

## COMBATANT STATUS UNDER INTERNATIONAL HUMANITARIAN LAW: LEGAL IMPLICATIONS FOR INDONESIAN NATIONAL ARMY OPERATIONS IN SEPARATIST CONFLICTS

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### ABSTRACT:

*The armed conflict between the Indonesian National Army and separatist groups in Papua shows the characteristics of a non-international armed conflict (NIAC) based on international humanitarian law (IHL). However, the legal status of Indonesian National Army soldiers in this conflict has not been clearly defined in the national legal system, thus creating ambiguity regarding their protection and accountability. This study aims to analyze the combatant status of Indonesian National Army soldiers in NIAC based on international legal instruments and national regulations. Through a normative legal approach comparisons with other countries such as Colombia, Philippines, and Hungary are examined to assess legal gaps and best practices. The research findings indicate that, although combatant status is not formally recognized in NIAC, the fundamental principles of IHL remain applicable to all parties. The study concludes that Indonesia must reform its legal framework to ensure both the protection of soldiers acting lawfully and accountability for IHL violations.*

**Keywords:** Combatant status, International Humanitarian Law, Separatism.

### A. Introduction

The armed conflict in Papua between the Indonesian National Army and armed separatist groups such as the Free Papua Organization has become one of the most complex

national security issues in Indonesia. Even though geographically and juridically it occurred within Indonesia's sovereign territory, this conflict showed consistent intensity of violence, the use of military weapons, and the involvement of organized non-state actors. Based on the criteria established by international humanitarian law, this situation meets the threshold for a non-international armed conflict (NIAC), as regulated in Article 3 of the 1949 Geneva Conventions and Additional Protocol II of 1977.<sup>1</sup>

Non-international armed conflict is legally defined as a conflict between state officials and armed groups that have a command structure, control a particular territory, and can carry out sustained military operations. In this context, the conflict between the Indonesian National Army and armed groups in Papua cannot only be considered a disturbance to domestic security. Still, it must also be viewed within the framework of international humanitarian law, which provides limitations and protections for all parties, including both combatants and civilians.<sup>2</sup> In the international legal system, International Humanitarian Law (IHL) functions as *lex specialis* in situations of armed conflict. The two main instruments that form the normative basis are the 1949 Geneva Conventions and Additional Protocol II of 1977, which apply to non-international conflicts. Article 3, together with the Geneva Conventions, establishes minimum treatment for all parties not directly involved in hostilities, and introduces basic principles such as the protection of civilians, the prohibition of torture, and the humane treatment of detainees.

Although the term "combatant" is formally only recognized in international armed conflicts, in practice, parties directly involved in hostilities in non-international conflicts, including Indonesian National Army soldiers, remain bound by the principles of humanitarian law. In Indonesia, the recognition of the application of international humanitarian law is reflected in the ratification of Additional Protocol I through Law No. 59 of 2008, as well as the commitment to the principles of the Geneva Conventions, which have been ratified since 1958. In addition, Law Number 34 of 2004 concerning the Indonesian National Army and the Military Criminal Code serves as the basis for national law, regulating the role and limits of military operations, including those involving domestic conflicts. However, to date, there are no national regulations that explicitly classify the status

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<sup>1</sup> Savitri, N. "Konflik Bersenjata Non-Internasional dalam Perspektif Hukum Humaniter Internasional." *Jurnal Hukum Internasional*, Vol. 17, No. 1. 2020, pp. 45-68.

<sup>2</sup> ICRC, "Non-International Armed Conflict." ICRC Casebook, 2016-2022. [https://casebook.icrc.org/a\\_to\\_z/glossary/non-international-armed-conflict](https://casebook.icrc.org/a_to_z/glossary/non-international-armed-conflict)

of Indonesian National Army combatants in the context of internal conflicts, such as in Papua. This raises legal problems related to the status of protection, accountability, and the legitimacy of the state's use of armed force in dealing with separatist groups. Several studies even suggest that this vacuum in norms can lead to violations of humanitarian law and human rights.

This study aims to comprehensively analyze the legal status of Indonesian National Army soldier combatants in the context of non-international armed conflict in Papua, examining both international law and national law perspectives. With a more complete understanding of the applicable legal norms, the results of this study can contribute to strengthening the application of international humanitarian law and encouraging reform of national legal policies in domestic conflict situations. Moreover, to make this study comprehensive, the author also examines how other countries regulate NIAC. In this paper, we have chosen Hungary because it is a civil law country.

