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# Legality of the Use of Autonomous Weapons Systems in International Humanitarian Law

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**Abstract:** Along with the development of the era, the world of weapons has increased until a system called Autonomous Weapons Systems was created which allows weapons to be able to determine and take action completely without human intervention. Autonomous Weapons Systems are feared to violate International Humanitarian Law. This study uses a normative legal research method that refers to positive law to be able to analyze a problem being studied, especially in the realm of international humanitarian law. This research was conducted with a literature study, where the author examines several legal materials such as primary, secondary, and tertiary legal materials used based on the problem. The results of the study indicate that the use of Autonomous Weapons Systems in armed conflict or war is something that is legally valid as long as it does not violate the international law that regulates it and must be in line with International Humanitarian Law. Countries and Individuals in the use of Autonomous Weapons Systems can be held accountable for Violations of International Humanitarian Law.

**Keyword:** Autonomous Weapons Systems, War, International Humanitarian Law..

## INTRODUCTION

Along with the development of the era, war or conflict is a problem that continues to occur in the world, this is because of the many problems that occur between countries that lead to war. Based on its development, war continues to develop as technology in the military field develops. In relation to international law, the mechanisms and procedures of war are regulated in international law to date. International law stipulates that war is not the only way to resolve disputes experienced by a country, but a dispute can be resolved peacefully without violence. With the continuous development of technology, of course, it is related to the weapons technology in a country with the aim of creating a weapon that can be used to destroy the opposing party at any time of war. The development of technology continues to adjust along with the development of the era, especially in the field of weapons where in the past it still relied on troops to wage war until now it is increasingly advanced where there is a system that can operate a weapon for war purposes from a distance or does not need to be controlled by humans and can run automatically.

Technological developments continue to occur in the world of weapons until a new military force is created with sophisticated machines that can be controlled remotely or even

operate without having to be controlled by humans. This is certainly a breakthrough in the world of war which aims to minimize the risk to a country's armed forces personnel. The goal of a country in the event of war is of course to be able to win the war through the most effective and efficient means that can currently be done through automatic technology to replace the role of humans to carry out the tasks given. The history of this weaponry according to Martin van Creveld consists of 4 (four) phases, name age of tools, age of machines, age of systems, And age of automation. Actually, technology that can run automatically is not something new in the world, but in the world of weapons, used in the battlefield is certainly not common. This is interesting to be a research material because something controlled by artificial intelligence is used as a combat force. With the concept "dehumanization" said, humans no longer need to go to the battlefield when armed conflict occurs because weapons can run based on the system and are autonomous. Autonomous means that machines can operate without the need for human control and supervision, which means that the smaller the human intervention in the machine, the greater the autonomous nature of the machine.

Autonomous Weapons Systems (AWS) is a term for a system that allows a weapon to become an independent agent for use in war by minimizing or eliminating human involvement in carrying out its duties. The system in a weapon is not always controlled autonomously based on artificial intelligence, but there are also those that still require humans to be able to control a weapons machine, namely a weapons system equipped with an autonomous system but at a low level where it can only follow programmed instructions. Thus, the system will only run as previously programmed to be able to react. At the level above, it is a weapons system that can automatically determine military objects that have the potential to be dangerous and send a signal to the operator, namely a human, so that the human still determines whether an attack can be carried out on the targeted object automatically or not. Then, there is also the meaning of Autonomous Weapons Systems which is intended to have its own intelligence to do everything that is considered necessary without any human intervention at all. AWS does not have a formal definition yet, which in general can be explained through the following explanation: "Any weapon system with autonomy in its critical functions-that is, a weapon system that can select (search for, detect, identify, track or select) and attack (use force against, neutralize, damage or destroy) targets without human intervention". Based on the explanation, it can be concluded that AWS is a weapon system equipped with autonomous properties and carries out its functions, this includes determining and attacking targets without the need for human approval or intervention to determine the occurrence of an attack. Thus AWS relies on Artificial Intelligence to carry out all its tasks even without human involvement.

With the development of AWS as a weapon system that can autonomously perform an action in war, it certainly triggers a discussion about the legality of using AWS, especially related to International Humanitarian Law which specifically regulates the protection of civilians where this is related to the principle of military interests which regulates that the principle of humanity, human rights protect civilians, religion, medical or other things that are not involved in a war and or are no longer involved in a war. The loss of the role of humans in weapons has caused various polemics in society so that United States Department of Defense (DoD) and Human Rights Watch (HRW) stated that actions in any form should be determined by humans and cannot make decisions on their own. This is because AWS can be controlled remotely, especially if it can be fully controlled based on Artificial Intelligence Carrying out attacks on citizens or parties not involved in the war can violate the principles of humanitarian law.

