



Forced Displacement and Blockade Reviewed From International Humanitarian Law: A Case Study of the Humanitarian Attacks in Rafah

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Abstract

This paper elaborates the forced displacement as regulated by the 1949 Geneva Convention and the use of blockades measures as a war strategy within the international humanitarian law framework in the conflict occurring in Rafah. The study employs a normative research method and is a doctrinal study characterized by descriptive analysis by utilising the secondary data sources with case-based and statutory approach. The findings show that the forced displacement carried out by Israel, along with the enforcement of blockade measures that cut off access to the area, weakened defences, and disrupt the supply of food and medical aids, are categorized as the wrongful act of genocide and have violated the international humanitarian law. This study concludes that Israel is an international humanitarian law violator and can be held accountable for its actions.

Keywords: *blockades; forced displacement; humanitarian law*



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Abstrak

Tulisan ini menguraikan tentang pemindahan paksa sebagaimana diatur dalam Konvensi Jenewa 1949 dan penggunaan tindakan blokade sebagai strategi perang dalam kerangka hukum humaniter internasional dalam konflik yang terjadi di Rafah. Penelitian ini menggunakan metode penelitian normatif dan merupakan penelitian doktrinal yang bercirikan analisis deskriptif dengan memanfaatkan sumber data sekunder dengan pendekatan berbasis kasus dan perundang-undangan. Temuan menunjukkan bahwa pemindahan paksa yang dilakukan oleh Israel, serta penerapan langkah-langkah blokade yang memutus akses ke wilayah tersebut, melemahkan pertahanan, dan mengganggu pasokan makanan dan bantuan medis, dikategorikan sebagai tindakan genosida yang salah dan telah melanggar hukum humaniter internasional. Kajian ini menyimpulkan bahwa Israel merupakan pelanggar hukum humaniter internasional dan dapat dimintai pertanggungjawaban atas perbuatannya.

Kata Kunci: *blokade; pemindahan paksa; hukum humaniter*

A. Introduction

War or armed conflict is the last step taken by a country when 2 or more countries are in conflict with each other and feel that their goals will not be achieved except by force.¹ Morgenthau in his classic work said that war occurs because of the strong human will to live and bring a war that knows no

¹ Ambarwati, *International Humanitarian Law in International Relations Studies* (Jakarta: Raja Grafindo, 2012).

bounds,² which is in line with the opinion put forward by Thomas Hobbes that, "the natural condition of human life is conflict".³

Hobbes, in his theory known as the social contract theory, said that, "...An agreement is needed so that human beings with their anarchy do not clash with each other, which we know as the phenomenon of social contracts".⁴ Thus, in order to control wars that have the potential to exceed the limits, an instrument that regulates limits so that wars can be carried out humanely is also formed, this instrument is referred to as international humanitarian law (IHL).

IHL is a set of rules and legal principles that regulate armed conflicts that aim to protect human

² D S Atmaja, P Patmawati, and F Kusumayanti, *Theological Basis of Religious Tolerance* (Pontianak: IAIN Pontianak Press, 2022).

³ Mohamad Nur Wahyudi, "Social Contract Theory (A Comparative Study of Political Theory According to Imam Al-Mawardi, Thomas Hobbes and John Lock)," *An-Nawa : Journal of Islamic Studies* 4, no. 2 (December 31, 2022): 113–25, <https://doi.org/10.37758/annawa.v4i2.504>.

⁴ Iain McLean, "The Social Contract in Leviathan and the Prisoner's Dilemma Supergame," *Political Studies* 29, no. 3 (September 22, 1981): 339–51, <https://doi.org/10.1111/j.1467-9248.1981.tb00500.x>.

rights and dignity in armed conflicts, consisting of regulating the use of weapons (*Jus Ad Bellum*) in wars between countries and the treatment of war victims (*Jus In Bello*).⁵ The source of IHL is agreements that have legal rules or law-making treaties and customary international law.⁶

IHL is classified into 2, namely The Hague Convention and the Geneva Convention. The Hague Convention consists of the 1899 Deen Haag Convention and the 1907 Deen Haag Convention, while the Geneva Convention includes 4 Treaties and 3 Protocols that provide for the protection of war victims.⁷ These two Conventions are guidelines that must be followed in situations of armed conflict.

