

CHAPTER I

INTRODUCTION

A. Research Background

Armed conflict is one of the leading causes of humanitarian crises in many regions around the world. When conflict occurs civilians become the most vulnerable group in obtaining basic necessities such as food, clean water, medicine, and medical services. International humanitarian law is established as a legal instrument to protect those who are not directly involved in hostilities and ensure the delivery of humanitarian aid to affected populations.¹

The core principles of international humanitarian law underscore the obligation of parties to an armed conflict to uphold human rights and ensure the protection of civilians. Acts such as employing starvation as a means of warfare, targeting humanitarian institutions, or arbitrarily restricting humanitarian access constitute grave breaches of international law. Nevertheless, the practical application of these humanitarian norms often encounters complex challenges in real-world conflict situations. Considerations of military necessity, national security, and political agendas are frequently invoked to justify limitations on humanitarian assistance.

Consequently, populations affected by conflict frequently face significant barriers in obtaining timely and sufficient emergency relief. Delays in the delivery of aid further deteriorate civilian conditions, particularly among those already struggling with scarce resources. Moreover, such restrictions impede post-conflict recovery processes and exacerbate human suffering. This persistent situation reflects a significant disparity between established legal norms and their effective implementation during armed conflicts.²

Within the Middle Eastern context, Gaza represents one of the most critical regions enduring a prolonged humanitarian crisis as a result of recurrent and intense armed hostilities. The blockade restricting the entry of essential goods has severely disrupted the population's economic and social conditions. Basic necessities such as fuel, electricity, medicine, and food are often limited, fostering a growing dependence on humanitarian assistance. The area's high population density further exacerbates the decline in living standards, as large-scale attacks render essential infrastructure including hospitals and water systems unable to operate effectively. Consequently, Gaza serves as a significant case study for analyzing humanitarian access under international humanitarian law.

International law establishes clear obligations for parties to an armed conflict to allow the delivery of humanitarian aid. The 1949 Geneva Conventions and the

¹ Umar Suryadi Bakry, 2016. *Hukum Humaniter Internasional (International Humanitarian Law)*, Jakarta: Kencana. p. 45.

² Hikmahanto Juwana. 2018. *Hukum Humaniter Internasional dalam Penyelesaian Sengketa Bersenjata* (International Humanitarian Law in the Resolution of Armed Conflict), Universitas Indonesia Coffrence Rilis Press. p. 98.

1977 Additional Protocol I stipulate that humanitarian relief must reach those in need without obstruction. These legal instruments also reinforce the principles of civilian protection and prohibit acts that inflict unnecessary suffering. However, requirements such as obtaining the consent of conflicting parties are frequently exploited as legal loopholes to delay or deny aid distribution. International bodies, including the United Nations and the International Committee of the Red Cross (ICRC), consistently advocate for unrestricted humanitarian access. Despite these efforts, numerous reports document continuous blockades and denials of entry for aid convoys, resulting in preventable casualties and suffering. Such actions may constitute violations of international obligations, particularly when they deliberately endanger civilians by restricting their access to vital resources. The recurring nature of these incidents raises serious concerns about systematic breaches of humanitarian norms and highlights the need for stronger accountability mechanisms. Accordingly, the international community continues to call for compliance with, and enhanced supervision of, humanitarian access in Gaza.³

The humanitarian crisis becomes more severe due to the extremely high population density in Gaza. During escalations, the local health system is unable to meet the growing needs for emergency medical care. Hospitals often operate under extreme shortages of medicines, equipment, and medical personnel. Damage to civilian infrastructure disrupts public services, including sanitation, electricity, and water supply, placing additional pressure on vulnerable groups. Children, women, and the elderly face heightened risks of illness and malnutrition. Without adequate and timely assistance, Gaza risks encountering a catastrophic and uncontrolled humanitarian disaster.

Legally essential issue concerns assessing whether the parties to the conflict comply with the established rules of international humanitarian law, particularly regarding the facilitation of humanitarian relief. Under the Geneva Conventions and customary international law, belligerents must ensure safe access for humanitarian actors to populations in need. Failure to uphold this obligation may lead to state responsibility and individual criminal accountability. In addition, non-state armed groups engaged in the conflict are also bound by fundamental humanitarian rules. Determining the extent of their obligations and responsibility presents unique legal and enforcement challenges. Thus, a comprehensive legal evaluation is necessary to identify the nature and scale of violations in Gaza.

