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Legality of Reserve Components in Indonesia in State Defense Efforts, From an International Law Perspective

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Abstract

The formation of a reserve component in state defense efforts is questionable the legality because it directly contradicts the provisions of international law, especially the principle of distinction. This is evidenced by the fact that the formation of reserve components in state defense efforts creates uncertainty about the legal status of the civilian population involved. Starting from that, the problem studied here is including the conflict between the two legal systems, namely international law and national law. This paper is divided into several sections of discussion, including: First, it examines the concept of state defense in terms of its practical ontology. Second, it looks at the clash between the international and national legal systems. Third, mapping the impact of the problem. Finally, it offers relevant solutions that can be applied to overcome the problems that occur. The conclusion that can be drawn from this discussion is that the formation of reserve components in state defense efforts is declared illegal because it is contrary to international law and has the potential to result in human rights violations. Therefore, to be able to anticipate these implications, the right to refuse military service and the principle of alternative duty must be accommodated.

Keywords: *Legality, Reserve Components, Indonesian, State Defense, International Law.*

Introduction

International law today is developing rapidly and dynamically because it is influenced by the behavior of its legal subjects. The state is the one that takes a central position in engineering and stimulating the development of international law. The will, rights and authority of states are engineering and stimulating tools that have created new paths towards the transformation of international law. All of this stems from the basic idea of state sovereignty which in certain situations has placed international law in a negative light. Concrete examples that can be found of the negative influence of state sovereignty on international law can be seen in the context of regulating armed conflict. As is commonly understood, the regulation of armed conflict is included in the concept of jus in bello, which is better known as international humanitarian law as its legal regime (Zsolt, 2019). The concept of jus in bello contains two main things, namely legal provisions governing the methods of conflict (Hague Law) and also legal regulations relating to the protection of the parties involved in it (Geneva Law) (Haryomataram, 2012).

If we trace one of the two international law arrangements in the concept of jus in bello, it has been directly impacted by the influence of state sovereignty as stated at the beginning. What is meant here is Geneva Law which regulates the protection of parties in conflict. This claim is based on the fact that the country, on the basis of its sovereignty, has formed what is called a reserve component. The formation of a reserve component is not new because many countries have done it within the framework of state defense efforts. One of the countries that is participating in the formation of reserve components is Indonesia. The formation of a reserve component in Indonesia is a constitutional mandate for all citizens as regulated in the 1945 Constitution, which is formulated in 2 (two) articles, including:

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Article 27 Paragraph (3) which states that "every citizen has the right and obligation to participate in efforts to defend the country."

Article 30 Paragraph (1) also regulates that "every citizen has the right and obligation to participate in national defense and security efforts; Paragraph (2) states that "state defense and security efforts are carried out through the universal people's defense and security system by the Indonesian National Army and the National Police of the Republic of Indonesia, as the main force, and the people as the supporting force."

The two provisions of the above articles were then actualized in Law no. 3 of 2002 concerning National Defense or hereinafter referred to as the National Defense Law. Article 7 Paragraph (2) of the National Defense Law states that:

The country's defense system in facing military threats places the Indonesian National Army as the main component, supported by reserve and supporting components.

Mutatis mutandis, to clarify the characteristics of reserve components, Article 8 Paragraph (1) of the National Defense Law regulates that:

The reserve component consists of citizens, natural resources, artificial resources, as well as national facilities and infrastructure that have been prepared to be deployed through mobilization to enlarge and strengthen the main components.

Apart from that, Law no. 23 of 2019 concerning Management of National Resources for National Defense or what is known as the PSDN Law, the contents of which further regulate the use of reserve components (Brantas, 2015). The formation of the PSDN Law was carried out in accordance with the instructions of Article 8 Paragraph (3) of the National Defense Law which states that "Reserve components and supporting components, as intended in paragraph (1) and paragraph (2), are regulated by law." In substance, the PSDN Law explains that the reserve component is a resource that is used to protect state interests when conflict escalates (Sahubuddin & Ramdani, 2020). This is in line with the assertion of Article 1 number 9 which reads "Reserve Components are National Resources that have been prepared to be deployed through mobilization in order to enlarge and strengthen the strength and capabilities of the Main Components." So that a reserve component candidate is more technically qualified in terms of utilization, he will be provided with basic military training for three months from the time he is declared to have passed the selection as regulated in Article 35 Paragraph (1) of the PSDN Law.

