

PERLAKUAN TERHADAP TAWANAN PERANG
(STUDI KOMPARATIF ANTARA HUKUM ISLAM DAN HUKUM
INTERNASIONAL)



SKRIPSI

DIAJUKAN KEPADA FAKULTAS SYARI'AH
UNIVERSITAS ISLAM NEGERI SUNAN KALIJAGA JOGJAKARTA
UNTUK MEMENUHI SEBAGIAN DARI SYARAT-SYARAT
GUNA MEMPEROLEH GELAR SARJANA
DALAM ILMU HUKUM ISLAM

OLEH:

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NIM: 99363889

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2. AGUS MOH. NAJIB, S.Ag, M.Ag

PERBANDINGAN MAZHAB DAN HUKUM
FAKULTAS SYARI'AH
UNIVERSITAS ISLAM NEGERI
SUNAN KALIJAGA
JOGJAKARTA
2004

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NOTA DINAS

Hal : Skripsi Saudara Ramli Siddiq

Kepada Yth.:
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Setelah membaca, mengoreksi dan menyarankan perbaikan seperlunya, maka menurut kami skripsi saudara :

Nama : Ramli Siddiq

NIM : 99363889

Judul : "Perlakuan Terhadap Tawanan Perang (Studi komparatif antara hukum Islam dan hukum internasional)."

Sudah dapat diajukan untuk memenuhi sebagian dari syarat memperoleh gelar sarjana strata satu dalam Perbandingan Mazhab dan Hukum pada Fakultas Syari'ah UIN Sunan Kalijaga Jogjakarta.

Bersama ini kami ajukan skripsi tersebut untuk diterima selayaknya dan mengharap agar segera dimunaqasyahkan. Untuk itu kami ucapan terima kasih.

Was-salamu'alaikum Wr. Wb.

STATE ISLAMIC UNIVERSITY
SUNAN KALIJAGA
YOGYAKARTA

Jogjakarta, 03 Rajab

1425 H

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PEDOMAN TRANSLITERASI ARAB-LATIN

Transliterasi Arab-Latin yang dipakai dalam penulisan skripsi ini berdasarkan surat keputusan bersama (SKB) Menteri Agama dan Menteri Pendidikan dan Kebudayaan Republik Indonesia, tertanggal 22 Januari 1988 No. 158/1987 dan No. 054/U/1987.

Pedoman itu adalah sebagai berikut:

1. Konsonan tunggal

Huruf Arab	Nama	Huruf Latin	Keterangan
ا	alif	-	Tidak dilambangkan
ب	ba'	b	-
ت	ta'	t	-
ث	ša	š	š (dengan titik di atas)
ج	jim	j	-
ح	ha'	h	h (dengan titik di bawah)
خ	kha'	kh	-
د	dal	d	-
ذ	žal	ž	ž (dengan titik di atas)
ر	ra'	r	-
ز	zai	z	-

س	sin	s	-
ش	syin	sy	-
ص	ṣad	ṣ	ṣ (dengan titik di bawah)
ض	ḍad	ḍ	ḍ (dengan titik di bawah)
ط	ṭa'	ṭ	ṭ (dengan titik di bawah)
ظ	ẓa'	ẓ	ẓ (dengan titik di bawah)
ع	‘ain	‘	koma terbalik
غ	gain	g	-
ف	fa'	f	-
ق	qaf	q	-
ك	kaf	k	-
ل	lam	l	-
م	mim	m	-
ن	nun	n	-
و	wawu	w	-
هـ	ha'	h	-
ءـ	hamzah	,	apostrof
يـ	ya'	y	-

2. Konsonan rangkap karena *syaddah* ditulis rangkap, contoh:

مُنْعَدِينٌ : ditulis *muta'aqqidin*.

عَدَةٌ : ditulis *'iddah*.

3. Ta' marbutah di akhir kata.

a. Bila mati ditulis *h*, seperti:

هَبَةٌ : ditulis *hibah*.

جَزِيَّةٌ : ditulis *jizyah*.

b. Bila dihidupkan karena berangkai dengan kata lain ditulis *t*, seperti:

نِعَمَةُ اللَّهِ : ditulis *ni'matullāh*.

زَكَاةُ الْفِطْرِ : ditulis *zakātul fitri*.

4. Vokal pendek

_____ (*fathah*) ditulis *a*, contoh : ضَرَبٌ ditulis *daraba*.

_____ (*kasrah*) ditulis *i*, contoh : فَهِيمٌ ditulis *fahima*.

_____ (*dammah*) ditulis *u*, contoh : كَتَبٌ ditulis *kutubun*.

5. Vokal panjang

a. Fathah + alif, ditulis *ā*,

contoh: جَاهِيلِيَّةٌ ditulis *jāhiliyyah*.

b. Fathah + alif maqsūrah, ditulis *ā*,

contoh: يَسْعَى ditulis *yas'ā*.

c. Kasrah + ya mati, ditulis *ī*,

contoh: مَجِيدٌ ditulis *majīd*.

d. Dammah + wawu mati, ditulis *ū*,

contoh: فَرِودٌ ditulis *furūd*.

6. Vokal rangkap

- a. Fathah + ya mati, ditulis *ai*,

بِينَكُمْ ditulis *bainakum*.

- b. Fathah + wawu mati, ditulis *au*,

قَوْلٌ ditulis *qaul*.

7. Vokal-vokal pendek yang berurutan dalam satu kata, dipisahkan dengan apostrof.

Contoh: أَنْتُمْ ditulis *a 'antum*.

أَعْدَتْ ditulis *u 'iddat*.

لَئِنْ شَكَرْتُمْ ditulis *la 'in syakartum*.

8. Kata sandang alif + lam

- a. Bila diikuti dengan huruf *qamariyyah* ditulis *al-*, misalnya:

الْقُرْآنُ ditulis *al-Qur 'ān*.

الْقِيَاسُ ditulis *al-Qiyās*.

- b. Bila diikuti dengan huruf *syamsiyyah* ditulis dengan menggandakan huruf *syamsiyyah* yang mengikutinya, serta menghilangkan huruf (*al-*)

السَّمَاءُ ditulis *as-Samā*

الشَّمْسُ ditulis *asy-Syams*

9. Huruf besar (kapital).

Penggunaan huruf kapital dalam transliterasi seperti yang berlaku dalam EYD, di antaranya huruf kapital digunakan untuk menuliskan huruf awal nama diri dan permulaan kalimat. Bila nama diri itu didahului oleh kata

sandang, maka yang ditulis dengan huruf kapital tetap huruf awal nama diri tersebut, bukan awal kata sandang.

10. Penulisan kata-kata dalam rangkaian kalimat.

Dapat ditulis menurut bunyi atau pengucapannya dan menulis penulisannya, contoh:

علوم القرآن ditulis *Ulum al-Qur'an* atau *Ulumul-qur'an*.

أهل السنة ditulis *Ahl as-Sunnah* atau *Ahlus-sunnah*.



MOTTO

Jadilah orang yang selalu berpegang pada **T2CK...**

Tenang, Tidak mengeluh, Canda dan Kerja



KATA PENGANTAR

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله، الحمد لله الذي جعل النهار معاشاً للبشر وجعل الليل راحة ل لأنام ، أشهد أن لا إله إلا الله وأشهد أن محمدًا عبد الله ورسوله لا نبي بعده . اللهم صل على محمد وعلى آله وأصحابه أجمعين . أما بعد :

Puji dan syukur senantiasa dipanjangkan kehadirat Allah SWT atas segala limpahan berkah dan karunia-Nya, sehingga skripsi ini dapat terselesaikan. Salawat dan salam tidak lupa juga untuk senantiasa dihaturkan kepada junjungan nabi besar Muhammad saw, beserta keluarga dan sahabat-sahabatnya.

Dalam penyusunan skripsi ini sangat disadari bahwa terealisasinya skripsi yang berjudul “Perlakuan Terhadap Tawanan Perang (Studi komparatif antara hukum Islam dan hukum internasional)” ini tidak terlepas dari bantuan berbagai pihak. Oleh karenanya, dalam kata pengantar ini ingin disampaikan rasa terima kasih yang sedalam-dalamnya kepada yang terhormat:

1. Bapak Drs. H. A. Malik Madany, MA, selaku Dekan Fakultas Syari'ah.
2. Bapak Drs. H. Barmawi Mukri, SH, M.Ag dan bapak Agus Moh. Najib, S.Ag, M.Ag, selaku pembimbing I dan II yang telah meluangkan waktunya untuk memberikan saran dan bimbingan di dalam menyelesaikan penyusunan skripsi ini.
3. Bapak dan ibu dosen Fakultas Syari'ah UIN Sunan Kalijaga Jogjakarta, yang telah memberikan bekal ilmu pengetahuan yang begitu banyak, sehingga memudahkan penyusunan dalam melakukan penelitian ilmiah ini.

4. Ayah, bunda, kakak-kakak dan adik-adik kandungku, ibu kosku, teman-teman PMH 3 angkatan'99, teman-temanku di Wisma Sampurno dan yang selalu kucintai Retno Murti yang memberikan dorongan, nasehat, semangat dan pengertian untuk menyelesaikan penyusunan skripsi ini.
5. Semua pihak yang telah membantu dalam penyusunan skripsi ini yang tidak mungkin disebutkan satu persatu.

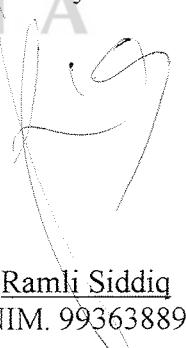
Semoga Allah SWT membalas amal baik mereka dengan pahala yang berlipat ganda. Amin!

Ada banyak kekurangan dalam skripsi ini dan mungkin jauh dari kata sempurna, maka koreksi dan masukan dari pembaca selalu sangat diharapkan. Dan akhirnya, semoga skripsi ini dapat bermanfaat dan menambah pengetahuan umat Islam dan masyarakat internasional tentang perlakuan terhadap Tawanan Perang, baik dari hukum Islam maupun hukum internasional. Amin!

Jogjakarta, 03 Rajab 1425 H
19 Agustus 2004 M

STATE ISLAMIC UNIVERSITY
SUNAN KALIJAGA
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Penyusun


Ramli Siddiq
NIM. 99363889

ABSTRAKSI

Penelitian ini bertitik tolak dari dua tujuan pokok. Pertama, untuk mengetahui dengan jelas dan rinci apakah hukum Islam dan hukum internasional telah menetapkan peraturan-peraturan khusus dalam memperlakukan tawanan perang dengan baik dan manusiawi. Kedua, untuk mengetahui seperti dan berupa apa sanksi hukum yang diberikan oleh hukum Islam dan hukum internasional kepada suatu orang, kelompok atau negara apabila memperlakukan tawanan perang dengan buruk dan tidak manusiawi. Pembahasannya meliputi; definisi tawanan perang, syarat-syarat sehingga bisa dikatakan tawanan perang, tujuan mengapa harus diadakan penawanahan, macam-macam tawanan perang, indikator-indikator masalah tawanan perang dari al-Qur'an dan Ḥadīṣ, sejarah Konvensi Jenewa 1949, kapan dimulainya penawanahan, perlakuan tawanan perang dan sanksi hukumnya dan kapan bisa berakhirnya masa penawanahan. Mengingat penelitian ini berangkat dari disiplin ilmu pendidikan perbandingan, maka pembahasannya akan menggunakan analisis perbandingan, yaitu mencari segi-segi persamaan dan perbedaannya.

Dalam penelitian ini akan mengkomparasi dua hukum, yaitu hukum Islam dan hukum internasional. Disini hukum Islam akan memfokuskan diri historis, sosiologis, al-Qur'an, Ḥadīṣ dan pendapat-pendapat para cendikiawan. Dan hukum internasional yang acuannya adalah Konvensi Jenewa 1949 mengenai perlakuan terhadap tawanan perang akan memfokuskan diri pada sosiologis, historis dan yuridis. Jenis penelitian ini adalah penelitian pustaka dan bersifat deskriptif, analitik dan kompratif.

Penelitian ini terangkat dari beberapa contoh perlakuan buruk terhadap tawanan perang. Pertama, pasukan Aliansi Utara yang menyiksa tawanan perang mereka, yaitu pasukan Taliban Afghanistan. Dengan tidak memberi minum dan membekap mereka diruangan tertutup sehingga menyebabkan tawanan perang tersebut tewas karena kehausan dan kekurangan oksigen. Kedua, pasukan Amerika Serikat yang menampari dan memukuli Saddam Hussein. Padahal yang pertama adalah pasukan muslim dan yang kedua adalah pasukan non-muslim. Dari dua contoh di atas timbul pertanyaan bahwa bagaimana hukum Islam dan hukum internasional memperlakukan tawanan perang dan adakah sanksi yang diberikan kepada suatu orang, kelompok atau negara apabila memperlakukan tawanan perang dengan buruk?

Pemecahan dari masalah-masalah di atas adalah menurut hukum Islam, Islam mengajarkan umatnya untuk memperlakukan tawanan perang dengan baik dan manusiawi. Ini tercermin dari firman Allah surat al-Insan ayat 8.

Dan tindakan pasukan Aliansi Utara dan Amerika Serikat, seperti tertera di atas, itu bisa dikategorikan kepada pembunuhan dan penyiksaan, maka hukuman bagi manusia yang melakukan tindakan buruk tersebut adalah qīṣāṣ, yaitu dihukum dengan hukuman serupa dengan tindakannya. Dan ini bisa dilihat dari firman Allah SWT surat al-Baqarah ayat 178-179 dan juga firman Allah SWT surat al-Isrā' ayat 33.

Kalau melihat dari firman Allah SWT tersebut, dalam masalah ini ada 2 jenis hukuman yang harus diterima para pelaku tindakan buruk terhadap tawanan perang di atas, yaitu:

1. Hukuman mati bagi para pelaku yang menyebabkan para tawanan perang tewas.
2. Hukuman penjara bagi para pelaku yang menyiksa tawanan perang. Dan perlakuan mereka harus sama ketika mereka memperlakukan tawanan perang dengan buruk. Ini dimaksudkan agar mereka merasakan bagaimana rasanya kalau diperlakukan dengan buruk.

Dan menurut hukum internasional menyatakan bahwa para peserta Konvensi diwajibkan memperlakukan tawanan perang dengan baik dan manusiawi. Ini bisa dilihat di Pasal 13, 14, dan 16.

Dan tindakan pasukan Aliansi Utara dan Amerika Serikat, seperti tertera di atas, itu bisa dikategorikan kepada pembunuhan dan penyiksaan, maka hukumannya adalah:

1. Pembunuhan dipidana dengan pidana mati atau pidana seumur hidup atau pidana penjara paling lama 25 (dua puluh lima) tahun dan paling singkat 10 (sepuluh) tahun.
2. Penganiayaan (penyiksaan) dipidana dengan pidana penjara paling lama 20 (dua puluh) tahun dan paling singkat 10 (sepuluh) tahun.

