

# Characteristics of War Crimes in the Perspective of International Criminal Law

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## Abstract:

War crimes are offenses as defined in the Articles of International Law. To address war crimes in international law, there are different regulations, such as those set out in International Humanitarian Law (IHL), and within these regulations there are different areas of application. In addition to the Hague Convention, and jurisprudential conventions. The research uses normative legal research, namely research conducted on legal principles, legal rules in the sense of values (norms), concrete legal regulations and legal systems, which are related to the material under study. With the aim of discussing how the Characteristics of War Crimes in the Perspective of International Criminal Law. The results of this study war crime is one of the criminal acts that has not been fully accommodated into the rules of Indonesian national law. The applicable legal customs and regulations governing relations between kings are regulated through the law of nations. Ideally, war crimes are more dangerous than other types of international crimes.

**Keywords:** Characteristics, War Crimes, International Criminal Law

## INTRODUCTION

War crimes are central issues in international law and human rights. The term refers to serious violations of the norms of behavior in armed conflict. In a global context, understanding war crimes is critical for protecting individual rights, maintaining peace, and preventing atrocities. The history of war crimes can be traced back to various conflicts and was first officially recognized in Nuremberg trials after World War II (Grodin, 2018). Nazi leaders tried here for acts that violated international law (Bassiouni, 1996). Currently, various international institutions, including the International Criminal Court (ICC), play a role in prosecuting individuals responsible for war crimes. War crimes are among the most serious offenses under the Geneva Convention. War is an act carried out physically or non-physically with the aim of seizing something that must be achieved between belligerents. From a smaller perspective, war is an attempt to hostility between two groups of people who have different understandings and opinions so that conflicts occur between these groups, and can lead to wars to seize power and the goals of each group to cause losses and extraordinary pain to the groups carrying out the war.

The concept of war encompasses a wide range of interpretations, primarily referring to the state of conflict between human entities in the context of national and international diplomatic relations. Traditionally, war is defined as the systematic employment of violence intertwined with political

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elements on a global scale. The onset of war typically occurs when nations embroiled in disputes face unresolved objectives and subsequently resort to violent means as a method to achieve these aims (Khairani et al., 2021).

War crimes that still occur today are war crimes and human rights violations in Eastern Ghouta, and the war between the Syrian Assad regime and Russia, especially in Eastern Ghouta, has become a humanitarian crisis due to the obstruction of aid to civilians. The siege also includes international crimes, such as indiscriminate bombing and deliberate starvation of civilians, which resulted in more than 400 people living in Syria, despite the UN Security Council declaring a ceasefire throughout Syria (Pradana & Wibowo, 2020). Physical and mental violence were also carried out by committing murder, bombing, shooting, kidnapping, and rape, which became a horrific story in Syria in the history of the 21st century (Sari, 2021).

War crimes are offenses referred to in the Articles of International Law. To address war crimes in international law, there are different regulations, such as those set out in International Humanitarian Law, and within these regulations, there are different areas of application. In addition to the Hague Convention and jurisprudential conventions, there are provisions or regulations to eradicate crimes that are considered a serious threat to humanity, and the crimes committed require regulation, namely referring to the International Criminal Code (Kereh. 2019). International Humanitarian Law, previously known as the law of war or the law of armed conflict, is as old as human civilization, or even as old as war itself. War is defined as the highest level of conflict between two or more parties. Such interactions have existed since the emergence of human civilization in ancient times. Evidence of this interaction has been found since ancient times (International et al., 2014).

The status of international humanitarian law as a legal instrument based on international practices aims to limit the means of war to protect human rights. The further development of International Humanitarian Law not only discusses armed conflicts between one state and another or between states. The Geneva Convention of 1949 regulates the protection of victims of international and non-international armed conflicts and provides protection to victims of international and non-international armed conflicts (Nrangwesti, 2021). Based on the above description, it is important to examine in depth the characteristics of war crimes from the perspective of international criminal law. This research aims to analyze the extent to which International Criminal Law regulates War Crimes.