The formation of reserve components in Indonesia by the state government in accordance with the explanation above has essentially disrupted and violated the provisions of the Geneva Legal regime, both those contained in the Convention and its Additional Protocol. The reason is because the formation of a reserve component has the impact of uncertain legal status on the civilian population participating in it. As is known, the spirit of Geneva Law lies in the Principle of Distinction, which is the most important and powerful humanitarian law doctrine (Schmitt, 1999; Henckaerts, 2005). Thus, the International Court once said that the principle of distinction is a basic principle that must not be violated because it is part of the structure of international humanitarian law (I.C.J. Reports, 1996). According to Quéguiner, this opinion of the International Court of Justice places and confirms the principle of distinction as jus cogens (Quéguiner, 2008). Therefore, in situations of armed conflict, all provisions of international humanitarian law are reduced to the obligation to comply with these principles at all times (Rosenblad, 1979). According to Schwarzenberger, the principle of differentiation is categorized into three main components, namely place, equipment and people (*ratione loci instrumenti vel personae*) (Wortley, 1983). In essence, in practice, these three categories can carry out attacks if they are only military targets (Wortley, 1983) in accordance with the provisions of Article 52 Paragraph (2) of Additional Protocol I 1977 which confirms that:

Attacks should be strictly limited to military objectives. As far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action. Meanwhile, the goal of destruction, capture or neutralization in whole or in part, in the circumstances prevailing at that time, provides a definite military advantage.

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Starting from the description above, important questions will arise if they are related to the context of reserve component formation in Indonesia. In fact, why is the principle of distinction said to be violated, with the formation of this reserve component. The answer is because the formation of a reserve component obscures the application of the principle of distinction, especially regarding the differentiation of people. In studies of customary international humanitarian law, it is said that combatants must be able to distinguish themselves from civilians when in situations of armed confrontation or in military operations in preparation for attacks (Henckaerts, 2005). This is the real problem that arises from the formation of reserve components. In addition, reserve component members can be considered combatants because they have received military training, hold weapons, have active involvement and have a line of command led by a commander, meaning they are members and are legally declared members of the state's armed forces (Article 43 Paragraph 2 of Additional Protocol I 1977). Apart from that, they can also be considered permanent civilians/non-combatants because combatant status is not permanent. However, this will be difficult because if recruitment occurs and an armed conflict begins, they will definitely be in the militarized zone and equated with combatants in general, unless the principle of necessity and the principle of proportionality are applied to them (Fleck, 1997). Through this explanation, it can be said that reserve component members have been placed in quasi combatant status, namely half combatants and half civilians.

This ambiguity and uncertainty will be very fatal for reserve component members because in fact the 1949 Geneva Convention only regulates legal protection for combatants and non-combatants and not for people with quasi-combatant status. Combatants in the true sense are regulated by their rights and obligations in accordance with the provisions of the Geneva Convention III concerning Prisoners of War if they are captured by the enemy. Meanwhile, civilians in the real sense receive protection accommodation by referring to the IV Geneva Convention concerning the Protection of Civilian Populations in Time of War. In contrast to the two things above, with quasi combatant status attached to a reserve component member, there is no guarantee of legal protection for them. This means that reserve component members can be treated as they wish by the enemy if they are captured during an armed conflict, namely as civilians or prisoners of war. The equivalent of this is the threat to the human rights of the reserve component members. Starting from that, the author is interested in studying and finding solutions that are relevant to this case. This paper is presented in several parts, including: First, examining the concept of state defense from a practical ontology perspective and looking the state's interests in it. Second, seeing the contradiction between the two legal systems due to the formation of a reserve component in state defense efforts. Third, map the impact of this problem on both international law and national law. Fourth, offer relevant solutions that can be applied to overcome the problems that occur.

Research Methods

The research method used by the author is normative legal research, namely the pattern of examining theories, principles, concepts and laws and regulations that are useful for providing a systematic and comprehensive explanation of the object under study. This type of research has several approaches to the problem which in this paper is more aimed at the statutory approach, conceptual approach and case approach (Marzuki, 2005). The sources of legal materials in this research include, among others, laws and regulations, books, journals, articles and other documents relevant to the object of research. All legal materials are collected through library techniques, analyzed qualitatively and presented prescriptively analytically (Negara, 2023).

