



USE OF NUCLEAR WEAPONS IN HUMANITER LAW ENFORCEMENT PERSPECTIVE

Arimbi Fajari Furqon

Bengkulu University, Indonesia

Email: Arimbifajari12321@gmail.com

ARTICLE INFO	ABSTRACT
Date received : 25 Mei 2022 Revision date : 15 Juni 2022 Date received : 25 Juni 2022 Keywords: <i>nuclear weapons; methods and means of war; threats; law enforcement.</i>	<i>Human life and technological developments are closely related to the legal awareness of the international community. The discovery of nuclear weapons for the first time was by the United States (US). It was used in World War II to attack and bomb the cities of Hiroshima and Nagasaki in 1945. The incident resulted in the death of 160,000 (one hundred and sixty thousand) people, and damage to almost all the ecosystem. The devastating negative effects resulting from the use of nuclear weapons were then regulated and contradicted the norms outlined in Additional Protocol I of 1977, to the 1949 Geneva Conventions which regulates the methods and methods of war. Although it has been regulated in the 1949 Geneva Conventions (international humanitarian law), however, it turns out that there are still many countries that continue to develop nuclear weapons for reasons of national security. The research method used is a type of normative juridical research and uses a statutory approach and conceptual thinking. The results of the study indicate that the governing norms regarding; research and possession of nuclear weapons are still discriminatory. In practice, there is a distinction between a nuclear state and a non-nuclear state. Furthermore, in the current reality, there are still countries that are classified as not having good intentions to carry out the agenda of disarming and stopping the development of nuclear weapons. Meanwhile, according to the results of this study, to overcome these problems, it is necessary to have new legal principles that can be universally binding.</i>

INTRODUCTION

The development of technology is inseparable from the development of human civilization. It was first marked by the existence of the steam engine in the 17th century. Technology in the field of weapons experienced significant improvements during World War I and World War II. During World War I and World War II. Nuclear weapons were first used by the United States in 1945 when it launched bombs at the cities of Hiroshima and Nagasaki. The bomb that was launched belongs to the category of nuclear weapons called Fat Man. This weapon resulted in the death toll of 80,000 people and 70,000 injured in Hiroshima City. While the incident in Nagasaki City resulted in 80,000 deaths and 39,000 injuries.

The impact of using nuclear weapons can result in excessive dangers such as physical and mental injury to mass death for humans and animals. In the environment, radioactive particles cause damage to soil, water, and air supplies. Given the excessive danger posed by the use of nuclear weapons, it is necessary to have regulations regarding the use of nuclear weapons. In this case, it is regulated by Humanitarian Law to prevent the impact of the use of nuclear weapons.

Additional Protocol I 1977 The Geneva Convention 1949, namely Article 35 regulates the prohibition of the use of weapons that injure the enemy causing excessive injury and pain (superfluous injury or unnecessary suffering). This prohibition on the use of weapons is carried out based on humanitarian principles and the principle of good faith by the parties. The implementation of these principles such as prohibiting killing or injuring an enemy who has laid down weapons or no longer has the means to defend themselves, prohibits killing civilians and protected people and prohibits killing or injuring the enemy with cruel methods and means, but there are many countries admit that they have developed nuclear weapons for the security and defense of their countries or for the sake of their national interests. The countries that have acknowledged possessing nuclear weapons are North Korea which has acknowledged developing nuclear weapons on Monday, July 27, 2020. Iran's leader, Ayatollah Ali Khamenei, issued a decree against the development, production, stockpiling and use of nuclear weapons by the Iranian government. Furthermore, Syria is known to have developed nuclear weapons for the first time in 1973. This is contrary to what has been regulated in Article 35 Additional Protocol I 1977 of The Geneva Convention 1949 because nuclear weapons cause excessive injury and pain and injure the enemy without limit.

METHOD

The type of research used in this research is normative research. Normative research is often also called Doctrinal Legal Research, then literature research. The normative legal research method is defined as "a research method on the rules of law both in terms of the hierarchy of laws and regulations (vertical) and the harmonious

relationship of laws (horizontal)"(Marzuki & SH, 2021). Based on the existing doctrine, it can be concluded that what is meant by normative legal research is one type of legal research methodology that bases its analysis on applicable laws and regulations and is relevant to legal issues that are the focus of research (Benuf, 2021).