According to Mochtar Kusumaatmadja, International Humanitarian Law is "A part of the law that regulates the provisions for the protection of war victims, different from the law of war which regulates war itself and everything related to the method of waging war itself." In International Humanitarian Law, legal instruments that regulate the use and need for review of new weapons technology have been anticipated since the 19th century, precisely in 1868.

These provisions regulate the level of conformity of the provisions of International Humanitarian Law regarding the limitation of means and methods of warfare. The first instrument that regulates internationally regarding the importance of legal review of new weapons is in The Declaration of St. Petersburg of 1868. The St. Petersburg Declaration of 1868 reads as follows:

The Contracting or Acceding Parties reserve for themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to reconcile the necessities of war with the laws of humanity.

The above declaration relates to Article 36 of the additional protocol 1 of 1977 which contains in essence regulating participating countries to conduct legal reviews of weapons and other matters relating to AWS at the development stage until it is used as a weapon as stipulated. In its use, new challenges arise in the application of the rules of war regarding the balance of military needs with humanitarian interests due to autonomy. AWS is currently widely used by countries in the world such as South Korea assigning AWS as a robot tasked with becoming a demilitarized zone in Korea with the name "SGR-A1" with the ability to detect and select targets equipped with threat sensors with deadly force or not based on the circumstances. The use of AWS by countries is also carried out by America where it is used on unmanned aircraft (drones) semi-autonomous which is named "The X-47B" with the ability to take off and land without human intervention. Although it has been used by several countries in several weapons, many parties consider the presence of AWS to be a double-edged sword with various advantages, sophistication and positive and negative impacts that arise. Because AWS depends on Artificial Intelligence, Several rules are likely to be violated, especially those related to the principle of humanity, the principle of impartiality, the principle of distinction, the principle of military necessity and various other principles as principles of the use of weapons in armed conflict. Thus, based on the description above, the author will conduct in-depth research which will require further study regarding "Legality of the Use of Autonomous Weapons Systems in International Humanitarian Law".

## **METHOD**

This study uses a normative legal research method that refers to positive law to be able to analyze a problem being studied, especially in the realm of international humanitarian law. This research was conducted with a literature study, where the author will examine several legal materials such as primary, secondary, and tertiary legal materials used based on the problem being studied.

## **RESULTS AND DISCUSSION**

What is the legality of using Autonomous Weapons Systems under international humanitarian law?

In general, the requirements related to the legality of weapons,

tools, or methods of war can be given an assessment that is systematically used as a requirement that can apply to all countries. Basically, the country must meet the requirements and comply with the existing rules in using a weapon, tool, or method of war. Based on this, a country is not allowed to use a weapon, tool, or method of war in an illegal manner. International law is applied to be a guideline for each country to be responsible and to provide certainty that the weapons, tools, or methods of war used does not violate applicable laws. However, in practice, there are only a few countries that use weapons, tools, or methods of war that are used and do not violate applicable laws.

The development of increasingly advanced weapons technology, then in 2003, the 28th International Conference of the Red Cross and Red Crescent stated that the legality of a weapon

must be based on applicable international law. In addition, the conference also explained that all weapons, tools, and methods of warfare must be subject to a multidisciplinary review and rules and must be based on considerations regarding military, law, environment, and health. This aims to protect a country's civilian population from the effects that can be caused by indiscriminate weapons and avoid unnecessary suffering to civilians and from prohibited weapons. In international humanitarian law, a legal basis is needed that can conduct a review of the needs of weapons technology that is useful for knowing whether a weapon is in accordance with all the provisions contained in International Humanitarian Law or not. In International Humanitarian Law there is a clause called Martens clause which states that:

"Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of public conscience."

Based on the explanation of the clause above, it can be explained that Martens clause is a clause that can be used if a problem occurs but is not regulated in Humanitarian Law Internationally, the solution to resolve this problem is to apply basic humanitarian principles and general awareness. International Court of Justice gave an opinion in 1996 regarding the legality of the threat or use of nuclear weapons stating that Martens clause has proven that the existence of this clause is a fairly effective way to overcome the increasingly rapid development of military technology by studying and developing weapons, tools and methods of warfare that can produce new effects.