Hasil dari penelitian ini adalah adanya persamaan dan perbedaan pada perlakuan terhadap tawanan perang menurut hukum Islam dan hukum internasional. Persamaan keduanya, yaitu mereka sama-sama menginginkan tawanan perang untuk diperlakukan dengan baik dan manusiawi. Dan perbedaan keduanya adalah kalau ketentuan-ketentuan hukum mengenai perlakuan baik terhadap tawanan perang dalam hukum internasional hanya berlaku pada negara-negara yang menjadi peserta Konvensi tersebut, tetapi di dalam hukum Islam perlakuan baik terhadap tawanan perang berlaku kepada semua umat manusia.

Dan hal yang sama juga pada sanksi hukum yang harus diberikan kepada suatu orang, kelompok atau negara terdapat persamaan dan perbedaannya apabila memperlakukan tawanan perang dengan buruk menurut hukum Islam dan hukum internasional. Persamaan yang disampaikan oleh keduanya, yaitu sama-sama ingin memberikan ganjaran hukum bagi pelaku yang bertindak buruk terhadap tawanan perang, sehingga dengan demikian orang akan berfikir untuk melakukan tindakan brutal dan di luar perikemanusiaan terhadap tawanan perang. Dan perbedaan dari keduanya adalah hukum Islam tidak melihat apakah para pelaku tindakan buruk terhadap tawanan perang telah bisa dikategorikan kepada pelanggaran Hak Asasi Manusia (HAM) berat atau ringan, tetapi yang jelas apabila mereka melakukan tindakan buruk terhadap tawanan perang, maka itu berarti pelanggaran dan harus dihukum. Dan di dalam hukum internasional hanya menghukum para pelanggar HAM berat saja sedangkan selain itu tidak mendapat hukuman. Ini bisa dilihat di Pasal 129-nya.

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STATE ISLAMIC UNIVERSITY
SUNAN KALIJAGA
YOGYAKARTA

BAB I

PENDAHULUAN

A. Latar Belakang Masalah

Perang memang kejam, ia tidak mengenal saudara maupun teman. Semuanya bisa saling membunuh. Di belahan bumi manapun perang selalu membawa bencana, baik yang berperang maupun yang tidak ikut berperang dan juga sebelum, sedang maupun sesudah perang usai.

Diangkatnya judul ini sendiri dilatar belakangi dari beberapa contoh perlakuan buruk terhadap tawanan perang. Dan ini dapat dilihat pada tulisan-tulisan berikut. Pada kisah Rahmadsyah yang dilansir oleh Jawa Pos, seorang sopir Rajawali Citra Televisi Indonesia (RCTI) yang lolos dari sekapan Gerakan Aceh Merdeka (GAM), menyatakan bahwa dia selama enam bulan ditawan GAM hanya mengenakan satu pakaian di badan. Dan juga katanya, dua wanita, istri tentara, salah satunya diketahui hamil dua bulan. Akan tetapi kondisi itu tidak membuat dia mendapat pelayanan yang lebih baik daripada tawanan lain.¹

Ada perbedaan pendapat mengenai sopir RCTI dan dua orang wanita yang ditangkap GAM ini. Ada yang menyatakan mereka sandera dan ada juga yang menyatakan mereka tawanan. Kalau ditilik kembali pernyataan ‘Alī‘Alī Mansūr, bahwa pemberontakan dalam sebuah negara bukanlah perang walaupun

¹ Riznal Faisal, “Kisah Rahmadsyah, Sopir RCTI yang Lolos dari Sekapan GAM(1),” <http://www.jawapos.com>, akses kamis, 22 Januari 2004.

pemberontakan itu bersenjata kecuali jika pemberontakan itu berkembang dan memiliki pasukan yang kuat lagi terorganisir dengan baik dan juga menguasai sebagian daerah dalam suatu negara. Dan di sini mungkin bisa disebut perang dengan syarat ada pengakuan bahwa pemberontakan itu bersifat perang antar dua kelompok dan kadang-kadang pengakuan ini datang dari negara induknya atau negara lain.²

Dari pernyataan tersebut jelaslah bahwa dua orang wanita yang ditangkap GAM adalah termasuk tawanan perang, karena:

1. GAM memiliki daerah kekuasaan sendiri.
2. GAM memiliki pasukan yang terorganisasi dengan baik dan persenjataannya hampir sama dengan Tentara Nasional Indonesia (TNI).
3. Republik Indonesia secara implisit, yang notabenenya adalah negara induk GAM, telah mengakui eksistensi GAM dengan mengikuti kemauan GAM untuk berunding di Swiss dan mengundang IRC (*International Red Cross*) ketika hendak membebaskan orang-orang yang ditangkap GAM.

Dan pada sebuah berita lainnya yang ditulis oleh seorang wartawan Jawa Pos, Djoko Susilo. Dia menuliskan, sungguh merupakan pandangan yang menyakitkan ketika melihat tayangan Saddam Hussein di berbagai saluran televisi. Saddam seperti gelandangan, dengan rambut dan jenggot awut-awutan, dia ditampari dan dipukuli oleh serdadu AS yang menangkapnya. Banyak yang kasihan dan simpati terhadap Saddam, meski mereka mengetahui kekejamannya

² 'Alī 'Alī Manṣūr, *Asy-Syarī'atulislāmiyyah wa al-Qāmīn al-Ām* (Kairo: Tnp, 1971), hlm. 233

selama berkuasa.³ Padahal Saddam Hussein merupakan seorang tawanan perang sebagaimana yang dilansir koran Republika bahwa Amerika Serikat secara resmi mengumumkan mantan presiden Iraq Saddam Hussien, yang ditangkap 13 Desember 2003 dan ditahan oleh tentara AS, sebagai tawanan perang musuh, kata Pentagon, Jumat 09 Januari 2004.

Setelah paparan memilukan dari beberapa contoh perlakuan buruk terhadap para tawanan perang di atas, sekarang akan dipaparkan bagaimana perlakuan terhadap tawanan perang pra-Islam. Sebelum datangnya Islam, dalam agama Yahudi seperti tersebut dalam kitab Talmud, bahwa semua tawanan perang dibunuh, bahkan terhadap wanita, anak-anak dan binatang-binatang yang terdapat pada daerah yang telah dikuasainya. Di jaman Romawi dan Yunani, para tawanan perang dijadikan budak (*slave*) sebagai ganti pembunuhan. Para tawanan menjadi milik seperti barang dan dipekerjakan di luar perikemanusiaan. Di Eropa para tawanan perang dijadikan budak berlangsung hingga abad ke-7. Satu abad lamanya Grotius memberi saran agar diadakan tukar-menukar tawanan perang atau dengan jalan tebusan, tetapi saran beliau tidak digubris.⁴

³ Djoko Susilo, "Dilematis, Saddam bagi AS," <http://www.jawapos.com>, akses kamis, 22 Januari 2004.

⁴ Grotius, yang nama lengkapnya Hugo Grotius (1583-1645), adalah seorang advokat berkebangsaan Belanda, teolog, negarawan dan penyair. Ia dianggap pendiri hukum internasional modern. Dia menulis Hukum Perang dan Damai (*The Law of war and peace*), lahir 10 April 1583 di Delft, Belanda. Dia menyelesaikan S1-nya di Universitas Leiden pada umur 15 tahun. Pada tahun 1613, ia menjadi ketua hakim Rotterdam. Di tahun 1619, Grotius dihukum penjara seumur hidup karena menentang kalvanisme, namun istrinya menyelamatkannya melarikan diri ke Paris pada tahun 1621. 1635-1645, ia mengabdi sebagai duta besar Swedia untuk Prancis (lihat buku *The World Book Encyclopedia*, (Chicago: World Book, inc, 1987), vol. 8: 393 dan Robert S Phillips (ed), *Funk & Wagnalls New Encyclopedia* (New York: Funk & Wagnalls New, inc, tt), vol. 12: 45).

Setelah datang Islam didapati di dalam al-Qur'an berbagai prinsip yang wajar dan bermanfaat dalam memperlakukan tawanan-tawanan perang.⁵

Sebagaimana terdapat dalam firman Allah SWT:

فِإِذَا لَقِيْتُمُ الظَّالِمِينَ كَفَرُوا فَصُرِّبُ الرِّقَابُ حَتَّىٰ إِذَا أَنْتَنَّهُمْ فَشَدُوا الْوَثَاقَ فَإِمَامًا مَّا بَعْدَ وَإِمَامًا فَدَاءَ حَتَّىٰ تَضَعَ الْحَرْبُ أَوْ زَارَهَا ذَلِكُولَو يَشَاءُ اللَّهُ لَا تَنْتَصِرُ مِنْهُمْ وَلَكِنْ لَّيَبْلُوَا بَعْضَكُمْ بِبَعْضٍ وَالظَّالِمُونَ قُتْلُوَا فِي سَبِيلِ اللَّهِ فَلَنْ يَضُلَّ أَعْمَالُهُمْ .⁶

Islam, menurut ajarannya, juga memperlakukan para tawanan perang dengan perlakuan manusiawi. Dia menyeru agar menghormati dan berbuat baik kepada para tawanan perang serta memuji bagi orang yang berbuat baik kepada mereka. Sebagaimana dalam firman-Nya:

وَيَطْعَمُونَ الطَّعَامَ عَلَىٰ جَبَهَ مُسْكِنَةٍ وَيَتِيمَةً وَأَسِيرَةً، إِنَّمَا نَطْعَمُكُمْ لِوَجْهِ اللَّهِ لَا نَرِيدُ مِنْكُمْ جَزَاءً وَلَا شَكُورًا.⁷

Setelah paparan doktrin Islam mengenai perlakuan terhadap tawanan perang di atas. Lalu bagaimana dalam perspektif hukum internasional tentang masalah ini. Dalam masalah ini, hukum internasional yang menjadi acuan adalah Konvensi Jenewa 1949 mengenai perlakuan terhadap tawanan perang. Menurut Konvensi tersebut, perlakuan terhadap tawanan perang secara umum

⁵ L. Amin Widodo, *Fiqih Siasah dalam Hubungan Internasional*, cet. Ke-1 (Jogjakarta: PT.Tiara Wacana, Oktober 1994), hlm. 91.

⁶ Muhammad (47) : 4.

⁷ Al-Insan (76) : 8-9.

terungkap di Pasal 13, 14, dan 16.⁸

1. Pasal 13 berbunyi bahwa tawanan perang harus diperlakukan dengan perikemanusiaan dan melarang dilakukannya perbuatan-perbuatan yang membahayakan kesehatan atau jiwanya, terutama pencideraan jasmani dan percobaan-percobaan kedokteran atau ilmiah lain apapun yang tidak dilakukan untuk kepentingan kesehatan si Tawanan Perang. Tawanan perang juga harus dilindungi terhadap segala bentuk tindakan kekerasan (intimidasi), demikian pula terhadap penghinaan-penghinaan dan tontonan umum. Juga dilarang melakukan pembalasan terhadap tawanan perang.
2. Pasal 14 berbunyi bahwa tawanan perang dalam segala keadaan berhak atas penghormatan terhadap pribadi dan martabatnya. Tawanan perang wanita harus diperlakukan dengan kehormatan yang patut diberikan mengingat jenis kelamin mereka. Mereka dalam segala hal harus mendapat perlakuan yang sama baiknya dengan kaum laki-laki. Tawanan perang tetap memiliki kemampuan sipil penuh yang mereka miliki pada saat penangkapan mereka. Mereka dapat terus menggunakan hak-hak perdata mereka, seperti misalnya; membuat surat wasiat dan menikah, dan Negara Penahan tidak boleh membatasinya, kecuali sejauh yang diperlukan oleh keadaan penawanannya.
3. Pasal 16 berbunyi bahwa dengan memperhatikan ketentuan-ketentuan Konvensi ini. Mengenai pangkat dan jenis kelamin, dan dengan tidak mengurangi perlakuan istimewa yang dapat diberikan kepada mereka karena keadaan kesehatan, umur atau keahlian mereka, maka semua tawanan perang harus diperlakukan sama oleh Negara Penahan, tanpa perbedaan merugikan yang didasarkan atas suku, kebangsaan, kepercayaan agama atau pandangan-pandangan politik, atau perbedaan lainnya yang didasarkan kriteria serupa itu.

Berdasarkan beberapa contoh perlakuan buruk terhadap tawanan perang sebelumnya, timbul pertanyaan bagaimana hukum Islam dan hukum internasional menyikapi masalah pelaku yang bertindak buruk terhadap tawanan perang? Adakah keduanya telah menetapkan jenis hukuman apa yang diberikan kepada para pelaku tersebut? Karena secara hati nurani, tindakan memperlakukan tawanan perang secara buruk sangat bertentangan dengan nilai-nilai kemanusiaan.

Oleh karena itu, hal ini penting untuk diketahui masyarakat luas akan kedudukan

⁸ Mochtar Kusumaatmadja, *Konvensi-Konvensi Djeneva TH. 1949 mengenai Perlindungan Korban Perang*, cet. Ke-1 (Bandung: Dhiwantara, 1963), hlm. 160-161.

hukumnya, karena akan menjadi barometer (standar) kepastian hukum dalam mencari keadilan.

B. Pokok Masalah

Dari uraian latar belakang di atas, dapat dirumuskan beberapa masalah antara lain:

1. Bagaimana hukum Islam dan hukum internasional memperlakukan tawanan perang?
2. Adakah sanksi yang diberikan kepada suatu orang, kelompok atau negara apabila memperlakukan tawanan perang dengan buruk, ditinjau dari hukum Islam dan hukum internasional?

C. Tujuan Dan Kegunaan

Mengacu pada empat pokok masalah di atas, maka tujuan dan kegunaan dari penyusunan skripsi ini adalah sebagai berikut:

1. Tujuan.
 - a. Untuk mengetahui dengan jelas dan rinci bagaimana memperlakukan tawanan perang menurut hukum Islam dan hukum internasional.
 - b. Untuk mengetahui seperti dan berupa apa sanksi hukum yang diberikan oleh hukum Islam dan hukum internasional kepada suatu orang, kelompok atau negara apabila memperlakukan tawanan perang dengan buruk dan tidak manusiawi .

2 Kegunaan.

- a. Untuk menambah wawasan masyarakat baik orang muslim maupun non-muslim dalam bidang hukum, khususnya mengenai masalah perlakuan terhadap tawanan perang.
- b. Agar suatu orang, kelompok atau negara, dengan diketahui adanya sanksi hukum yang diberikan kepada yang memperlakukan tawanan perang dengan buruk, bisa memperlakukan tawanan perang dengan baik dan manusiawi.
- c. Di samping sebagai tugas formal dari fakultas, kajian ini diharapkan dapat memberikan kontribusi ilmiah kepada masyarakat internasional dalam menyempurnakan hukum tentang masalah tawanan perang.