RESULT AND DISCUSSION

A. Regulations concerning the Use of Nuclear Weapons under International Humanitarian Law

1. International Agreements

a. Additional Protocol I 1977 Geneva Convention 1949

Additional Protocol I 1977 was established to regulate the methods of warfare used by developing countries.binding *legally* as an integral part of the 1949 Geneva Conventions. This Protocol stipulates that the rights of the parties to the dispute to choose the means and method of warfare are not unlimited and are also prohibited from using weapons or projectiles and other means which may result in excessive injury or unnecessary suffering (Permanasari, 2018). The tools and methods of war that are not unlimited have an excessive impact in fighting such as excessive pain, so they are prohibited from being used in this provision.

The use of nuclear weapons in warfare results in the health effects of an explosion consisting of direct effects, including injury from the explosion itself and the radiation it produces, and indirect effects, including damage from the explosion. Casualty effects of nuclear weapons include burns, explosions, ionizing radiation, and thermal radiation. The consequences of explosive effects include lung damage and ruptured eardrums as well as the crushing or burning effects of a large-scale nuclear explosion.

b. The 1968 Non-Proliferation Nuclear Weapons Treaty (NPT)

Agreement is the only binding commitment in a multilateral treaty for the purpose of disarmament by nuclear-armed states. Through the United Nations, this Treaty was negotiated since 1958 initiated by Frank Aiken, Minister of Foreign Affairs of Ireland.

The first signing was opened in 1968. Finland was the first country to sign. The NPT came into force in 1970 and is *hard law* on the 191 countries that have ratified it. In this agreement the parties are divided into two types, namely *Nuclear Weapon State (NWS)* and *Non-Nuclear Weapon State (NNWS)*. The NWS consists of five nuclear-owning countries, namely France, the People's Republic of China, Russia, the United Kingdom, and the United States. Meanwhile, NNWS is a non-nuclear country that cannot have nuclear, consisting of parties other than the NWS. Discrimination over the distribution of the NWS and NNWS as well as the lack of goodwill from the NWS to carry out nuclear disarmament on a regular basis has resulted in the failure to achieve the goal of this agreement, namely a world free from nuclear weapons. The clearly visible distinction of

rights between NWS and NNWS is in terms of ownership of nuclear weapons where NNWS is not absolutely allowed to own or develop nuclear weapons, while NWS which already has nuclear weapons prior to signing the agreement may still have nuclear weapons with regard to the pillars of disarmament. nuclear.

c. *Treaty on The Prohibition of Nuclear Weapons 2017 / TPNW*)

The TPNW is an agreement that prohibits any state party from developing, testing, producing, stockpiling, placing, transferring, using and threatening the use of nuclear weapons, as well as assistance for these activities. This agreement is a follow-up to the ineffective NPT in terms of world nuclear disarmament.

TPNW is initiated by countries that are part of the NNWS, namely Ireland, Austria, Brazil, Indonesia, Mexico, Nigeria, South Africa and Thailand. This agreement contains the contents of the prohibition as well as the commitment of the international community to realize a world without nuclear weapons (*nuclear weapons free zone*). States parties will have an obligation to prevent and stop any activities prohibited under the TPNW that are carried out by persons or in areas under their jurisdiction or control. The TPNW also requires states parties to provide adequate assistance to individuals affected by the use or testing of nuclear weapons, activities related to the testing or use of nuclear weapons (Gopel, 2010).

2. General Law Principles

a. The Principle of Distinction

principle of distinction is the principle that distinguishes between groups that can participate directly in combat (combatants) on the one hand, and groups that do not participate and must be protected in combat, namely the civilian population, children, civilian women, medical personnel, clergy. Based on this principle, when there is an armed conflict, a distinction must be made (Kusumo & Tejomurti, 2015).

The impact of nuclear weapons will have an impact on a very wide radius of up to 4.8 km/10 kilotons. With a very wide radius, the use of nuclear weapons will cause casualties for civilians.

b. The Principle of Proportionality

The principle of proportionality is generally accepted as one of customary international law. So that every country is fully bound to the application of this principle. This principle regulates the balance between the principle of military interests and the principle of humanity. This principle also explains that in order to achieve success in war, the state may not use civilians as targets or shields in disputes.