## **B. Research Method**

This study employs a descriptive-analytical method to present a structured and in-depth analysis of the suitability of the Indonesian National Army's operations in Papua following the principles of International Humanitarian Law (IHL). The approach employed is a normative legal approach, which involves examining law as a system of norms derived from international legal instruments and national laws and regulations. In selecting sources, this study prioritizes authoritative legal instruments, such as the 1949 Geneva Convention, Additional Protocols I and II, and national laws and regulations such as Law Number 34 of 2004 concerning the Indonesian National Army and Law Number 26 of 2000 concerning the Human Rights Court. In addition, the opinions of leading legal experts, such as Yoram Dinstein, Sivakumaran, and Jean-Marie Henckaerts, are also utilized to strengthen the legal and theoretical basis of this analysis. This study also refers to essential court decisions such as the Tadić Case of the ICTY and Korbély v. Hungary from the ECHR to understand how the status of NIACs and combatants is interpreted legally.

To enrich the analysis and increase contextual relevance, a comparative legal approach is used. In this approach, the author compares the legal framework and practices of internal conflict management in several countries facing similar challenges, especially Colombia, the Philippines, and Hungary. Colombia and the Philippines were chosen because they have a

long history of experience in non-international armed conflicts and the application of IHL principles into within their domestic legal systems. Meanwhile, Hungary was selected because it has a civil law system similar to Indonesia and has adopted IHL norms into its national criminal law, thus becoming a relevant example in understanding the translation of international obligations into national law.

## **C. Discussion**

### **1. Classification of Separatist Conflicts in Indonesia as Non-International Armed Conflicts**

Armed conflict is one of the primary concerns within the framework of International Humanitarian Law (IHL). The existence and type of conflict determine what laws apply and the extent of protection that can be provided to victims, including combatants and civilians. In this case, IHL categorizes armed conflict into two main forms: International Armed Conflict (IAC) and Non-International Armed Conflict (NIAC). This categorization is not merely a theoretical classification, but has very significant practical implications. Each type of conflict carries different legal consequences regarding protection for the parties involved, enforcement of legal responsibility, and the state's obligations in implementing humanitarian principles. Therefore, determining the type of conflict is a fundamental initial step before assessing the legal status of the parties involved, including the position of Indonesian National Army soldiers in the conflict in Papua.

Assessing the combatant status of the Indonesian National Army under international law requires understanding how international humanitarian law (IHL) and related legal frameworks apply to the Indonesian National Army's operations, particularly in contexts such as counterterrorism and internal conflicts. The Indonesian National Army's legal status as combatants is determined by the nature of the conflict and the applicable legal regime, which has direct implications for their rights, responsibilities, and accountability.

Before further evaluating the status of the conflict in Papua, it is first essential to understand the fundamental differences between IAC and NIAC in international humanitarian law, both in terms of definition, legal criteria, and the scope of protection provided. Each type of conflict has a distinct legal framework for protecting victims, treating combatants, and the obligations of the state and armed parties. The following are the differences between IAC and NIAC, which are presented in tabular form:

| Aspect              | International Armed Conflict (IAC)   | Non-International Armed Conflict (NIAC)   |
|---------------------|--|---|
| Definition          | Conflict between two or more sovereign states                              | Armed conflict between state officials and non-state armed groups, or between armed groups within a country |
| Parties involved    | Country vs State   | State vs Non-State Groups, or between armed groups  |
| Legal basis         | Geneva Conventions 1949 and Additional Protocol I 1977                     | Article 3, Together with the 1949 Geneva Conventions and 1977 Additional Protocol II                        |
| Combatant Status    | Legally recognized, with the rights of combatants and prisoners of war     | Not formally recognized; non-state parties do not receive combatant status                                  |
| Confession of War   | It is not required formally, and the law still applies                     | States are often reluctant to recognize them to avoid legitimizing rebel groups officially                  |
| Scope of Protection | Broad, including protection of combatants, prisoners of war, and civilians | Limited to basic protection for conflict victims; focus on non-combatants and those hors de combat          |

**Table 1. Differences between IAC and NIAC**

International armed conflict (IAC) is legally defined as an armed conflict between two or more sovereign states. Article 2 of the 1949 Geneva Convention confirms this, stating that the provisions of the Convention apply in all cases of a binding declaration of war or armed conflict between two or more High Parties, even if one of the parties does not recognize the state of war.<sup>3</sup>

In contrast, non-international armed conflict (NIAC) is defined as a conflict that occurs within a state's territory, between state officials and non-state armed groups, or between non-state armed groups themselves. The primary legal basis for NIAC is Common Article 3 of the 1949 Geneva Conventions and Additional Protocol II of 1977, which establishes minimum standards of protection for victims of conflict, including civilians and combatants who are no longer actively engaged in hostilities.