D. Telaah Pustaka

Ada dua buku (karangan Paula Casey dan William Lindsay White) berikut ini yang menggambarkan contoh-contoh perlakuan buruk nan kejam lagi tidak manusiawi terhadap tawanan perang.

Pada buku Paula Casey, saat Iraq Menginvasi Kuwait, pasukan Iraq telah menangkap ribuan orang dan dijadikan sebagai tawanan perang. Mereka dijebloskan ke penjara di Kuwait. Saat itu kondisi penjara di Iraq hampir lebih baik dari apa yang berlaku di Kuwait. Para tawanan, kadang-kadang seluruh keluarga, dipindahkan dari satu penjara ke penjara lainnya. Tiap mereka hanya merasakan ketakutan yang sama seperti penjara sebelumnya. Mereka kebanyakan ditangkap saat musim panas. Dan pada saat musim dingin yang dinginnya sampai

menusuk tulang tiba, mereka hanya mengenakan pakaian yang sangat tidak layak untuk musim yang sangat dingin. Hanya sedikit air yang tersedia, kecuali tawanan berduit yang bisa membeli dari penjaga, dan makanan yang hampir tidak tetap antara ada dan tiada. Kebersihan penjara yang sangat buruk. Satu penjara khusus di Basra digambarkan sebagai Neraka Dunia. Tiap hari beberapa tawanan perang dimintai keterangan dan setelah itu terdengar suara siksaan dan pukulan dari kamar lembab, gelap dan panjang. Hanya ada sedikit cahaya yang berasal dari jendela tinggi lagi kecil, kotoran manusia menumpuk di atas lantai, para tawanan banyak kutunya. Tidak ada cukup ruang bagi setiap tawanan untuk tidur berbaring dengan nyaman di saat malam, mereka harus bergantian ada yang duduk dan ada yang berbaring.⁹

Dan di buku William Lindsay White, pada perang Korea di tahun 1950-an, ada kejadian memilukan yang dilakukan pihak Korea Utara terhadap para tawanan perang dari Korea Selatan dan Amerika. Ini dapat dilihat dari perlakuan buruk seorang perwira Korea Utara terhadap seorang perawat dari Korea Selatan, perawat tersebut adalah salah satu tawanan perang pihak Korea Utara. Perawat itu dipukul mukanya dengan ujung gagang senapan hingga hidungnya rata dan pipinya pun pecah terbuka, hanya karena tidak mau mengangkat tangannya ketika disuruh perwira tersebut.

Begitupula halnya 40 orang Amerika yang merupakan tawanan perang dari pihak Korea Utara. Mereka dalam keadaan luka-luka dan payah disuruh berjalan kaki. Kemudian mereka semua berjalan kaki sejauh 4 mil untuk dikumpulkan di

⁹ Paula Casey, *Forgotten Victims Kuwait's Prisoners in Iraq*, cet. Ke-1 (London: Planet Publishing Ltd, 1994), hlm. 13-14.

tempat penampungan tawanan orang-orang Amerika, tempat mereka akan bermalam. Kamar ruangannya begitu kecil, hanya separuh mereka yang dapat dimasukkan ke dalam. Sekalipun suhu udara sangat dingin dan 20 derajat di bawah 0, mereka tidak dibolehkan menyalaikan api.¹⁰

Dari uraian di atas dapat dicatat bahwa Iraq, yang notabenenya adalah kaum muslimin, telah melanggar ajaran Islam yang dianutnya tentang perlakuan terhadap tawanan perang. Dan Korea Utara yang notabenenya adalah salah satu dari negara-negara peserta Konvensi Jenewa 1949 mengenai perlakuan terhadap tawanan perang yang merupakan acuan dari hukum internasional tentang perlakuan terhadap tawanan perang, telah melanggar kesepakatan Konvensi itu dengan memperlakukan tawanan perang secara buruk. Lalu bagaimana sanksi hukum di dalam hukum Islam dan hukum internasional pada suatu orang, kelompok, atau negara yang memperlakukan tawanan perang dengan buruk?

Dalam menyikapi masalah-masalah di atas, ada beberapa cendikiawan mencoba untuk memecahkan masalah bagaimana memperlakukan tawanan perang dengan baik, melalui tulisan-tulisan yang telah dibukukan. Ide-ide yang keluar berdasarkan pengetahuan dalam disiplin ilmu yang merupakan bidang mereka.

‘Alī ‘Alī Manṣūr dan Mochtar Kusumaatmadja, keduanya adalah dua cendikiawan yang mencoba ingin memecahkan masalah perlakuan terhadap tawanan perang, tetapi keduanya memiliki disiplin ilmu yang berbeda.

Manṣūr mencoba untuk membandingkan antara hukum Islam dan hukum internasional mengenai perlakuan terhadap tawanan perang. Di dalam bukunya

¹⁰ William Lindsay White, *Tawanan Korea*, alih bahasa Partoho, cet. Ke-2 (Jakarta: N.V. Inmajorty, tt), hlm. 28.

Asy-Syari'atulislāmiyah wa al-Qānūn ad-Duālī al-'Ām, ia mengemukakan bagaimana Islam memperlakukan tawanan perang dengan baik dan berbeda dengan jaman Romawi dan Yunani yang memperbudak dan memanfaatkan tawanan perang dengan diberi kerja yang berat-berat, serta diberi makan dan pakaian yang buruk-buruk.¹¹

Ia juga menulis bagaimana Nabi saw menerapkan hukuman tebusan bagi kaum musyrikin yang tertawan dalam perang Badar, Rasulullah menerima usulan Abū Bakar untuk meminta tebusan kepada mereka karena mereka masih dari satu suku, yaitu suku Quraisy dan untuk menambah kekuatan kaum muslimin dalam hal pendanaan. Di lain peristiwa Nabi membebaskan Šumāmah Ibn ušāl, seorang pemuka penduduk Yaman, yang tertawan oleh kaum muslimin ketika di Najd.¹² Dan dari dua peristiwa itu, ia mengemukakan sebuah firman Allah SWT:

فَإِذَا لَقِيْتُمُ الظَّالِمِينَ كَفَرُوا فَضْرِبُ الرِّقَابَ حَتَّىٰ إِذَا أَشْخَنْتُمُوهُمْ
فَشَدُوا الْوَثَاقَ فَإِمَامَنَا بَعْدَ وَإِمَامَ فَدَاءَ حَتَّىٰ تَضَعَ الْحَرْبُ
أَوْزَارُهَا ذَلِكَ وَلَوْ يَشَاءُ اللَّهُ لَا نَتَصَرُّ مِنْهُمْ وَلَكِنْ لَيَبْلُوَا بَعْضُكُمْ

¹³ بَعْضُ وَالظَّالِمِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ فَلَنْ يَضُلَّ أَعْمَالُهُمْ

Akan tetapi ketika ia membahas perlakuan terhadap tawanan perang dilihat dari sudut pandang hukum internasional, kajiannya hanya sedikit. Ia menuliskan bahwa perlakuan terhadap tawanan perang, telah disebutkan dalam Persetujuan Den Haag bagi peperangan di darat dan persetujuan Jenewa tahun 1949 mengenai

¹¹ 'Alī 'Alī Mañṣūr, *Asy-Syari'atulislāmiyah wa al-Qānūn al-'Ām* (Kairo: Tnp, 1971), hlm. 331.

¹² *Ibid*, hlm. 331.

¹³ Muhammad (47) : 4.

perlakuan terhadap tawanan perang.¹⁴ Dan ia tidak menyebutkan lebih rinci bagaimana kedua persetujuan tersebut memperlakukan tawanan perang, bahkan ironisnya dalam sebuah kalimat ia menyatakan bahwa perlakuan terhadap tawanan perang dalam Islam sesungguhnya suatu kebanggaan yang hingga kini belum tercapai oleh hukum internasional, dan juga sampai sekarang masih merupakan secarik kertas. Mengapa itu bisa terjadi? Ia tidak memaparkannya lebih lanjut.¹⁵

Kusumaatmadja juga mencoba meneliti bagaimana sebaiknya perlakuan yang mesti diberikan kepada tawanan perang. Di dalam bukunya *Konvensi-konvensi Djenewa TH. 1949 mengenai Perlindungan Korban Perang*, ia menulis bahwa negara-negara yang mengikuti hukum internasional, yang acuannya adalah Konvensi Jenewa 1949, harus memperlakukan tawanan perang dengan perikemanusiaan dan melarang dilakukannya perbuatan-perbuatan yang membahayakan kesehatan atau jiwanya, terutama pencideraan jasmani dan percobaan-percobaan kedokteran atau ilmiah lain apapun yang tidak dilakukan untuk kepentingan kesehatan si Tawanan Perang. Tawanan perang juga harus selalu dilindungi terhadap segala bentuk tindakan kekerasan dan ancaman (intimidasi), demikian pula terhadap penghinaan-penghinaan dan tontonan umum. Dan juga dilarang untuk melakukan pembalasan terhadap tawanan perang.¹⁶

Ia juga menulis, hukum internasional telah menetapkan bahwa tawanan perang hanya boleh diasingkan dalam gedung-gedung yang terletak di daratan, yang terjamin kebersihan dan syarat-syarat kesehatan lainnya. Mereka yang

¹⁴ Mansūr, *Asy-Syarī'atulislāmiyyah*, hlm. 336.

¹⁵ Mansūr, *Asy-Syarī'atulislāmiyyah*, hlm. 334.

¹⁶ Kusumaatmadja, *Konvensi-konvensi Djenewa TH. 1949*, hlm. 54.

diasingkan di daerah-daerah yang tidak sehat, atau daerah yang iklimnya merugikan kesehatan, harus selekas mungkin dipindahkan ke daerah yang lebih baik iklimnya. tawanan perang sekali kali tidak boleh dikirim ke daerah yang mungkin kena tembakan dari medan pertempuran. Tempat-tempat tawanan peralihan atau saringan yang bersifat tetap (*transition or screening camps*), harus memenuhi syarat-syarat yang sama dengan syarat-syarat yang berlaku bagi tawanan perang biasa.¹⁷

Dan dalam tulisannya secara implisit bahwa dalam hukum internasional berakhirnya penawanannya ada tiga, yaitu tawanan perangnya melarikan diri, dipulangkan langsung dan ditempatkan di negara netral, dan meninggal dunia.¹⁸ Oleh karena disiplin ilmunya berbasis umum dan bukan berbasis Islam, maka ia tidak membandingkan sedikitpun bagaimana hukum Islam memperlakukan tawanan perang. Dari masalah-masalah yang telah dipaparkan di atas, semuanya masih perlu pengkajian lebih lanjut.

Dalam skripsi ini akan disusun berbeda dari dua cendikiawan di atas. Kalau Mansūr sangat sedikit dalam memaparkan hukum internasional tentang perlakuan terhadap tawanan perang bahkan cenderung mengagungkan hukum Islamnya, begitu pula Kusumaatmadja yang tidak menyinggung sama sekali bagaimana hukum Islam menyikapi masalah tawanan perang, maka di skripsi ini akan dikomparasikan bagaimana hukum Islam dan hukum internasional menyikapi masalah perlakuan terhadap tawanan perang dengan sebanding, apa adanya dan tidak memihak salah satu hukum tersebut.

¹⁷ *Ibid*, hlm. 56.

¹⁸ *Ibid*, hlm. 69-71.

E. Kerangka Teoretik

Mempelakukan tawanan perang secara baik dan manusiawi adalah merupakan sebuah kewajiban bagi setiap insan. Islam, sebagai sebuah agama, mewajibkan umatnya untuk selalu berbuat baik kepada setiap tawanan perang dimanapun mereka berada dan dalam kondisi apapun. Ini tercermin dari firman Allah:

وَيَطْعَمُونَ الطَّعَامَ عَلَى حِبَّةٍ مَسْكِينًا وَيَتَّيْمًا وَأَسْيَرًا، إِنَّمَا
نَطَعْمَكُمْ لِوَجْهِ اللَّهِ لَا تَرِيدُونَكُمْ جَزاءً وَلَا شَكُورًا.¹⁹

Dan juga dalam sebuah Ḥadīs yang dikutip oleh ad-Dimasyqī:

اسْتَوْصُوا بِالْأَسْارِيِّ خَيْرًا.²⁰

Dalam Konvensi Jenewa 1949 mengenai Perlakuan Terhadap Tawanan Perang, perlakuan tawanan perang secara umum terungkap dalam pasal 13, 14, dan 16.²¹

1. Pasal 13 berbunyi bahwa tawanan perang harus diperlakukan dengan perikemanusiaan dan melarang dilakukannya perbuatan-perbuatan yang membahayakan kesehatan atau jiwanya, terutama pencideraan jasmani dan percobaan-percobaan kedokteran atau ilmiah lain apapun yang tidak dilakukan untuk kepentingan kesehatan si Tawanan Perang. Tawanan perang juga harus dilindungi terhadap segala bentuk tindakan kekerasan (intimidasi), demikian pula terhadap penghinaan-penghinaan dan tontonan umum. Juga dilarang melakukan pembalasan terhadap tawanan perang.
2. Pasal 14 berbunyi bahwa tawanan perang dalam segala keadaan berhak atas penghormatan terhadap pribadi dan martabatnya. Tawanan perang wanita harus diperlakukan dengan kehormatan yang patut diberikan mengingat jenis kelamin mereka. Mereka dalam segala hal harus mendapat perlakuan yang sama baiknya dengan kaum laki-laki. Tawanan perang tetap memiliki

¹⁹ Al-Insan (76): 8-9.

²⁰ Dikutip oleh Ibn Hamzah al-Husaini al-Hanafī ad-Dimasyqī, *Al-Bayān wa at-Ta'rīf fi Asbāb wurūd al-Ḥadīs asy-Syarīf* (Beirut: Dār as-Šaqāfah al-Islāmiyah, tt), HR. At-Tabrānī dari Ibn 'Azīz dan menurut Haisyī sanadnya hasan, I: 217.

²¹ Kusumaatmadja, *Konvensi-konvensi Djenewa TH. 1949*, hlm. 160-161.

kemampuan sipil penuh yang mereka miliki pada saat penangkapan mereka. Mereka dapat terus menggunakan hak-hak perdata mereka, seperti misalnya; membuat surat wasiat dan menikah, dan Negara Penahan tidak boleh membatasinya, kecuali sejauh yang diperlukan oleh keadaan penawanannya.

3. Pasal 16 berbunyi bahwa dengan memperhatikan ketentuan-ketentuan Konvensi ini. Mengenai pangkat dan jenis kelamin, dan dengan tidak mengurangi perlakuan istimewa yang dapat diberikan kepada mereka karena keadaan kesehatan, umur atau keahlian mereka, maka semua tawanan perang harus diperlakukan sama oleh Negara Penahan, tanpa perbedaan merugikan yang didasarkan atas suku, kebangsaan, kepercayaan agama atau pandangan-pandangan politik, atau perbedaan lainnya yang didasarkan kriteria serupa itu.