Moreover addressing these legal issues requires examining the effectiveness of international enforcement mechanisms. The United Nations Security Council holds authority to impose measures that compel compliance, yet political divisions among member states often obstruct decisive action. Documentation of alleged violations by monitoring bodies and human rights organizations plays a crucial role in supporting investigations and future prosecutions. International judicial

³ ICRC. 2005..*Customary International Humanitarian Law*, Rule 55: Access for Humanitarian Relief to Civilians in Need,

forums, including the International Criminal Court (ICC), may serve as avenues for accountability if sufficient legal criteria are met. The success of these processes depends heavily on cooperation from states and international institutions. Strengthening enforcement and accountability remains essential in ensuring the protection of humanitarian access.⁴

Considering the urgency of the humanitarian crisis in Gaza and the significant legal implications of restricted access to aid, a comprehensive scientific analysis is required to examine these challenges in depth. This study will focus on evaluating the regulatory framework governing humanitarian access during armed conflict, particularly the provisions under international humanitarian law that ensure the protection and survival of civilians. In connection with the research questions, this study will specifically analyze the legal obligations of state parties and non-state actors in facilitating humanitarian assistance, as well as the degree of responsibility borne by each actor in the event of restricted or obstructed access to aid. Furthermore, this research will assess the role and limitations of international non-governmental organizations (INGOs) in delivering humanitarian assistance to Gaza within the constraints of armed hostilities and blockade measures. The findings are expected to contribute to accountability efforts by identifying relevant violations and their legal consequences under international law. Based on these considerations, the author is strongly motivated to examine the topic entitled: **“International Legal Review of Humanitarian Access to Gaza in Situations of Armed Conflict.”**

B. Statement Of The Problem

Based on the description of the background above, the problem formulation is as follows:

1. What is the role Of internasional non-governmental organizations (NGOs) in international law regarding the distribution of humanitarian aid to gaza??
2. What is the state's responsibility under international law if it obstructs humanitarian aid facilitated by NGOs?

C. Objectives and Significance of the Study

Based on the problem formulation explained, the research objectives in writing this thesis are :

1. Research Objectives

- a. To analyze the international humanitarian law provisions that regulate humanitarian access during armed conflict, particularly those applicable in the Gaza Strip.

⁴ Daulay, F. N. H. (2024). Peran Pbb Dalam Menegakkan Hukum Humaniter Internasional Di Zona Konflik. *Jurisprudensi: Jurnal Ilmu Hukum*, 1(2), p. 142-155.

- b. To assess the legal responsibilities and accountability mechanisms under international law for the obstruction of humanitarian access to civilian populations in Gaza.

2. Significance of the Study

This research is expected to contribute to the development of legal scholarship, particularly in the field of international humanitarian law concerning the protection of civilians and humanitarian access during armed conflict. Additionally, the research may serve as an academic reference for policymakers, humanitarian organizations, and the public in understanding the legal implications of restricted humanitarian access in Gaza, where the issue remains highly relevant but underexamined. The results of this study are anticipated to provide deeper insights into the forms of violations and accountability of conflicting parties, thus supporting future humanitarian and legal efforts.

D. Research Originality

Author's Name : Mohammad Abdullah Bawazir Title of post : The Effectiveness Of International Humanitarian Law In The Israel-Palestine Conflict 2014 Type of Work : Thesis Year : 2014 College : Universitas Gontor		
Uraian	Penelitian Terdahulu	Rencana Penelitian
Issues and Problems:	1. what extent is the effectiveness of international humanitarian law in minimizing war crimes in the Israel-Palestine conflict on 2014	1. What is the role Of internasional non-govermental organizations (NGOs) in international law regarding the distribution of humanitarian aid to gaza?? 2. What is the state's responsibility under international law if it obstructs humanitarian aid facilitated by NGOs?