Result and Discussion

I. National Defense: Basics Of Application, Influential Factors And Its Application

The concept of defending the country in Indonesia has become a constitutional obligation for all citizens in accordance with the provisions of Article 27 Paragraph (3) of the 1945 Constitution. This obligation arises and is considered valid because citizens already enjoy the reservation of their rights through positive law (Van Kan & Beekhuis, 1983). Therefore, it can be said that defending the country as a legal obligation is an achievement in the reciprocal legal relationship between citizens and their country. Likewise, according

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to Mahfud MD, defending the country is a form of love for the country or what is known as nationalism so that citizens must be ready to make sacrifices for the nation and state (Mahfud MD, 2009). In this section, the scope of the concept of state defense will be studied, including the basis and reasons for its implementation, as well as its creation/implementation.

Practical Ontology

The concept of state defense in Indonesia is designed within the framework of the nomenclature, namely Sishankamrata or Universal People's Defense and Security System as stated in Article 30 Paragraph (2) of the 1945 Constitution. According to this article, it is said that state defense and security efforts are carried out through a defense and security system people of the universe. In this system there are main forces, namely the TNI and POLRI and the people as supporting forces. The concept of Sishankamrata itself is considered to start from a practical basis based on the experience of revolution in efforts to realize Indonesian independence, which has long been known as Guerrilla War or People in Arms (Rusfiana, 2021). In the course of the development of the Sishankamrata concept, it seems that it has also experienced rapid progress, especially in the New Order era because it has been adopted as a legal doctrine. The Sishankamrata doctrine is specifically regulated in the Decree of the People's Consultative Assembly Number IV/MPR/1973 concerning Outlines of State Policy. The contents of this decree state that the doctrine of defense and security of the universal people is related to the safety of the state and nation. In seeking safety, the dominant factor or the one that most determines its success is the people factor. People in this sense are patriotic, militant, well-trained and well-organized, and whose mental/soul quality has been tested. All of these things are also determined by the organization and skills of the core defense and security force itself, namely the Armed Forces of the Republic of Indonesia or ABRI. When compared with international history, the sishankamrata doctrine was also used during the French revolution in 1789, led by Napoleon Bonaparte, an army officer who later became French Emperor around the end of the 18th to the beginning of the 19th century (Simamora, 2014). At that time a revolution was launched using people's power with the slogans of freedom (liberte), equality (egalite) and brotherhood (fraternite) to overthrow the tyrannical nobility (Simamora, 2014). This also continued when the Bourbon Monarchy in France was overthrown by the third strata of society (commoners) who then formed a republic (de Tocqueville, 1856).

Theoretically, if we trace the origins of the sishankamrata concept, it originates and is adapted from the theory of The Paradoxical Trinity presented by Carl von Clausewitz. Clausewitz in his view stated that war is a combination of primordial violence, hatred and enmity which are basic human nature (Echevarria, 2007; Djatah, 2021). In fact, war is a form of cruelty against humanity, so according to him, to minimize this cruelty, there are two things that can and need to be done. First, establishing cooperation between nation-states and forming universal rules that can curb and control the cruelty of war (Glascott, 2017). For example, this effort has been carried out with the creation and implementation of the Geneva legal regime, both in the form of the Convention and its Additional Protocol. Second, balancing the elements within the country itself, including the government, people and military (commanders and troops). Maintaining a balance between these three elements is important because the relationship between the three is a paradoxical relationship (Clausewitz, 1989) namely the context of war is an extension of policies made by the government, and implemented by both the military and the people (Waldman, 2013; Herberg-Rothe, 2007). Apart from that, in this trinitarian hierarchy (The Paradoxical Trinity theory), the government, people and military (commanders and troops) are located as secondary elements which are a direct manifestation of the essence of war which has been stated above which is located as the primary element.

Through the explanation above, it must then be clarified what the relationship is between Clausewitz's The Paradoxical Trinity theory and the concept of sishankamrata which is being studied, especially with the fact of the people's involvement in it. The relationship between the two can be seen from the paradoxical relationship described above. In fact, the sishankamrata doctrine actually emphasizes the balance or cooperation of these three elements, but the people's element is the most important and determining factor. According to Clausewitz, this occurs because both the government and the military also come from the people, only to be elected to carry out functional duties in the government (Waldman, 2013; Herberg-Rothe, 2007). Therefore, it can be said that the sishankamrata doctrine in the concept of state defense as regulated in Article 27 Paragraph (3) and Article 30 Paragraph (2) of the 1945 Constitution is the full implementation

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of the basic principles of defense and security efforts originating from the people, by the people, for the people, and even with the people (Decision of the Constitutional Court of the Republic of Indonesia, 2021).

