perpetrators of war crimes accountable.²⁸

²⁷ Al Mezan Center for Human Rights, 2021, *Gaza's Health Sector on the Brink of Collapse as Israel's 15-year Illegal Closure Continues*, Retrieved from www.mezan.org/en/post/24572. on March 10th, 2024, at 3.15 WITA
²⁸ Amnesty International, 2023, *Amnesty International calls on the UN Security Council to take concrete steps to address the Israel-Palestine crisis*, Retrieved from www.amnesty.org/en/latest/news/2023/03/amnesty-international-calls-on-the-un-council-to-take-concrete-steps-to-address-the-israel-palestine-crisis/ on March 10th, 2024, at 3.20 WITA



The Israel-Palestine conflict presents significant challenges for the legal protection of medical facilities in Palestine, particularly from attacks by the Israeli Defense Forces. The conflict's historical roots, humanitarian consequences, and legal dimensions underscore the importance of addressing the plight of Palestinian civilians and the need for accountability for violations of international humanitarian law. Efforts to uphold the principles of medical neutrality and ensure access to healthcare for all must be pursued through diplomatic channels, international advocacy, and accountability mechanisms.

C. Legal Framework for Protection of Medical Facilities in Armed Conflict

The legal framework governing the protection of medical facilities in armed conflict is grounded in international humanitarian law (IHL) and human rights law. This section explores the key principles and provisions of these legal frameworks, emphasizing their relevance to the protection of medical facilities in Palestine from attacks by the Israeli Defense Forces (IDF). International humanitarian law, also known as the laws of war or the law of armed conflict, is a set of rules and principles that regulate the conduct of parties to armed conflict, with the aim of protecting civilians and minimizing the effects of

ilities on non-combatants. The cornerstone of IHL is the principle distinction, which requires parties to distinguish between combatants and civilians, as well as between military objectives and



civilian objects.²⁹ Medical facilities, including hospitals and clinics, are considered civilian objects and enjoy special protection under IHL, provided they are not being used for military purposes.³⁰

The protection of medical facilities is further reinforced by specific provisions in international humanitarian law, including the Fourth Geneva Convention of 1949 and its Additional Protocols. The Fourth Geneva Convention establishes the rights and protections of civilians in times of armed conflict, including the right to receive medical care and the obligation of parties to the conflict to respect and protect medical facilities and personnel.³¹ Additional Protocol I and II provide additional safeguards for medical facilities and personnel, prohibiting attacks on medical units and transportation, as well as acts of violence or intimidation against medical personnel.

In addition to international humanitarian law, the protection of medical facilities is also governed by human rights law, particularly the right to health as enshrined in international human rights instruments. The right to health, recognized in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, encompasses the right to access healthcare services, including medical treatment and facilities. States have an obligation to



Henckaerts, J. M., & Doswald-Beck, L, 2005, *Customary International Law: Volume 1, Rules*, Cambridge University Press, p. 43-45.
Bothe, M., Partsch, K. J., & Solf, W. A., 1982, *New Rules For Victims Of Armed Commentary On The Two 1977 Protocols Additional To The Geneva Conventions Of 1949*. Martinus Nijhoff Publishers, p. 156-157.
ICRC, *The Geneva Conventions of 1949 and their Additional Protocols*.

respect, protect, and fulfill the right to health, including ensuring the availability, accessibility, and quality of healthcare facilities and services.³²

Despite the clear legal framework for the protection of medical facilities in armed conflict, attacks on hospitals and clinics continue to occur, particularly in conflict-affected areas such as Palestine. The deliberate targeting of medical facilities by parties to the conflict, including the IDF, constitutes a serious violation of international humanitarian law and may amount to war crimes. Such attacks not only endanger the lives of patients and medical personnel but also undermine the provision of essential healthcare services to civilian populations in need.³³ Efforts to hold perpetrators of attacks on medical facilities accountable have been hampered by challenges in investigating and prosecuting such crimes. The lack of access to conflict zones, the politicization of humanitarian aid, and the reluctance of states to support international accountability mechanisms have all contributed to the impunity enjoyed by perpetrators. Furthermore, the absence of an effective enforcement mechanism for international humanitarian law has limited the



Apetroe, Alexandru C, 2017, *The Responsibility to Protect. from “Emerging a False Promise. A New Challenge to International Security Policy”*, Studia Opapea, LXII, p. 71.

Haines, Steven; Kassimeris, George, ed, 2010, *Humanitarian Intervention: Crimes Against Humanity and the Use of Force*, The Ashgate research on to modern warfare, Burlington, VT: Ashgate Publishing Ltd, p. 308.

deterrence effect of legal norms and contributed to the perpetuation of attacks on medical facilities.³⁴

In response to the challenges faced in protecting medical facilities in armed conflict, various initiatives and mechanisms have been proposed to enhance compliance with international humanitarian law and ensure accountability for violations. The protection of medical facilities in armed conflict is governed by a robust legal framework rooted in international humanitarian law and human rights law. However, the persistent targeting of hospitals and clinics, particularly in conflict-affected regions like Palestine, underscores the need for stronger enforcement mechanisms and accountability measures. Efforts to strengthen compliance with international legal norms and hold perpetrators of attacks on medical facilities accountable are essential for safeguarding the right to health and ensuring access to essential healthcare services for civilian populations in conflict zones.



Nasution, H& Nurangga, F., 2020, *Mekanisme Penerapan Intervensi*
aan dalam Hukum Nasional Indonesia, Jurnal Penelitian Hukum De Jure 20.2.