

Analisis keberlakuan ketentuan geneva convention relative to the treatment of prisoners of war 1949 serta convention against torture and other cruel, inhuman or degrading treatment or punishment 1984 terhadap penyiksaan atas tawanan terduga teroris = Analysis on the application of the provisions in geneva conv relative to the treatment of prisoners of war 1949 conv against torture and other cruel, inhuman or degrading treatment or punishment 1984 on the torture of suspected terrorist detainee

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Abstrak

Global War on Terror yang dicanangkan oleh Pemerintah Amerika Serikat pasca serangan 9/11 yang dilansir merupakan perbuatan dari kelompok teroris al-Qaeda berujung kepada penangkapan besar-besaran atas orang-orang yang diduga sebagai anggota teroris al-Qaeda. Para tawanan terduga teroris tersebut ditempatkan di Penjara Guantanamo yang terletak di Teluk Guantanamo, Kuba. Pada permulaan Global War on Terror, pihak Amerika Serikat mengumumkan sebuah International Armed Conflict kepada Afghanistan demi memberantas rezim Pemerintahan Taliban dan kelompok terorisme al-Qaeda yang berada disana. Karena hal tersebut lah Hukum Humaniter Internasional sudah sewajarnya diberlakukan dalam konteks Global War on Terror tersebut, terutama kepada para tawanan terduga teroris yang ditangkap selama keadaan tersebut. Pada khususnya harus diberlakukan ketentuan-ketentuan yang terdapat di dalam Geneva Convention relative to the Treatment of Prisoners of War 1949 serta Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984. Namun pada kenyataannya pihak Amerika Serikat tidak melaksanakan ketentuan-ketentuan yang terdapat di dalam Konvensi-konvensi tersebut dengan alasan para tawanan terduga teroris bukanlah pihak yang memiliki hak untuk dilindungi berdasarkan Konvensi-konvensi tersebut. Para tawanan terduga teroris tersebut kerap mendapatkan perlakuan tidak manusiawi dari para Militer Amerika Serikat yang bertugas di Guantanamo. Para tawanan pun tidak mendapatkan keputusan yang jelas dari sebuah pengadilan yang kompeten mengenai status mereka selama berada di dalam penawanan. Dengan demikian penting untuk dianalisa lebih lanjut mengenai status dari para tawanan terduga teroris tersebut, sehingga keberlakuan dari Konvensi-konvensi tersebut pun dapat lebih jelas tergambarkan. Permasalahan-permasalahan tersebut akan dijawab melalui penelitian yuridis-normatif sehingga diperoleh kesimpulan bahwa pada intinya Hukum Humaniter Internasional, khususnya ketentuan yang terdapat di dalam Geneva Convention relative to the Treatment of Prisoners of War 1949 serta Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 harus diberlakukan dalam keadaan Global War on Terror, terutama kepada para tawanan terduga teroris.

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Global War on Terror declared by the Government of the United States after the attacks of 9/11 reported as an act by a terrorist group known as al-Qaeda, led to massive arrests of people suspected as the members of al-Qaeda terrorists. The suspected terrorist detainees were placed in Guantanamo Prison located at the Guantanamo Bay, Cuba. At the beginning of the Global War on Terror, the United States announced an International Armed Conflict to Afghanistan in order to combat the Taliban regime and al-Qaeda terrorist

group located there. By that situation, the International Humanitarian Law has been duly enacted in the context of the Global War on Terror, especially to the suspected terrorist detainees who were captured during these circumstances. In particular, the provisions in the Geneva Convention relative to the Treatment of Prisoners of War in 1949 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 should be applied. Nonetheless, the fact is that the United States did not execute the provisions in the Conventions on the grounds that the suspected terrorist detainees is not a party that has a right to be protected under the Conventions. The suspected terrorist detainees often get inhuman treatment by the U.S. Military who served in Guantanamo. Moreover, the detainees did not get their status clearly determined by any competent tribunal during their captivity. Therefore, it is important to analyze more about the status of the suspected terrorist detainees, so that the enforcement of the provisions in those Conventions could be clearly reflected. These problems will be reviewed using a juridicalnormative research method until it can be concluded that the International Humanitarian Law, in particular the provisions in the Geneva Convention relative to the Treatment of Prisoners of War in 1949 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 must be enforced in the state of Global War on Terror, particularly to the suspected terrorist detainees.