State Interests

It must be taken into account and fully realized that the current state defense efforts implemented are a direct manifestation and integration of state interests in the field of legal politics. If explored further, efforts to defend the country as a form of legal political interest in this country are driven by two factors. First, the state sovereignty factor which emphasizes the existence of autonomous state power in regulating its domestic/internal affairs. At this stage the country hopes to be completely free from intervention by any party. Second, the threat factor to the country's defense and security which can occur at any time and must be faced by the country. Therefore, in the state's view, it is very appropriate to carry out mitigation early in order to reduce the impacts that can be experienced later.

State Sovereignty

State defense efforts are carried out with full confidence by the state because they are fully supported by state sovereignty. Conceptually, state sovereignty is an important but extreme and problematic teaching and view because it has the potential for ambiguity, multiple interpretations and multifacets. Thus, to be able to understand state sovereignty, at least the context must first be determined. The context in question is based on several general references such as circumstances, beliefs, hypotheses or subjective justifications (MacCormick, 1993). In international law, sovereignty is considered to reflect the constituent elements of a state, legal personality, supremacy, autonomy, and the general will of a state as applied to individuals within that state (Maftei, 2015). Respecting state sovereignty is the same as respecting the provisions of international law according to several experts (Maftei, 2015). However, negatively, state sovereignty also presupposes the monopolistic nature of the state which sometimes uses violence, both physical and non-physical, to achieve its goals, as stated by Max Weber (Maftei, 2015). In some cases, for example, the state even regulates and controls the freedom of life of its people for the purpose of defending the country, as happened in Afghanistan. According to report by the Immigration and Refugee Council of Canada, national defense in Afghanistan, which is carried out in the form of military conscription by the government, has used unlawful methods (Research Directorate, Immigration and Refugee Board, Canada, 1990). The Afghan government implements military conscription in the age range 13-55 years for men by forcibly taking them from their communities and homes (Research Directorate, Immigration and Refugee Board, Canada, 1990). Apart from that, there are also consequences for those who try to escape and avoid military service in Afghanistan, namely being executed on the spot (shot) and being restricted from traveling abroad for an indefinite period (Research Directorate, Immigration and Refugee Board, Canada, 1990). Of course, this is contrary to humanitarian principles which guarantee the right to life and liberty as stated in the 1948 Universal Declaration of Human Rights and the 1977 International Covenant on Human Rights.

In Indonesia itself, efforts to defend the country are not carried out with such force as in Afghanistan, but in fact still contrary to the law. The proof is that defending the country in Indonesia, which is carried out by forming a reserve component legally, has violated the provisions of international law, namely the principle of distinction in humanitarian law. However, the Indonesian government still maintains that the formation of a reserve component in state defense efforts is in order to achieve national goals. Quoting the Information Media of the Ministry of Defense, the essence of state defense efforts is to build the character of the Indonesian nation which has a spirit of nationalism and patriotism and has strong national resilience in order to ensure the continued upholding of the Republic of Indonesia based on Pancasila and the 1945 Constitution and the maintenance of the implementation national development in achieving its national goals (WIRA, 2017). In line with this, according to the explanation in the Indonesian Defense White Paper (Ministry of Defense of the Republic of Indonesia, 2015), it is stated that the national objectives as intended are those stated in the Preamble to the 1945 Constitution, namely protecting the entire Indonesian nation and all of Indonesia's blood, and advance Indonesia to be welfare and smart society in life and following all kinds of world ordering based on independent, eternal peace and social justice. Based on this, it can be seen that Indonesia has indirectly conveyed the message that state sovereignty must be prioritized. However, it must be emphasized that achieving national goals through efforts to defend the country on the basis of

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state sovereignty in violation of international law should not be allowed to continue. Because state sovereignty at a certain point has limits to whether it can continue to be applied, which means that sovereignty is relative. This is known and has been recognized as a new sovereignty paradigm. In essence, the new sovereignty paradigm emphasizes that the sovereignty of a country also depends on the assessment of the international community (Yanubi, et.al., 2022). Therefore, every state's actions also determine the final result, whether it is seen as a sovereign state because it acts in accordance with legal provisions or on the contrary, it will receive a reduction in social and legal status at the international level.