F. Metode Penelitian

Metode memegang peranan penting dalam menggapai suatu maksud, termasuk juga dalam sebuah penelitian. Dalam penyusunan skripsi ini, akan digunakan metode penelitian sebagai berikut:

1. Jenis Penelitian.

Jenis penelitian yang digunakan dalam penyusunan skripsi ini adalah penelitian pustaka (*Library Research*). Yakni dengan meneliti sumber-sumber kepustakaan yang ada kaitannya dengan penelitian ini, seperti ayat-ayat al-Qur'an, hadīs-hadīs, hukum humaniter, konvensi-konvensi, pendapat-pendapat para cendikiawan dan juga sumber-sumber berita lainnya, baik dari koran, majalah maupun internet.

2. Sifat Penelitian.

Sifat penelitian yang dipakai dalam penyusunan skripsi adalah deskriptif, analitik dan komparatif.²²

²² Menurut Emory, sebagaimana dikutip oleh Talizidhu Ndaha, perbedaan mendasar antara penelitian deskriptif dan kausal adalah pada objeknya. Jika penelitian tersebut berhubungan dengan memperhatikan siapa, apa, dimana, kapan, atau berapa, maka kajian itu adalah deskriptif. Jika itu berhubungan dengan pertanyaan mengapa, maka itu adalah kausal... (*The essencial*

3. Teknik Pengumpulan Data.

Karena penelitian ini merupakan penelitian pustaka, maka dalam mengumpulkan datanya akan dilakukan pengkajian terhadap literatur-literatur pustaka yang koheren dengan obyek yang dimaksud, yakni mengkaji kitab-kitab atau buku-buku yang ada relevansinya dengan tema pembahasan.

Adapun sumber data primer yang digunakan adalah *Āyāt al-Jihād fi al-Qur'ān al-Karīm*, *Asy-Syarī'atulislāmiyyah wa al-Qānūn al-Duālī al-'Ām*, Terjemahan Konvensi Jenewa Tahun 1949, yurisprudensi, dan Pokok-Pokok Hukum Humaniter (Hukum Perang). Dan sumber data sekunder yang digunakan adalah *Fi al-Jihād Ādāb wa Ahkām*, *Al-Islām wa al-'Alāqātul Daūliyyah fi al-Salm wa al-Harb*, *Droit International, Forgotten Victims Kuwait's Prisoners in Iraq*, *The Gulf War 1990-1991 in Internasional and English Law*, Konvensi-konvensi Jenewa Th.1949 mengenai Perlindungan Korban Perang, Perang & Damai dalam Hukum Islam, Islamologi, Fiqh Siasah dalam Hubungan Internasional, Jihad dalam Islam, Tawanan Korea, Hukum Pidana Militer di Indonesia, dan Menembus Sarajevo Kesaksian Pembersihan Etnik di Bosnia.

4. Analisis Data.

Penelitian ini merupakan penelitian doktrinal yang bertujuan menggali doktrin-doktrin (asas-asas) hukum. Ini dapat dilakukan secara induktif dengan mempelajari berbagai peraturan hukum konkret atau dari perlakuan suatu

difference between descriptive and causal studies is in their objectives. If the research is concerned with finding out who, what, where, when, or how much, then the study is descriptive. If it is concerned with asking why, then it is causal...). Penelitian analitik ialah penelitian yang dimulai dari teori dan berakhir pada fakta (lihat Talizidhu Ndaha, *Desain Riset dan Teknik Penyusunan Karya Tulis Ilmiah* (Jakarta: Bina Aksara, 1987), hlm. 32 dan 39).

orang, kelompok dan negara terhadap tawanan perang,²³ dan putusan pengadilan mengenai orang, kelompok dan negara yang telah berbuat buruk terhadap tawanan perang, atau dapat juga dilakukan secara deduktif dengan menganalisis data dari yang bersifat umum kemudian ditarik pada kesimpulan yang bersifat khusus, di samping itu juga digunakan metode komparatif untuk membandingkan antara kedua sistem hukum tersebut sehingga diperoleh gambaran yang jelas, baik dari sisi perbedaan maupun dari sisi persamaannya.²⁴

5. Pendekatan yang dipakai dalam penelitian ini adalah:

a. Sosiologis.

Adalah pendekatan terhadap masalah yang diteliti dengan mendasarkan diri pada bukti empiris yang tersusun atau yang dihasilkan oleh data atau keterangan yang tersusun secara sistematis dan yang kebenarannya dapat diuji dan diperiksa. Ia memusatkan perhatian pada kehidupan manusia secara kelompok dan akibat dari kehidupan bersama dalam kelompok itu.²⁵

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²³ Induktif adalah proses logika yang berangkat dari data empirik lewat observasi menuju kepada suatu teori (lihat Saifuddin Azwar, *Metode Penelitian* (Jogjakarta: Pustaka Pelajar, 1998), hlm. 40). Hukum kongkret adalah peraturan-peraturan hukum yang merupakan penerjemahan atas umum hukum (lihat Pedoman Penulisan Karya Ilmiah Mahasiswa Fakultas Syari'ah IAIN Sunan Kalijaga Jogjakarta nomor S-25 tahun 2003, hlm. 54).

²⁴ Deduktif adalah proses pendekatan yang berangkat dari kebenaran umum mengenai suatu fenomena (teori) dan menggeneralisasikan kebenaran tersebut pada suatu peristiwa atau data tertentu yang berciri sama dengan fenomena bersangkutan (prediksi) (lihat Saifuddin Azwar, *Metode Penelitian*, hlm. 40).

²⁵ DA. Willa Huky, *Pengantar Sosiologi* (Surabaya: Usaha Nasional, 1986), hlm. 29.

b. Historis.

Adalah pendekatan yang bermaksud membuat rekonstruksi masa latihan secara sistematis dan obyektif, dengan cara mengumpulkan, mengevaluasi, memverifikasi, serta mem sintesikan bukti-bukti untuk mendukung fakta dalam mempeoleh kesimpulan yang kuat.²⁶

c. Normatif²⁷

Yaitu pendekatan terhadap masalah yang diteliti dengan mengkaji berdasarkan hukum internasional, hukum Islam serta norma-norma hukum yang berlaku, sehingga setelah adanya analisis akan tampak pemecahan yang terbaik terhadap masalah yang ada.

d. Yuridis.

Yaitu pendekatan terhadap suatu masalah yang diteliti dengan berdasarkan pada aturan Konvensi Jenewa 1949, yurisprudensi dalam hukum internasional.

G. Sistematika Penyusunan

Skripsi ini disusun dengan sistematika sebagai berikut:

Pembahasan dalam skripsi ini dimulai dengan bab pertama sebagai pengantar umum bagi keseluruhan pembahasan. Pada bagian ini akan dijelaskan

²⁶ Husaini Usman & Purnomo Setiady Akbar, *Metodologi Penelitian Sosial*, cet. Ke-1 (Jakarta: Bumi Aksara, Mei 1996), hlm. 4.

²⁷ Pendekatan normatif adalah pendekatan mengenai praktik-praktek masa sekarang yang dipergunakan oleh pihak-pihak lain untuk memperoleh prosedur yang dapat dilaksanakan, sehingga berdasarkan analisis tampaknya menjadi pemecahan yang terbaik terhadap masalah yang ada (lihat Moekijat, *Metode Riset Dalam Pelatihan* (Bandung: Mandar Maju, tt), hlm. 41).

mengenai latar belakang masalah, pokok masalah, tujuan dan kegunaan, telaah pustaka, kerangka teoretik, metode penelitian, dan sistematika penyusunan.

Bab kedua, berisi tinjauan umum tentang tawanan perang, yang di dalamnya dibahas bagaimana definisi dari tawanan perang, syarat-syarat sehingga bisa dikatakan tawanan perang, tujuan mengapa harus diadakan penawanahan, serta macam-macam tawanan perang yang dikategorikan menjadi beberapa jenis dan hukuman-hukumannya.

Bab ketiga, berisi bahasan tentang masalah tawanan perang menurut hukum Islam, yang di dalamnya membahas dalil-dalil masalah tawanan perang dari al-Qur'an dan Ḥadīṣ disertai dengan keterangan tentang sebab-sebab turunnya ayat dan keluarnya Ḥadīṣ, kapan dimulainya masa penawanahan, perlakuan tawanan perang dan sanksi hukumnya, dan kapan bisa berakhirnya masa penawanahan. Dan menurut hukum Islam, yang di dalamnya membahas sejarah singkat terjadinya Konvensi dan nama lain dari Konvensi Jenewa 1949, kapan dimulainya masa penawanahan, perlakuan tawanan perang dan sanksi hukumnya dan kapan bisa berakhirnya masa penawanahan.

Bab keempat, berisi tentang penganalisisan komparasi antara hukum Islam dan hukum internasional, yang di dalamnya membahas bagaimana keduanya memperlakukan tawanan perang dan sanksi apa yang diberikan keduanya kepada pelaku yang bertindak buruk terhadap tawanan perang.

Bab kelima, setelah penjabaran bagaimana hukum Islam dan hukum internasional memperlakukan tawanan perang, maka akan bisa ditarik kesimpulan dari komparasi dua hukum tersebut. Dan terakhir adalah saran-saran konstruktif.

BAB V

PENUTUP

A. Kesimpulan

Dari uraian yang telah dikemukakan di atas, dapat dirumuskan beberapa kesimpulan sebagai berikut:

1. Hukum Islam mewajibkan setiap umat Islam untuk memperlakukan tawanan perang seperti layaknya perlakuan terhadap kaum miskin dan anak yatim, yaitu berlaku baik dan tidak berbuat di luar perikemanusiaan, karena tawanan perang adalah manusia juga yang mempunyai perasaan dan hati nurani. Ia berhak untuk diperlakukan sebagai manusia dan bukan binatang.

Dan menurut hukum Islam, seorang muslim apabila memperlakukan tawanan perang dengan buruk, brutal dan di luar perikemanusiaan, seperti:

- a. Pembunuhan atau penyiksaan, maka hukumannya adalah *qisāṣ*, yaitu hukuman mati atau penjara.
 - b. Pemusnahan etnis. Maka hukumannya adalah dibunuh atau disalib atau dipotong tangan dan kaki.
 - c. Perkosaan, maka hukumannya adalah dicambuk 100 kali bagi yang belum menikah. Dan bagi yang telah menikah, maka hukumannya adalah 100 cambukan dan dirajam hingga mati.
2. Hukum internasional mewajibkan setiap negara-negara peserta Konvensi untuk tunduk dan patuh terhadap peraturan-peraturan yang sudah ditetapkan,

yaitu memperlakukan tawanan perang dengan baik dan tidak bertindak di luar perikemanusiaan.

Dan menurut Undang-undang Nomor 26 tahun 2000 tentang Pengadilan Hak Asasi Manusia (HAM) di Indonesia, apabila seseorang bertindak buruk terhadap tawanan perang, seperti:

- a. Pembunuhan; pemusnahan; pengusiran atau pemindahan penduduk secara paksa; perampasan kemerdekaan atau perampasan kebebasan fisik lain secara sewenang-wenang yang melanggar (asas-asas) ketentuan pokok hukum internasional; kejahatan apartheid, maka hukumannya adalah dipidana dengan pidana mati atau pidana seumur hidup atau pidana penjara paling lama 25 tahun dan paling singkat 10 tahun.
- b. Setiap orang yang melakukan perbuatan perbudakan, maka hukumannya adalah dipidana dengan penjara paling lama 15 tahun dan paling singkat 5 tahun.
- c. Setiap orang yang melakukan perbuatan penyiksaan, maka hukumannya adalah dipidana dengan pidana penjara paling lama 15 tahun.
- d. Setiap orang yang melakukan perbuatan:
 - I. Perkosaan, perbudakan seksual, pelacuran secara paksa, pemaksaan kehamilan, pemandulan atau sterilisasi secara paksa atau bentuk-bentuk kekerasan seksual lain yang setara.
 - II. Penganiayaan terhadap 1 (satu) kelompok tertentu atau perkumpulan yang didasari paham politik, ras, kebangsaan, etnis, budaya, agama,

jenis kelamin atau alasan lain yang telah diakui secara universal sebagai hal yang dilarang menurut hukum internasional.

III. Penghilangan orang secara paksa.

Dipidana dengan pidana penjara paling lama 20 tahun dan paling singkat 10 tahun.

B. Saran-saran

1. Pertikaian senjata di Korea menunjukkan bahwa, walaupun berlakunya ketentuan-ketentuan Jenewa tahun 1949 sudah diterima kedua belah pihak dan tidak menjadi persoalan lagi, pelaksanaan ketentuan-ketentuan tertentu yakni pasal-pasal mengenai penghukuman tawanan perang telah memenuhi kesulitan-kesulitan karena PBB bukan pihak atau negara peserta konvensi dan karenanya juga tidak bisa dianggap sebagai Negara Penahan dalam arti Konvensi Jenewa tahun 1949. Satu-satunya jalan untuk memecahkan kesulitan ini, adalah untuk menambahkan pada Konvensi-konvensi Jenewa suatu ketentuan yang mengakui PBB sebagai peserta konvensi, di samping negara-negara.¹
2. Mahkamah Internasional, sebagai perangkat hukum masyarakat internasional, harus membuat aturan yang jelas, tegas dan berani agar penjahat-penjahat perang di negara-negara besar lagi adi daya (contoh kejadian perang Amerika Serikat pada perang Vietnam dan mantan negara Uni Soviet pada perang Afghanistan) bisa diseret dan diadili apabila melakukan tindakan buruk

¹ Mochtar Kusumaatmadja, *Konvensi-konvensi Djenewa TH. 1949 mengenai Perlindungan Korban Perang*, cet. Ke-1 (Bandung: Dhiwantara, 1963), hlm. 99.

terhadap tawanan perang sehingga keadilan bisa ditegakkan dan dunia akan selalu damai.

3. Tidak ada salahnya bagi umat Islam, yang saat ini diwakili oleh OKI (Organisasi Konferensi Islam), membuat aturan yang jelas, rinci dan legal tentang bagaimana perlakuan terhadap tawanan perang karena aturan-aturan hukum tentang perlakuan terhadap tawanan perang yang ada di dalam al-Qur'an dan Sunnah masih global dan perlu penjabaran lebih lanjut. Dan diharapkan aturan-aturan ini bisa menjadi sumber rujukan masyarakat internasional, khususnya masyarakat Islam.
4. Kalau negara Republik Indonesia (RI) bersikeras ingin mengklaim bahwa orang-orang yang ditangkap oleh Gerakan Aceh Merdeka (GAM) adalah sandera bukannya tawanan perang, maka seharusnya segala permasalahan dengan GAM harus diselesaikan secara internal dan tidak mengikuti pihak eksternal. Akan tetapi kalau memang RI harus mengikutsertakan pihak-pihak asing dalam penyelesaian masalah Nangroe Aceh Darussalam (NAD), maka RI harus jujur dan mengakui bahwa ada perang antara RI dan GAM sehingga orang-orang yang ditahan GAM bisa disebut sebagai tawanan perang. Negara RI adalah negara besar dan kebesaran itu akan tampak apabila selalu berlaku jujur terhadap segala hal walaupun itu pahit.