In IAC, recognizing conflict status is easier because it involves state actors. Meanwhile, to designate a conflict as NIAC, two main elements must be met: the intensity of violence and the organizational structure of non-state armed groups. The intensity of

<sup>3</sup> Dinstein, Y. *Non-International Armed Conflicts in International Law*. Cambridge University Press. 2012. pp. 89-112.

violence can be measured through conflicts that occur continuously, systematically, and involve the use of military weapons. At the same time, the organizational structure of armed groups must have an integrated command, the ability to carry out military operations, and control specific areas.<sup>4</sup> The lack of formal state recognition does not preclude classification as an NIAC if both criteria are met in fact.

In the IAC, the protection provided is broader than that regulated in the four Geneva Conventions and two Additional Protocols. In the IAC, the status of combatants and prisoners of war is explicitly regulated, and the rights of combatants are fully recognized. In contrast, NIAC has a more limited scope of protection because it is only regulated in detail in Common Article 3 and Additional Protocol II, which regulate the basic principles of protection for victims of conflict, but do not grant formal combatant status to non-state groups or government troops.<sup>5</sup> These fundamental differences impact how the law is applied in state military and political practices. In NIAC, the government tends to avoid recognizing the combatant status of rebel groups, as this can legitimize their existence and political demands. However, from a humanitarian law perspective, identifying a conflict's status as an NIAC is not synonymous with political recognition of a rebel group. It is solely to ensure the implementation of minimum protection laws.<sup>6</sup>

In general, armed conflicts are categorized into two main classifications in international humanitarian law: international armed conflicts (IAC) and non-international armed conflicts (NIAC). However, this is not always the case. There is a form of hybrid conflict known as internationalized armed conflict. This type of conflict arises when an internal conflict that was originally non-international changes its character to become international due to the direct involvement of a foreign country, either through military support, armed intervention, or effective control of non-state parties.<sup>7</sup>

According to Cassese,<sup>8</sup> an internationalized armed conflict refers to a situation when:

- a. Foreign countries are directly involved in internal conflicts, such as sending troops or weapons to support one side of the conflict.
- b. Non-state armed groups act on behalf of or under the effective control of a foreign state, so that their involvement is seen as an extension of interstate conflict.

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<sup>4</sup> ICRC. *Commentary of the Geneva Conventions*. 2021. <https://casebook.icrc.org>

<sup>5</sup> Melzer, N. *International Humanitarian Law: A Comprehensive Introduction*. ICRC. 2016. pp. 56.

<sup>6</sup> Akande, D., & Gillard, E. *Classification of Armed Conflicts: Relevant Legal Concepts*. In: Clapham, A., Gaeta, P., & Sassòli, M. (Eds.), *The 1949 Geneva Conventions: A Commentary*. Oxford University Press. 2015. pp. 32

<sup>7</sup> Simaela, A. et al. "Status Konflik Papua dalam Perspektif Hukum Humaniter Internasional". *Papua Law Review*, 6(1). 2023. pp. 88-103.

<sup>8</sup> Cassese, A. *International Law*. Oxford University Press. 2003. pp. 420-430.

- c. Domestic power struggles have become a field for proxy conflicts between countries, as occurred in the conflicts in Syria, Yemen, and Libya.

In international legal practice, the International Court of Justice (ICJ) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) have developed the doctrine of the "*overall control test*," which states that if a state has overall control over the military operations of a non-state group, then the conflict can be classified as an IAC.<sup>9</sup> The legal implications of this status are substantial. If a NIAC turns into an internationalized conflict (IAC), then all provisions in the 1949 Geneva Conventions and 1977 Additional Protocol I will apply, including recognition of combatant status, protection for prisoners of war, and state responsibility in cases of grave breaches.<sup>10</sup>

In the Indonesian context, although the conflict in Papua has not involved open involvement from foreign countries, the discourse on the internationalization of the conflict often appears in foreign political forums. If at any time it is proven that a country is actively supporting armed groups in Papua in the form of military assistance, logistics, or operational orders, then the conflict could shift from NIAC to an internationalized conflict. This situation will undoubtedly alter the legal approach that the Indonesian government must take in addressing it, including the treatment of combatants and its international accountability obligations.

The armed conflict in Papua between the Indonesian National Army and the armed group *Organisasi Papua Merdeka (OPM)* has been going on for decades. Although the Indonesian government officially classifies these groups as Armed Criminal Groups, the intensity of their violence and organizational structure show characteristics of a non-international armed conflict (NIAC). As explained, a conflict can be categorized as NIAC if it meets two main criteria: sufficient intensity of violence and the involvement of organized non-state armed groups. The conflict between the Indonesian National Army and OPM in the Papuan context meets both criteria. Research by Simaela et al.<sup>11</sup> concluded that the Indonesian National Army and OPM conflict could qualify as a non-international armed conflict because it occurred within Indonesian territory and involved organized non-state actors.

