

CHAPTER I INTRODUCTION

A. Background

International law or public international law according to Mochtar Kusumaatmadja is a body of rules and principles of law that regulates the legal relations or issues between or among states or nations (international relation) which is not civil.¹ According to the definition we can argue that the international relation is not only among states, but also between a state and a non-state subject or among non-states subject.² International law has many parts, and International Humanitarian Law is one of the parts.

Humanitarian law is the new name of Laws of War. In one of his speeches on International Humanitarian Law on March, 26th 1981, Prof. Dr. Mochtar Kusumaatmadja explained that International Humanitarian Law is a part of laws of war that protects persons who become the war victims in contrast to the part of laws of war that regulates the methods of war or anything relating to war, in example forbidden war weapons.³ International humanitarian law represents the balance among states' military needs. As the rapid development of international community, some country all over the world have provided many contribution for the

¹ Mochtar Kusumaatmadja, *Pengantar Hukum Internasional*, Buku I Bagian Umum, fourth edition, (Jakarta: Binacipta, 1982), pg.1.

² Sefriani, *Hukum Internasional Suatu Pengantar*, third edition, (Jakarta: PT RajaGrafindo Persada, 2010), pg.2.

³ Haryomataram, *Pengantar Hukum Humaniter*, (Jakarta: PT RajaGrafindo Persada, 2005), pg.21.

development of international humanitarian law. One of the contributions is the International Conference on the Protection of War Victims which was held in Geneva on August-September 1993 which particularly discussed how to prevent the violation against the International Humanitarian Law and also the formation of the four Geneva Conventions as the major part international humanitarian law which specifically regulates the laws of war (armed conflict).

There are many armed conflict which already happened in the world. It affects million people's lives all over the world, especially children. Moreover if the armed conflict involves children as soldiers, which was happened in Ituri armed conflict, in the Democratic Republic of Congo (DRC).

The Ituri conflict in the DRC was a major conflict between the agriculturalist Lendu and pastoralist Hema ethnic groups in the Ituri region of the north-eastern DRC. While the two groups had fought since at least as early as 1972, the conflict itself lasted from 1999 to 2003. The conflict was complicated by the presence of various armed groups (many of which had participated in the Second Congo War), the large quantities of small arms in the region, the area's abundant natural resources and wealth, and the existing ethnic tensions throughout the region. The Lendu ethnicity was largely represented by the Nationalist and Integrationist Front (FNI) while the Union of Congolese Patriots (UPC) claimed to be fighting for the Hema. The conflict was extremely violent and was accompanied by

large-scale massacres perpetrated by members of both ethnic factions. In 2006, the BBC reported that as many as 60,000 people had died in Ituri since 1998. Hundreds of thousands of people were forced from their homes, becoming refugees. A low-level armed conflict continued until 2007.⁴

Children are people who susceptible during the conflict. Many children hurt, harmed, lost their houses, education, and also lost their parents because of war. And even though it is illegal to use children under fifteen years old in the armed conflict, there are still some military groups who recruite children under age to be child soldiers. In the Ituri armed conflict in the DRC, Thomas Lubanga Dyilo, the military commander in the pro-Uganda Congolese Rally for Democracy-Liberation Movement (RCD-ML) and the founder of the Union of Congolese Patriots (UPC),⁵ who became one of the main actors in the Ituri conflict between the Hema and Lendu ethnic groups, recruited children under fifteen years old to be child soldiers during the armed conflict.⁶

Recruiting children under age is obviously violates the international laws. It is a violation to recruit and use children under 15 years old to take part in armed conflict, according to the Article 77(2) of Additional Protocol I (AP I) to the Geneva Conventions and Article

⁴ UCDP Conflict Encyclopedia, http://www.ucdp.uu.se/gpdatabase/gpcountry.php?id=38®ionSelect=2-Southern_Africa# downloaded Thursday, 18 September 2014.

⁵ IRIN, "DRC: Who's Who in Ituri - Militia Organisations, Leaders", <http://www.irinnews.org/> downloaded Thursday, 18 September 2014.

⁶ Tempo, "Perekrut 'Tentara Bocah' Kongo Diadili di Den Haag", <http://www.tempo.com/> downloaded Thursday, 22 Mei 2014.