⁵ Haryomataram, *Humanitarian Law* (Jakarta: CV Rajawali, 1984).

⁶ Christopher Greenwood, "A Modern Introduction to International Law. Fourth Edition. By Michael Akehurst, M.A., LL.B. <https://doi.org/10.1017/S0008197300109018>.

⁷ Kristina Mutiara; Komaling, "Protection of the Rights of War Victims According to the 1949 Geneva Conventions," *Lex Administratum* 11, no. 2 (2023): 7, <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/45677>.

However, violations of IHL related to the protection of war victims are common, such as the bombing of detention facilities belonging to Houthi rebels in Yemen⁸ and the detention of Palestinian child prisoners by the Israeli army.⁹ The article specifically highlights an Israeli drone strike that fired on Palestinians in Rafah in May 2024 and killed civilians, especially children, in the incident.¹⁰

The Israeli drone strike was directed at the Al Mawasi refugee camp, which is a safe zone for civilians to flee, as the refugees were preparing to rest.¹¹ Amnesty International said Israel's attack on

⁸ Susetyorini Peni Prakoso Haidarullah Anggoro, Setiyono Joko, "Violations of International Humanitarian Law on Coalition of Arab States in Armed Conflict (Case Study: Bombing of Detention Facilities Owned by Houthi Rebels in Dhamar City, Yemen)," *Diponegoro Law Journal* 10 (2021): 5–24.

⁹ Nuswantoro Dwi Warno Indah Rizki Restuningtias, Soekotjo Hardiwinoto, "Juridical Analysis of Child Prisoner Protection in the Perspective of International Humanitarian Law," *Serambi Hukum* 6, no. 02 (2015): 1–13.

¹⁰ CNBC INDONESIA, "All Eyes on Rafah: 36000 People Killed Due to Israeli Violence" <https://www.cnbcindonesia.com/research/20240530123431-128-542429/all-eyes-on-rafah-36000-orang-tewas-karena-keganasan-israel> accessed on August 19, 2024

¹¹ CNBC INDONESIA, "Israel Bombards Rafah Mercilessly, Dozens of Palestinian Refugees Killed"

Rafah was a violation of IHL, as Israel's attack on the Al-Mawasi refugee camp prompted the forced displacement of refugees in Rafah.

Article 49 of the Geneva Convention states that,

*"Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive."*¹²

Not only that, Israel also imposed a blockade in the Gaza Strip which hindered the entry of humanitarian aid that was urgently needed by the refugees.¹³ Several previous studies have determined that forced displacement and blockade are war crimes. Joanna Korner, examines the issue of forced displacement of ethnic communities in Yugoslavia. Korner argued that this incident was a

<https://www.cnbcindonesia.com/news/20240527174736-4-541556/israel-bombardir-Rafah-tanpa-ampun-puluhan-pengungsi-palestina-tewas> accessed on June 17, 2024

¹² See Article 49 of the 1949 IV Geneva Convention

¹³ CNBC INDONESIA "Israel Blocks UN Entry into Rafah, Humanitarian Aid Increasingly Threatened", [accessed https://www.cnbcindonesia.com/news/20240507190314-4-536521/israel-blokir-pbb-masuk-Rafah-bantuan-kemanusiaan-makin-terancam](https://www.cnbcindonesia.com/news/20240507190314-4-536521/israel-blokir-pbb-masuk-Rafah-bantuan-kemanusiaan-makin-terancam) June 17, 2024

humanitarian violation.¹⁴ Emma Brandon, elaborates on forced displacement as a war crime in the context of humanitarian law and emphasizes that the justification of displacement for the sake of security is sometimes inappropriate and cannot legitimize this act that violates humanitarian law by providing several case studies and legal precedents.¹⁵

Dora Vanda Velencze, on the other hand, evaluates the justification claims of the parties implementing the blockade as a reason for national security. However, the blockade caused mass suffering with the focus of the blockade cases occurring in Gaza.¹⁶

Based on the above description, this paper tries to analyze and describe the humanitarian events

¹⁴ Joanna Korner, "Criminal Justice and Forced Displacement in the Former Yugoslavia," no. July (2012).

