



## THE PRINCIPLES OF DISTINCTION AND PROPORTIONALITY REGARDING ATTACK ON THE INDONESIAN HOSPITAL IN GAZA BY ISRAEL DEFENSE FORCE (IDF)

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### Abstract

This study analyzes the Israel Defense Force (IDF) attack on the Indonesian Hospital in Gaza in November 2023 through the application principles of distinction and proportionality in International Humanitarian Law (IHL). The method used is normative legal research with legislative, conceptual, and case-based approach based on the 1949 Geneva Convention, the 1977 Additional Protocol I, and the 1998 Rome Statute. The results of the study show that there is no independent evidence verify claims of IDF that hospital was used Hamas for military purposes. The attack resulted damage to medical facilities, civilian casualties, and disruption of health services, which had widespread impact on the people of Gaza. The analysis shows that action of IDF did not comply with the principle of distinction because hospitals remain protected civilian objects, and violated the principle of proportionality because the civilian casualties caused far exceeded presumed military advantage. Thus, these attacks could potentially be classified as serious violations of IHL and constitute war crimes.

**Keywords:** *law of armed conflict, hospitals, international humanitarian law.*

## Abstrak

Penelitian ini menganalisis serangan Israel Defence Force (IDF) terhadap Rumah Sakit Indonesia di Gaza pada November 2023 melalui penerapan prinsip pembedaan dan prinsip proporsionalitas dalam Hukum Humaniter Internasional (HHI). Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus yang bertumpu pada Konvensi Jenewa 1949, Protokol Tambahan I 1977, serta Statuta Roma 1998. Hasil penelitian menunjukkan tidak adanya bukti independen yang dapat memverifikasi klaim IDF bahwa rumah sakit digunakan Hamas untuk tujuan militer. Serangan tersebut mengakibatkan kerusakan fasilitas medis, jatuhnya korban sipil, serta terhentinya layanan kesehatan yang berdampak luas pada masyarakat Gaza. Analisis menunjukkan bahwa tindakan IDF tidak memenuhi prinsip pembedaan karena rumah sakit tetap merupakan objek sipil yang dilindungi, serta melanggar prinsip proporsionalitas karena kerugian sipil yang ditimbulkan jauh melebihi dugaan keuntungan militer. Dengan demikian, serangan ini berpotensi dikualifikasikan sebagai pelanggaran berat HHI dan memenuhi unsur kejahatan perang.

**Kata Kunci:** *hukum konflik bersenjata, rumah sakit, hukum humaniter internasional*

## INTRODUCTION

War crimes are prohibited under international criminal law.<sup>1</sup> According to the framework of international criminal law, an act can be classified as a war crime if it meets two main criteria. These criteria are a serious violation of provisions set forth in the 1949 Geneva Conventions or a violation of internationally recognized laws and customs of war. These violations must occur specifically in the context or situation of armed conflict.<sup>2</sup> In the view of International Humanitarian Law (IHL), armed conflict or war seen as an unavoidable reality in interactions between states. Therefore, rather than attempting to prohibit war entirely, IHL strives to regulate conduct of such conflicts. The goal is to ensure that, even if war occurs all parties must continue to adhere humanitarian

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<sup>1</sup> "Statuta Roma 1998 Mahkamah Pidana Internasional (ICC)" (1998).

<sup>2</sup> Zainal Abdul Aziz Hadju, "Anotasi Spirit Unable Dan Unwilling Terhadap Kejahatan Perang Israel Palestina," *Jambura Law Review* 1, no. 2 (2019): 167.

principles so that war can be conducted in "humanized" manner (or reducing unnecessary suffering).<sup>3</sup>

The Israel-Palestinian conflict has been ongoing since the migration of Jews to Arab Palestinian lands. The Israeli occupation of Gaza Strip referred to as unresolved conflict of world, which has been going on for past six decades.<sup>4</sup> The armed conflict between Israeli and Palestine has not only caused casualties among civilians and children, but also several health facilities such as hospitals have not been spared from Israel attacks on the Gaza Strip. The pattern of contemporary armed conflict shows worrying trend which the civilized aspects of war are being ignored. This is clearly seen in disregard for protection of non-combatants (civilians) and neglect safety of military personnel who have been incapacitated or become victims. In short, there has been significant decline in compliance with the core principles of International Humanitarian Law (IHL). Therefore, respect for the neutrality of medical facilities is very important and must be adhered to all armed actors.<sup>5</sup> Another worrying incident has occurred in the Israeli-Palestinian conflict. The prolonged conflict, which has yet to reach peaceful agreement impacted the surrounding communities who have become victims of the armed conflict. The conflict has not only caused civilian casualties, but also targeted health facilities such as hospitals in Gaza, Palestine, by Israel.