Research Methode :	Normatif	Normatif
Issues and Problems:	This concept states that law can be said to be effective if the actors involved can implement the principles contained therein. In this conflict, many violations of the laws of war were found by both parties, especially Israel. This can be seen from the disregard of several principles of international humanitarian law: the principle of proportionality, the principle of limitation, and the principle of humanity. The continued increase in civilian casualties and losses is an important indicator of the effectiveness of international humanitarian law. Keywords: Legal Effectiveness, Principles of International Humanitarian Law, War Victims, Israel – Palestine	

Author's Name	:	Nasrullah Mazii
Title of post	:	The Legal Status Of Private Military And Security Company Personnel Involved In An Armed Conflict Under International Humanitarian Law (Revision)
Type of Work	:	Thesis
Year	:	2020
College	:	Universitas Islam Indonesia
Uraian	Penelitian Terdahulu	Rencana Penelitian
Issues and Problems :	1. What is the legal statutes of Private Military and Security Companies (PMSC) Personnel involved in Armed Conflict under International Humanitarian Law (IHL)? 2. What are the right and obligations of PMSC Personnel during Armed Conflict based on IHL?	1. What is the role Of internasional non-govermental organizations (NGOs) in international law regarding the distribution of humanitarian aid to gaza? 2. What is the state's responsibility under international law if it obstructs humanitarian aid facilitated by NGOs?
Research Methode	:	Normatif
Issues and Problems:	This concept states that Private military and security companies' personnel does not operate in a legal vacuum. Due to the existing rules are applicable to them, depending on their actual activities and their relationship with the contracting states.	

	In the situations of armed conflict certain well-established rules and principles in the form of International Humanitarian Law apply to the activities of PMSC and its personnel. With the basis of Distinction Principle, and concern to Art 13 Conv I, II, III, Art 41 related to Protected person, Art 4A Conv III on Prisoner of War, and Montreux Document, it can be conclude that that PMSCs status can possibly felt into civilians or Unlawful combatant depend on case by case basis mention at Montreux Document, which related to their function and role in the battlefield. Although in the Mountrex document stated the existing Civilians accompanying armed forces, it is included as the Civilians group with role to accompanying the armed forces. At the core, IHL and Montreux Document try to emphasize and give clear solutions standard. It was stated that all the status of the personnel was civilians,	
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	except for those who have an aggressive nature and carry out combat functions that are directly involved in an armed conflict marked with fight/kill enemy, are fall into Unlawful combatant status.	
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E. Theoretical/Conceptual

1. The Right to Humanitarian Assistance in Armed Conflict

The right to humanitarian assistance in armed conflict is a concept based on the principle of protecting civilians as non-participants in the conflict. This principle is affirmed in various international humanitarian law instruments, which oblige conflicting parties to provide access for the distribution of essential aid when humanitarian conditions are dire.⁵ In this context, INGOs are the primary actors carrying out humanitarian functions when states are unable or unwilling to fulfill their obligations to civilians. The right to receive aid does not require political approval and should not be hampered by military strategies that collectively target civilian populations.

The role of INGOs within this theoretical framework stems from the mandate of international law, which places humanitarianism as the highest priority in armed conflict. Their presence is part of a global protection system that ensures aid reaches affected populations without discrimination. The international legal structure still places states as the primary obligation holders, but INGOs' moral and operational responsibilities contribute concretely to realizing civilians' right to a decent life. The implementation of the theory of the right to humanitarian assistance becomes even more significant when states are the ones obstructing aid.

In several conflict zones including Gaza, INGOs face strict controls on cross-border access, often imposed by warring parties. Impeded access can cripple humanitarian operations that depend on stable logistics chains. Actions that obstruct or deny aid access to civilian areas could potentially constitute collective punishment, prohibited under international humanitarian law.⁶ INGOs adhere to the principles of neutrality and independence in carrying out their aid mandates,

⁵ Jean-Marie Henckaerts & Louise Doswald-Beck, 2005, *Customary International Humanitarian Law*, ICRC & Cambridge University Press, p. 315–318.

⁶ Cordula Droege, 2007, "The Interplay Between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict," *Israel Law Review*, Vol. 40, No. 2, p. 9.

but their position remains subject to geopolitical pressures that are not easily resolved legally.