¹⁵ Emma Brandon, "Grave Breaches and Justifications: The War Crime of Forcible Transfer or Deportation of Civilians and the Exception for Evacuations for Imperative Military Reasons," *Oslo Law Review* 6, no. 2 (September 17, 2019): 107–24, <https://doi.org/10.18261/issn.2387-3299-2019-02-03>.

¹⁶ Dora Vanda Velenczei, "A Progressive Programme of Starvation: The Gaza Strip Blockade as the Crime against Humanity of Extermination," *ELTE Law Journal* 2022, no. 2 (2022): 85–100, <https://doi.org/10.54148/ELTELJ.2022.2.85>.

that occurred in Rafah related to the forced displacement and blockade of humanitarian aid through the IHL perspective using a descriptive analytical doctrinal approach with the Geneva Convention and the Deen Hague Convention as well as several literature references such as books, journals related to humanitarian law as a source of reference.

B. Discussion

1. State Responsibility Under International Law

The concept of state responsibility is divided into state responsibility and state liability. According to Goldie, state responsibility talks about the standards of behavior that a country must comply with in its dealings with international relations, while state liability talks about how a country compensates for losses caused by its failure to comply with these standards of conduct.¹⁷

¹⁷ Ida Bagus Wyasa Putra, *State Responsibility for the Impact of Space Commercialization* (Bandung: PT. Refika Aditama, 2001).

In addition to the term responsibility, Rosalyn Higgins uses the term accountability which means that there is responsibility for the actions of a country that violates international law.¹⁸ Thus, international legal experts agree and recognize state accountability as part of the fundamental principles in international law.

The state accountability principle was born from the idea that no country should enjoy its rights without respecting the rights of other countries. Violations of the rights of other countries cause an obligation to repair or be responsible for recovering losses arising from the actions of the relevant state.¹⁹ The principle of state accountability is based on international standards that apply to actions that violate a country's obligations at the level of international law or even to the extent that

¹⁸ Rosalyn Higgins, "The International Court of Justice: Selected Issues of State Responsibility," in *International Responsibility Today* (Brill | Nijhoff, 2005), 271–86, https://doi.org/10.1163/9789047407706_033.

¹⁹ Satria Nugraha, "State Responsibility in the Application of International Humanitarian Law: A Case Study of Non-International Armed Conflict in Syria and Its Implications for Indonesia," *Aktualita (Law Journal)* 2, no. 1 (June 19, 2019): 215–32, <https://doi.org/10.29313/aktualita.v2i1.4683>.

they cause damage due to such acts.²⁰ Thus, the actions of a country, whether intentional or contain elements of negligence, which result in losses to other countries, must be accounted for by the country concerned.

2. Israeli Army Attacks on Civilians in Rafah

Rafah is the location of the Palestinian evacuation until now.²¹ On May 27, 2024, the Al-Mawashi refugee camp was attacked by Israeli soldiers and resulted in the death of Palestinians who were non-combatants. Therefore, the UN stated that the conditions that occurred in Rafah have reached an alarming level.²²

²⁰ Malcolm David Evans, *International Law* (Oxford University Press, USA, 2014).

²¹ Universitas Muhammadiyah Surakarta, Israel Bombards Rafah After Court Decision, <https://www.ums.ac.id/berita/teropong-jagat/israel-bombardir-rafah-usai-putusan-mahkamah> Accessed on August 19, 2024

²² BBC News Indonesia" *History of Rafah, a city where millions of Palestinians have fled threatened by ground attacks*" <https://www.bbc.com/indonesia/articles/c3gd8k8nn9jo> accessed on June 17, 2024

Israeli Prime Minister Benjamin Netanyahu stated that the attack was aimed at destroying the power of Hamas.²³ However, this attack actually killed refugees consisting of women, children, and the elderly, which sparked global outrage.