The war began on October 7, 2023, when Palestinian armed groups in Gaza launched thousands of rockets toward Israeli and successfully breached the Gaza border fence at several points, entering Israel cities and killing and capturing Israeli soldiers and civilians. The Israel military declared "state of war" and began attacking targets in the Gaza Strip, including residential buildings and health facilities.<sup>6</sup> According to report released by the Ministry of Health in Gaza, which is affiliated with the Hamas authority, on Friday,

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<sup>3</sup> Haryomataram, *Pengantar Hukum Humaniter* (Jakarta: PT Rajawali Press, 2005).

<sup>4</sup> Vitus Mazi Udegbulem, "Accountability For Violations Of International Humanitarian Law In The Occupied Palestinian Territories," *International Review of Law and Jurisprudence* 2, no. 2 (2020): 38.

<sup>5</sup> Helena Kennedy, "The 2014 Conflict Left Gaza's Healthcare Shattered. When Will Justice Be Done?," The Guardian, 2015, <https://www.theguardian.com/>.

<sup>6</sup> United Nations, "In Focus Israel-Gaza Crisis," 2013, <https://www.un.org/>.

November 17, 2023, the armed conflict between Israel forces and Hamas factions since October 7 has had significant humanitarian consequences. The data shows that the death toll in the Gaza Strip has reached 12,000. Furthermore, the report highlights demographic vulnerability, detailing that 5,000 children and 3,300 women are among the dead. In addition, the physical impact of the conflict is also measurable through the number of 30,000 individuals reported to have been injured. This data emphasizes the need for an in-depth evaluation of compliance with International Humanitarian Law (IHL) and the urgent need to mitigate humanitarian crisis in conflict zone.<sup>7</sup> At least three hospitals have been targeted by Israel attacks, one of them is the Indonesian Hospital in Gaza.<sup>8</sup>

In the conflicts armed, parties accused of attacking health facilities often disagree with these accusations and tend not to provide explanations for their denials. It was confirmed by an official press statement from Israel Defense Force (IDF) spokesperson Admiral Daniel Hagari regarding Israel attack on hospital facility in Gaza.<sup>9</sup> Attacks on health facilities such as hospitals tend to blame enemy for violating international law by claiming that the bombed hospitals were being used as shields. The statement of Israel briefly that hospital was protecting combatants or hiding weapons, so bombing the hospital was not considered a violation. However, as a sub-field of essential public international law, IHL strictly regulates conduct of warfare (*jus in bello*) and guarantees legal protection for victims of armed conflict. Ironically, although IHL is crucial legal framework for evaluating legality of such

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<sup>7</sup> Irawan Sapto Adhi, "Jumlah Korban Tewas Di Gaza Saat Ini Capai 12.000 Orang," *Kompas.Com*, 2023, <https://www.kompas.com/>.

<sup>8</sup> Tommy Patrio Sorongan, "Deretan Rumah Sakit Gaza Yang Kena Rudal Israel, Ada RS RI," *CNBC Indonesia*, 2023, <https://www.cnbcindonesia.com/>.

<sup>9</sup> Israel Defence Force (IDF), "Press Briefing by IDF Spokesperson Rear Admiral Daniel Hagari," November 16th, n.d., <https://www.idf.il/>. Isi Pernyataan Laksamana Daniel Hagari : "pasukan IDF menemukan sebuah terowongan di Rumah Sakit Shifa dan pasukan teknik tempur saat ini sedang menggali infrastruktur di lokasi tersebut. Kami juga menemukan sebuah kendaraan di rumah sakit yang dipersiapkan Hamas untuk pembantaian 7 Oktober 2023. Kendaraan itu tidak digunakan, namun masih memiliki banyak senjata dan amunisi di dalamnya. Saya ingin menekankan hal ini bahwa sebuah kendaraan milik teroris Hamas, dengan banyak senjata di dalamnya, ditemukan di kompleks rumah sakit Shifa. Sebuah kendaraan yang dimaksudkan untuk digunakan dalam pembantaian 7 Oktober 2023, berada di rumah sakit."

attacks, its fundamental principles and their application in conflict are often not widely understood by the international community. This creates a gap between military operational justifications and public understanding of legal accountability.<sup>10</sup>

A war is considered legitimate if it is carried out for certain reasons in IHL, such as self-defense right or proportional retaliation that aim of preventing further escalation of violence. In this regard, IHL divides the doctrine of just war into two parts, namely *ius ad bellum* and *ius in bello*. *Ius ad bellum* is a rule that determines when a country is allowed to use armed force and assesses fairness of the decision to go to war. Meanwhile, *ius in bello* regulated procedures for conducting war, protection of individuals affected conflict, and provisions regarding the use of permitted types of weapons.<sup>11</sup>