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LAMPIRAN-LAMPIRAN

Lampiran I: Terjemahan Ayat dan Ḥadīṣ.

No	Fn	Hlm	Terjemahan
1	6	4	Apabila kamu bertemu dengan orang-orang kafir (di medan perang), maka pancunglah batang leher mereka. Sehingga apabila kamu telah mengalahkan mereka, maka tawanlah mereka dan sesudah itu kamu boleh membebaskan mereka atau menerima tebusan sampai perang berhenti. Demikianlah, apabila Allah menghendaki niscaya Allah akan membinasakan mereka tetapi Allah hendak menguji sebagian kamu dengan sebagian yang lain. Dan orang-orang yang gugur pada jalan Allah, Allah tidak akan menyia-nyiakan amal mereka.
2	7	4	Dan mereka memberikan makanan yang disukainya kepada orang miskin, anak yatim dan orang yang ditawan. Sesungguhnya kami memberi makanan kepadamu hanyalah untuk mengharapkan keridaan Allah, kami tidak menghendaki balasan dari kamu dan tidak pula (ucapan) terima kasih.
3	13	10	Apabila kamu bertemu dengan orang-orang kafir (di medan perang), maka pancunglah batang leher mereka. Sehingga apabila kamu telah mengalahkan mereka, maka tawanlah mereka dan sesudah itu kamu boleh membebaskan mereka atau menerima tebusan sampai perang berhenti. Demikianlah, apabila Allah menghendaki niscaya Allah akan membinasakan mereka tetapi Allah hendak menguji sebagian kamu dengan sebagian yang lain. Dan orang-orang yang gugur pada jalan Allah, Allah tidak akan menyia-nyiakan amal mereka.
4	19	13	Dan mereka memberikan makanan yang disukainya kepada orang miskin, anak yatim dan orang yang ditawan. Sesungguhnya kami memberi makanan kepadamu hanyalah untuk mengharapkan keridaan Allah, kami tidak menghendaki balasan dari kamu dan tidak pula (ucapan) terima kasih.
5	2	19	Perang berarti pernyataan yang tercipta oleh penggunaan pasukan-pasukan bersenjata antar negara-negara atau (perang sipil) kelompok-kelompok yang bersaing dalam sebuah bangsa.
6	5	20	Tawanan perang berarti orang yang tertangkap di dalam peperangan dan biasanya ditahan di sebuah kamp selama masa peperangan.

7	6	20	Tawanan berarti orang yang tertangkap dan diambil (dirinya dan hartanya).
8	9	23	Tidak patut bagi seorang Nabi mempunyai tawanan sebelum ia dapat melumpuhkan musuhnya di muka bumi. Kamu menghendaki harta benda dunia wih sedangkan Allah menghendaki (pahala) akhirat (untukmu). Dan Allah Maha Perkasa lagi Maha Bijaksana. Kalau sekiranya tidak ada ketetapan yang terdahulu dari Allah, niscaya kamu ditimpa siksaan yang besar karena tebusan yang kamu ambil.
9	11	25	Apabila kamu bertemu dengan orang-orang kafir (di medan perang), maka pancunglah batang leher mereka. Sehingga apabila kamu telah mengalahkan mereka, maka tawanlah mereka...
10	12	26	Apabila kamu bertemu dengan orang-orang kafir (di medan perang), maka pancunglah batang leher mereka. Sehingga apabila kamu telah mengalahkan mereka, maka tawanlah mereka dan sesudah itu kamu boleh membebaskan mereka atau menerima tebusan sampai perang berhenti...
11	19	29	Apabila kamu bertemu dengan orang-orang kafir (di medan perang), maka pancunglah batang leher mereka. Sehingga apabila kamu telah mengalahkan mereka, maka tawanlah mereka dan sesudah itu kamu boleh membebaskan mereka atau menerima tebusan sampai perang berhenti...
12	20	29	Rasulullah saw berkata kepada saya: "Hai Salmah! Serahkan kepada saya wanita itu (seorang tawanan) lillahi ta'ala". Jawab saya: "wanita itu untuk tuan. Demi Allah saya belum pernah menyentuhnya". Kemudian setelah wanita itu diambil oleh Beliau, lalu dikirimkannya kepada orang-orang Mekkah sebagai penebus orang-orang muslimin yang tertawan di sana.
13	21	30	Apabila sudah habis bulan-bulan haram itu, maka bunuhlah orang-orang musyrikin dimana saja kamu jumpai mereka dan tangkaplah mereka (musyrikin = yang memerangi orang Islam...)
14	1	37	Dan mereka memberikan makanan yang disukainya kepada orang miskin, anak yatim dan orang yang ditawan.
15	2	38	"Dan mereka memberi makanan yang disukainya kepada orang miskin, anak yatim dan orang yang ditawan," ia berkata berkata: "Nabi saw tidak pernah mempunyai tawanan orang Islam, tetapi ayat itu diturunkan mengenai beberapa tawanan musyrikin yang disiksa. Kemudian turunlah ayat itu yang berkenaan dengan mereka, dan Nabi saw memerintahkan untuk memperbaikinya (dari penyiksaan terhadap tawanan musyrikin menjadi perlakuan baik terhadap mereka).

16	5	38	Sampaikanlah oleh kalian pesan-pesan kebaikan kepada para tawanan.
17	7	39	Apabila kamu bertemu dengan orang-orang kafir (di medan perang), maka pancunglah batang leher mereka. Sehingga apabila kamu telah mengalahkan mereka, maka tawanlah mereka dan sesudah itu kamu boleh membebaskan mereka atau menerima tebusan sampai perang berhenti. Demikianlah, apabila Allah menghendaki niscaya Allah akan membinasakan mereka tetapi Allah hendak menguji sebagian kamu dengan sebagian yang lain. Dan orang-orang yang gugur pada jalan Allah, Allah tidak akan menyia-nyiakan amal mereka.
18	8	40	Rasulullah saw pernah mengutus ‘Abdullah Ibn Gālib al-Laiṣī dalam suatu detasmen, sedang aku dalam satuan itu. Beliau perintahkan, agar mereka menyerang Banī Mulawwah di Kadīd, kemudian kami keluar sampailah kami di Kadīd, kami bertemu al-Hāriṣ Ibn al-Barṣā’ al-Laiṣī. Lalu kami menangkapnya, kemudian ia berkata: “Sesungguhnya saya datang untuk masuk Islam, dan sesungguhnya saya pergi untuk menemui Rasulullah saw”. Kemudian kami berkata: “Jika kamu muslim, tidak mengapa kami ikat sehari semalam. Akan tetapi jika kamu tidak demikian, kami akan mengikatmu”. Kemudian kami mengikatnya erat-erat.
19	16	46	Hai orang-orang yang beriman, diwajibkan atas kamu qiṣāṣ berkenaan dengan orang-orang yang dibunuh; orang merdeka dengan orang merdeka, hamba dengan hamba dan wanita dengan wanita. Lalu barangsiapa yang mendapat suatu perma’afan dari saudaranya, hendaklah (yang mema’afkan) membayar (<i>diyat</i>) keapda yang memberi ma’af dengan cara yang baik (pula). Yang demikian itu adalah suatu keringanan dari Tuhan kamu dan suatu rahmat. Barangsiapa yang melampaui batas sesudah itu, maka baginya siksa yang sangat pedih. Dan dalam qiṣāṣ itu ada (jaminan kelangsungan) hidup bagimu, hai orang-orang yang berakal, supaya kamu bertakwa.
20	17	46	Dan janganlah kamu membunuh jiwa yang diharamkan Allah (membunuhnya), melainkan dengan suatu (alasan) yang benar. Dan barangsiapa dibunuh secara zalim, maka sesungguhnya Kami telah memberi kekuasaan kepada ahli warisnya, tetapi janganlah ahli waris itu melampaui batas dalam membunuh. Sesungguhnya ia adalah orang yang mendapat pertolongan.
21	18	47	Sesungguhnya pembalasan terhadap orang-orang yang memerangi Allah dan Rasul-Nya dan membuat kerusakan dimuka bumi, hanyalah mereka dibunuh atau disalib, atau

			dipotong tangan dan kaki mereka dengan bertimbal balik, atau dibuang dari negeri (tempat kediamannya). Yang demikian itu (sebagai) suatu penghinaan untuk mereka di dunia, dan di akhirat mereka memperoleh siksaan yang besar. Kecuali orang-orang yang taubat (di antara mereka) sebelum kamu dapat menguasai (menangkap) mereka; maka ketahuilah bahwasannya Allah Maha Pengampun lagi Maha Penyayang.
22	19	47	Perempuan yang berzina dan laki-laki yang berzina, maka deralah tiap-tiap seorang dari keduanya seratus kali dera, dan janganlah berbelas kasihan kepada keduanya mencegah kamu untuk (menjalankan) agama Allah dan hari akhirat, dan hendaklah (pelaksanaan) hukuman mereka disaksikan sekumpulan dari orang-orang yang beriman.
23	20	48	Rasulullah saw bersabda: Ambillah dari aku, ambillah dari aku. Allah betul telah membuat jalan untuk mereka. Jejaka berzina dengan gadis dihukum 100 dera dan dihukum setahun. Duda berzina dengan janda dihukum 100 dera dan rajam.
24	21	48	Apabila kamu bertemu dengan orang-orang kafir (di medan perang), maka pancunglah batang leher mereka. Sehingga apabila kamu telah mengalahkan mereka, maka tawanlah mereka dan sesudah itu kamu boleh membebaskan mereka atau menerima tebusan sampai perang berhenti. Demikianlah, apabila Allah menghendaki niscaya Allah akan membinasakan mereka tetapi Allah hendak menguji sebagian kamu dengan sebagian yang lain. Dan orang-orang yang gugur pada jalan Allah, Allah tidak akan menyia-nyiakan amal mereka.
25	22	49	Rasulullah saw pernah mengutus sepasukan berkuda ke Najd, kemudian mereka datang membawa seorang tawanan laki-laki dari Banī Hanifah, bernama Šumāmāh Ibn ‘Uṣāl, pemimpin penduduk Yamamah. Lalu sahabat mengikunya di sebuah tiang masjid, kemudian Rasulullah saw pergi mendatanginya seraya berkata: “Apa kabarmu hai Šumāmāh?” Jawabnya: “Saya baik-baik saja hai Muhammad. Jika engkau membunuh, maka engkau menumpahkan darah. Jika engkau memberi kesenangan, engkau memberi kesenangan kepada orang yang pandai bersyukur. Dan jika engkau menginginkan harta, mintalah, pasti engkau akan diberi sesuai kemauanmu”. Kemudian Rasulullah saw membiarkannya. Setelah keesokan harinya, beliau bertanya beliau bertanya: “Apa yang kamu miliki hai Šumāmāh?” Šumāmāh mengulangi jawabannya seperti semula. Setelah dibiarkan pula oleh Beliau. Setelah keesokan harinya lagi, Beliau memeriksanya seperti semula

			lagi. Lalu Rasulullah saw bersabda: “Lepaskanlah šumāmāh!” Kemudian šumāmāh pergi ke sebuah kebun dekat masjid, kemasian berkata: “Aku bersaksi bahwasannya tiada Tuhan selain Allah dan aku bersaksi bahwa Muhammad adalah hamba dan Rasul-Nya”.
26	23	49	sewaktu perang Badar, Nabi saw mengambil tebuan, Allah menurunkan ayat: “Tidak patut bagi seorang Nabi mempunyai tawanan sebelum ia dapat melumpuhkan musuhnya di muka bumi. Kamu menghendaki harta benda dunia wiah sedangkan Allah menghendaki (pahala) akhirat (untukmu). Dan Allah Maha Perkasa lagi Maha Bijaksana. Kalau sekiranya tidak ada ketetapan yang terdahulu dari Allah, niscaya kamu ditimpak siksaan yang besar karena tebusan yang kamu ambil). Kemudian setelah itu, allah menghalalkan harta-harta rampasan perang.
27	24	49	Rasulullah saw berkata kepada saya: “Hai Salmah! Serahkanlah kepada saya wanita itu (seorang tawanan) lillahi ta’alā”. Jawab saya: “wanita itu untuk tuan. Demi Allah saya belum pernah menyentuhnya”. Kemudian setelah wanita itu diambil oleh Beliau, lalu dikirimkannya kepada orang-orang Mekkah sebagai penebus orang-orang muslimin yang tertawan di sana.
28	25	50	Bahwa Rasulullah saw memasuki Mekkah pada tahun Fath al-Makkah, sedang beliau memakai topi baja. Ketika beliau mencabutnya, datanglah seorang laki-laki, lalu berkata: Ibn Khaṭal berlindung pada kelambu Ka’bah. Kemudian bersabda: “Bunuhalah dia!”.
29	1	73	Dan mereka memberikan makanan yang disukainya kepada orang miskin, anak yatim dan orang yang ditawan.
30	3	74	“Dan mereka memberi makanan yang disukainya kepada orang miskin, anak yatim dan orang yang ditawan,” ia berkata berkata: “Nabi saw tidak pernah mempunyai tawanan orang Islam, tetapi ayat itu diturunkan mengenai beberapa tawanan musyrikin yang disiksa. Kemudian turunlah ayat itu yang berkenaan dengan mereka, dan Nabi saw memerintahkan untuk memperbaikinya (dari penyiksaan terhadap tawanan musyrikin menjadi perlakuan baik terhadap mereka).
31	5	75	Sampaikanlah oleh kalian pesan-pesan kebaikan kepada para tawanan.
32	8	77	Hai orang-orang yang beriman, diwajibkan atas kamu qisaṣ berkenaan dengan orang-orang yang dibunuh; orang merdeka dengan orang merdeka, hamba dengan hamba dan wanita dengan wanita. Lalu barangsiapa yang mendapat suatu perma’afan dari saudaranya, hendaklah (yang mema’afkan) membayar (<i>diyat</i>) keapda yang memberi ma’af

			dengan cara yang baik (pula). Yang demikian itu adalah suatu keringanan dari Tuhan kamu dan suatu rahmat. Barangsiapa yang melampaui batas sesudah itu, maka baginya siksa yang sangat pedih. Dan dalam qisâs itu ada (jaminan kelangsungan) hidup bagimu, hai orang-orang yang berakal, supaya kamu bertakwa.
33	9	77	Dan janganlah kamu membunuh jiwa yang diharamkan Allah (membunuhnya), melainkan dengan suatu (alasan) yang benar. Dan barangsiapa dibunuh secara zalim, maka sesungguhnya Kami telah memberi kekuasaan kepada ahli warisnya, tetapi janganlah ahli waris itu melampaui batas dalam membunuh. Sesungguhnya ia adalah orang yang mendapat pertolongan.
34	10	78	Sesungguhnya pembalasan terhadap orang-orang yang memerangi Allah dan Rasul-Nya dan membuat kerusakan dimuka bumi, hanyalah mereka dibunuh atau disalib, atau dipotong tangan dan kaki mereka dengan bertimbang balik, atau dibuang dari negeri (tempat kediamannya). Yang demikian itu (sebagai) suatu penghinaan untuk mereka di dunia, dan di akhirat mereka memperoleh siksaan yang besar. Kecuali orang-orang yang taubat (di antara mereka) sebelum kamu dapat menguasai (menangkap) mereka; maka ketahuilah bahwasannya Allah Maha Pengampun lagi Maha Penyayang.
35	11	79	Perempuan yang berzina dan laki-laki yang berzina, maka deralah tiap-tiap seorang dari keduanya seratus kali dera, dan janganlah berbelas kasihan kepada keduanya mencegah kamu untuk (menjalankan) agama Allah dan hari akhirat, dan hendaklah (pelaksanaan) hukuman mereka disaksikan sekumpulan dari orang-orang yang beriman.
36	12	79	Rasulullah saw bersabda: Ambillah dari aku, ambillah dari aku. Allah betul telah membikin jalan untuk mereka. Jejaka berzina dengan gadis dihukum 100 dera dan dihukum setahun. Duda berzina dengan janda dihukum 100 dera dan rajam.