The use of nuclear weapons during war is not in line with what is determined by the Principle of Proportionality because the impacts resulting from their use are not balanced with the military interests of the parties. Military interests refer to the defeat of the opposing military, not to cause casualties which are protected in IHL.

3. The Decision of the International Court of Justice in the Nuclear Weapons Case in 1996

The *Nuclear Weapons* is a dispute submitted to the International Court of Justice to question the legality of possession and use of nuclear weapons under international law. On December 19, 1994, the United Nations General Assembly convened resolution A/RES/49/75K which was adopted by 78 countries who voted in favor, 43 against, 38 abstained and 26 did not vote.

From October 30 to November 15 1995, an oral hearing was held with the participation of 20 countries, namely Australia, Egypt, France, Germany, Indonesia, Mexico, Iran, Italy, Japan, Malaysia, New Zealand, Philippines, Qatar, Russia, San Marino, Samoa, Marshall Islands, Solomon Islands, Costa Rica, United Kingdom, United States and Zimbabwe (Rhineland, de Chazournes, Weiss, Neubauer, & Matheson, 1997).

On 8 July 1996 the International Court of Justice gave an *Advisory Opinion* on the question raised. The International Court of Justice is of the opinion that there is no international law that explicitly regulates specific prohibitions on the development and use of nuclear weapons in either international treaties or customary international law. The court also argued that the use of nuclear weapons is not in line with the principle of *good faith* as part of the international community to use nuclear weapons. The court further argued that the legality of the use of nuclear weapons can be seen in the provisions of Humanitarian Law, as well as the existing General Law Principles, such as in the 1949 Geneva Conventions which have stated the prohibition on the use of certain weapons in war disputes. Nuclear weapons are included in the provisions of the 1949 Geneva Conventions which stipulate the prohibition of the use of weapons that cause excessive injury and suffering.

However, if the use of nuclear weapons according to the court is an effort to carry out *self-defense* of a country in the face of conflict based on Article 51 of the United Nations Charter, its use does not violate international law, as long as the state can prove the elements contained in Article 51. The elements contained in Article 51 of the United Nations Charter are as follows:^[5]

1. Danger (*present danger*)

Self-defense is based on the need for instant self-defense and there is no other choice for such action and there is no time for deliberation about the dangers that will arise from the upcoming attack.

2. Balance (*proportionality*)

Balance refers to the force used in *self-defense* should not exceed the danger posed by the impending attack.

3. Consent of the UN Security Council (*consent*)

The UN Security Council examines existing treaty and statutory arrangements to determine whether the action is justified or not.

B. International Humanitarian Law Enforcement Against the Use of Nuclear Weapons

1. Organs for Enforcement of International Humanitarian Law against the Use of Nuclear Weapons.

The enforcement of HII cannot be separated from the role of the international community in realizing world peace in accordance with the objectives of the United Nations contained in Article 2 of the *United Nations Charter*. History records that there have been many efforts made by the international community in realizing the enforcement of IHL. One of them is to use the diplomatic path of countries in the world to agree or bind themselves into several international agreements. The international agreement itself is one of the sources of international law based on Article 38 Paragraph (2) *International Court of Justice Statute*.

The agreement and signing of the Rome Statute carried out by the international community is one manifestation of the enforcement of international humanitarian law which in Article 8 of the Rome Statute states that the jurisdiction of the *International Criminal Court* is to try war crimes. War crimes are comprehensively regulated in the Rome Statute which indicates whether the crime is within the jurisdiction of the *International Criminal Court*.

The Security Council as the main body of the United Nations also has an important role for international peace and security, one of the tasks and authorities of the UN Security Council is to participate in monitoring the development of countries in the world in the field of weapons, especially weapons of mass destruction. The Security Council is the main organ of the United Nations that has *primary responsibility* for maintaining international peace and security, as stated in Article 24 paragraph (1) of the United Nations Charter.