INGOs also perform advocacy and international accountability functions that have long-term legal implications. These actions include systematically documenting potential war crimes, preparing independent reports, and monitoring compliance with the principles of proportionality and distinction in military operations. The information collected by INGOs provides a crucial contribution to international institutions such as the International Criminal Court in assessing whether violations warrant further legal enforcement. No state authority can override this function, as it directly relates to global civil protection mechanisms.

In the international legal structure, INGOs have not yet achieved equal standing with states as primary legal subjects. These limitations have implications for the suboptimal protection of humanitarian workers and the sustainability of their mandates in conflict areas. Challenges in legal standing create vulnerabilities because INGOs cannot directly hold those obstructing humanitarian aid accountable. Legal reform is needed so that any actions restricting humanitarian access can be more effectively assessed through international instruments with judicial authority.

The situation in Gaza provides a clear illustration of the application of the theory of the right to humanitarian aid in the face of harsh political realities. INGOs function as guardians of humanitarian values when states or parties to the conflict neglect the survival of civilians. This role demonstrates that the fulfillment of fundamental rights in armed conflict should not depend on the unilateral will of military actors. Gaza presents a crucial study for the international community in assessing the extent to which humanitarian law theory can be implemented to ensure that humanitarian aid proceeds without political or military intervention.

2. Civilian Protection Theory

Humanitarian Access Theory explains the right of humanitarian actors to gain access to conflict-affected areas to provide assistance to civilians. This theory is rooted in International Humanitarian Law, which stipulates that warring parties are obligated to provide prompt and unhindered access to essential aid. Access restrictions are often a military strategy to weaken certain groups, thus emphasizing that such actions contradict humanitarian principles. The right to humanitarian access is directly linked to the right to life and human dignity in armed conflict.⁷

The core of this theory is the protection of civilians through effective aid delivery mechanisms. Any obstruction to aid access carries the potential to violate the prohibition on collective punishment. This theory also supports the role of humanitarian organizations as technical implementers, ensuring that basic civilian needs are met. When a state is unable to fulfill its obligations or is the party

⁷ Sassòli, Marco. 2019. *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*. Edward Elgar Publishing, p. 412.

causing the risk, humanitarian access must still be guaranteed through international legal instruments.

Humanitarian Access Theory provides a normative basis for assessing the legality of access restrictions imposed by warring parties. Disproportionate restrictions that worsen civilian conditions can qualify as serious violations of the laws of war. This approach views humanitarian access as a legal obligation, not a voluntary policy. Aid access conducted based on the principles of neutrality and impartiality reflects legal protection for humanitarian actors.

In the context of Gaza, this theory holds particular importance because the territory is under a prolonged blockade. Repeated restrictions on humanitarian aid place the civilian population in a highly vulnerable situation. Evaluation of aid access to Gaza serves as a concrete test of the effectiveness of this theory's application in practice. International attention is increasing because humanitarian access concerns not only material assistance but also medical access and the evacuation of civilian casualties.⁸

Humanitarian Access Theory also highlights the issue of accountability for access barriers imposed by warring parties. The doctrine of accountability asserts that perpetrators can be brought before international legal forums if proven to have disregarded humanitarian obligations. This theory emphasizes that civilian protection must be prioritized at every stage of military operations. The role of law is instrumental in ensuring that basic rights are protected even as the conflict continues.

Humanitarian Access Theory emphasizes that humanitarian access is not merely a technical issue of aid distribution, but also involves legal regulations that determine the extent to which humanitarian actors can intervene. The coordinating role of the UN and other international institutions ensures that any barriers to access are assessed based on international legal standards. In Gaza, the territorial authorities and external military actors maintain complete control over the border, making aid access entirely dependent on political approval. This situation demonstrates an imbalance of power that directly impacts the fulfillment of civil rights. Restrictions not based on legitimate security grounds can lead to international accountability.