Lampiran II: Biografi Cendikiawan.

1. Mochtar Kusumaatmadja (Jakarta, 17 Pebruari 1929).¹
Mantan Menteri Luar Negeri Indonesia, meraih gelar doktor dalam Ilmu Hukum dari Universitas Padjadjaran, Bandung (1962), kemudian diangkat menjadi guru besar Hukum Internasional serta Dekan Fakultas Hukum pada perguruan tinggi tersebut. Dari tahun 1974-1978 menjabat sebagai Menteri Kehakiman pada Kabinet Pembangunan II; memiliki 5 bintang kehormatan. Untuk pegangan di bidang diplomasi, dia banyak mendalami hukum laut; gigih dalam memperjuangkan konsep Wawasan Nusantara dalam Konferensi Hukum Laut Dunia; peletak dasar eksperimen pembaruan pendidikan hukum yang kini dijalankan di semua fakultas hukum negeri. Di samping itu, ia juga menjabat sebagai anggota *Editorial Board* pada *Ocean Development and Internasional Law Journal*, Washington; *Corresponding Member, Law of the Sea Institute University of Rhode Island*, Kingston; anggota *Panel of Settlement for Internal Disputes*. Karya-karya ilmiahnya meliputi sejumlah buku tentang hukum, termasuk hukum laut.
2. ‘Alī‘Alī Mansūr.²
‘Alī‘Alī Mansūr, selain ahli hukum juga ahli fiqh Islam. Dan selain kedudukannya yang menanjak dalam bidang kehakiman, sehingga menjabat kedudukan ‘mustasyar’ atau penasehat hukum negara di Mesir, juga menjadi guru besar di Universitas Al-Azhar dalam bidang kaidah-kaidah hukum internasional umum dan hubungannya dengan Syari‘at Islam. Ia juga seorang staf-ahli pada Majelis Tinggi bagi Soal-soal Islam, suatu badan yang ditugaskan pemerintah Mesir menggali kembali mutiara-mutiara ilmu dari fiqh Islam (*Islamic Jurisprudence*) dari ratusan buku-buku fiqh yang telah berumur ratusan tahun itu dan menghidangkannya kembali dalam uslub (*style*) modern.
Ketika terjadi perselisihan konstitusionil di Libya selagi masa kerajaan, atas permintaan kerajaan itu, ia terpilih untuk menyelesaikan perselisihan tersebut dan menjatuhkan hukuman tidak sahnya pembubaran parlemen oleh Raja Sanusi waktu itu. Setelah terjadi revolusi di Libya dan pemimpin-pemimpinnya bertekad untuk mengembalikan perundang-undangan di Republik Arab Libya kepada dasar-dasar hukum Islam, ‘Alī‘Alī Mansūr terpilih lagi untuk memikul tugas yang berat itu. Selain menjabat Ketua Mahkamah Agung Libya, ia juga menjadi Ketua Panitia Tertinggi Penetapan Hukum Islam.

¹ Hassan Shadily dkk, *Ensiklopedi Indonesia* (Jakarta: Ichtiar Baru-Van Hoeve, 1984), 4: 1927.

² ‘Alī‘Alī Mansūr, *Syari‘at Islam dan Hukum Internasional Umum*, alih bahasa Muhammad Zein Hassan, cet. Ke-1 (Jakarta: Bulan Bintang, 1973), hlm. 7-8.

Lampiran III: Piagam Madinah.

Berikut petikan lengkap terjemahan Piagam Madinah yang terdiri dari 47 pasal.³

Preambule: Dengan nama Allah Yang Maha Pengasih dan Maha Penyayang. Ini adalah piagam dari Muhammad Rasullulah saw, di kalangan mukminin dan mukminin (yang berasal) dari Quraisy dan Yatsrib (Madinah), dan yang mengikuti mereka.

Pasal 1

Sesungguhnya mereka satu umat, lain dari (komunitas) manusia lain.

Pasal 2

Kaum Muhajirin (pendatang) dari Quraisy sesuai keadaan (kebiasaan) mereka, bahu-membahu membayar *diyat* di antara mereka dan mereka seperti semula, dan setiap suku membayar tebusan tawanan dengan cara yang baik dan adil di antara mukminin.

Pasal 3

Banu ‘Awf, sesuai keadaan (kebiasaan) mereka, bahu-membahu membayar *diyat* di antara mereka (seperti) semula, dan setiap suku membayar tebusan tawanan dengan baik dan adil di antara mukminin.

Pasal 4

Banu Sa’idah, sesuai keadaan (kebiasaan) mereka, bahu-membahu membayar *diyat* di antara mereka (seperti) semula, dan setiap suku membayar tebusan tawanan dengan baik dan adil di antara mukminin.

Pasal 5

Banu al-Hars, sesuai keadaan (kebiasaan) mereka, bahu-membahu membayar *diyat* di antara mereka (seperti) semula, dan setiap suku membayar tebusan tawanan dengan baik dan adil di antara mukminin.

Pasal 6

Banu Jusyam, sesuai keadaan (kebiasaan) mereka, bahu-membahu membayar *diyat* di antara mereka (seperti) semula, dan setiap suku membayar tebusan tawanan dengan baik dan adil di antara mukminin.

³ Mohammad Shoelhi (ed.), *Demokrasi Madinah Model Demokrasi Cara Rasulullah*, cet. Ke-1 (Jakarta: Penerbit Republika, Maret 2003), hlm. 93-101.

Pasal 7

Banu al-Najjar, sesuai keadaan (kebiasaan) mereka, bahu-membahu membayar *diat* di antara mereka (seperti) semula, dan setiap suku membayar tebusan tawanan dengan baik dan adil di antara mukminin.

Pasal 8

Banu ‘Amr Ibn ‘Awf, sesuai keadaan (kebiasaan) mereka, bahu-membahu membayar *diat* di antara mereka (seperti) semula, dan setiap suku membayar tebusan tawanan dengan baik dan adil di antara mukminin.

Pasal 9

Banu al-Nabit, sesuai keadaan (kebiasaan) mereka, bahu-membahu membayar *diat* di antara mereka (seperti) semula, dan setiap suku membayar tebusan tawanan dengan baik dan adil di antara mukminin.

Pasal 10

Banu al-Aws, sesuai keadaan (kebiasaan) mereka, bahu-membahu membayar *diat* di antara mereka (seperti) semula, dan setiap suku membayar tebusan tawanan dengan baik dan adil di antara mukminin.

Pasal 11

Sesungguhnya mukminin tidak boleh membiarkan orang yang berat menanggung hutang di antara mereka, tetapi membantunya dengan baik dalam pembayaran tebusan atau diat.

Pasal 12

Seorang mukmin tidak dibolehkan membuat persekutuan dengan sekutu mukmin lainnya, tanpa persetujuan daripadanya.

Pasal 13

Orang-orang mukmin yang takwa harus menentang orang yang di antara mereka mencari atau menuntut sesuatu secara lazim, jahat, melakukan perrusuhan atau kerusakan di kalangan mukminin, kekuatan mereka bersatu dalam menentangnya, sekalipun ia anak dari salah seorang di antara mereka.

Pasal 14

Seorang mukmin tidak boleh membunuh orang beriman lainnya lantaran (membunuh) orang kafir. Tidak boleh pula orang mukmin membantu orang kafir untuk (membunuh) orang beriman.

Pasal 15

Jaminan Allah satu. Jaminan (membunuh) diberikan oleh mereka yang dekat. Sesungguhnya mukminin itu saling membantu, tidak tergantung pada orang lain.

Pasal 16

Sesungguhnya orang Yahudi yang mengikuti kita berhak atas pertolongan dan santunan, sepanjang (mukminin) tidak terzalimi dan ditentang (olehnya).

Pasal 17

Perdamaian mukminin adalah satu seorang mukmin tidak boleh membuat perdamaian tanpa ikut serta mukmin lainnya di dalam suatu peperangan di jalan Allah, kecuali atas dasar kesamaan dan keadilan di antara mereka.

Pasal 18

Setiap pasukan yang berperang bersama kita harus bahu-membahu satu sama lain.

Pasal 19

Orang-orang mukmin itu membala pembunuhan mukmin lainnya dalam peperangan di jalan Allah. Orang-orang briman dan bertakwa berada pada petunjuk yang terbaik dan lurus.

Pasal 20

Orang musyrik (Yatsrib) dilarang melindungi harta dan jiwa orang (musyrik) Quraisy, dan tidak boleh bercampur tangan melawan orang beriman.

Pasal 21

Barang siapa yang membunuh orang beriman dan cukup bukti atas perbuatannya, harus dihukum bunuh, kecuali wali si terbunuh rela (menerima diat). Segenap orang beriman harus bersatu dalam menghukumnya.

Pasal 22

Tidak dibenarkan bagi orang mukmin yang mengakui piagam ini, percaya pada Allah dan Hari Akhir, untuk membantu pembunuhan dan memberi tempat kediamannya kepada mereka. Siapa yang memberi bantuan atau menyediakan tempat bagi pelanggar itu, akan mendapat kutukan dan kemurkaan Allah di hari kiamat, dsan tidak diterima daripadanya penyesalan dan tebusan.

Pasal 23

Apabila kamu berselisih tentang sesuatu, penyelesaiannya menurut (ketentuan) Allah ‘azza wa jalla dan (keputusan) Muhammad saw.

Pasal 24

Kaum Yahudi dan Banu ‘Awf adalah satu umat dengan kaum mukminin. Bagi kaum Yahudi agama mereka, bagi kaum muslimin agama mereka. Juga (kebiasaan ini berlaku) bagi sekutu-sekutu dan diri mereka sendiri, kecuali bagi yang zalim dan jahat. Hal demikian akan merusak dan keluarganya.

Pasal 26

Kaum Yahudi Banu Najjar diperlakukan sama seperti Yahudi Banu ‘Awf.

Pasal 27

Kaum Yahudi Banu Hars diperlakukan sama seperti Yahudi Banu ‘Awf.

Pasal 28

Kaum Yahudi Banu Sa’idah diperlakukan sama seperti Yahudi Banu ‘Awf.

Pasal 29

Kaum Yahudi Banu Jusyam diperlakukan sama seperti Yahudi Banu ‘Awf.

Pasal 30

Kaum Yahudi Banu al-‘Aws diperlakukan sama seperti Yahudi Banu ‘Awf.

Pasal 31

Kaum Yahudi Banu Tsa’labah diperlakukan sama seperti Yahudi Banu ‘Awf, kecuali orang zalim atau khianat. Hukumannya hanya menimpa diri dan keluarganya.

Pasal 32

Suku Jafnah dan Tsa’labah (diperlakukan) sama seperti mereka (Banu Tsa’labah).

Pasal 33

Banu Syutaibah (diperlakukan) sama seperti Yahudi ‘Awf. Sesungguhnya kebaikan (kesetiaan) itu lain dari kejahanatan (khianat).

Pasal 34

Sekutu-sekutu Tsa’labah (diperlakukan) sama seperti mereka (Banu Tas’labah).

Pasal 35

Kerabat Yahudi (di luar kota Madinah) sama seperti mereka (Yahudi).

Pasal 36

Tidak seorang pun dibenarkan (untuk perang), kecuali sejirn Muhammad saw. Ia tidak boleh dihalangi (menuntut pembalasan) luka (yang dibuat orang lain). Siapa berbuat jahat (membunuh), maka balasan kejahanatan itu akan menimpa diri dan keluarganya, kecuali ia teraniaya. Sesungguhnya Allah sangat membenarkan (ketentuan) ini.

Pasal 37

Bagi kaum Yahudi ada kewajiban biaya, dan bagi kaum muslimin ada kewajiban biaya. Mereka (Yahudi dan muslimin) bantu-membantu dalam menghadapi musuh piagam ini. Mereka saling memberi saran dan nasihat.

Memenuhi janji lawan dari khianat. Seseorang tidak menanggung hukuman akibat (kesalahan) sekutunya. Pembelaan diberikan kepada pihak yang teraniaya.

Pasal 38

Kaum Yahudi memikul biaya bersama mukminin selama dalam peperangan.

Pasal 39

Sesungguhnya Yatsrib itu tanahnya “haram” (suci) bagi warga piagam ini.

Pasal 40

Orang yang mendapat jaminan (diperlakukan) seperti diri penjamin, sepanjang tidak bertindak merugikan dan tidak berkhianat.

Pasal 41

Tidak boleh jaminan diberikan, kecuali sejin ahlinya.

Pasal 42

Bila terjadi suatu peristiwa atau perselisihan di antara pendukung piagam ini, yang dikhawatirkan menimbulkan bahaya, diserahkan penyelesaiannya menurut (ketentuan) Allah ‘azza wa jalla, dan (keputusan) Muhammad saw. Sesungguhnya Allah paling memelihara dan memandang baik isi piagam ini.

Pasal 43

Sungguh tidak ada perlindungan bagi Quraisy (Mekkah) dan juga bagi pendukung mereka.

Pasal 44

Mereka (pendukung Piagam) bahu-membahu dalam menghadapi penyerang kota Yatsrib.

Pasal 45

Apabila mereka (pendukung Piagam) diajak damai dan mereka (pihak lawan) memenuhi perdamaian serta melaksanakan perdamaian itu, maka perdamian itu harus dipatuhi. Jika mereka diajak berdamai seperti itu, kaum mukminin wajib memenuhi ajakan dan melaksanakan perdamaian itu, kecuali terhadap orang yang menyerang agama. Setiap orang wajib melaksanakan (kewajiban) masing-masing sesuai tugasnya.