In the absence of customary law or treaties, an evaluation must be carried out in various stages of the development of a weapon that may occur, before the weapon system enters the production stage, is acquired and is in the modification stage. Thus, weapons, tools, and methods of war must be evaluated as early as possible by taking into account the principles of humanity and the dictates of the public conscience. The existence of Martens clause, is very important because the clause emphasizes the importance of customary norms that are in the rules of armed conflict. Furthermore Martens clause, also provides a link between international legal norms related to armed conflict with natural law. Where, natural law is considered by some countries to have contradictory legal norms so that it is considered subjective by some countries.

That based on this, then Autonomous Weapons Systems as a new weapon must apply the existing principles of international humanitarian law, namely as follows:

#### 1. Principle of Distinction

This principle of differentiation is a principle that has been regulated in the provisions of Article 51 paragraph (1), Article 51 paragraph (2), and Article 51 paragraph (3) of Additional Protocol I of 1977 to the Geneva Conventions of 1949. This principle emphasizes that there needs to be a distinction between combatants and non-combatants in armed forces, where this is a fairly large obstacle for a weapon that is completely an autonomous weapon in accordance with applicable international humanitarian law. Furthermore, weapons autonomous basically does not have the expertise to interpret a significant difference between civilians and the military of a country, especially in a contemporary combat zone. In addition, the principle of distinction states to prohibit the use of a weapon that has the nature indiscriminate or cannot differentiate between legitimate and illegitimate military targets. Thus, there are still many parties who doubt Autonomous Weapons Systems (AWS) because even though AWS is equipped with the presence of Artificial Intelligence However, the AWS is still inadequate to make a distinction between armed conflicts.

#### 2. Principle of Proportionality

This principle of proportionality is a principle that has been regulated in the provisions of Article 51 paragraph (5) letter b and Article 57 paragraph (2) letter a points i-iii of Additional

Protocol I of 1977 to the Geneva Conventions of 1949. This principle prohibits any form of attack aimed at military targets if there is a possibility that civilians will exceed or be disproportionate to an expected military advantage. This principle of proportionality is one of the requirements contained in international humanitarian law which is very complex, which requires human judgment which is basically not possessed by autonomous weapons in general.

### 3. Principle of Military Interest

This principle of military interest is a principle that has been regulated in the provisions of Article 52 paragraph (2) of Additional Protocol I of 1977 of the Geneva Convention of 1949. That based on the provisions of the article above, it is explained that this principle of military interest is a principle that determines the existence of a military attack target that can basically provide an advantage to the military but can also reduce the losses that can be suffered by civilians. This principle of military interest provides an opportunity for military forces to plan military actions that aim to consider the practical requirements of a military situation at a particular time while remaining limited by humanitarian principles.

### 4. Principle of Limitation

This principle of limitation is a principle that provides limitations on the rights of parties who are in conflict in choosing the means of war to be able to harm their war opponents. There are several provisions that have been stated in International Humanitarian Law that explain the existence of limitations in using weapons of war, namely as follows:

- a. Triggering suffering that actually does not need to occur;
- b. Has a discriminatory and fraudulent nature;
- c. The losses and injuries suffered by civilians were excessive;
- d. Environmental damage that occurs over a long period of time.

Thus, autonomous weapons systems must comply with the provisions applicable to International Humanitarian Law to avoid things that could harm a country's civilian population.

In Article 36 of Additional Protocol I of the 1977 Geneva Conventions, which refers to the explanation of weapons, tools and methods of warfare, the ICRC is of the opinion that:

"the words 'methods and means' include weapons in the widest sense, as well as the way in which they are used. The use that is made of a weapon can be unlawful in itself, or it can be unlawful only under certain conditions. For example, poison is unlawful in itself, as would be any weapon which would, by its very nature, be so imprecise that it would inevitably cause indiscriminate damage. (...) However, a weapon that can be used with precision can also be used abusively against the civilian population. In this case, it is not the weapon which is prohibited, but the method or the way in which it is used."

The article explains that countries have an obligation to prevent the use of weapons that may violate applicable international law. Where prevention can be done by using a procedure or method such as a review of a weapon, law or review of Article 36 of Additional Protocol I of the 1977 Geneva Convention which can basically provide legitimacy to weapons, tools, or methods of war before an armed conflict occurs.