Furthermore, the Israeli attack on the refugee camp in Rafah is also a form of defiance of the call issued by the International Court of Justice (ICJ) which forces Israel to stop attacks on non-combatants and is a form of barbarism and a clear violation of IHL.²⁴

3. Forced Displacement as a War Crime

The 1973 Apartheid Convention, the 1949 Geneva IV Convention, and the Rome Statute state that the act of forcibly displacing the population is

²³ CBC NEWS" *Israel Netanyahu is Determined to Launch a Ground offensive in Rafah. Here's why, and why it matters*"<https://www.cbsnews.com/news/israel-hamas-war-gaza-netanyahu-Rafah-offensive-why-it-matters/> diakses pada 17 Juni 2024

²⁴ OHCHR" *UN experts outraged by Israel strikes on civilians sheltering in Rafah camps*"<https://www.ohchr.org/en/press-releases/2024/05/un-experts-outraged-israeli-strikes-civilians-sheltering-rafah-camps> diakses pada 17 Juni 2024

categorized as a crime against humanity.²⁵ Referring to Article 7 of the Rome Statute, there are eleven types of crimes that are categorized as crimes against humanity with 4 of them classified as international crimes against humanity,²⁶ one of which is deportation or forced displacement of the population.²⁷

Article 7 of the Rome Statute explains that the act of forced displacement is an act of relocation of a population through means of expulsion or other means of violence from the place where the resident is legally located without a basis justified in international law.²⁸ Forced displacement is classified as a crime against humanity if it is

²⁵ Dio Boy Tetelepta, Arman Anwar, and Richard Marsilio Waas, "Forced Displacement of Population in Armed Conflict in the Philippines and Its Legal Consequences under International Humanitarian Law," *TATOHI: Journal of Legal Sciences* 2, no. 10 (2022): 987, <https://doi.org/10.47268/tatohi.v2i10.1438>.

²⁶ Lihat Pasal 7 Rome Statute of The International Criminal Court

²⁷ Ericson Cristian Umboh, "THE RIGHT TO IMMUNITY OF THE HEAD OF STATE WHO COMMITS A CRIME (LEGAL STUDY OF ARTICLE 7 OF THE ROMAN STATUTE)," *Lexetsocietatis* VII, no. 2 (2019): 93-102, <https://doi.org/https://doi.org/10.35796/les.v7i2.24660>.

²⁸ See Explanation of Article 7 Rome Statute of The International Criminal Court

deliberately carried out as part of a widespread or systematic attack directed at the civilian population.

The concept of forced transfer was also mentioned in the Nuremberg Tribunal regarding the deportation case in Germany, which later led to the Nuremberg Tribunal's decision that what happened in Germany was a war crime in international law.²⁹ Articles 54 and 85 of Additional Protocol I of the 1997 Geneva Conventions and Additional Protocol II of the 1997 Geneva Conventions also state that forced displacement is considered a crime against humanity when it is deliberately carried out as part of a widespread or systematic attack directed at the civilian population, which is also described as ethnic cleansing and in almost all cases of forced displacement.³⁰

²⁹ Jean-Marie Henckaerts, "Deportation and Transfer of Civilians in Time of War," *Vanderbilt Journal of Transitional Law* 26, no. 3 (1993), <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1946&context=vjtl>.

³⁰See Conflict in the former Yugoslavia (1991-1999) and Genocide in Rwanda 1994 in the ICRC Handbook

The Additional Protocol to the 1949 Geneva Conventions also contains a prohibition for parties to the conflict to carry out forced displacement of populations.³¹ This prohibition does not apply if the evacuation is carried out voluntarily or against residents fleeing from the danger zone, or the evacuation of residents is carried out for the purpose of evacuation.³²

The Additional Protocol to the 1949 Geneva Conventions stipulates that civilians should not be forced to leave their own territory for reasons related to the conflict.³³ Therefore, civilians should not be expelled from the jurisdiction of a State party to the conflict whose territory is controlled by rebels.