Threats To State Defense and Security

In practice, state defense efforts carried out by the Indonesian government are also based on consideration of various challenges, namely factual and potential threats that can arise at any time from within or outside the country. This mission is in line with the provisions of Article 4 of the National Defense Law which explains that state defense efforts in national defense aim to maintain and protect the sovereignty of the country, the territorial integrity of the Republic of Indonesia, and the safety of the entire nation from all forms of threats. It can also be said that state sovereignty, territorial integrity and national safety are the main priorities that must continue to be guarded and maintained. At this time, the factual threats as intended include intra- and inter-state conflicts, namely conflicts based on political and power issues which have now spread to the Asia Pacific region. In the Southeast Asia region where Indonesia is located, this experience also occurred several years ago, namely through the military coup in Myanmar carried out by General Min Aung Hlaing against the civilian government (Firnas, 2023). Furthermore, the area is also vulnerable to transnational crimes such as terrorism (Yahzunka, et.al., 2018; Pradnyana, 2022), drugs, human trafficking, weapons smuggling, cybercrime (Hilmy, 2021) and so on. If you look at other parts of the world, non-linear ways of conflict, known as proxy war, have also developed using asymmetric weapons, as was done in the armed conflict between Russia and Ukraine (Manfaluthy, 2015). Indonesia must also always be alert to potential threats such as climate change, natural disasters, epidemics and pandemics (for example, Covid-19 which has occurred) and problems with the availability of energy, water and food (Ministry of Defense of the Republic of Indonesia, 2015). All of this is a justification for the government to implement the concept of state defense in Indonesia regardless of the substantial legal conflicts therein.

Reserve Components

Reserve components are manufactured or the result of direct application from state defense efforts in national defense which are currently being intensively organized by the Indonesian government. The reserve component consists of all citizens and all existing resources, both natural and artificial, and even all kinds of national facilities and infrastructure. All of this was specially prepared, managed and systematized to be deployed through mobilization to enlarge and strengthen the main components, namely the TNI and POLRI. According to the government, reserve components are formed in units based on the needs of the main components, while still paying attention to the balance between civil rights and citizen's obligations in state defense efforts (Ministry of Defense of the Republic of Indonesia, 2015). Based on this, conceptually, the practice of utilizing reserve components is in the form of systematic, tiered and integrated alerting in each region according to the needs of each dimension (land, sea and air). If taken from a human resources perspective, according to the Indonesian government, the formation of a reserve component is a form of developing human capital or human resource capacity in the defense sector (WIRA, 2016). In this context, human capital places and sees humans as intangible assets (intangible assets), namely assets with many advantages or multitalents that can be used, which will not reduce this essence (Christa, 2013). In the context of the country, civilians involved in the reserve component are also believed to have a wealth of abilities to encourage progress in national defense, which means contributing positively to the country's progress. Based on this, a number of basic military training activities (Latsarmil) for reserve components have been carried out during 2023 in several places such as at Wingdik 800/Pasgat Bandung involving 500 participants, at Kodam IX/Udayana Bali with a total number of Latsarmil participants from Matra Darat. This is a total of 499 people from ASN/Government and Private Agencies, at Kodikmar Surabaya involving as many as 500 people for Latsarmil Matra Laut (Ministry of Defense of the Republic of Indonesia, 2023).

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The contradiction between international law and national law has started since the nature or style of both were regulated in the body of international law, each of which has substantial differences. The nature of these two legal systems can be found implicitly in the formulation of Article 2 Paragraph (1) of the UN Charter which essentially implies that countries in their legal relations have equality or equal sovereignty. This equality of sovereignty indicates that there is no stratification or hierarchical division of the position of one country compared to other countries. This also means that there is no supranational body that supervises and governs all countries under the banner of international law. This is what has explicitly stated and implied that international law is coordinative because countries coordinate with each other under this law. Among legal experts, extreme statements have emerged regarding the coordinative nature of international law. That international law is not law in the true sense but is merely positive moral (Dixon, 2001) because it refers to the fact that this law does not have legislative bodies and police bodies that can enforce its implementation (Sefriani, 2011). However, it is actually irrelevant and can be dismissed because international law has main organs, namely the General Assembly which in practice carries out legislative functions and the Security Council which carries out law enforcement duties. Very different from that, through the regulation of the article above it has also been confirmed that national law has a subordinate nature because countries have sovereignty in the form of legal authority to be able to impose and defend their desires. This can be done internally towards its citizens or externally towards other countries as well as international law itself. The guarantee can be seen in the provisions of Article 2 Paragraph (7) of the UN Charter which provides immunity for state sovereignty, which has become known as the principle of non-intervention in international law.