The Security Council does not have the right to take action on the possession, development and testing and use of weapons within a country or in the event of a violation of disarmament agreements including the NPT. Article 2 paragraph (7) of the UN Charter expressly does not give the UN the right to interfere in the internal affairs of a country, however, if an indication is found that the situation may lead to international disputes, then in accordance with Chapter VI of the UN Charter, the Security Council may act through the provision of recommendations. to the disputing parties regarding the existing settlement method, namely the peaceful settlement of disputes based on Article 33 of the United Nations Charter. All decisions taken by the Security Council are not only binding on all members of the UN but also binding on non-UN member states based on Article 2 Paragraph (6) of the UN Charter (Suryokusumo, 1997).

The Security Council can impose sanctions on countries that are deemed not to have good faith in carrying out UN objectives. Until now, there have been many UN

Resolutions issued based on the recommendations and investigations of the IAEA against countries that are deemed not to be carrying out international agreements regarding nuclear weapons. One of them is the UN Resolution which was addressed to Iran for violating the NPT. UN resolutions are not *hard law* based on Article 38 of *ICJ Statute*, but UN resolutions are *soft law* and world countries are obliged to comply with these provisions as UN member states.

2. State Practices on the Development of Nuclear Weapons

a. United States

As a country that has the nickname "Superpower", the United States has a very advanced technology compared to other countries in the world. The technology developed by the United States is not only technology that is used daily but also weapon technology including nuclear weapons. The United States developed the first nuclear weapons in World War II in collaboration with Britain and Canada. The United States tested its first nuclear weapon on July 16, 1945 (Hansen, 1995). The United States became the first country to develop a hydrogen bomb in 1952. The bomb development program continued in 1992, the program known as the *Stockpile*.^[8] The United States had a nuclear arsenal of 31,175 warheads in 1966.^[9] Later, the United States redeveloped about 70,000 nuclear warheads. The United States is a member country of the NPT and is incorporated as the NWS. The United States as the NWS has the right to store nuclear weapons as long as it does not transfer nuclear weapons to other countries. This has led to the emergence of the TPNW, which is an agreement that absolutely prohibits the proliferation, storage, and use of nuclear weapons. However, none of the NWS countries or countries that have nuclear weapons are parties to this agreement, including the United States. This raises the view of countries in the world that the NWS countries do not want to commit to stopping the proliferation of nuclear weapons. NWS countries still view nuclear weapons as a diplomatic tool between countries so that there is no intention to join the TPNW. So that there is no disarmament action against nuclear weapons that are stored or being developed.

b. India

The development of Indian Nuclear Weapons first took place in 1948 during the leadership of Homi Bhabha. Bhabha adopts the actions and attitudes of Western countries to raise India's ranking in the world with nuclear technology (Perkovich, 2001).

India's nuclear spread is almost evenly distributed in all parts of the country. *Defense Research and Development Organization* (DRDO) became one of the institutions that developed India's nuclear. The institute functions to manufacture weapons systems, platforms and other defense-based equipment, provide technological solutions to optimize combat effectiveness and build infrastructure. In addition, India has other weapons research institutions including the *Armament Research and Development*

Establishment (ARDE), High Energy Materials Research Laboratory (HEMRL), Center for Fire and Explosive and Environment Safety.

Under international law, India is not a party to the NPT Treaty. So that India is not bound by *hard law* to the NPT Agreement. India rejected the NPT in 1960 on the grounds that the NPT created an unbalanced world between the NWS and the NNWS towards the development of nuclear weapons. India will not participate in international control of nuclear facilities. India is of the opinion that by developing nuclear weapons it can be a way to maintain the military power of countries that already have nuclear weapons as defense and security if there are conflicts that will occur in the future.

c. North

Korea North Korea claimed to have functional nuclear weapons in 2005 and carried out a nuclear test on October 9, 2006. North Korea conducted a second nuclear weapons test on May 25, 2009 and a third, higher-yielding test on February 12, 2013. The first test of a hydrogen bomb was carried out by North Korea on January 5, 2016. The last test of a nuclear weapons device was carried out by North Korea which caused an earthquake measuring 6.1 on the Richter scale on September 3, 2017.

The development of nuclear weapons carried out by Korea North is contrary to what has been regulated in the NPT. Initially North Korea was a party to the NPT, but North Korea was not part of the NPT Treaty after officially withdrawing in good faith in 2003. North Korea is not legally bound by *this* treaty. North Korea is also not part of the TPNW Treaty so it is not bound by the Treaty that prohibits developing nuclear weapons. Thus, North Korea's actions to develop nuclear weapons do not violate several international agreements regarding the prohibition of developing nuclear weapons.