8(2)(b)(xxvi) of the ICC Statute for international armed conflict, and Article 4(3) of Additional Protocol II (AP II) to the Geneva Conventions and Article 8(2)(e)(vii) of the ICC Statute for non-international armed conflict. Convention on the Rights of the Child (CRC), Article 38, explains that children under fifteen years of age should not be forced or recruited to take part in a war or join the armed forces. Besides, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict also explains about the prohibition of the involvement of children under age in the armed conflict. According to international humanitarian law, it can be understood that the recruitment of children under fifteen years old to take part in a war or join the armed forces violates the international laws, one of them is the Convention on the Rights of the Child which has been adopted and signed by the United Nations General Assembly on November 20th, 1989. And DRC is one of the states parties of those conventions above since DRC ratified the AP I in 1982, AP II in 2002, CRC in 1990, ICC Statute in 2002 and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2001.⁷ And on January 26th, 2009, the International Criminal Court (ICC) opened its first trial in the case against Thomas Lubanga Dyilo, who has been charged under the Rome Statute of the ICC Articles 8(2)(b)(xxvi) or 8(2)(e)(vii) of enlisting and conscripting children under the age of fifteen

⁷ International Committee of the Red Cross, "Treaties and States Parties to Such Treaties", <http://www.icrc.org/> downloaded Wednesday, 15 October 2014.

and using them to participate actively in hostilities, from September 2002 to 13 August 2003, and Article 25(3)(a) of individual criminal responsibility.⁸

The ICC is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community.⁹ The ICC has jurisdiction over crimes of genocide, crimes against humanity, war crimes, and crimes of aggression.¹⁰ The ICC is based on a treaty, Rome Statute of ICC, which governed the jurisdiction and functioning of the ICC.¹¹ The ICC is joined by 122 countries,¹² including DRC. And on the case of Thomas Lubanga, the ICC found him guilty of the crimes of conscripting and enlisting children under the age of fifteen and using them to participate actively in hostilities within the meaning of Articles 8(2)(e)(vii) and 25(3)(a) of the ICC Statute from early September 2002 to 13 August 2003.¹³

Based on the explanations above, there are many children under fifteen years old who were recruited to take part in a war or conflict as

⁸ Coalition for the International Criminal Court, "Cases & Situations > Democratic Republic of Congo > Lubanga Case", <http://www.iccnw.org/> downloaded Wednesday, 15 October 2014.

⁹ International Criminal Court - Cour Pénale Internationale, "About the Court", <http://www.icc-cpi.int/> downloaded Thursday, 18 September 2014.

¹⁰ *Rome Statute of International Criminal Court*, ICC Statute 1998, Art.5(1).

¹¹ International Criminal Court - Cour Pénale Internationale, "About the Court > ICC at a glance", <http://www.icc-cpi.int/> downloaded Wednesday, 15 October 2014.

¹² International Criminal Court - Cour Pénale Internationale, "Assembly of States Parties > States Parties to the Rome Statute", <http://www.icc-cpi.int/> downloaded Wednesday, 15 October 2014.

¹³ Trial Chamber I, *Situation in the Democratic Republic of Congo*, Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, 14 March 2012, pg.591, para.1358.

child soldiers, especially in the Ituri armed conflict in the DRC, which violates the International law. Therefore, the title of this research is "**The Reviews of International Law on the Recruitment of Child Soldiers (Legal Study of Ituri Conflict in the Democratic Republic of Congo)**".

B. Research Questions

The researcher has identified some core problems and obstacles based on the background of the research above. The research questions are as follows:

1. Why the protection of child soldiers is governed by international humanitarian law?
2. Why the Democratic Republic of Congo is held responsible for the recruitment of child soldiers?
3. What are the approaches of the International Criminal Court to the case of child soldiers in Ituri conflict in the Democratic Republic of Congo?

C. Research Objectives and Benefits

Research Objectives:

The purposes of this research are:

1. To analyze the protection of child soldiers according to international humanitarian law.

2. To analyze the responsibility of the Democratic Republic of Congo on the recruitment of child soldiers.

3. To examine the approaches of the International Criminal Court to the case of child soldiers in Ituri conflict in the Democratic Republic of Congo.

Research Benefits:

The benefits of this research are:

1. To the readers in understanding the recruitment of child soldiers in the Democratic Republic of Congo.

2. To the readers in understanding the protection of child soldiers according to international humanitarian law.

3. To the readers in understanding the responsibility of the Democratic Republic of Congo on the recruitment of child soldiers.

4. To the readers in understanding the approaches of the International Criminal Court to the case of child soldiers in Ituri conflict in the Democratic Republic of Congo.