In practical terms, the contradiction between international law and national law is proven by the formation of a reserve component in state defense efforts which violates the provisions of the principle of distinction in international humanitarian law. Even though it is against the law, this is the aim of countries to continue to confirm what has been started. Historically, from the beginning, countries have been antipathetic to the application of the principle of distinction regulated in international humanitarian law. States consider the presence of the principle of distinction in the context of armed conflict between states as an attempt to downgrade state sovereignty. This context is called the dichotomy between international humanitarian law and the philosophy of state sovereignty. However, this can also be exclusively expressed as a fierce struggle between the principle of distinction and state sovereignty. In this regard, in retrospect it will be seen that several decades after the diplomatic conference which initiated the birth of the 1949 Geneva Convention, in the United States a handbook for the School of Advocates was published, the contents of which are as follows:

Humanitarian law, namely the law governing armed conflict, has attacked and disturbed the roots of state sovereignty because it has limited the ways and methods of applying violence in armed conflict and imposed obligations to respect and protect certain people and places (Bartels, 2018).

The meaning of these words directly alludes to and refers to the principle of distinction regulated in international law, namely the differentiation of persons as referred to in Article 4A of the 1949 Geneva Convention III and the differentiation of objects, namely places and equipment, which refers to the provisions of Article 52 Paragraph (2) Additional Protocol I 1977. This resistance occurred because in the view of states the regulation of the principle of distinction had no clear direction while the state had been sacrificed for not carrying out comprehensive action against its enemies in armed conflict. On closer inspection, there are a number of things that are seen as showing the ambiguity of the principle of distinction which is considered to be very detrimental to countries. In the provisions of Article 52 Paragraph (2) of the 1977 Additional Protocol I which discusses the assessment of the validity of operational targets, it is considered only a material provision that is not accompanied by formal regulations. This means that it is not discussed further regarding how to assess the validity, namely whether it is done through investigation and/or proof. As a result, interpreting this matter is left to the interpretation of each party in conflict, giving rise to multiple interpretations. There is also the phrase "military objectives" which seems very subjective and undirected, and there is also the phrase "effective contribution" whose nature cannot be determined

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(Dorman, 2005). For this reason, the state then initiated the separation of the issue of internal disturbances from the realm of international humanitarian law which was annulled through the same provisions of Article 3 of the 1949 Geneva Convention and Article 1 of the 1977 Additional Protocol II.

However, objections and practices have been put forward to block the application of the principle of distinction, especially with the formation of a reserve component, but what should be paid attention to by countries is the origins of its existence. The principle of distinction was born from the customary law practices of countries which were then outlined in the regulations of the 1907 Hague Convention and were strengthened by the decision of the Nuremberg Tribunal. This means that the principle of distinction is not a new concept but rather the result of extraction from the behavior of countries themselves. For example, in the American Civil War, Francis Lieber, a legal expert, created the Lieber Code according to the orders of President Abraham Lincoln, which contained rules for land warfare based on customs which were then made into General Army Regulations which also recognized the principle of distinction (Sweney, 2005). Article 22 of the regulation states that:

In situations of hostility between countries and within the country itself, individuals who are part of that country must be distinguishable from the armed forces. That unarmed/armed citizens must have their personal, property and honor protected as long as the state of hostilities can be accepted as war (Sweney, 2005).

Based on the explanation above, if it is relevant to the context of assessing the legality of the reserve components formation in Indonesia, in efforts to defend the country, it can be concluded that the reserve components formation is an illegal act carried out by the state. This is because juridically and practically there is no single justification in international law that allows the creation of methods to mix up the legal status of civilians in armed conflicts. Therefore, it can be said that the reserve component formation in Indonesia is a form of abuse of international law based on state sovereignty and non-intervention. In a more comprehensive perspective, the author also sees that the legal position of the reserve component formation which is in fact illegal also raises legal ethical issues for the state. That the reserve component is not only a legal anomaly but also an anomaly regarding legal morals. Issues of ethics and morality should not be separated from legal issues because the third relationship is complementary as stated by Habermas (Xhemajli, 2021).