The ICJ's decision regarding the forced removal of civilians cannot be categorized, directly or

³¹ See Additional Protocol to the 1949 Geneva Conventions

³² See the Commentary on the IV Geneva Convention

³³ See Additional Protocol to the 1949 Geneva Conventions, article 17 (2)

unfairly, as genocide or ethnic cleansing.³⁴ When traced back, Israel is known to have forced more residents to flee, as seen in the Israeli attack on Gaza that forced Palestinians to flee in Rafah and the attack directed at the refugee camp in Rafah that forced the refugees to immediately evacuate to the so-called humanitarian zone in Al Mawasi.³⁵

When viewed from the 1949 Geneva Convention IV, Israel's actions can be categorized as an act of forced displacement which is a violation of humanitarian law, namely forced displacement carried out without a valid reason such as for the safety of civilians or urgent military reasons.³⁶

From the description above, it can be said that there is an element of forced transfer on an

³⁴ Rina Rusman and Syofirman Syofyan, "Prohibition of Civilians Transfer Under Humanitarian Law and Its Relation to Genocide" 7, no. 3 (2024): 455–65.

³⁵ United Nation " Speaker in Security Council Urge Israil To Stop Military Incursion into rafah" <https://press.un.org/en/2024/sc15701.doc.htm> diakses pada 18 Juni 2024

³⁶ Jan Willms, "Without Order, Anything Goes? The Prohibition of Forced Displacement in Non-International Armed Conflict," *International Review of the Red Cross* (Cambridge University Press, 2009), <https://doi.org/10.1017/S1816383109990397>.

unfounded order. For this reason, the acts committed by Israel constitute a violation of IHL that can be held accountable under international law through a judgment issued by the International Criminal Court (ICC) or other ad hoc criminal courts.³⁷

In the case of the attack in Rafah, despite calls for evacuation notices, forced evacuation is still unjustified. This is similar to the case of Gotovina's forced removal,³⁸ where the judge of the International Criminal Tribunal for the Former Yugoslavia (ICTY) stated in his ruling that attacks on public facilities aimed at instilling fear in civilians are categorized as acts of forced removal. Furthermore, forced displacement is closely related to the crime of genocidal war, because as happened in World War II, ethnic cleansing accompanied by

³⁷ Emanuela-Chiara Gillard, "THE ROLE OF INTERNATIONAL HUMANITARIAN LAW IN THE PROTECTION OF INTERNALLY DISPLACED PERSONS," *Refugee Survey Quarterly* 24, no. 3 (September 2, 2005): 37–48, <http://www-jstor-org.ezproxy.ugm.ac.id/stable/45054000>.

³⁸BBC News" Croatian war criminal sentenced soon https://www.bbc.com/indonesia/dunia/2011/04/110414_croatia_war accessed on June 18, 2024

the intention or purpose of exterminating the ethnic, racial, national, or religious group that is the target is manifested in the form of persecution in the form of widespread and systematic crimes against humanity aimed at civilians as defined by the 1998 Rome Statute.

The Rome Statute stipulates that at least 3 out of 5 acts of genocide are most likely to be carried out in conjunction with forced displacement. The three actions are:³⁹

1. Murder of a member of a group;
2. Causing serious physical or mental harm to a member of the group; and
3. Deliberately damaging the living conditions of a group that is thought to have caused physical destruction in whole or in part.

Forced displacement carried out through actions as described in number 3 above, can be carried out indirectly or openly calling for eviction by

³⁹ See in the 1998 Statute of Rome

destroying or changing the environment in which the civilian population is located, especially attacks on public facilities aimed at displacing them.⁴⁰

This pattern looks similar to the attacks experienced by refugees in Rafah. The forced displacement by means of attacks and destruction of public facilities indicates an attempt to commit genocide against Palestinians who are refugees in Rafah by Israeli forces.