This theory also emphasizes the protection of humanitarian workers, who are often targeted in conflict. Attacks on medical personnel, volunteers, and aid convoys are considered serious violations of humanitarian norms and can constitute war crimes. This protection is governed not only by conventional provisions but also by customary international law, which imposes a universal obligation on all parties to respect humanitarian missions. The security of humanitarian actors is directly linked to the success of aid distribution in conflict areas. Any action that endangers their safety will result in the cessation of aid to civilians.

⁸ Butt, K. M., & Butt, A. A. (2016). *Blockade on Gaza strip: A living hell on earth*. J. Pol. Stud., 23, p. 157.

Humanitarian Access Theory holds that access to aid must be above political, military, or economic interests. Humanitarian aid in Gaza is often used as a bargaining chip in regional geopolitical dynamics, thus influencing the level of civilian suffering. An evaluation of this situation demonstrates that the success of this theory depends heavily on the international will to consistently enforce humanitarian law. Existing legal instruments are adequate, but their implementation faces obstacles stemming from state political interests. Humanitarian access can only be effective if international oversight mechanisms are strengthened to ensure that any violations are not left without legal consequences.

3. Theory of State Responsibility for Obstructing Humanitarian Aid

The State Responsibility Theory in international law asserts that every state bears legal responsibility for the actions of its organs if those actions violate international norms. This principle is a consequence of the state's status as the primary subject of international law, possessing rights and obligations. In this context, a state cannot hide its security concerns to avoid responsibility for humanitarian violations occurring within its territory.⁹

In modern international law, this theory has evolved into a mechanism that asserts that any violation of international obligations, such as violations of civilian rights or obstruction of humanitarian aid, gives rise to an obligation for the violating state to remedy the resulting consequences. This principle is affirmed in the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), adopted by the International Law Commission (ILC) in 2001.¹⁰

Under the 1949 Geneva Convention IV and its 1977 Additional Protocol I, states have an obligation to guarantee the protection of civilians and provide access to humanitarian aid without discrimination. States are not permitted to use humanitarian aid as a political or military tool. When a state intentionally obstructs access to aid, it violates the principles of humanity and the obligations of international humanitarian law.

Within the framework of the theory of state responsibility, violations such as the obstruction of humanitarian aid can be classified as serious breaches (gross violations) of humanitarian law. States committing such acts can be held internationally accountable, both morally and legally, through mechanisms such as the UN, the International Court of Justice (ICJ), and the International Criminal Court (ICC). This emphasizes that humanitarian violations are not merely political issues, but concrete violations of international law.¹¹

⁹ International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)*, United Nations, 2001, p. 34.

¹⁰ Arbitration, I. (2024). SOTIRIOS-IOANNIS LEKKAS* Introduction The Articles on State Responsibility for Internationally Wrongful Acts ('ARSIWA') constitute an experiment in international law-making. Unlike other successful projects of the International Law Commission. *Custom and Its Interpretation in International Investment Law: Volume 2*, 2, 93.

¹¹ Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, Cambridge University Press, 2022, p. 123.

In the context of Gaza, this theory explains that the blockade and denial of aid access by the warring states have resulted in widespread civilian suffering. Restrictions on the supply of basic necessities, medicine, and health services have created a critical humanitarian situation. Based on the theory of state responsibility, these actions not only violate humanitarian principles but also create a legal obligation for the state to redress the losses and ensure that the violations do not recur.

According to Mochtar Kusumaatmadja, international law not only regulates relations between states but also encompasses state responsibility for actions that cause suffering to humanity. He emphasized that in the international legal system, there is no absolute power; any state action that disregards humanitarian values will result in legal consequences. This view strengthens the theoretical basis that states obstructing humanitarian aid can be held accountable under universal humanitarian principles.