Another argument supporting the aggressor stated claim that they justify attacks on health facilities claims that the enemy has blurred distinction between military targets and civilian buildings by using hospitals as shields to hide military activities behind them or by placing their medical units close to military targets.<sup>12</sup> The rules of war were agreed upon by countries in the 1949 Vienna Convention for the Amelioration Condition of the Wounded and Sick in Armed Forces the Field, and refined with Additional Protocols I and II in 1977. Article 19 of the 1949 Vienna Convention clearly states that "permanent buildings and medical units operated by Medical Service shall not be attacked under any circumstances, but shall always be respected and protected parties to the conflict." It further explains that the parties of conflict must ensure that these buildings and medical units are located in such a way that attacks on military targets do not endanger safety of the civilian population.<sup>13</sup>

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<sup>10</sup> Kushartoyo, *Pengantar Hukum Humaniter / KGPH* (Jakarta: Raja grafindo persada, 2007). H. 1.

<sup>11</sup> Joshua A.H. Roring, Cornelis Dj. Massei, and Herlyanty Bawole, "Perlindungan Hukum Terhadap Tenaga Medis Dalam Konflik Bersenjata Menurut Hukum Humaniter Internasional," *Lex Privatum* 12, no. 1 (2023).

<sup>12</sup> Gordon and Perugini, "'Hospital Shields' and the Limits of International Law," *European Journal of International Law* 30, no. 2 (2019): 439, <https://doi.org/10.1093/ejil/chz029>.

<sup>13</sup> Pasal 19 "Convention (IV) Relative to the Protection of Civilian Persons in Time of War," Pub. L. No. 12 August 1949 (1949).

As described above, research needs to be conducted to examine, firstly the impact of Israel Defense Force (IDF) attacks on operations and safety of patients and staff at Indonesian hospitals in Gaza. Secondly how the principles of distinction and proportionality are enforced and response of the international community in ensuring the safety and operations of hospitals in Gaza that are targeted by the Israel Defense Force (IDF).

## RESULTS AND DISCUSSION

### Attack on the Indonesian Hospital in Gaza

Six weeks after October 7 during the Gaza conflict, Zionist forces began actively targeting hospitals, in addition to continuing attacks on refugee camps, schools, and churches. These attacks caused more than 60% of hospitals in Gaza (21 out of 35), including cancer centers completely paralyzed. The other healthcare facilities have been damaged and facing crises medication and essential supplies. One of the most severe incidents occurred on Monday, November 20, 2023, when the Indonesian Hospital in Beit Lahia was attacked, killing at least 12 people.<sup>14</sup>

The conflict in Gaza has resulted very high number of civilian casualties, reaching tens of thousands, with tens of thousands of them dead. In addition, tens of thousands of individuals have suffered serious injuries without adequate medical treatment. This situation exacerbated an acute humanitarian crisis that marked by extreme shortages of medicines, cessation of hospital operations due to depletion of fuel reserves for electric generators, and various other emergency situations. The people of Gaza currently face high vulnerability, living under the threat of intense Israel air and ground attacks, and experiencing fundamental deprivation basic necessities such as food, clean water, electricity, and fuel. These relentless military attacks alleged disregard of humanitarian principles and international law. Healthcare facilities, including the Indonesian Hospital an entity built in northern Gaza through philanthropic contributions from

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<sup>14</sup> Thea Fathanah Arbar, "9 Update Terbaru Perang Gaza: 10.000 Tewas–Rumah Sakit Kolaps," *CNBC Indonesia*, 2023, <https://www.cnbcindonesia.com/>.

Indonesian people also been targeted. These targeted actions are often followed attempts by Israel to disseminate information and framing to legitimize attacks on important civilian facilities, including the Indonesian Hospital.<sup>15</sup>

The Indonesian Hospital in Gaza is health care facility established through a philanthropic initiative by Indonesian people. Its purpose to carry out of the humanitarian missions and provide essential medical services to the Palestinian population in Gaza. Currently, the hospital is under full management Palestinian Authority in the Gaza Strip.<sup>16</sup> Israel claims that Indonesian Hospital is used by Hamas for military purposes, accusing the facility of being systematically built to cover underground infrastructure linked to terrorist activities. These allegations based on aerial images that allegedly showed rocket launchers just a few dozen meters from the hospital complex. In addition, Israel also alleged intercepted communications between Hamas officials discussing the exploitation and use fuel reserves of Indonesian Hospital. However, it is important to note that the claims made by Israel regarding military used of Indonesian Hospital, as reported by The Guardian cannot be independently verified.<sup>17</sup> At least 500 lives were lost as a result of the attack.