Pasal 46

Kaum Yahudi al-‘Aws, sekutu dan diri mereka memiliki hak dan kewajiban seperti kelompok lain pendukung Piagam ini, dengan perlakuan yang baik dan penuh dari semua pendukung Piagam ini. Sesungguhnya kebaikan (kesetiaan) itu berada dari kejahatan (penghianatan). Setiap orang bertanggungjawab atas perbuatannya. Sesungguhnya Allah paling membenarkan dan memandang isi Piagam ini.

Pasal 47

Sesungguhnya Piagam ini tidak membela orang zalim dan khianat. Orang yang keluar (bepergian) aman, dan orang berada di Madinah aman, kecuali orang yang zalim dan khianat. Allah adalah penjamin orang yang berbuat baik dan takwa. Dan Muhammad Rasulullah saw.



Lampiran IV: Konvensi Jenewa 1949.

Mengingat hingga saat ini telah terjadi dan akan terus terjadi perkembangan istilah dalam bahasa Indonesia terutama di bidang kemiliteran, maka Konvensi Jenewa tahun 1949 dibawah ini tidak diterjemahkan ke dalam bahasa Indonesia, tetapi ditulis dalam bahasa Inggris sebagaimana aslinya.⁴

Hal ini sejalan dengan apa yang ditulis Romli Atmasasmita dalam kata pengantaranya di buku *Terjemahan Konvensi Jenewa Tahun 1949*. Perkembangan atau perubahan istilah bahasa Indonesia maupun di bidang militer memacu perubahan pada penerjemahan Konvensi Jenewa 1949, yang bahan acuan penerjemahan ini adalah buku *Konvensi-konvensi Djenewa Th. 1949 mengenai Perlindungan Korban Perang* karangan Mochtar Kusumaatmadja. Dan buku ini sendiri diterbitkan pada tahun 1963.⁵ Berikut ini adalah isi dari Konvensi Jenewa 1949 mengenai perlakuan terhadap tawanan perang.⁶

**Geneva Convention relative to the Treatment of Prisoners of War
Adopted on 12 August 1949 by the Diplomatic Conference for the
Establishment of**

**International Conventions for the Protection of Victims of War, held in
Geneva
from 21 April to 12 August, 1949
entry into force 21 October 1950**

PART I

GENERAL PROVISIONS

⁴ Pasal 143, DIBUAT di Jenewa hari kedua belas Agustus 1949, dalam bahasa Inggris dan Prancis. Naskah asli akan disimpan dalam arsip Konfederasi Swiss. Dewan Federal Swiss akan meneruskan salinan-salinan yang disahkan dari Konvensi ini kepada negara-negara penandatangan dan negara-negara yang telah menyatakan aksesi (lihat *Terjemahan Konvensi Jenewa 1949*, alih bahasa Direktorat Jenderal Hukum dan Perundang-undangan Kehakiman (Jakarta: Tnp. Agustus 2000), hlm. 169).

⁵ *Ibid*, hlm. iv.

⁶ “Geneva Convention,” <http://google/data/Geneva Convention relative to the Treatment of Prisoners of war.htm>, akses 22 Januari 2004.

Article 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Article 2

In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (b) Taking of hostages;
 - (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;
 - (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 4

- A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:
 - 1. Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.
 - 2. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:
 - (a) That of being commanded by a person responsible for his subordinates;
 - (b) That of having a fixed distinctive sign recognizable at a distance;
 - (c) That of carrying arms openly;
 - (d) That of conducting their operations in accordance with the laws and customs of war.
 - 3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
 - 4. Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.
 - 5. Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.
 - 6. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.
- B. The following shall likewise be treated as prisoners of war under the present Convention:
 - 1. Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.
 - 2. The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers

may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

- C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention.

Article 5

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

Article 6

In addition to the agreements expressly provided for in Articles 10, 23, 28, 33, 60, 65, 66, 67, 72, 73, 75, 109, 110, 118, 119, 122 and 132, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them.

Prisoners of war shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Article 7

Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Article 8

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own

nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

Article 9

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief.

Article 10

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When prisoners of war do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

Article 11

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for prisoners of war, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

PART II

GENERAL PROTECTION OF PRISONERS OF WAR

Article 12

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

Article 13

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against prisoners of war are prohibited.

Article 14

Prisoners of war are entitled in all circumstances to respect for their persons and their honour. Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men. Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

Article 15

The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.

Article 16

Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

PART III CAPTIVITY

SECTION I BEGINNING OF CAPTIVITY

Article 17

Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information. If he wilfully infringes this rule, he may render himself liable to a restriction of the privileges accorded to his rank or status.

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints, or both, of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 x 10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind

whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.

Prisoners of war who, owing to their physical or mental condition, are unable to state their identity, shall be handed over to the medical service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph.

The questioning of prisoners of war shall be carried out in a language which they

Article 18

All effects and articles of personal use, except arms, horses, military equipment and military documents shall remain in the possession of prisoners of war, likewise understand.

their metal helmets and gas masks and like articles issued for personal protection. Effects and articles used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none.

Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war.

Sums of money carried by prisoners of war may not be taken away from them except by order of an officer, and after the amount and particulars of the owner have been recorded in a special register and an itemized receipt has been given, legibly inscribed with the name, rank and unit of the person issuing the said receipt. Sums in the currency of the Detaining Power, or which are changed into such currency at the prisoner's request, shall be placed to the credit of the prisoner's account as provided in Article 64.

The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.

Such objects, likewise the sums taken away in any currency other than that of the Detaining Power and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned in their initial shape to prisoners of war at the end of their captivity.

Article 19

Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.

Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.

Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.

Article 20

The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station.

The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during evacuation, and shall establish as soon as possible a list of the prisoners of war who are evacuated.

If prisoners of war must, during evacuation, pass through transit camps, their stay in such camps shall be as brief as possible.

SECTION II **INTERNMENT OF PRISONERS OF WAR**

Chapter I **GENERAL OBSERVATIONS**

Article 21

The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

Prisoners of war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise.

Upon the outbreak of hostilities, each Party to the conflict shall notify the adverse Party of the laws and regulations allowing or forbidding its own nationals to accept liberty on parole or promise. Prisoners of war who are paroled or who have given their promise in conformity with the laws and regulations so notified, are bound on their personal honour scrupulously to fulfil, both towards the Power on which they depend and towards the Power which has captured them, the engagements of their paroles or promises. In such cases, the Power on which they depend is bound neither to require nor to accept from them any service incompatible with the parole or promise given.

Article 22

Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness. Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries.

Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate.

The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent.

Article 23

No prisoner of war may at any time be sent to or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.

Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply to them.

Detaining Powers shall give the Powers concerned, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of prisoner of war camps.

Whenever military considerations permit, prisoner of war camps shall be indicated in the day-time by the letters PW or PG, placed so as to be clearly visible from the air. The Powers concerned may, however, agree upon any other system of marking. Only prisoner of war camps shall be marked as such.

Article 24

Transit or screening camps of a permanent kind shall be fitted out under conditions similar to those described in the present Section, and the prisoners therein shall have the same treatment as in other camps.

Chapter II QUARTERS, FOOD AND CLOTHING OF PRISONERS OF WAR

Article 25

Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and

lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them.

Article 26

The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

Prisoners of war shall, as far as possible, be associated with the preparation of their meals; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession.

Adequate premises shall be provided for messing.

Collective disciplinary measures affecting food are prohibited.

Article 27

Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should, if suitable for the climate, be made available to clothe prisoners of war.

The regular replacement and repair of the above articles shall be assured by the Detaining Power. In addition, prisoners of war who work shall receive appropriate clothing, wherever the nature of the work demands.

Article 28

Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices. The profits made by camp canteens shall be used for the benefit of the prisoners; a special fund shall be created for this purpose. The prisoners' representative shall have the right to collaborate in the management of the canteen and of this fund.

When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organization, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the fund. In case of a general repatriation, such profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

Chapter III ***HYGIENE AND MEDICAL ATTENTION***

Article 29

The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics.

Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.

Article 30

Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.

Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civilian medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.

Prisoners of war shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality.

Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.

The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power.

Article 31

Medical inspections of prisoners of war shall be held at least once a month. They shall include the checking and the recording of the weight of each prisoner of war. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis.

Article 32

Prisoners of war who, though not attached to the medical service of their armed forces, are physicians, surgeons, dentists, nurses or medical orderlies, may be required by the Detaining Power to exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 49.

Chapter IV

MEDICAL PERSONNEL AND CHAPLAINS RETAINED TO ASSIST PRISONERS OF WAR

Article 33

Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious instruction to, prisoners of war.

They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions:

- (a) They shall be authorized to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. For this purpose, the Detaining Power shall place at their disposal the necessary means of transport.
- (b) The senior medical officer in each camp shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel. For this purpose, Parties to the conflict shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of societies mentioned in Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949. This senior medical officer, as well as chaplains, shall have the right to deal with the competent authorities of the camp on all questions relating to their duties. Such authorities shall afford them all necessary facilities for correspondence relating to these questions.
- (c) Although they shall be subject to the internal discipline of the camp in which they are retained, such personnel may not be compelled to carry out any work other than that concerned with their medical or religious duties.

During hostilities, the Parties to the conflict shall agree concerning the possible relief of retained personnel and shall settle the procedure to be followed.

None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view.

Chapter V

RELIGIOUS, INTELLECTUAL AND PHYSICAL ACTIVITIES

Article 34

Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities.

Adequate premises shall be provided where religious services may be held.

Article 35

Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

Article 36

Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

Article 37

When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed, at the request of the prisoners concerned, to fill this office. This appointment, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security.

Article 38

While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment.

Prisoners shall have opportunities for taking physical exercise, including sports and games, and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.

Chapter VI

DISCIPLINE

Article 39

Every prisoner of war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his government, for its application.

Prisoners of war, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own forces.

Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power; they must, however, salute the camp commander regardless of his rank.

Article 40

The wearing of badges of rank and nationality, as well as of decorations, shall be permitted.

Article 41

In every camp the text of the present Convention and its Annexes and the contents of any special agreement provided for in Article 6, shall be posted, in the prisoners' own language, at places where all may read them. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand.

Article 42

The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances.

Chapter VII ***RANK OF PRISONERS OF WAR***

Article 43

Upon the outbreak of hostilities, the Parties to the conflict shall communicate to one another the titles and ranks of all the persons mentioned in Article 4 of the present Convention, in order to ensure equality of treatment between prisoners of equivalent rank. Titles and ranks which are subsequently created shall form the subject of similar communications.

The Detaining Power shall recognize promotions in rank which have been accorded to prisoners of war and which have been duly notified by the Power on which these prisoners depend.

Article 44

Officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

In order to ensure service in officers' camps, other ranks of the same armed forces who, as far as possible, speak the same language, shall be assigned in sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.

Supervision of the mess by the officers themselves shall be facilitated in every way.

Article 45

Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

Supervision of the mess by the prisoners themselves shall be facilitated in every way.

Chapter VIII ***TRANSFER OF PRISONERS OF WAR AFTER THEIR ARRIVAL IN CAMP***

Article 46

The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially so as not to increase the difficulty of their repatriation.

The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure.

Article 47

Sick or wounded prisoners of war shall not be transferred as long as their recovery may be endangered by the journey, unless their safety imperatively demands it.

If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or if they are exposed to greater risks by remaining on the spot than by being transferred.

Article 48

In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, which shall in no case be more than twenty-five kilograms per head.

Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commander shall take, in agreement with the prisoners' representative, any measures needed to ensure the transport of the prisoners' community property and of the luggage they are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph of this Article.

The costs of transfers shall be borne by the Detaining Power.

SECTION III LABOUR OF PRISONERS OF WAR

Article 49

The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.

If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work.

Article 50

Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes:

- (a) Agriculture;
- (b) Industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and chemical industries; public works and building operations which have no military character or purpose;
- (c) Transport and handling of stores which are not military in character or purpose;
- (d) Commercial business, and arts and crafts;
- (e) Domestic service;
- (f) Public utility services having no military character or purpose.

Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78.

Article 51

Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions.

The Detaining Power, in utilizing the labour of prisoners of war, shall ensure that in areas in which prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the safety of workers, are duly applied.

Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to the provisions of Article 52, prisoners may be submitted to the normal risks run by these civilian workers.

Conditions of labour shall in no case be rendered more arduous by disciplinary measures.

Article 52

Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.

No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

The removal of mines or similar devices shall be considered as dangerous labour.

Article 53

The duration of the daily labour of prisoners of war, including the time of the journey to and fro, shall not be excessive, and must in no case exceed that permitted for civilian workers in the district, who are nationals of the Detaining Power and employed on the same work.

Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed in addition a rest of twenty-four consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of eight consecutive days, during which his working pay shall be paid him.

If methods of labour such as piece-work are employed, the length of the working period shall not be rendered excessive thereby.

Article 54

The working pay due to prisoners of war shall be fixed in accordance with the provisions of Article 62 of the present Convention.

Prisoners of war who sustain accidents in connection with work, or who contract a disease in the course, or in consequence of their work, shall receive all the care their condition may require. The Detaining Power shall furthermore deliver to such prisoners of war a medical certificate enabling them to submit their claims to the Power on which they depend, and shall send a duplicate to the Central Prisoners of War Agency provided for in Article 123.

Article 55

The fitness of prisoners of war for work shall be periodically verified by medical examinations at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required to do.

If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinion, unfit for work, be exempted therefrom.

Article 56

The organization and administration of labour detachments shall be similar to those of prisoner of war camps.

Every labour detachment shall remain under the control of and administratively part of a prisoner of war camp. The military authorities and the commander of the said camp shall be responsible, under the direction of their government, for the observance of the provisions of the present Convention in labour detachments.

The camp commander shall keep an up-to-date record of the labour detachments dependent on his camp, and shall communicate it to the delegates of

the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp.

Article 57

The treatment of prisoners of war who work for private persons, even if the latter are responsible for guarding and protecting them, shall not be inferior to that which is provided for by the present Convention. The Detaining Power, the military authorities and the commander of the camp to which such prisoners belong shall be entirely responsible for the maintenance, care, treatment, and payment of the working pay of such prisoners of war.

Such prisoners of war shall have the right to remain in communication with the prisoners' representatives in the camps on which they depend.

SECTION IV FINANCIAL RESOURCES OF PRISONERS OF WAR

Article 58

Upon the outbreak of hostilities, and pending an arrangement on this matter with the Protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess, which was properly in their possession and which has been taken or withheld from them, shall be placed to their account, together with any monies deposited by them, and shall not be converted into any other currency without their consent.

If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or by the camp administration who will charge them to the accounts of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect.

Article 59

Cash which was taken from prisoners of war, in accordance with Article 18, at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, in accordance with the provisions of Article 64 of the present Section.

The amounts, in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts.

Article 60

The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts:

Category I : Prisoners ranking below sergeant: eight Swiss francs.

Category II : Sergeants and other non-commissioned officers, or prisoners of equivalent rank: twelve Swiss francs.