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<sup>9</sup> ICTY, *Prosecutor v. Tadić*, Judgment, IT-94-1-A, 15 July 1999.

<sup>10</sup> Henckaerts, J.-M., & Doswald-Beck, L.. *Customary International Humanitarian Law*, Volume I: Rules. ICRC/Cambridge University Press. 2005.pp.40.

<sup>11</sup> Simaela, A. et al.. "Status Konflik Papua dalam Perspektif Hukum Humaniter Internasional". *Papua Law Review*, 6(1). 2023. Pp. 90.

However, a different view states that the conflict in Papua has not yet reached the threshold to be categorized as NIAC. Hitipeuw et al.<sup>12</sup> argue that conditions in Papua are more appropriately classified as domestic security disturbances or internal tensions, so international humanitarian law is not entirely applicable. These differences in views underscore the need for a thorough assessment of the characteristics of the conflict in Papua to determine the most suitable application of international humanitarian law.

## **2. Legal Status of Indonesian National Army Soldiers as Combatants in Non-International Armed Conflicts**

Under international humanitarian law (IHL), the concept of “combatant status” applies primarily in international armed conflicts (IACs), granting lawful combatants the right to participate directly in hostilities and, if captured, to receive prisoner-of-war (POW) status. However, in non-international armed conflicts (NIACs)—such as those involving internal unrest or terrorism—the legal distinction between combatants and civilians becomes less clearly defined. In such contexts, members of state armed forces, including the Indonesian National Armed Forces (*Tentara Nasional Indonesia* or *TNI*), do not enjoy the same privileges or formal recognition as lawful combatants.<sup>13</sup>

In the Indonesian context, most internal security operations, including military involvement in Papua and counterterrorism efforts, do not consistently meet the legal threshold to be classified as NIAC under IHL. As a result, Indonesian National Army operations in these circumstances fall more appropriately under the domain of international human rights law (IHRL) rather than IHL. Consequently, Indonesian National Army personnel operating in such scenarios do not acquire special combatant privileges under international law.<sup>14</sup>

In international armed conflicts, combatant status confers specific rights and obligations on members of armed forces, including protection as prisoners of war if captured. However, in non-international armed conflicts, international humanitarian law does not explicitly regulate the status of combatants. Nevertheless, the basic principles of

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<sup>12</sup> Hitipeuw, C.B., Kainama, M., & Waas, R.M. “Perlindungan Penduduk Sipil Dari Kelompok Kriminal Bersenjata Di Provinsi Papua Ditinjau Dari Hukum Humaniter Internasional”. *TATOHI: Jurnal Ilmu Hukum*, 2(11), 2023. 1077 – 1089.

<sup>13</sup> Sefriani., & Mahardhika, N. “The Legality of Military Involvement in Law Enforcement Operations Against Criminal Armed Groups in Indonesia’s Papua Province”. *Asia-Pacific Social Science Review*. 2023. <https://doi.org/10.59588/2350-8329.1515>

<sup>14</sup> *Ibid*



humanitarian law remain in effect, including the obligation to differentiate between combatants and non-combatants and the protection of civilians.

Combatant status is strictly regulated in the 1949 Geneva Convention III and Additional Protocol I of 1977, which apply in the context of international armed conflict. Article 4 of Geneva Convention III states that combatants are members of the armed forces of a party to a conflict, including militias and volunteer groups, as long as they meet four criteria, namely having a responsible command structure, wearing permanent identification that can be recognized from a distance, carrying weapons openly, and complying with the laws and customs of war.<sup>15</sup>

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 not participating directly in hostilities; Second, limiting the number of means used solely to achieve the goal of the conflict, namely weakening the enemy's military potential. The two mentioned above are the essence of the principle of distinction, which must be respected and implemented by parties involved in armed conflict as a form of respect for humanitarian values, as the basic principles of international humanitarian law.

The primary distinction between combatants and law enforcement officers lies in their functions and legal authorities. Combatants are military personnel of a party to the conflict who have the right to conduct hostilities directly and, if captured, have the right to prisoner of war status.<sup>16</sup> Meanwhile, law enforcement officers, such as the police and the Indonesian National Army, are tasked with enforcing the law and maintaining public order, rather than being actively involved in fighting or armed hostilities. They are subject to national criminal law and do not receive combatant protection.<sup>17</sup>

Indonesian National Army soldiers, as part of the country's armed forces, are bound by national and international laws when carrying out military operations. Law Number 34 of 2004 concerning the Indonesian National Army and Law Number 39 of 1999 concerning Human Rights stipulate the Indonesian National Army's obligation to respect the law and

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<sup>15</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, Cambridge University Press, 2005, pp. 13.