Thus, the legality of a weapon also depends on how the weapon is used in a war, apart from the design and intent and purpose of the weapon being used. In use Autonomous Weapons Systems There is also a need for ethics in the use of AWS weapons, where there is still uncertainty about autonomous weapons systems that contribute to the use of weapons that can have an impact on unacceptable risks, especially for civilians. Where this can cause problems with ethics and applicable laws.

The discussion of ethics has also crossed the boundaries contained in international law, which also has a dependence on the context of international humanitarian law and human rights. The existence of ethics is also closely related to all existing conditions and has also become a warning by Human Rights Watch, where in practice autonomous weapons can exceed moral limits due to the weak quality of humans needed to make the right moral decisions. So that

ethics and humanity is also a core discussion related to acceptance Autonomous Weapon System.

The issue of ethics becomes very important in using Autonomous Weapon System, where the ethics aims to provide limitations on the use of weapons because there are concerns about the loss of human agency in making decisions in using decisions to kill or destroy human dignity. It needs to be implemented that humans must make decisions that are good enough to be able to maintain a good relationship directly between human intentions and existing weapons systems. Thus, these decisions cannot be completely handed over to machines because they can result in a lack of predictability such as causing serious ethical and legal problems caused by the lack of predictability of the consequences of related risks, especially for civilians. Thus, humans have a responsibility for making ethical and legal decisions that cannot be given to machines or computer algorithms. This is because humans should have the rights and responsibilities related to these decisions.

2. What is the form of accountability for the use of Autonomous Weapons Systems in international humanitarian law?

In the use of a weapon by one party in a war, there is certainly a form of responsibility that must be borne by the party using it. This becomes very interesting if a weapon can determine whether or not action is needed to attack a target without human intervention. The discussion regarding the use of AWS leads to the legality or otherwise of the weapons system with international norms to determine whether the weapon will cause unnecessary suffering or unnecessary suffering also whether this weapon has an indiscriminate nature. Discussion on forms of accountability The use of AWS certainly needs to be done in stages, starting from the analysis area between Weapon Law And Targeting Law, terminology Weapon Law refers to the legality or otherwise of the weapons system used under international law. While Targeting Law refers to the use of weapons on the battlefield specifically related to targets and precautions as steps that need to be taken by operators regarding the method of warfare used. Based on International Humanitarian Law, International Humanitarian Law basically focuses on protecting individuals, especially in situations of war and the consequences of war, which consists of at least 2 (two) basic rules that form its basis, namely The Hague Law and Geneva Law.

In its use, AWS is considered to have the potential to violate the laws of war as regulated in Additional Protocol 1 of 1977 of the 1949 Geneva Convention, especially related to the principle of humanity stated in Article 35 paragraph (2), the principle of impartiality in Article 51 paragraph (4), the principle of differentiation in Article 51 paragraph (1-3), the principle of military interest in Article 52 paragraph (2) and the principle of proportionality in Article 51 paragraph (5) as a condition for allowing weapons to be used conventionally, especially if used in war. Thus, there needs to be a form of accountability for the use of AWS related to International Humanitarian Law. The ability of AWS to operate without human intervention is possible because there are 3 (three) most important components so that AWS can carry out the tasks given, namely:

1. Sensor System

The Sensor System on AWS is used to obtain images, data, target zones and other things that are used to be processed by artificial intelligence through digital processes.

2. Artificial Intelligence (Artificial Intelligence)

Artificial intelligence has the use to process what is sent by sensors to be able to detect, identify based on the data it receives. After receiving the data sent by the sensor system then Artificial intelligence has the ability to solve problems by shooting at predetermined targets.

3. Weapons

The weapon will carry out commands carried out by artificial intelligence to carry out attacks on targets based on potential targets as previously determined. Based on the 3 (three) stages of AWS, there is certainly a stage of development and testing of weapons before being

launched. This means that there are parties involved in the stages of development, programming, to activation of weapons involving the decision of the commander or operator to run the weapons system. Thus, the parties directly involved in the use of AWS consist of military commanders, operators, acquisition teams, computer programmers and weapons designers, all of whom are involved in accountability or responsibility that leads to responsibility for the use of AWS in International Humanitarian Law. If in the case of the use of AWS it turns out that there is a violation of International Humanitarian Law, there are 2 (two) forms of responsibility in International Law, namely as follows:

#### 1. State Accountability(State Responsibility)

The use of AWS for war purposes certainly cannot be separated from the interests of the country that ordered its use. Because of this, the country needs to be responsible for its actions if in carrying out the tasks given to AWS it violates the regulations contained in International Humanitarian Law. State accountability will immediately arise if a country is proven to have violated the obligations contained in International Law as explained in Article 1 The Draft Articles on Responsibility of States for Internationally Wrongful Acts which reads "Every internationally wrongful act of a State entails the international responsibility of that State." Thus, a country can be blamed for violating public international law based on international agreements, customary international law, principles of international law and bilateral or multilateral agreements.