The Medical Emergency Rescue Committee (MER-C) strongly denied the allegations made by Israeli authorities regarding existence of Hamas headquarters in the Indonesian Hospital in Gaza. This statement was reinforced by rebuttal of information disseminated by Head of IDF Digital Media on social media, which accused Hamas of using the hospital facilities as command center and part of its civilian infrastructure for operational purposes. The IDF official even included a video that allegedly shows the Indonesian Hospital building along with tunnel entrance said to be located in the hospital area. In addition,

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<sup>15</sup> Sarbini Abdul Murad, "Surat Terbuka Mer-C Kepada Presiden RI 'Selamatkan RS Indonesia Dan Jalur Gaza,'" *MER-C Indonesia*, 2023, <https://mer-c.org/>.

<sup>16</sup> Widhia Arum Wibawana, "Sejarah Rumah Sakit Indonesia Di Jalur Gaza Palestina," *DetikNews*, 2023, <https://news.detik.com/>.

<sup>17</sup> "Situasi Terkini RS Indonesia Gaza, Mengapa Diserang Israel?," *CNBC Indonesia*, 2023, <https://www.cnbcindonesia.com/>.

MER-C also rejected statement of IDF that Indonesian Hospital stored or built bunker containing diesel fuel supplies, and accused the hospital of taking and hoarding fuel under building. In response to these allegations, MER-C held press conference that titled "Clarification Allegations of Israel Against the Indonesian Hospital" on Monday, November 6, 2023, at the MER-C Headquarters Indonesia in Jakarta. The press conference was attended by Dr. Sarbini Abdul Murad as Chairman of the MER-C Presidium, Ir. Faried Thalib as a member of the presidium, and Dr. Henry Hidayatullah. On that occasion, Dr. Sarbini Abdul Murad emphasized that the various accusations directed at Indonesian hospitals were attempted of Israel to create preconditions legitimize potential attack on these health facilities. He said, "We refute accusations of Israel. The building shown in the video circulating on social media and claims to be an Indonesian hospital is not an Indonesian hospital building. These allegations are pretext of Israel for attack the Indonesian Hospital." Another member of the MER-C Presidium, Ir. Faried Thalib, who also serves as the Head of Indonesian Hospital Construction Team in Gaza, added that the structure of Indonesian Hospital has distinctive architectural feature, namely an octagonal shape. This feature is very different from building shown in the post account of Sacha Rotman X (Twitter), which is claims to be the Indonesian Hospital.<sup>18</sup>

One month after the outbreak armed conflict, on November 7, 2023, data released by Gaza Ministry of Health Hamas showed that death toll in the region had exceeded 10,000. This figure includes more than 4,000 children. Responding to this situation, United Nations (UN) Secretary General of Antonio Guterres told the media that area targeted by bombing had been transformed into a "graveyard for children," the statement that emphasized enormous humanitarian impact on the young population.<sup>19</sup> The victims of the attack included

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<sup>18</sup> Eva Mazrieva, "Bantah Tuduhan Israel, MER-C Tegaskan RS Indonesia Di Gaza Murni Untuk Pengobatan," *VOA Indonesia*, n.d., <https://www.voaindonesia.com/>. diakses pada 23 Mei 2024 pukul 14.20 WIB.

<sup>19</sup> Thea Fathanah Arbar, "Ternyata Ini Alasan Israel Menyerang RS Indonesia Di Gaza," *CNBC Indonesia*, 2023, <https://www.cnbcindonesia.com/>.

children and women, as well as war casualties who were still receiving treatment.

The attack on Indonesian Hospital in Gaza had been targeted the Israel military and revealed claims that Hamas used health facility as a humanitarian shield to store Hamas weapons. However, at the time of writing, this claim has not been verified because Hamas has denied it and asked Israel to prove their claims. According to the author, even if these claims can be proven, the civilian nature of the hospital cannot be changed, nor can the hospital be target of war because this is in direct violation of the principles of war as stipulated in the 1949 Vienna Convention.