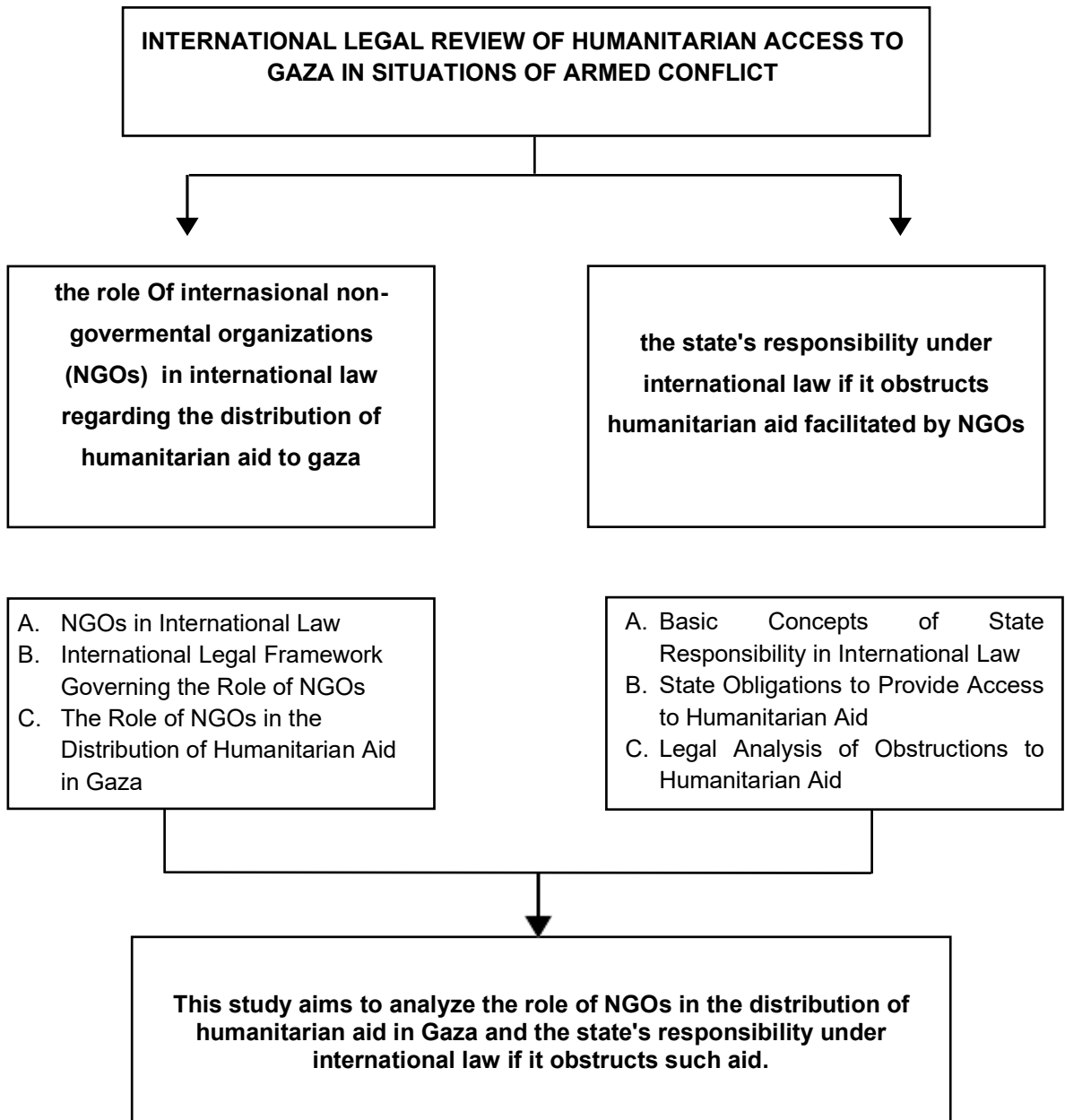
Menurut Mochtar Kusumaatmadja international law does not only regulate relations between states, but also encompasses state responsibility for actions that cause suffering to humanity. It affirms that within the international legal system, there is no absolute power. This view strengthens the theoretical basis that states obstructing humanitarian aid can be held accountable under universal humanitarian principles.¹²

This theory also serves as a normative basis for assessing the effectiveness of international law enforcement mechanisms against violations committed by states. Mechanisms such as international sanctions, UN Security Council resolutions, and prosecutions at the ICC are all implementations of the principle of state responsibility. Through this theory of implementation, the international community can affirm that no state compromises its humanitarian obligations, including in conflict situations like Gaza.