## METHODS

This study uses normative legal research, namely research conducted on legal principles, legal rules in the sense of values (norms), concrete legal regulations, and legal systems, which are related to the material under study (Adlini et al., 2022). Normative legal research is also called doctrinal legal research. In this type of research, the law is conceptualized as what is written in the legislation (law in books) or the law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate (Nurhayati, 2013). Therefore, this study describes and analyzes related war crimes in the reform of Indonesian criminal law. The statute approach was used.

## RESULTS

War crimes are part of the jurisdiction of the International Criminal Court (ICC), which is regulated in the Rome Statute. This explains why war crimes are among the crimes of gross human rights violations (Khairani et al., 2021). As stipulated in Article 5 of the 1998 Rome Statute, the Court's jurisdiction is limited to the most serious crimes to include the international community as a whole. In this case, war crimes were regulated by the Geneva Convention of 1949.

The Geneva Convention is a set of rules for treating civilians, prisoners of war, and soldiers who are unable to combat. In this case, 196 countries ratified the Geneva Convention in 1949. Article 50 of the Geneva Conventions states that grave breaches, as referred to in the previous article, are violations involving acts against protected persons or property, intentional killing, abuse, including biological

experimentation or inhumane treatment, acts that intentionally cause great suffering or serious injury to the body or health, and acts of destruction, deprivation, widespread deprivation of property, not justified by military interests. Serious violations are also regulated in Article 85 of the 1977 Additional Protocol (Sari, 2021).

What needs to be specified is Article (1), which states that the provisions of the Articles of the Convention on the Prosecution of Violations and Serious Offenses supplemented by this Article shall apply to acts of violation and serious violations of these rules. Then Section (5) states “without prejudice to the application of the Convention and this Protocol, serious violations of this Charter shall be considered as arbitrary war crimes under the law. Based on this explanation, serious violations listed in both the Geneva Conventions and the 1977 additional protocol can be categorized as war crimes. Conventionally, war crimes can be categorized into four categories: the use of prohibited weapons, prohibited means of participating in combat, changing the status of the civilian population, and targeted crimes (Situngkir, 2018).

The use of prohibited weapons aims to protect combatants and non-combatants by prohibiting the use of weapons that can naturally cause excessive harm or excessive suffering, which is done indiscriminately. The second ICC Statute lists a mixture of prohibited tools of war, including but not limited to the killing or wounding of combatants who have laid down their arms, plunder, sexual violence, and the participation of civilians as bulwarks of war. The third category involves changing the status of civilians during wartime with the aim of preventing warring parties from using tactics that could destroy certain organizations, such as forcing civilians from enemy countries to take part in atrocities against their own countries; last category) directed crimes involving violations of the principle that participants in armed conflict should only target combatants and military objects and should refrain from objectifying the civilian population (Sugiantoro, et al., 2024).

Then the understanding of war crimes in the London Charter is explained in article 6 (b) that: “War Crimes: Namely, violations of the laws or customs of war. Such violations shall include, but are not limited to, the killing, ill-treatment, or deportation of forced labor or for any other purpose of the civilian population of or in the occupied territory, the killing or ill-treatment of prisoners of war or persons at sea, the killing of hostages, the seizure of public or private property, the indiscriminate destruction of towns or villages, or destruction not justified by military necessity (Fitri Arianti Saputri, 2024).

Whereas in the Charter of the International Tribunal For the East, explaining that war crimes are contained in articles 5 (b) “Conventional War Crimes: Namely, violations of the laws or customs of war”. Meanwhile, the Charter of the International Tribunal for the East explains that war crimes are contained in Article 5 (b), namely “Conventional War Crimes: Namely, violations of the laws or customs of war” (Sindhu Gautama, 2019).

## DISCUSSION

The lack of a clear definition of war crimes in armed disputes has created difficulties in determining their formulation of war crimes. When used as a general term, war crimes are any violation of the law of war or humanitarian law that gives rise to individual criminal responsibility; however, technically, war crimes are often understood to be limited to violations of the applicable legal rules regarding the conduct of war (Nrangwesti, 2021).

War crimes are criminal acts that have not been fully accommodated by the rules of Indonesian national law. The applicable legal customs and regulations governing relations between kings are regulated through the law of nations, which in this nation's law regulates broad relations between the people of the state or the nation. Ideally, war crimes are a type of international crime that is more dangerous than other types of international crimes. Even the concept of war crimes is the source of the emergence of acts of genocide or crimes against humanity (Charles Frera Sumilat, 2021).