### **Analysis of the Principles of Distinction Attack on Indonesian Hospitals in Gaza by the Israel Defense Force (IDF)**

With the passage of time, regulations related to protection of hospitals have become crucial and important for each country to pay attention that supported by the 1949 Geneva Convention. Article 19 of the Geneva Convention (IV) concerning the Protection of Civilian Populations in Time of War explains that hospitals must be warned if there is suspicion that they are endangering the enemy, but combatants who are being treated should not be considered as endangering the enemy.<sup>20</sup> Therefore, International Humanitarian Law places great emphasis on the protection of hospitals, so that it is better for attacker to allow the enemy to escape unharmed than to apply normally targeting regime distinction and proportionality.<sup>21</sup> Violations of

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<sup>20</sup> Pasal 19 Convention (IV) 1949 relative to the Protection of Civilian Persons in Time of War. *“Perlindungan yang menjadi hak rumah sakit sipil tidak boleh dihentikan kecuali jika rumah sakit tersebut digunakan untuk melakukan, di luar tugas kemanusiaan mereka, tindakan-tindakan yang membahayakan musuh. Akan tetapi, perlindungan hanya dapat dihentikan setelah peringatan yang semestinya diberikan, dengan menyebutkan, dalam semua kasus yang tepat, batas waktu yang wajar, dan setelah peringatan tersebut tidak diindahkan. Kenyataan bahwa anggota angkatan bersenjata yang sakit atau terluka dirawat di rumah sakit-rumah sakit ini, atau adanya senjata api kecil dan amunisi yang diambil dari para kombatan dan belum diserahkan kepada dinas yang semestinya, tidak boleh dianggap sebagai tindakan-tindakan yang membahayakan musuh”*

<sup>21</sup> Kevin Jon Heller, “Don’t Blame IHL for Attacks on ‘Hospital Shields,’” *Just Security / Opinio Juris*, 2016, <http://opiniojuris.org/>.

the rule of proportionality can be considered a war crime if committed intentionally.

The principle of distinction in international humanitarian law affirms the obligation to provide protection and limited use of force in situations of armed conflict. This principle encompasses two main aspects. First, protection must be provided for individuals who are not or no longer directly participating in hostilities. Second, the use of means and methods of warfare must be limited to the extent necessary to achieve legitimate military objectives that weaken the military capacity of the opposing party. These aspects are core of the principle of distinction and must be observed and implemented by all parties involved in armed conflict. Compliance with this principle also reflects respect for the humanitarian values that form the fundamental basis of international humanitarian law.<sup>22</sup> Therefore, under the principle of distinction, hospitals should not be included among the parties directly participating in armed conflict in Gaza Strip. Article 52 Paragraph (3) of Additional Protocol (I) to the 1977 Geneva Convention states that when there is doubt as to whether an object is used for humanitarian purposes or other facilities, it must be considered that object is not being used.<sup>23</sup>

Article 51 paragraph (5b) regulates the principle of proportionality, which explains the limits of proportionality and protects matters that may endanger civilians. The principle of proportionality prohibits using any type or amount of force that exceeds what is necessary to achieve military objectives. Proportionality compares the military gains obtained with the civilian losses suffered.<sup>24</sup>

In the tradition of International Humanitarian Law (IHL), a war is not automatically considered legitimate simply because it occurs

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<sup>22</sup> Danial, "Efektifitas Konsep Prinsip Pembedaan Hukum Humaniter Internasional Sebagai Upaya Perlindungan Korban Dalam Konflik Bersenjata Modern," *Jurnal Media Hukum* 23, no. 2 (2016): 203.

<sup>23</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War. Pasal 52 ayat (3) Protokol Tambahan (I) Konvensi Jenewa 1977 : "*In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used*".

<sup>24</sup> Pasal 51 ayat (5b) Protokol Tambahan (I) Konvensi Jenewa 1977.

between two hostile parties.<sup>25</sup> There are certain reasons that can justify the use of armed force, such as acts of self-defense or military responses that are considered proportionate to receive the attacks. These principles stem from desire to ensure that warring states remain capable of restraint and prevent violence from escalating into wider destruction.<sup>26</sup>

From this idea, developed two major doctrines known as just war theory.<sup>27</sup> Then IHL formalized this doctrine into two different categories of law. The first is *ius ad bellum*, which is set of rules determine when country is allowed to take up arms and how that judged to be fair or unfair in its decision to go to war.<sup>28</sup> In other words, *ius ad bellum* deals with the moral and legal reasons for starting a war.

The second category is *ius in bello* which applies once the war is underway. This part regulates how the war should be conducted, who must be protected, and the limitations used of weapons. Here, it is emphasized that even in wartime, there are rules that must be obeyed to maintain human dignity and prevent unnecessary suffering. *Ius in bello* ensures that war victims, both civilians and combatants who are no longer involved in the fighting continue to have legal protection.<sup>29</sup>

Thus, the two doctrines work side by side, *ius ad bellum* regulating when violence can begin, while *ius in bello* regulates how that violence must be limited. Both of them reflect international community's efforts to reconcile the realities of war with humanitarian principles. Therefore, every country at war must continue to uphold this principle of proportionality in an effort to ensure the protection of civilians and other civilian objects that could cause significant harm.