The theory of State Responsibility provides a comprehensive analytical framework for assessing state actions that obstruct humanitarian aid. This theory not only affirms states' legal obligations to protect civilians but also demands global accountability for humanitarian violations. In the context of Gaza, this theory provides a strong basis for examining the role and responsibility of states in ensuring humanitarian access in accordance with the principles of international law.

¹² Mochtar Kusumaatmadja, *Pengantar Hukum Internasional*, PT Alumni Bandung, 2003, p. 112.

F. Analytical Framework



CHAPTER II

RESEARCH METHODS

A. Type Of Research

This research is legal research using normative legal research as an approach that the author uses in conducting research in completing his writing, namely:

1. The statutory approach involves the use of legal materials in the form of laws and regulations as the main reference source. This research method entails reviewing, analyzing, and examining all legal provisions that are relevant to the issues under study. The research concludes with an examination of library materials or secondary data to gain a comprehensive understanding of the applicable legal norms and provisions.¹³ The research ends with a study of library materials or secondary data to understand the applicable legal norms or provisions.¹⁴
2. Conceptual approach is an approach from doctrines and views that develop in legal science. This approach is used for researchers to put forward ideas in the form of legal concepts that are relevant to the legal issues that have been studied.¹⁵

B. Type And Source

The sources of law used by the author to address legal issues in this research and serve as supporting materials are as follows:

1. Primary Legal Materials

Primary legal materials refer to sources of law derived from various laws and regulations, as well as court decisions that have obtained *permanent legal force (inkracht van gewijsde)*. In this research, the author employs primary legal materials, namely Geneva Convention

2. Secondary Legal Materials :

Secondary legal materials serve as supporting sources that encompass various topics and issues relevant to the research. Examples of such materials include books, legal writings, scholarly journals, legal dictionaries, and previous legal studies that share similarities with the focus of this research.¹⁶

¹³ Kadaruddin, 2021, *Penelitian di bidang Ilmu Hukum (sebuah pemahaman awal)*, Semarang:formaci, p. 106.

¹⁴ Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, PT Kencana, p. 47

¹⁵ *Ibid*, p.10.

¹⁶ *Ibid*. Peter Mahmud Marzuki. p 181.

3. Non Legal Materials :

This research is not limited solely to the legal domain. The author also utilizes non-legal sources obtained through literature review techniques, including books, dictionaries, articles, online publications, and non-legal journals that correspond to the object of study. These materials function as complementary references supporting the overall analysis in this research.

C. Legal Material Collection Techniques

The technique employed by the author in collecting research materials involves conducting library research through reading and analyzing relevant legal and non-legal sources. This method aims to identify, select, and examine materials that are directly related to the object of the research, thereby providing a strong theoretical and normative foundation for the study.

E. Data Types and Sources

1. Primary data is data obtained from primary sources. Primary data was obtained from respondents and informants. Respondents in this study refer to subjects, both individuals and groups, who are directly involved in copyright infringement practices through the use of the lyrics feature on the Spotify platform for commercial purposes. The informants are parties who provide information, opinions, or analysis based on their scientific capacity or experience relevant to the research object.
2. Secondary data is data obtained from collecting and documenting journals, scientific papers, and related documents and directly discussing the research problem, sourced from literature or legal materials.¹⁷

F. Analysis Legal Materials

The legal materials collected by the researcher were subsequently analyzed and interpreted to produce a comprehensive conclusion. The process involved classifying the legal materials so that they could be logically understood, followed by drawing conclusions based on the researcher's analytical perspective.¹⁸ The data obtained from this study were analyzed using qualitative analysis techniques. All data obtained in this study, both primary and secondary, will be analyzed using qualitative analysis techniques.¹⁹ This analysis is conducted by systematically and comprehensively describing, outlining, and explaining the data based on the information obtained, so that it aligns with the focus of the problem that is the object of the research.

¹⁷ Ibid, hlm 101

¹⁸ Irwansyah, 2020, *Penelitian Hukum, Pilihan Metode & Praktif Penulisan Artikel*, Mira Buana Media, Yogyakarta, p 170.

¹⁹ Lexy, J. Moleong. 2014. *Metodologi Penelitian Kualitatif*, Cetakan Ke-1, Bandung: PT Remaja Rosdakarya. p. 6