<sup>16</sup> Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, Cambridge University Press, 2016, pp. 33–34.

<sup>17</sup> Judith Gardam, "The Law of Armed Conflict: A Gender Perspective," *Transnational Law & Contemporary Problems*, Vol. 12, No. 1, 2002, pp. 174.

human rights in all its operations. Additionally, Indonesia has ratified the Geneva Conventions and Protocol II, which regulate the protection of individuals who are not directly involved in hostilities. In the Papuan context, Indonesian National Army soldiers must adhere to the principles of international humanitarian law, including the principles of distinction and proportionality. Solerang<sup>18</sup> emphasized the importance of protecting civilians in non-international armed conflicts and the obligation of all parties to comply with international humanitarian law.

The absence of formal recognition of combatant status in non-international armed conflicts (NIAC) creates legal uncertainty for Indonesian National Army soldiers involved in military operations in Papua. This condition has an impact on legal protection and accountability, because their legal status is not expressly regulated in the national legal framework. Therefore, clearer regulations are needed regarding the status and legal protection of Indonesian National Army soldiers in the context of NIAC. On the other hand, armed separatist groups such as the West Papua National Liberation Army are categorized as non-state parties in NIAC. They are not recognized as legitimate combatants under the International Humanitarian Law (IHL) system, as combatant status only applies to international armed conflicts, as outlined in the 1949 Geneva Convention III and Additional Protocol I of 1977.<sup>19</sup>

Despite their organizational structure and military capabilities, their actions remain subject to national criminal law as perpetrators of treason, terrorism, or crimes against state security. This is also confirmed in national court decisions that reject claims of legitimacy based on political struggle.<sup>20</sup>

However, IHL continues to apply basic humanitarian principles to all parties involved in NIAC, including separatist groups and state officials. Common Article 3 of the 1949 Geneva Conventions explicitly states that in non-international conflicts, all parties must treat those not directly involved in hostilities (including surrendered or injured members) humanely without discrimination, with a prohibition against:

- a. Violence against body and soul, especially murder in all forms;
- b. Hostage taking;

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<sup>18</sup> Aprilia Solerang, "Perlindungan Hukum Terhadap Warga Sipil Dalam Konflik Bersenjata Non-Internasional Ditinjau dari Perspektif Hukum Humaniter Internasional" *Lex Et Societatis* Vol. 6 No. 10. 2018.

<sup>19</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, Cambridge University Press, 2005, pp. 11-15.

<sup>20</sup> Jayapura District Court Decision Number 172/Pid.B/2021/PN Jap, in the case of the crime of treason committed by members of a separatist group in Papua.

- c. Cruel treatment and torture;
- d. Execution without a valid trial.

Furthermore, Additional Protocol II expands this provision by affirming that actions towards victims of conflict must reflect the principle of respect for human dignity. Thus, even though separatist groups do not obtain combatant status, they still should comply with the minimum provisions of IHL. Violations of these principles, such as the torture of prisoners or the killing of civilians, may be classified as war crimes, even in the context of non-international conflicts.<sup>21</sup> The same applies to state apparatus, including the Indonesian National Army and the Indonesian National Police, which have an international legal responsibility to uphold IHL principles in their military and law enforcement operations. This obligation applies to all parties, regardless of their legal status in the conflict.<sup>22</sup> Hence, disproportionate repressive measures, extrajudicial executions (*extrajudicial killings*), or inhumane treatment of suspected separatists can also give rise to international liability for states.

This situation shows that formal legal status does not relieve or limit the moral and legal obligations of the conflicting parties. IHL regards the protection of human dignity as a universal principle that goes beyond recognition of the status of combatants themselves.

### 3. Implications of Combatant Status for Protection and Accountability

As previously explained, Indonesian National Army soldiers involved in non-international armed conflicts (NIAC), such as the separatist conflict in Papua, do not automatically obtain combatant status within the meaning of international humanitarian law (IHL). Consequently, Indonesian National Army soldiers do not automatically receive the international legal protection afforded to prisoners of war if opposing parties capture them. Their protection relies more on the general humanitarian principles stated in *Common Article 3* of the Geneva Conventions of 1949. This article stipulates humane treatment for all parties not directly involved in hostilities, including wounded or captured soldiers.

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<sup>21</sup> Andrew Clapham, *The Oxford Handbook of International Law in Armed Conflict*, Oxford University Press, 2014, pp. 496–499.

<sup>22</sup> Sandesh Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, 2012, pp. 225–227.