The parties involved in armed conflict tend to accuse their enemies of using hospitals means to deceive their opponents and

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<sup>25</sup> Roring, Massei, and Bawole, "Perlindungan Hukum Terhadap Tenaga Medis Dalam Konflik Bersenjata Menurut Hukum Humaniter Internasional."

<sup>26</sup> Mohd Yusuf DM et al., "Penegakan Hukum Pidana Internasional Terhadap Kejahanan Perang Dalam Hukum Humaniter," *Jurnal Cahaya Mandalika ISSN 2721-4796 (Online)* 5, no. 2 (2024): 781–99.

<sup>27</sup> M Hamdan Basyar, "Etika Perang Dalam Islam Dan Teori Just War," *Journal of Political Research* 17, no. 1 (2020): 17–30.

<sup>28</sup> Syasya Yuania Fadila Mas'udi, "Teori Perang vs Teori Perang Yang Adil: Sebuah Studi Perbandingan," *Jurnal Keamanan Nasional* 9, no. 1 (2023): 139–54.

<sup>29</sup> Mas'udi.

shield to store weapons. The claim of Israel that hospitals have been used as storage facilities for Hamas weapons is strong defense for Israel to attacks on hospitals. This allows Israel to claim that had warned medical units to evacuate before attack was launched and therefore Israel considers that it has not violated the principles of international humanitarian law. This is very unfortunate because this statement could cause medical personnel and civilians to lose their international humanitarian legal protection or even become victims who should not be targets of war themselves.

### **Analysis of the Principle of Proportionality in the Attack on Indonesian Hospitals in Gaza by the Israel Defense Forces (IDF)**

The principle of proportionality is one of the fundamental pillars in International Humanitarian Law (IHL), which aims to limit armed violence and protect civilians from unnecessary harm.<sup>30</sup> Strictly regulated in Article 51(5)(b) of the 1977 Additional Protocol I, this principle requires that every military attack must carefully consider balanced between concrete and direct military advantage and the potential harm that may befall civilians and civilian objects.<sup>31</sup> Accordingly, proportionality is not merely technical assessment, but a very strict ethical and legal process.

In the context of the Israel Defense Force (IDF) attack on the Indonesian Hospital in Gaza, the application of the principle of proportionality becomes increasingly complex. Israel claims that the hospital was used by Hamas as a place to hide weapons and underground infrastructure. However, this claim is hypothetical and is not accompanied by independent, verifiable evidence. This ambiguity puts the IDF in a position that is vulnerable to legal violations, because international humanitarian law requires adequate verification before designating an object as a legitimate target.<sup>32</sup>

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<sup>30</sup> DM et al., "Penegakan Hukum Pidana Internasional Terhadap Kejahatan Perang Dalam Hukum Humaniter."

<sup>31</sup> Pasal 51(5)(b) Protokol Tambahan I 1977 dalam Convention (IV) relative to the Protection of Civilian Persons in Time of War.

<sup>32</sup> Raden Roro Friska Sita Arifah, "Justifikasi Moral Konvensional Atas Prinsip Proporsionalitas Dan Penerapannya Pada Perusakan Rumah Sakit Al Shifa Di Gaza

Furthermore, even if there are military indications around the hospital, proportionality assessments must be carried out with an emphasis on the principle of preventing civilian casualties. In practice, this requires a series of alternative attack analyses: can the target be neutralized by other means? Are there less lethal tactical options? Can the timing of the attack be changed to minimize civilian casualties? None of these considerations appear to have been made by the IDF, given the high number of casualties and the destruction functions after the attack of the hospital.

The civilian casualties caused by the attack are very clear and well documented. Not only did it cause deaths and injuries among patients and medical personnel, but the attack also resulted in collapse of medical emergency response services that are so desperately needed people of Gaza. These multiple impacts include disruption to treatment of critically ill patients, loss of operating rooms, damage to vital medical equipment, and demise function as a life-saving institution of the hospital. According to MER-C, more than 500 people were directly affected by the attack, making it widespread humanitarian tragedy.<sup>33</sup>

When the real and massive civilian losses are compared to unclear and unverified military gains, it is clear that actions of IDF did not meet the threshold of proportionality as required by IHL. In fact, the attack demonstrates a pattern of force that disregards obligation to minimize the impact on civilians. Normatively, attacks that cause excessive civilian harm such as this can be classified as disproportionate attacks, which according to Article 8(2)(b)(iv) of the Rome Statute constitute a war crime. This qualification is not merely a moral label, but a legal assessment with serious implications in context of international accountability.<sup>34</sup> With increasing reports of attacks on health facilities in Gaza, the international community has strong reasons to push for a formal investigation at the International Criminal Court (ICC) to assess the compliance of the IDF's military actions with applicable legal standards.