Another case that has a similar pattern is known as the "Mother Of Srebrenica Case", which is the occurrence of war crimes in the form of genocide against the Bosnian Muslim community who were displaced to Srebrenica by Serbian army troops.⁴¹ Srebrenica is a small town in Eastern Bosnia where the majority of the population is Islamic and was designated as a "safe zone" by the United Nations in 1993 through Resolution 819.

⁴⁰ William A Schabas, *An Introduction to the International Criminal Court* (Cambridge University Press, 2011).

⁴¹ Remembering Srebrenica " What Happened In Srebrenica" <https://srebrenica.org.uk/what-happened/srebrenica-genocide/happened-srebrenica> diakses pada 17 Juni 2024

The "safe zone" status granted by the UN to Srebrenica emphasizes that the area must be protected from attacks by international forces, namely a contingent from the Netherlands known as *the "Dutch Peacekeepers"*. Unfortunately, Srebrenica's "safe zone" status did not make the area immune from attack, because Srebrenica was actually the site of the massacre of Bosnian Muslims by Serbian forces.⁴²

The similarities in the pattern of attacks carried out by the Serbian army against the Bosnian Muslim community in Srebrenica and the Israeli army against the Palestinian population in Rafah, deserve more attention to prevent the genocide tragedy from repeating. Regardless of whether it is related to genocide or not, forced displacement in any form cannot be justified because it violates the Geneva Conventions and the Rome Statute.

⁴² Smith, R. Jeffrey (2024, March 23). *Srebrenica massacre*. *Encyclopedia Britannica*.
<https://www.britannica.com/event/Srebrenica-massacre>

4. Humanitarian Aid Blockade

A blockade is an action taken by a country's armed forces to block traffic in or out of enemy territory in times of conflict.⁴³ The blockade is aimed at weakening defenses through the closure of access to the region, thereby preventing the fulfillment of the region's food or medical supplies.

Article 23 of the 1949 Geneva IV Convention explicitly regulates the delivery of medical supplies and food to blockade areas. Article 59 of the 1949 Geneva Convention regulates a collective assistance scheme for territories that are blockaded by an opposing country. This was also stipulated in the Declaration of Paris 1856 and the Declaration of London 1909, where the Declaration of London affirmed that the concept of blockade was a legal obligation for those who participated in the war and that it was allowed to neutral parties who did not participate in the war, and the Declaration of Paris

⁴³ James Kraska, "Rule Selection in the Case of Israel's Naval Blockade of Gaza: Law of Naval Warfare or Law of the Sea?," *Yearbook of International Humanitarian Law* 13 (2010): 367-95, https://doi.org/DOI: 10.1007/978-90-6704-811-8_13.

became the basis of written international legal principles regarding the effectiveness of blockade measures.⁴⁴

The implementation of blockade as a method of war has existed since the beginning of the 5th century BC which was carried out by besieging enemy territory. Blockade is a war strategy characterized by deliberate extreme suffering.⁴⁵ As the times progress, blockades are often used as a method of war that is considered very effective against vulnerable countries. This is because the imposition of the blockade aims to eliminate the materials needed by the enemy to wage war, cut off the supply of foodstuffs, and make the opponent unable to withstand the economic pressure caused by the war.⁴⁶

⁴⁴ Hardinna Putri Jazirah, Popi Tuhulele, and Welly Angela Riry, "War Strategies According to International Humanitarian Law: Is the Blockade Method Legal?," *Uti Possidetis: Journal of International Law* 3, no. 3 (October 11, 2022): 278–92, <https://doi.org/10.22437/up.v3i3.19279>.

⁴⁵ Sean Watts, "Humanitarian Logic and the Law of Siege: A Study of the Oxford Guidance on Relief Actions," *International Law Studies* 95 (2019): 1–48.

⁴⁶ Llewellyn Archer Atherley-Jones, "The Military Effect of Attacks on Commerce," *Problems of the War* 1 (1915): 91–96.