Legal Implications in Reserve Components Formation in Indonesia

As is known, the principle of distinction in international law, which is codified in humanitarian law, aims to ensure certainty of the legal status of parties directly involved in hostilities or armed conflicts. The parties differentiated in this principle are identified as combatants and civilians. The entry of new participants, namely reserve components, into the arena of armed conflict has in fact created chaos in the application of the principle of distinction. With the destruction of the system built on the principle of distinction due to the reserve component formation, legal implications have arisen in the form of vulnerabilities to human rights violations. So the question in this case is why human rights have become a clinical reaction to this. It must be understood that the institutionalization of the principle of distinction as a rule of humanitarian law was motivated by cases of major wars which threatened the human rights of the parties involved in them. For this reason, the principle of distinction was established with the aim of minimizing casualties, especially those who did not take a direct part in hostilities.

The case of the big war in question can be seen by starting from history, namely in 1907 European countries which were already haunted by the atmosphere of war tried as quickly as possible to form or codify the laws of war. Through the conference held, bombing regulations for land and sea zones were produced which essentially limited attacks to military facilities only. It can also be said that hostile acts against military objects and civilian objects have been strictly separated. The long-awaited moment finally arrived, namely during the First World War where this situation became a proving ground for the application of the principle of disticntion. The perpetrators in the First World War were classified into two different factions. First, the Entente (allied) powers whose members consisted of Great Britain and the United States. Second, the central powers consisting of Germany, the Austro-Hungarian Empire and Ottoman Türkiye (Althaus,

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et.al., 2012). After the First World War, it was found that the application of the principle of distinction was indeed implemented by both parties, but inconsistently. This can be seen by comparing the statements of United States Air Force officers with reality, namely actual casualty data. According to Major Jeanne Meyer, the bombing actions carried out by Britain, France, Germany, Italy and the United States showed adherence to the principle of distinction for two reasons: First, the targets aimed were only military objects and facilities; and second, all of them campaigned for a ban on the practice of unguided or indiscriminate bombing (Sweney, 2005).

However, as stated, there were inconsistencies in practice because there were too many casualties in the First World War, especially civilian victims, so that the first world war was considered the most destructive armed conflict of all time. In general, it cannot be calculated with certainty the number of fatalities that occurred, however, with heated debate, a number of literatures have succeeded in releasing their estimated results. The first source explained that the total number of casualties in the Allied bloc was estimated at more than 3,000 for civilians and more than 5 million for combatants (World War 1 Casualties, 1915). Meanwhile, for the central block, civilian casualties reached 3 million 400 thousand people and more than 3 million 900 thousand people for combatants (de Juan, 2024). However, other sources who conducted investigations with a focus only on civilian casualties stated that almost 13 million people had become victims of the First World War (Holocaust Encyclopedia, 2019). Over time, the world continued to be hit by other wars such as the Cold War, the Second World War, the Vietnam War (Gartner, et.al., 2000) and the Korean War, all of which claimed thousands of civilian and military lives.

Based on the description above, a simple analogy can be seen which, if drawn in the context of the formation of reserve components in Indonesia, will again emphasize that state actions and policies have opened the abyss of destruction for these quasi-combatants. In cases of human rights violations, namely the deaths of many civilians and combatants in the history of the war above, it shows that even the practice of the principle of distinction cannot stem the desire of countries to fight and destroy each other indiscriminately. If this position were reversed on reserve components, it would be very likely that inhumane treatment and massive deaths that threaten their human rights could be more potentially applied to reserve components because they are not protected by any special regulations at all. For this reason, the formation of a reserve component should be taboo for the state in the context of armed conflict. Especially in efforts to protect human rights, which even at the national level continues to be voiced and is the main focus of the government. Countries need to remember that the protection of human rights is an obligation of states in international law which must be considered as jus cogens or the highest legal norm whose implementation cannot be negotiated and is imperative to be implemented (Zenović, 2012; Fattah, 2017). This unity is inspired by the nature of legal relations and natural human rights, concretely the right to life which is part of these human rights. Therefore, every individual right, including reserve components, should be protected by law and its implementation must also be guaranteed by the competent institution or authority, namely the state itself. In another discussion, the implications of human rights violations will be increasingly likely to occur if the state and government ignore these legal orders.