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Utara Raden," *Federalisme : Jurnal Kajian Hukum Dan Ilmu Komunikasi* 2, no. 3 (2025).

<sup>33</sup> Arifah.

<sup>34</sup> Statuta Roma 1998 Mahkamah Pidana Internasional (ICC).

Based on the principle of proportionality in this case, it shows how vulnerable civilian objects, especially hospitals, schools, and so on, are when the parties to the conflict use security reasons without a transparent and accountable verification process. Ultimately, failure to apply proportionality not only reflects a violation of the law, but also a moral failure to protect human dignity in wartime.

### **Criticism of International Communities Response in Ensuring the Protection and Operation of Hospitals in Gaza**

As the Israel military expanded its combat operations in the Gaza Strip, the Prosecutor of the International Criminal Court (ICC Prosecutor), Karim Khan, conduct a working visit to Tel Aviv and Ramallah. He accepted invitations from survivors and families victims of the Hamas attacks on October 7, 2023. During the visit, Karim Khan gathered evidence related to alleged crimes committed by Hamas on October 7 and also sought evidence alleged violations of international criminal law committed by Israel in retaliatory attacks after that date. Prior to receiving the request from survivors of the Hamas attack, on November 17, 2023, Karim Khan had received an official request from five countries of South Africa, Bangladesh, Bolivia, Comoros, and Djibouti asking the ICC to investigate the situation in Palestine. In addition, the legal team representing victims of the Israel attacks in the Gaza Strip has also filed a formal complaint with the ICC. They claim that military of Israel actions in Gaza constitute genocide.<sup>35</sup>

Meanwhile, Palestinian Prime Minister Mohammad Shtayyeh stated on Monday, December 4, 2023, that parties are trying to monopolize the narrative as victims and divert international attention from suffering of the Palestinian people. He emphasized that situation is a serious test for the enforcement of international law and the credibility of the International Criminal Court (ICC). He warned the court handling of the Palestinian case will result in failure the court to

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<sup>35</sup> Nidia Zuraya, "Menanti Keberanian ICC Menghentikan Langkah Netanyahu Cs," *Republika*, 2023, <https://news.republika.co.id/>.

meet expectations or demonstrate independence and impartiality to the world.<sup>36</sup>

President Joko Widodo said that the Indonesian government strongly condemns Israel attack on the Indonesian Hospital in Gaza, which resulted at least 500 casualties. The Indonesian government also condemns the escalating violence in Gaza, which has caused increase in civilian casualties, that including women and children. As a subsequent action, the President has instructed Foreign Minister Retno L. P. Marsudi to attend extraordinary meeting of foreign ministers of the Organization of Islamic Cooperation (OIC) in Jeddah, Saudi Arabia. The Indonesian government has emphasized that Indonesia will not remain passive increasing number civilian casualties and various forms injustice experienced by the Palestinian people. Within the framework of cooperation with OIC, Indonesia calls on the international community to immediately take concrete steps to stop escalation of violence and the excessive use of force in the region.<sup>37</sup>

At the Organization of Islamic Cooperation (OIC) meeting in Istanbul, Turkish President Recep Tayyip Erdoan expressed his view that Israel Prime Minister Benjamin Netanyahu will ultimately face legal proceedings for alleged war crimes committed in the Gaza Strip. Erdoan strongly condemned military of Israel actions against the Palestinian people and stated that Netanyahu should be indicted before the International Criminal Court (ICC) for violations of international humanitarian law.

Comparatively, Erdoan referred to case of Serbian President Slobodan Milosevic, who was tried by the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague on charges of inciting bloody armed conflict during the collapse of Yugoslavia in the early 1990s. On the same occasion, Erdoan also criticized Western countries for what he considered to be their support for what he categorized as Israel genocide in the Gaza Strip. He asserted that Western countries that provided unconditional support for Israel military operation which have caused more than 15,000 casualties

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<sup>36</sup> "PM Palestina Desak ICC Percepat Prosedur Penyelidikan Dugaan Kejahatan Israel," *VOA Indonesia*, 2023, <https://www.voaindonesia.com/>.