When the Indonesian National Army is involved in law enforcement operations (e.g., against terrorism or armed groups), their actions must comply with principles such as legality, proportionality, necessity, accountability, and precaution. Their involvement is not prohibited, but they must meet strict legal standards.<sup>23</sup> The deployment of the Indonesian National Army in counterterrorism or internal security is regulated by domestic law. Presidential regulations should further clarify it to ensure compliance with both national and international legal standards.<sup>24</sup> Importantly, in the absence of an international armed conflict, Indonesian National Army personnel do not automatically receive combatant immunity or prisoner-of-war status if captured, and their actions are subject to criminal law and human rights obligations.<sup>25</sup>

However, regarding national law, Indonesian National Army soldiers still receive protection as state officials who carry out their duties following the law. This mechanism is supported by regulations in Law No. 34 of 2004 concerning the Indonesian National Army, and when soldiers' actions are carried out within the corridors of state duties, legal immunity (*immunity*) may be granted, as long as there are no serious violations of humanitarian law or human rights. Legal responsibility is a crucial aspect of military operations in conflict zones, particularly when serious human rights violations or breaches of international humanitarian law occur. Although the Indonesian National Army, as a state institution, fulfills its constitutional mandate, military personnel can still be held individually responsible for any violations, as stipulated in both national and international law.

Indonesia recognizes jurisdiction over serious crimes, including crimes against humanity and genocide, in Law No. 26 of 2000 concerning Human Rights Courts. However, the implementation of violations in the context of military operations often faces structural obstacles, including jurisdictional dualism between military justice and general justice.<sup>26</sup> From an IHL perspective, the principle of command and control emphasizes that responsibility rests not only with the direct perpetrator, but also with the commander who

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<sup>23</sup> Sefriani, & Mahardhika, N. "The Legality of Military Involvement in Law Enforcement Operations Against Criminal Armed Groups in Indonesia's Papua Province". *Asia-Pacific Social Science Review*. 2023. <https://doi.org/10.59588/2350-8329.1515>

<sup>24</sup> Silalahi, W.. "Indonesian National Army Involvement in Handling Terrorism Action from Legal Perspective". *Constitutionale*. 2021. <https://doi.org/10.25041/constitutionale.v2i1.2255>

<sup>25</sup> Tarigan, H., & Saputro, G.. The Role Of The Indonesian National Army (Tni) In Countering Terrorism. *JP*, 7, 2021.pp 100-112. <https://doi.org/10.33172/JP.V7I1.1167>

<sup>26</sup> Elvira Runkabu, "Human Rights Justice in Indonesia: Evaluation of the Effectiveness of Law No. 26 of 2000," *Jurnal Hukum Right Because Right*, Vol. 27 No. 1, 2020, pp. 135-149.

knew or should have known of the violation but failed to prevent or punish it.<sup>27</sup> Therefore, in a separatist conflict, legal responsibility may extend to field personnel and military officials higher up the chain of command.

This situation is not unique to Indonesia. Several other countries facing similar conflicts also face the same dilemma regarding the protection of state officials and the obligation to uphold legal accountability. Therefore, looking at international practice can provide a relevant comparative perspective in formulating a balanced legal approach between protection and responsibility. Colombia is an example of a country facing a prolonged non-international armed conflict with separatist and rebel groups such as the FARC and ELN.

Although these groups are not officially recognized as legitimate combatants, the Colombian government and military (*Colombian Military Forces*) implement IHL standards internally, including training soldiers in the laws of war and the establishment of special military and civilian courts for cases of violations.<sup>28</sup> Colombia also demonstrated progress in accountability by establishing the *Special Jurisdiction for Peace (JEP)* as part of the peace process, which allows for trials of gross human rights violations and IHL violations by state officials and rebel groups. This practice demonstrates that the protection of military personnel must be balanced with a commitment to transparency and fairness.<sup>29</sup>

Another example is the Philippines which experienced internal conflict with various armed groups such as the MILF and NPA. The Philippine government recognized the relevance of IHL and signed Protocol II 1977, as well as adopting the domestication of IHL principles in national law. The Philippine Army (*Armed Forces of the Philippines/AF*P) has a special unit for training and monitoring compliance with humanitarian law and human rights. However, the Philippines has also experienced significant challenges related to abuses by the military, including allegations of extrajudicial executions. This shows the importance of a strong accountability system, not just a formal commitment to IHL.<sup>30</sup>

Comparisons with Colombia and the Philippines underscore the importance of a strong domestic legal framework to guarantee legal protection for Indonesian National Army

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<sup>27</sup> Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, Cambridge University Press, 2016, pp. 145.