The acts of war crimes as well as the consequences of the actions of war criminals are regulated in international law, which thoroughly regulates international humanitarian law and international

criminal law. The characteristics of war crimes include 4 (four) things as follows (Asosiasi Pengajar Hukum Internasional, 2017):

- a. Grave Breaches of Geneva Conventions on August 12, 1949
- b. Serious Violations of the Laws and Customs Applicable in International Armed Conflict
- c. Serious Violations of Article 3 Common to the Four Geneva Conventions of August 12, 1949, in the case of an armed conflict not of international character.
- d. Other Serious Violations of the Laws and Customs Applicable in Armed Conflicts not of an International Character

War crimes are more accurately defined as violations of international humanitarian laws. These acts are classified as crimes because they contravene the laws of war or international humanitarian law, resulting in an individual criminal responsibility. The constituent elements of war crimes encompass contextual elements, *actus reus* elements, and *mens rea* (Raditya & Sadiawati, 1998).

In a crime, the *actus reus* has two forms: the first is the *actus reus*, in which the perpetrator's actions are prohibited by law. The second is *actus reus*, where what is prohibited by law is not the action, but the consequences of the action. The element of *Mens Rea* is that there is no definitive definition accepted as the customary international law of *Mens Rea*. One exception is Article 30 of the Rome Statute of the International Criminal Court, but this Article provides a definition of *mens rea* that is specific to crimes within the jurisdiction of the International Criminal Court, rather than a definition that has been recognized as customary international law (Lubis, 2019).

Humanitarian law consists of the Hague Convention and the Geneva Convention, both of which can be regarded as codifications of international customs during times of war. The Hague Law regulates the procedures and equipment that can be used during war, whereas the Geneva Law regulates the forms of protection for victims of war. In other words, these two laws were the main sources of humanitarian law. For example, many countries deplore armed conflict in Syria. Countries such as the European Union, Arab countries, and the United States have urged Syria to end conflicts peacefully. EU member states embargoed Syria by prohibiting it from supplying weapons (Osak et al., 2023).

The Arab League also imposed an arms embargo on freezing Syria's assets. The losses caused by the conflict are not only material, but many civilians have also become victims. Many civilian casualties were caused by cluster bomb attacks from the Syrian government. The Syrian government is suspected of committing serious violations of International Humanitarian Law, especially war crimes, which are violations committed during war, namely acts that are contrary to Humanitarian Law, where a state should provide protection to people who should be protected. This refers to the Articles of the Geneva Convention. There are three important elements of war crimes, namely (Osak et al., 2023):

- a. An act or action is a serious violation of the laws and customs of war. What can be categorized as war crimes are only serious violations of the laws and customs of war.
- b. The Act is committed to a situation or in the context of armed conflict. There is a requirement that there be a sufficient connection between the criminal act and the armed conflict that causes the application of international humanitarian law to be ineffective.
- c. This act gives rise to an individual criminal responsibility. This obligation is absolute, because it allows for the inclusion of state responsibility.

## CONCLUSION

War crimes are part of the criminal jurisdiction of the International Criminal Court (ICC), which is regulated in the Rome Statute. This explains why war crimes are among the crimes involving gross human rights violations. War crimes can be divided into four categories: the use of prohibited weapons, prohibited means of participating in combat, changing the status of the civilian population, and targeted crimes. The characteristics of war crimes include 4 (four) things, namely: Grave Breaches of the Geneva Conventions of August 12, 1949; Other, Serious Violations of the Laws and Customs Applicable in International Armed Conflict, Serious Violations of Article 3 Common to the four Geneva Conventions of August 12, 1949, in the case of an armed conflict not of an international character; (Serious Violations of Article 3 Common to the four Geneva Conventions of August 12, 1949, in the case of an armed conflict not of an international character) and Other Serious Violations of the Laws and Customs Applicable in Armed Conflicts not of an International Character. Other serious Violations of the Laws and Customs Applicable in Armed Conflicts not of an International Character.

### Conflict of Interest

All the authors declare that there are no conflicts of interest.

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