<sup>37</sup> Ghita Intan, "Jokowi: Indonesia Kutuk Serangan Israel Ke RS Di Gaza," *VOA Indonesia*, 2023, <https://www.voaindonesia.com/>.

could potentially be complicit in violations of international law. Erdoğan further highlighted the attitude of Western countries, which he considered to be ignoring the escalation of violence and humanitarian impact in Gaza. He also criticized the United Nations system (UN), particularly the five permanent members of the Security Council, which he said were hindering efforts to stop the violence in the region.<sup>38</sup>

Although the attack on the Indonesian Hospital in Gaza caused a large number of civilian casualties and strongly suspected violating the principles of distinction and proportionality, response from the international community has been inadequate and largely symbolic. Condemnation from various countries and international institutions has emerged, but most of it has been in form of moral statements without any legal or political follow up. This indecisiveness indicates a structural problem in enforcement of International Humanitarian Law (IHL).<sup>39</sup>

The International Criminal Court (ICC) has also failed to respond swiftly and proportionately to the level of violations that have occurred.<sup>40</sup> Although the ICC prosecutor made a regional visit, no concrete steps were taken to open a full investigation into the attacks on medical facilities. The slowness actions of ICC highlight its limitations in handling cases involving countries that are not parties to the Rome Statute, or that have significant global political influence. As a result, impunity continues, and IHL violations are likely to continue.

On the other hand, various international humanitarian organizations such as the WHO, ICRC, and OCHA have issued reports and calls for an end to attacks on health facilities. However, their humanitarian mandate does not include law enforcement, so their response is limited to advocacy without any enforcement mechanisms.

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<sup>38</sup> Tri Hantoro, “Erdogan: Netanyahu ‘Si Tukang Jagal Gaza’ Pasti Akan Diadili ICC,” *Tribunnews Video*, 2023, <https://video.tribunnews.com/>.

<sup>39</sup> Muhamad Fadli, Ilham Aji Pangestu, and Fitri Fitri, “Problematika Penegakan Hukum Humaniter Internasional Dalam Konflik Israel Dan Palestina,” *Citizen: Jurnal Ilmiah Multidisiplin Indonesia* 5, no. 3 (2025): 871–78.

<sup>40</sup> Alette Smeulers, “Why Serious International Crimes Might Not Seem ‘Manifestly Unlawful’ to Low-Level Perpetrators” 17, no. March 2019 (n.d.): 105–23, <https://doi.org/10.1093/jicj/mqz001>.

These limitations mean that the protection of hospitals, medical personnel, and patients cannot be effectively guaranteed.

Criticism should also be directed fragmentation of global solidarity.<sup>41</sup> Western countries tend to give loose justification for Israel military operations that using narrative of "self-defense," without objectively assessing whether the actions taken still in accordance with IHL standards. When powerful countries do not consistently demand accountability, IHL norms lose their coercive power and become mere ethics of war, rather than binding law.

Overall, the response of international community to attack on Indonesian hospital shows a collective failure to apply the principle of accountability. The absence of firm legal action not only weakens the legitimacy of IHL, but also sends a dangerous message that serious violations against medical facilities can occur without consequences. This situation calls for reform of the mechanisms for enforcing IHL, including strengthening authority of the ICC, restricting the use of veto power in cases of serious humanitarian violations, and increasing the capacity for independent investigation in armed conflicts.

## **CONCLUSION**

The military attacks of Israel on health facilities had devastating impact on civilians in Gaza. These actions also constitute violations of international humanitarian law. Regulations on the protection of civilian objects such as hospitals are stipulated in the 1907 Hague Convention, the 1949 Geneva Convention, and the 1977 Additional Protocol (I) (Additional Protocol to the 1949 Geneva Convention). The hospitals are neutral objects and cannot be attacked for any reason in accordance with the principles of distinction and proportionality, because such attacks result in hundreds of civilian casualties. The attack on the Indonesian Hospital shows the lack of good faith on part of the Israel Defence Force (IDF) in implementing the rules of armed conflict, which has fatal consequences for civilians. Attacks on hospitals cannot be justified under any circumstances, even if there are uninjured

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<sup>41</sup> Durrotul Mas' udah, "Dapatkan Kita Menghentikan Genosida Media Sosial, Tumbangnya Propaganda Media Barat, Dan Solidaritas Global Untuk Palestina," 2024.

combatants in the hospital, as this does not justify deliberately attacking the hospital. This indicates that humanitarian reasons must be considered far more important than anything else.

Therefore, the UN is expected to be able to resolve the problems occurring in Gaza so reduce increasing number of casualties. If this continues, certainly that respect for international law and international humanitarian law will not be jointly adhered to, even though international law was born out of mutual agreement all countries in the world. The attack on the hospital is evidence disregard of the international humanitarian law. However, the existing rules of the international humanitarian law actually regulate war very well, but the implementation of these rules tends to be ignored by the warring parties. The ICC is the hope for victims to obtain justice for the violations that have been committed in the Gaza Strip.

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