<sup>28</sup> Human Rights Watch, "Colombia's Military Justice System," 2012, <https://www.hrw.org>.

<sup>29</sup> International Center for Transitional Justice, "Special Jurisdiction for Peace in Colombia," 2019, <https://www.ictj.org>.

<sup>30</sup> Amnesty International, "Philippines 2020: Human Rights Violations by Armed Forces," <https://www.amnesty.org/en/countries/asia-and-the-pacific/philippines/>.

soldiers who act according to the law in domestic conflicts, legal accountability for Indonesian National Army members who violate IHL and human rights, application of the principle of command in accountability for violations, transparency of the military justice system, including civilian oversight mechanisms in cases of serious abuses.

The absence of formal recognition of combatant status within the NIAC does not imply a lack of protection or accountability. In internal conflicts, states bear greater responsibility to ensure that the basic principles of IHL are consistently upheld to maintain the legitimacy of military operations and ensure justice for all parties.

#### **4. Hungarian Regulation on a Non-International Armed Conflict**

Hungary is a party to the Geneva Conventions of 1949 and has incorporated them into its domestic law through Law Decree No. 32 of 1954.<sup>31</sup> The integration of the Geneva Convention of 1959 means that all the conventions are bound to Hungarian law. Moreover, Hungary has also ratified Protocol II of the Geneva Conventions of 1949. Hungary regulates non-international armed conflicts (NIAC) through a combination of international treaties and domestic legislation grounded in the requirements of Common Article 3 of the Geneva Conventions, Additional Protocol II, and customary international law. Common Article 3 provides a minimum baseline of humanitarian protections applicable to all NIACs, whether formal or informal, requiring humane treatment for all persons "taking no active part in hostilities." Hungarian law enshrines these prohibitions, such as violence to life and person, torture, and humiliating and degrading treatment, as war crimes based on international law and binds domestic courts accordingly.

As Protocol II (1977) mentions, in Hungary, NIAC participants and victims gain enhanced protections similar to those in international armed conflicts, including protections for the civilian population and limits on weapon use. Although Protocol II is more limited, it is directly binding, and Hungary must translate its provisions into internal law through domestic legislation and enforcement mechanisms. Beyond treaties, Hungary is bound by customary IHL, which often mirrors the detailed rules of international armed conflicts and fills gaps in NIAC regulation. In areas not covered by international humanitarian law (IHL), international human rights law applies, subject to Hungarian implementation and the

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<sup>31</sup> Hoffmann, Tamás. "Individual Criminal Responsibility for Crimes Committed in Non-International Armed Conflicts: The Hungarian Jurisprudence on the 1956 Volley Cases." *Criminal Law Between War and Peace: Justice and Cooperation in Criminal Matters in International Military Interventions*. 2009.pp 735-753.

European Convention on Human Rights (ECHR). Any derogations during emergencies must meet the ECHR's strict requirements (Article 15).

In Hungary, the Criminalization of NIAC can be found in Hungary's Penal Code,<sup>32</sup> reflecting Geneva rules criminalizes "grave breaches" in NIAC—acts like starvation, torture, and homicide—based on international war crimes norms.<sup>33</sup> Under the New York Convention and Common Article 3, war crimes are considered crimes against humanity or war crimes and are thus not subject to statutes of limitation. Consequently, Investigative and prosecutorial duties stem from both International Humanitarian Law (IHL) and customary international law, as well as Hungary's obligations at all times.

Korbély v. Hungary<sup>34</sup> Confirmed that Hungary's domestic courts correctly recognized Geneva protections in crimes such as multiple homicide, affirming the accessibility and foreseeability of these rules. Some scholars have raised constitutional concerns, particularly regarding the retention of international norms in domestic criminal law. Hungary must ensure that international law is applied without altering its content, highlighting the tension between domestic constitutional principles and international obligations.

| Aspect                      | Hungary's Approach   |
|-----------------------------|--|
| International Instruments   | Ratified Geneva Conventions (1954), Protocol II (1977), bound by customary IHL                 |
| Core Provision              | Applies Common Article 3 to all NIACs, both codified and in practice                           |
| Domestic Law Implementation | Transfers war crimes definitions (torture, homicide, starvation) into the Hungarian Penal Code |
| Enforcement                 | Criminalization with no statute of limitations; State duty to investigate per IHL guidelines   |
| Human Rights Integration    | Supplemented by ECHR standards, emergency derogations require justification.                   |
| Judicial Confirmation       | ECHR confirmed Geneva norms applied domestically (e.g., Korbély case)                          |
| Constitutional Challenges   | Tensions exist; domestic law must align with treaty content without modification.              |

**Table 2. Hungarian Approach on NIAC**

<sup>32</sup> Act C of 2012, [https://thb.kormany.hu/download/a/46/11000/Btk\\_EN.pdf](https://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf), access on June 9, 2025

<sup>33</sup> Varga, Réka. "Facilitating War Crimes Procedures in Hungary: The New Criminal Code and Lex Biszku." *Hungarian YB Int'l L. & Eur. L.* 2013. pp 491.