Way Out for the Problem of Reserve Components Formation in Indonesia: Right to Refuse Military Service and the Principle of Alternative Duty

In practice, the formation of reserve components is very problematic because it not only violates the provisions of the principle of differentiation but also has the potential to cause violations of human rights from the perspective of international law. In addressing and dealing with this, it is necessary to facilitate the right to refuse military service and the principle of alternative duty for members of the reserve component. The right to refuse military service is known as the principle of conscientious objection, namely conscientious objection to military service. The term conscientious objection began to be massively discussed in the mid-19th century (The New York Assembly Committee, 1841) but the practice was found to have been carried out long before that. In the 3rd century, 295, Maximilianus son of Fabius Victor, a veteran of the Roman military, at the age of 21 was called to join the Roman legion (military unit) (The New York Assembly Committee, 1841). He refused this call on the grounds that based on his religious beliefs he could not fulfill his duties as a soldier (The New York Assembly Committee, 1841). This reason

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was presented to the Proconsul in Numidia who consequently had him executed but the Catholic church later canonized him as a saint (The New York Assembly Committee, 1841)

The practice of conscientious objection was reintroduced during the Dutch independence movement in 1575, when Mennonites were fully exempted from military service (Brock, 1972). A century later, in America the performance of military service for the defense of the colonial government was also collectively ruled out (Prasad & Smythe, 1968). This continued during the period of military service in France, which was established by the emperor Napoleon Bonaparte (Holmes, 2001). Conscientious objection further occurred in the 20th century precisely in World War I, recorded approximately 16,000 civilians in the UK (Prasad & Smythe, 1968) and 4,000 people in America refused military service (Swarthmore College Peace Collection, 2024). The widespread practice of conscientious objection has started to attract the attention of legal experts and countries to be constructed as a norm in the international legal system. The idea is considered relevant because if we look at the basis of conscientious objection, which is the basis of conscience, it directly refers to the regulation of multilateral human rights treaties, namely in Article 18 of the Universal Declaration of Human Rights 1948 and Article 18 of the International Covenant on Civil and Political Rights 1977.

However, the implementation of the right to refuse military service or conscientious objection in the above example must basically be aligned with the principle of alternative duty, a principle that refers to the main idea of preventive exploitation, which means assigning component members during military service to places with minimal risk of threatening their legal protection. In this context the allocation of principles is intended to support the proposal that members of reserve components should be excluded from direct participation during armed conflict. This principle is constructed with reference to Recommendation No. R (87) 8 of the Committee of Ministers of the Council of Europe on conscientious objection to conscription which states that:

Any person liable to conscription who, for compelling reasons of conscience, refuses to engage in the use of arms, is entitled to be exempted from the obligation to perform military service, on conditions to be determined later. Such persons may be liable to perform alternative service (Recommendation No. R (87) 8, 1987).

In the Indonesian context, military service is related to the active period of service of reserve component members which consists of three situations including the latsarmil period, the refresher period, and the mobilization period. The existence of the right to refuse military service or conscientious objection can make reserve component members refuse to be involved in these three situations. In line with that, if a reserve component member has refused military service then he can undergo alternative duties. Based on the practice of countries, it was found that most of the alternative duties within the framework of the principle are performed outside the premises of the military community. For example, Mexico stipulates the application of alternative duties in educational institutions, sports, cultural preservation, social workers including in rehabilitation institutions for public diseases (drugs) (United Nations Human Right, 2012). Meanwhile, Russia directs alternative tasks in the field of labor (United Nations Human Right, 2012). However, if it must be implemented within the military community, it is generally focused on military administrative and medical management. Through all of this, it is hoped that the protection of the human rights of every citizen or civilian who is used in the defense of the country can be guaranteed.

Conclusion

The legality of the formation of reserve components in Indonesia in state defense efforts in the perspective of international law is illegal because it violates the provisions of the principle of distinction as stipulated in the 1949 Geneva Convention and Additional Protocol I 1977. The implication arising from the formation of the reserve component in Indonesia is that it has the potential to cause violations of human rights. This is because the unclear status of reserve components, whether as combatants or civilians, will have a direct impact on the provision of legal protection for them in the event of an armed conflict. On the other hand, the Indonesian state views the formation of reserve components involving civilians or citizens as a form of

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resource development in the field of defense. The formed reserve component is expected to support the main component in maintaining the defense and security of the country for the safety of the nation. In order to face the reality of the formation of reserve components and to minimize the potential for human rights violations that can occur at any time, the state must facilitate the realization of the right to refuse military service and alternative duties. These two methods are expected to guarantee the individual rights or human rights of the civilian population or citizens who participate as members of the reserve component.

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