The state's responsibility for an act carried out by a person or group of people where an act is carried out under the direction of the state, then all actions carried out by the person or group of people can be considered as an act of the state. This is regulated in Article 8 of the Draft Convention regarding state responsibility which reads "The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct." Thus it becomes clear that an act carried out under the direction of the state will be the responsibility of the state. The use of AWS based on the direction of the state through official capacity as per national law, then committing a violation of International Humanitarian Law results in the state being internationally responsible for the instruments it has deployed. The state is responsible for providing compensation for losses incurred as a result Internationally Wrongful Acts. This includes material and immaterial losses, restitution, compensation, punishment of people who are also responsible for the actions that arise and are attached as state responsibility. State accountability can also be carried out through International Criminal Court where war crimes in armed conflict are regulated in Article 8 paragraph (2) letter b of the Rome Statute. The same thing is also regulated in Article 6 paragraph (1) of the 1966 International Covenant on Civil and Political Rights, which states "Every human being has the right to life which is inherent in him. This right must be protected by law. No one can arbitrarily deprive him of his right to life." Thus, Violations of international law, namely war crimes, can be accounted for through the ICC.

#### 2. Individual Accountability (Individual Responsibility)

The use of AWS that experiences problems can be subject to individual liability. There are at least several parties who can be said to be individually responsible for the misuse of AWS, including Combatants, Military Commanders, Programmers, and AWS Designers. Based on International Humanitarian Law, individual liability includes proof of the elements mental elements or mens rea, And physical elements. Provisions related to this are regulated in Article 30 Rome Statute of the International Criminal Court which states that the mental element includes intention and knowledge. This means the individual's intention to engage in an act of violation which then results in the consequences of the violation or is aware that there is a possibility that the violation will occur. Meanwhile, individual knowledge is assessed for acts of violation which are known to have consequences that will occur. In order to be declared individually responsible, the individual must be based on Article 25 paragraph (3) Rome Statute

1988 namely fulfilling the elements of a crime such as the elements mental elements And physical elements. Individual accountability can be directed at at least to 2 parties, namely as follows:

1. Combatant

Combatants have an important role in armed conflict and war, where in its implementation they must comply with International Humanitarian Law. Matters relating to means and methods of war are regulated in Article 35. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of Victims of International Armed Conflicts which reads as follows:

- I. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited;
  - II. It is prohibited to employ weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering;
  - III. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment
- To the relation with use AWS, Combatant rated responsible for the operation of AWS resulting in violations of the provisions set out in International Humanitarian Law.

2. Military Commander

Military commanders individually can be held accountable in cases where the operation of AWS violates the provisions of International Humanitarian Law because the military commander has the authority to determine whether or not to use AWS in armed conflict. Even if the error is made by a subordinate led by a military commander, the military commander can be held accountable because the subordinate's error is his responsibility.

## CONCLUSION

Based on the discussion that the author has explained previously, below are the conclusions that the author can provide, namely:

1. The use of Autonomous Weapons Systems in armed conflict or war can be said to be legal as long as it does not violate the provisions stipulated in International Humanitarian Law. Autonomous Weapons Systems must also meet the criteria stipulated in International Humanitarian Law to be used as Conventional weapons where their use must not be directly targeted at civilians or people protected under International Humanitarian Law, the use of AWS must be controlled by humans in order to distinguish military targets from civilian targets related to targets that can be attacked or not and of course in its use it is said to be legal as long as it does not violate International Humanitarian Law
2. The form of accountability for the use of Autonomous Weapons Systems in international humanitarian law can be in the form of compensation for losses caused by armed conflict in the form of material, immaterial, punishment for the responsible state. The state is responsible through International Criminal Court. In addition to the state, Individual Liability can be imposed on parties who are involved in the use of AWS in armed conflict or war, namely Combatants and Military Commanders.

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