<sup>34</sup> European Court of Human Rights, Case of Korbély v. Hungary, 2008 <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-88429%22%7D>, Accessed on June 9, 2025

Hence, Hungary's framework for non-international armed conflicts is robust and aligned with international standards. Through ratified treaties, domestic codification of war crimes, non-limitation of prosecution, and integration of human rights norms, the country provides a comprehensive legal framework to regulate non-international armed conflicts (NIACs) under both international humanitarian law (IHL) and domestic law. Judicial decisions, such as the Korbély case,<sup>35</sup> and academic critiques ensure continual checks and balances within Hungary's constitutional structure.

#### **D. Conclusion**

The separatist conflict in Indonesia, especially in Papua, creates complex challenges in enforcing international humanitarian law (IHL). As a non-international armed conflict (NIAC), neither state officials such as the Indonesian National Army nor separatist groups automatically obtain combatant status as regulated in classical international humanitarian law. In this context, the legal status of Indonesian National Army soldiers does not qualify as combatants in a formal sense. However, they still have rights and obligations based on the fundamental principles of IHL, including protection for those who are no longer actively participating in the conflict.

The combatant status of the Indonesian National Army under international law is context-dependent. In most current Indonesian scenarios, the Indonesian National Army operates under law enforcement and human rights frameworks, not as privileged combatants under IHL. This imposes strict legal obligations on their conduct and limits their immunity under both domestic and international law.

On the other hand, separatist groups cannot be categorized as legitimate combatants because they are not legitimate representatives of the state in the international legal system. Nevertheless, the group remains bound by the principles of IHL, especially the provisions of Common Article 3 of the 1949 Geneva Conventions and Additional Protocol II of 1977, which apply in non-international conflicts. This reflects a humanitarian approach that is universal and non-discriminatory, regardless of the legal status of the parties to the conflict.

The implications of not recognizing the status of combatants in the NIAC affect two crucial aspects. The unclear recognition of combatant status in NIAC has profound impacts on two main elements: legal protection for Indonesian National Army soldiers and

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<sup>35</sup> Hoffmann, Tamás. "Between Politics and Justice: International Criminal Law in Hungary." *International Criminal Law Review* 1.aop. 2024. 1-17.



accountability mechanisms for alleged human rights or IHL violations. Without clear regulations, soldiers who serve according to the law are still at risk of being criminalized, while the lack of clarity in accountability increases the possibility of impunity. Furthermore, the failure to clarify this legal framework has the potential to cause international legal problems, such as intervention by international human rights mechanisms, criticism from the global community, or even Indonesia's summons to international legal forums. This could tarnish Indonesia's reputation as a country that upholds the principles of law and human rights.

Comparative studies with other countries, such as Colombia and the Philippines, demonstrate that in internal conflicts, the state remains obligated to uphold humanitarian principles and establish a transparent accountability system. Applying IHL in internal conflicts requires a contextual approach, which recognizes the rights of soldiers on the one hand but also emphasizes the importance of the rule of law and protection for civilians on the other. Thus, to strengthen the legitimacy of handling separatist conflicts, Indonesia must affirm its commitment to the principles of IHL, strengthen national regulations regarding the use of force in non-international conflicts, and ensure protection and accountability for all actors involved.

#### **E. Suggestion**

The Indonesian government is advised to undertake comprehensive legal reforms related to the status of Indonesian National Army soldiers in non-international armed conflicts (NIAC), thereby providing legal certainty and enhancing the legitimacy of military operations in conflict areas, such as Papua. This reform can be initiated by formulating new laws or revising existing regulations, such as Law Number 34 of 2004 concerning the Indonesian National Army, to explicitly regulate the legal status of soldiers in the context of NIAC, including their rights, obligations, and limitations in the implementation of domestic military operations. In addition, the government needs to issue policies or presidential regulations that technically integrate the principles of international humanitarian law into national military policies and improve training for soldiers as a strategic step to ensure compliance with international standards while protecting civilians. Additionally, an evaluation of the military justice system is necessary to enhance its accountability and transparency, particularly in cases involving human rights and humanitarian law violations. Further research is needed to explore the possibility of limited recognition of combatant

status for state officials in the Indonesian Embassy and to comparatively examine international practices in dealing with internal conflicts so that they can be contextually adopted in Indonesia.

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