As a result of the tremendous impact of the blockade on the world, blockade as a war strategy was then regulated after World War II, namely in the San Remo Manual on International Law Applicable to Armed Conflicts at Sea which states that a blockade can be carried out if:⁴⁷

1. There was an announcement regarding the implementation of the blockade to all parties;
2. The blockade is effectively implemented;
3. The establishment of blockades;
4. Imposed impartially; and
5. Respect the rights of neutral countries.

For this reason, non-combatants affected by the blockade must be guaranteed their lives, from food to health services, as stipulated in article 10 of the 1949 Geneva Convention, which reads, "*International organizations that wish to provide humanitarian assistance must not be hindered.*"⁴⁸

⁴⁷ Phillip J Drew, "Can We Starve the Civilians? Exploring the Dichotomy between the Traditional Law of Maritime Blockade and Humanitarian Initiatives," *International Law Studies* 95, no. 1 (2019): 10.

⁴⁸ See the 1949 Geneva convention

Then Articles 23 and 59 of the 1949 Geneva Convention also state that each party must allow traffic lanes for all shipments of foodstuffs, and the delivery of such aid is not limited to food but also to medicines including goods that are aid supplies.⁴⁹

Based on the explanation above, blockade is one of the war strategies that is allowed and intended to separate combatants and non-combatants so that non-combatants do not participate in the war,⁵⁰ which is legal in practice if civilians in the zone are given guarantees in accordance with their rights.⁵¹ Even so, the implementation of blockades as a war strategy is still often abused and leads to violations of the human rights of civilians around the battlefield due to restricted sectors of life.

⁴⁹ Trixie Rachel Tandayu and Aji Wibowo, "Juridical Analysis of the Blockade at Yemen's Hudaydah Port That Caused the Death of Children," *Trisakti 2 Legal Reform*, no. 1 (2020).

⁵⁰ Harvard School of Public Health. Program on Humanitarian Policy and Conflict Research, *HPCR Manual on International Law Applicable to Air and Missile Warfare* (Cambridge University Press, 2013).

⁵¹ Rocío Ruiz-Jiménez Vera, "Starvation as a Method of Warfare in South Sudan: Addressing Faminogenic Practices from International Organizations' Security Mechanisms.," 2020.

Some literature also mentions war strategies other than blockades that have an impact on starvation of civilians. This strategy is known as "Starvation of Civilian" and is categorized as a prohibited method of warfare because it deliberately deprives civilians of their right to food.⁵² This method refers to policies that aim to deprive and deliberately cause hunger or food shortages of civilians by depriving, damaging or even blocking food aid.⁵³ This strategy is one of the war crimes in armed conflict listed in article 8(2)(b)(xxv) of the Rome Statute of 1998 which reads,⁵⁴ "*Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Convention.*"

⁵² Laura K Graham, "Malum in Se Starvation Crimes in International Law," *The International Journal of Ethical Leadership Special Volumes* 8 (2023): 3–26, <https://scholarlycommons.law.case.edu/ijelspecial/8>.

⁵³ Jazmi Adlan Bohari, "Starvation as a Method of Warfare in" Yarmouk Camp" Siege In Syria: A Perspective Of International Humanitarian Law," *PhD Diss., President University*, 2015.

⁵⁴ Rome Statute of the International Criminal Court

Allowing hunger is a serious violation of humanitarian law according to the 1997 Additional Protocol of the 1949 Geneva Convention. This prohibition is also contained in Article 54 of the Protocol I of the Geneva Conventions which specifically prohibits the attack, destruction, removal, or rendering unobtainable goods indispensable to the survival of civilians, especially those aimed at eliminating food for civilians.

Thus, Additional Protocol I of the 1949 Geneva Convention contains a general prohibition on the use of the "starvation of civilians" method as a war strategy.⁵⁵ This prohibition also applies if the method used is by way of blockade which results in starvation for civilians.⁵⁶ The Israeli army's imposition of a blockade on Rafah has captured the world's attention, with the ICJ unequivocally condemning Israel's actions and calling for the

⁵⁵ Aninda Aulia Zulfa et al., "THE SIEGE CAUSING STARVATION IN MADAYA FROM AN INTERNATIONAL HUMANITARIAN LAW PERSPECTIVE," *TerAs Law Review: Journal of Humanitarian Law and Human Rights* 4, no. 2 (2022): 69–79.