Although North Korea cannot be subject to sanctions based on the membership of the NPT and TPNW countries, the Security Council has implemented several resolutions because they are considered to be disturbing the stability of global peace. One of the resolutions adopted by the Security Council is Resolution: S/RES/2375 on limiting the export of refined petroleum products to the country to 2 million barrels per year, cutting North Korea's oil supply from outside by 30 percent, and prohibiting the sale of North Korean textiles to foreign countries. overseas.

d. South Africa

South Africa has produced six nuclear weapons since the 1980s. The detection of a nuclear test in the Indian Ocean occurred in 1979. The test belonged to South Africa. After that incident, in good faith South Africa signed the NPT Treaty in 1991. South Africa then stopped all its nuclear weapons proliferation. South Africa, which is the NNWS, has good faith in carrying out its obligations under the agreement by disarming its nuclear weapons.

e. Israel

leadership made the political decision to develop nuclear weapons in 1955. In September 1996 Israel signed the Comprehensive Nuclear Test Ban Treaty (CTBT), although it has not yet ratified it. This also applies to the NPT which is not ratified by Israel. In 2012 the United Nations Security Council held a meeting which was intended to agree on a resolution to Israel's possession of nuclear weapons but the session did not find a consensus on this issue.

f. Iran

Iran has had nuclear technology since the time of Shah Muhammad Reza Pahlavi in 1950. Right in 1955, three years after the launch of the *Eishenhower Plan* on atoms for peace (*US Atoms for Peace Program*), Iran established the Atomic Center of the University of Tehran (*Tehran Nuclear Research Center/ TNRC*). Iran established the Atomic Center with US aid and supplies of uranium, which initially operated at 5 megawatts in 1967. nuclear research center *Asfahan* with a power of no more than 30 kilowatts each (Abd Rahman, 2003). The UN Security Council issued a policy based on the investigation of the IAEA to increase sanctions against Iran as stated in Resolution 1803 in March 2008. There were additional sanctions imposed on Iran in addition to economic sanctions. Countries in the world are not only prohibited from conducting export and import transactions with Iran, but are also encouraged to prevent or deny the entry of Iranian individuals and entities related to Iran's nuclear program into the territories of their respective countries (Davenport, 2021). The Security Council subsequently passed Resolution 1929 in June 2010. In addition to reaffirming the main provisions of previous resolutions, this resolution also focused on expanding sanctions against all Iranian activities related to nuclear development. The Security Council also imposed an embargo on the sale of vehicles and combat equipment, large-caliber artillery, helicopters, warplanes, and various types of missiles to Iran. The existence of this resolution severely limits the movement of Iran as a sovereign country to deal with other UN member countries. However, Iran has not changed its policy regarding its ongoing nuclear proliferation.

Iran believes that complying with UN Security Council resolutions means admitting that Iran is guilty and also violating the NPT. As a member of the NPT party, Iran is obliged to carry out its obligations under the agreement. Iran is a member of the NNWS which is not allowed to possess and develop nuclear weapons. Thus, if the nuclear development program has interfered with the interests of other parties, the aggrieved party can file a dispute against Iran to the International Court of Justice.

CONCLUSION

International treaties governing the use of nuclear weapons are Additional Protocol I 1977 to the Geneva Conventions of 1949, the 1968 Treaty on the Non-Proliferation of

Nuclear Weapons, and the 2017 Treaty on the Prohibition of Nuclear Weapons. These regulations prohibit the use of nuclear weapons in any form. In the Decision of the International Court of Justice in the Nuclear Weapons case in 1996, it was stated that the use of nuclear weapons must be in accordance with the existing regulations in international humanitarian law, but the use of nuclear weapons does not violate international law if it fulfills the elements in Article 51 of the United Nations Charter, namely present danger, proportionality, and consent. Enforcement of the use of nuclear weapons is carried out by several international organs as well as the awareness of countries that have nuclear weapons. The international organs that can enforce the prohibition on the development of nuclear weapons are the International Court of Justice, the International Criminal Court, the Security Council and the International Atomic Energy Agency (IAEA). South Africa has carried out enforcement, while India, Iran, Israel and North Korea are still carrying out nuclear weapons activities

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