⁵⁶ Theo Kauranen, "Starvation as a Method of Warfare: A Case Study of Russian Actions in the War in Ukraine," 2023.

cease of armed operations and the immediate opening of the Rafah crossing for aid provision.⁵⁷

In its defense, Israel stated that it had facilitated humanitarian assistance. However, according to a report issued by Refugees International, Israel has consistently and baselessly hampered aid operations and obstructed legitimate aid operations.⁵⁸The Refuge International *report* also said that Palestinians struggle to get adequate food, shelter and medicine.

As mentioned earlier, a blockade is a war strategy recognized by international law. Even so, the implementation of the blockade must still be subject to the applicable rules. Wolf Heintschel Von Heinegg said that the implementation of the blockade led to insufficient food for the survival of

⁵⁷ The Washingtonpost “ U.N Court ourder deepen Israel isolation as iy fights on in Rafah” <https://www.washingtonpost.com/world/2024/05/24/israel-Rafah-invasion-icj-ruling/> diakses pada 18 Juni 2024

⁵⁸ Refuuge International “ *Siege starvation:How Israel Obstruct Aid to Gaza*” <https://www.refugeesinternational.org/reports-briefs/siege-and-starvation-how-israel-obstructs-aid-to-gaza/> diakses pada 18 Juni 2024

civil society, so the blockade party had to provide a freeway for the supply.⁵⁹

In the case of Israel's attack on the refugee camp in Rafah, Israel was reluctant to let go of the blockade that had been implemented earlier. Allowing the Palestinian people to experience starvation through the blocking of humanitarian aid carried out by Israel is a form of denial of applicable international humanitarian law.

Based on the above, Israel can be held accountable for the crimes against humanity they commit. According to the theory of state accountability, Israel is the main actor in the violation of international humanitarian law which in this case is carried out through the forced displacement of Palestinians displaced in Rafah and the implementation of a blockade whose actions are accountable and can be prosecuted before the ICC.

⁵⁹ Dieter Fleck and Michael Bothe, *The Handbook of Humanitarian Law in Armed Conflicts* (Oxford University Press, USA, 1999).

C. Conclusion

The forced displacement of the population is a crime against humanity as stipulated in the 1973 Apartheid Convention and IHL. In addition, the 1998 Rome Statute outlines eleven types of crimes against humanity, including deportation or forced displacement of populations. Forced displacement is categorized as a crime against humanity when it is carried out as part of a widespread and systematic attack on the civilian population. The case in Rafah is a clear example of forced displacement in violation of humanitarian law, with Israel attacking and forcing Palestinians to flee areas that have been designated as safe zones. Hence, forced displacement can lead to genocide or ethnic cleansing crimes of humanity, either directly or indirectly.

In the case of Rafah, the pattern of Israeli attacks suggests a motive for forced displacement that can be attributed to genocide, as happened in the case of the Mother of Srebrenica. Thus, forced displacement in any form cannot be justified as it violates the Geneva Conventions and the Rome

Statute. A blockade, on the other hand, is a war strategy carried out by closing access to an area so as to prevent the entry of food supplies and aid. The blockade is aimed at weakening the opponent's defenses by cutting off food and medical supplies, causing great hardship for the affected population. Israel's implementation of the blockade in Rafah is a clear example of the blocking of humanitarian aid that is causing great suffering to Palestinians. Although the implementation of the blockade is authorized under some sources of international law, the parties are required to ensure that humanitarian assistance for non-combatants remains available. Israel's refusal to comply with this shows a denial of international humanitarian law. Referring to the theory of state responsibility, Israel can be held accountable for the crimes committed, because allowing starvation is an inhuman act that cannot be justified in armed conflict.

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