- Category III : Warrant officers and commissioned officers below the rank of major or prisoners of equivalent rank: fifty Swiss francs.
- Category IV : Majors, lieutenant-colonels, colonels or prisoners of equivalent rank: sixty Swiss francs.
- Category V : General officers or prisoners of equivalent rank: seventy-five Swiss francs.

However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

Furthermore, if the amounts indicated in the first paragraph above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of a special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power:

- (a) Shall continue to credit the accounts of the prisoners with the amounts indicated in the first paragraph above;
- (b) May temporarily limit the amount made available from these advances of pay to prisoners of war for their own use, to sums which are reasonable, but which, for Category I, shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.

The reasons for any limitations will be given without delay to the Protecting Power.

Article 61

The Detaining Power shall accept for distribution as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts, at the earliest opportunity, in accordance with the provisions of Article 64. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention.

Article 62

Prisoners of war shall be paid a fair working rate of pay by the detaining authorities direct. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss franc for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend, through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

Working pay shall likewise be paid by the detaining authorities to prisoners of war permanently detailed to duties or to a skilled or semi-skilled occupation in connection with the administration, installation or maintenance of camps, and to the prisoners who are required to carry out spiritual or medical duties on behalf of their comrades.

The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining authorities shall pay these prisoners a fair working rate of pay.

Article 63

Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

Every prisoner of war shall have at his disposal the credit balance of his account as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependants shall be given priority.

In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows: the Detaining Power shall send to the aforesaid Power through the Protecting Power a notification giving all the necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount; the sums thus debited shall be placed by it to the credit of the Power on which the prisoners depend.

To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention.

Article 64

The Detaining Power shall hold an account for each prisoner of war, showing at least the following:

1. The amounts due to the prisoner or received by him as advances of pay, as working pay or derived from any other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at his request into the currency of the said Power.
2. The payments made to the prisoner in cash, or in any other similar form; the payments made on his behalf and at his request; the sums transferred under Article 63, third paragraph.

Article 65

Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the prisoners' representative acting on his behalf.

Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers at the time of visits to the camp.

When prisoners of war are transferred from one camp to another, their personal accounts will follow them. In case of transfer from one Detaining Power to another, the monies which are their property and are not in the currency of the Detaining Power will follow them. They shall be given certificates for any other monies standing to the credit of their accounts.

The Parties to the conflict concerned may agree to notify to each other at specific intervals through the Protecting Power, the amount of the accounts of the prisoners of war.

Article 66

On the termination of captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a statement, signed by an authorized officer of that Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the government upon which the prisoner of war depends, lists giving all appropriate particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power.

Any of the above provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.

The Power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity.

Article 67

Advances of pay, issued to prisoners of war in conformity with Article 60, shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power under Article 63, third paragraph, and Article 68, shall form the subject of arrangements between the Powers concerned, at the close of hostilities.

Article 68

Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 54, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

Any claim by a prisoner of war for compensation in respect of personal effects, monies or valuables impounded by the Detaining Power under Article 18 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants, shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons why such effects, monies or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Prisoners of War Agency provided for in Article 123.

SECTION V RELATIONS OF PRISONERS OF WAR WITH THE EXTERIOR

Article 69

Immediately upon prisoners of war falling into its power, the Detaining Power shall inform them and the Powers on which they depend, through the Protecting Power, of the measures taken to carry out the provisions of the present Section. They shall likewise inform the parties concerned of any subsequent modifications of such measures.

Article 70

Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card similar, if possible, to the model annexed to the present Convention, informing his relatives of his capture, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner.

Article 71

Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by

the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.

As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages.

Sacks containing prisoner of war mail must be securely sealed and labelled so as clearly to indicate their contents, and must be addressed to offices of destination.

Article 72

Prisoners of war shall be allowed to receive by post or by any other means individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies and articles of a religious, educational or recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities.

Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

The only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or by the International Committee of the Red Cross or any other organization giving assistance to the prisoners, in respect of their own shipments only, on account of exceptional strain on transport or communications.

The conditions for the sending of individual parcels and collective relief shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the prisoners of relief supplies. Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule, be sent in collective parcels.

Article 73

In the absence of special agreements between the Powers concerned on the conditions for the receipt and distribution of collective relief shipments, the rules and regulations concerning collective shipments, which are annexed to the present Convention, shall be applied.

The special agreements referred to above shall in no case restrict the right of prisoners' representatives to take possession of collective relief shipments intended for prisoners of war, to proceed to their distribution or to dispose of them in the interest of the prisoners.

Nor shall such agreements restrict the right of representatives of the Protecting Power, the International Committee of the Red Cross or any other organization giving assistance to prisoners of war and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

Article 74

All relief shipments for prisoners of war shall be exempt from import, customs and other dues.

Correspondence, relief shipments and authorized remittances of money addressed to prisoners of war or despatched by them through the post office, either direct or through the Information Bureaux provided for in Article 122 and the Central Prisoners of War Agency provided for in Article 123, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

If relief shipments intended for prisoners of war cannot be sent through the post office by reason of weight or for any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories.

In the absence of special agreements between the Parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the rates charged for telegrams sent by prisoners of war, or addressed to them.

Article 75

Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the shipments referred to in Articles 70, 71, 72 and 77, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway wagons, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

- (a) Correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 123 and the National Bureaux referred to in Article 122;
- (b) Correspondence and reports relating to prisoners of war which the Protecting Powers, the International Committee of the Red Cross or any other body assisting the prisoners, exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport, if it should so prefer, nor preclude the

granting of safe-conducts, under mutually agreed conditions, to such means of transport.

In the absence of special agreements, the costs occasioned by the use of such means of transport shall be borne proportionally by the Parties to the conflict whose nationals are benefited thereby.

Article 76

The censoring of correspondence addressed to prisoners of war or despatched by them shall be done as quickly as possible. Mail shall be censored only by the despatching State and the receiving State, and once only by each.

The examination of consignments intended for prisoners of war shall not be carried out under conditions that will expose the goods contained in them to deterioration; except in the case of written or printed matter, it shall be done in the presence of the addressee, or of a fellow-prisoner duly delegated by him. The delivery to prisoners of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by Parties to the conflict, either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

Article 77

The Detaining Powers shall provide all facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency provided for in Article 123, of instruments, papers or documents intended for prisoners of war or despatched by them, especially powers of attorney and wills.

In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war; in particular, they shall allow them to consult a lawyer and shall take what measures are necessary for the authentication of their signatures.

SECTION VI STATE ISLAMIC UNIVERSITY RELATIONS BETWEEN PRISONERS OF WAR AND THE AUTHORITIES

Chapter I

COMPLAINTS OF PRISONERS OF WAR RESPECTING THE CONDITIONS OF CAPTIVITY

Article 78

Prisoners of war shall have the right to make known to the military authorities in whose power they are, their requests regarding the conditions of captivity to which they are subjected.

They shall also have the unrestricted right to apply to the representatives of the Protecting Powers either through their prisoners' representative or, if they consider it necessary, direct, in order to draw their attention to any points on which they may have complaints to make regarding their conditions of captivity.

These requests and complaints shall not be limited nor considered to be a part of the correspondence quota referred to in Article 71. They must be transmitted immediately. Even if they are recognized to be unfounded, they may not give rise to any punishment.

Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the Protecting Powers.

Chapter II **PRISONER OF WAR REPRESENTATIVES**

Article 79

In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. These prisoners' representatives shall be eligible for re-election.

In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognized as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps, his assistants shall be chosen from among the prisoners of war who are not officers and shall be elected by them.

Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article. In such a case the assistants to the prisoners' representatives shall be chosen from among those prisoners of war who are not officers.

Every representative elected must be approved by the Detaining Power before he has the right to commence his duties. Where the Detaining Power refuses to approve a prisoner of war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal.

In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoners' representative, in accordance with the foregoing paragraphs.

Article 80

Prisoners' representatives shall further the physical, spiritual and intellectual well-being of prisoners of war.

In particular, where the prisoners decide to organize amongst themselves a system of mutual assistance, this organization will be within the province of the

prisoners' representative, in addition to the special duties entrusted to him by other provisions of the present Convention.

Prisoners' representatives shall not be held responsible, simply by reason of their duties, for any offences committed by prisoners of war.

Article 81

Prisoners' representatives shall not be required to perform any other work, if the accomplishment of their duties is thereby made more difficult.

Prisoners' representatives may appoint from amongst the prisoners such assistants as they may require. All material facilities shall be granted them, particularly a certain freedom of movement necessary for the accomplishment of their duties (inspection of labour detachments, receipt of supplies, etc.).

Prisoners' representatives shall be permitted to visit premises where prisoners of war are detained, and every prisoner of war shall have the right to consult freely his prisoners' representative.

All facilities shall likewise be accorded to the prisoners' representatives for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, the Mixed Medical Commissions and with the bodies which give assistance to prisoners of war. Prisoners' representatives of labour detachments shall enjoy the same facilities for communication with the prisoners' representatives of the principal camp. Such communications shall not be restricted, nor considered as forming a part of the quota mentioned in Article 71.

Prisoners' representatives who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

In case of dismissal, the reasons therefor shall be communicated to the Protecting Power.

Chapter III

PENAL AND DISCIPLINARY SANCTIONS

I. General provisions

Article 82

A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed.

If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall entail disciplinary punishments only.

Article 83

In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt, wherever possible, disciplinary rather than judicial measures.

Article 84

A prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war.

In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105.

Article 85

Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.

Article 86

No prisoner of war may be punished more than once for the same act, or on the same charge.

Article 87

Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.

When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.

Collective punishment for individual acts, corporal punishments, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden.

No prisoner of war may be deprived of his rank by the Detaining Power, or prevented from wearing his badges.

Article 88

Officers, non-commissioned officers and men who are prisoners of war undergoing a disciplinary or judicial punishment, shall not be subjected to more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank.

A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence.

In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence.

Prisoners of war who have served disciplinary or judicial sentences may not be treated differently from other prisoners of war.

II. Disciplinary sanctions

Article 89

The disciplinary punishments applicable to prisoners of war are the following:

1. A fine which shall not exceed 50 per cent of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 60 and 62 during a period of not more than thirty days.
2. Discontinuance of privileges granted over and above the treatment provided for by the present Convention.
3. Fatigue duties not exceeding two hours daily.
4. Confinement.

The punishment referred to under (3) shall not be applied to officers.

In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war.

Article 90

The duration of any single punishment shall in no case exceed thirty days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.

The maximum of thirty days provided above may not be exceeded, even if the prisoner of war is answerable for several acts at the same time when he is awarded punishment, whether such acts are related or not.

The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

When a prisoner of war is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

Article 91

The escape of a prisoner of war shall be deemed to have succeeded when:

1. He has joined the armed forces of the Power on which he depends, or those of an allied Power;
2. He has left the territory under the control of the Detaining Power, or of an ally of the said Power;
3. He has joined a ship flying the flag of the Power on which he depends, or of an allied Power, in the territorial waters of the Detaining Power, the said ship not being under the control of the last-named Power.

Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous escape.

Article 92

A prisoner of war who attempts to escape and is recaptured before having made good his escape in the sense of Article 91 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

A prisoner of war who is recaptured shall be handed over without delay to the competent military authority.

Article 88, fourth paragraph, notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subjected to special surveillance. Such surveillance must not affect the state of their health, must be undergone in a prisoner of war camp, and must not entail the suppression of any of the safeguards granted them by the present Convention.

Article 93

Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.

In conformity with the principle stated in Article 83, offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, the wearing of civilian clothing, shall occasion disciplinary punishment only.

Prisoners of war who aid or abet an escape or an attempt to escape shall be liable on this count to disciplinary punishment only.

Article 94

If an escaped prisoner of war is recaptured, the Power on which he depends shall be notified thereof in the manner defined in Article 122, provided notification of his escape has been made.

Article 95

A prisoner of war accused of an offence against discipline shall not be kept in confinement pending the hearing unless a member of the armed forces of the Detaining Power would be so kept if he were accused of a similar offence, or if it is essential in the interests of camp order and discipline.

Any period spent by a prisoner of war in confinement awaiting the disposal of an offence against discipline shall be reduced to an absolute minimum and shall not exceed fourteen days.

The provisions of Articles 97 and 98 of this Chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline.

Article 96

Acts which constitute offences against discipline shall be investigated immediately.

Without prejudice to the competence of courts and superior military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers.

In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war.

Before any disciplinary award is pronounced, the accused shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the prisoners' representative.

A record of disciplinary punishments shall be maintained by the camp commander and shall be open to inspection by representatives of the Protecting Power.

Article 97

Prisoners of war shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

All premises in which disciplinary punishments are undergone shall conform to the sanitary requirements set forth in Article 25. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness, in conformity with Article 29.

Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men.

Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women.

Article 98

A prisoner of war undergoing confinement as a disciplinary punishment, shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined. In no case may he be deprived of the benefits of the provisions of Articles 78 and 126.

A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.

Prisoners of war awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of the punishment; they shall meanwhile be entrusted to the prisoners' representative, who will hand over to the infirmary the perishable goods contained in such parcels.

III. Judicial proceedings

Article 99

No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed.

No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.

No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of a qualified advocate or counsel.

Article 100

Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power.

Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power upon which the prisoners of war depend.

The death sentence cannot be pronounced on a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

Article 101

If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the

date when the Protecting Power receives, at an indicated address, the detailed communication provided for in Article 107.

Article 102

A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed.

Article 103

Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.

Any period spent by a prisoner of war in confinement awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any penalty.

The provisions of Articles 97 and 98 of this Chapter shall apply to a prisoner of war whilst in confinement awaiting trial.

Article 104

In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least three weeks before the opening of the trial. This period of three weeks shall run as from the day on which such notification reaches the Protecting Power at the address previously indicated by the latter to the Detaining Power.

The said notification shall contain the following information:

1. Surname and first names of the prisoner of war, his rank, his army, regimental, personal or serial number, his date of birth, and his profession or trade, if any;
2. Place of internment or confinement;
3. Specification of the charge or charges on which the prisoner of war is to be arraigned, giving the legal provisions applicable;
4. Designation of the court which will try the case, likewise the date and place fixed for the opening of the trial.

The same communication shall be made by the Detaining Power to the prisoners' representative.

If no evidence is submitted, at the opening of a trial, that the notification referred to above was received by the Protecting Power, by the prisoner of war and by the prisoners' representative concerned, at least three weeks before the opening of the trial, then the latter cannot take place and must be adjourned.

Article 105

The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of these rights by the Detaining Power in due time before the trial.

Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by the prisoner of war or the Protecting Power, the Detaining Power shall appoint a competent advocate or counsel to conduct the defence.

The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

Particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.

The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held *in camera* in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly.

Article 106

Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

Article 107

Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also indicate whether he has the right of appeal with a view to the quashing of the sentence or the reopening of the trial. This communication shall likewise be sent to the prisoners' representative concerned. It shall also be sent to the accused prisoner of war in a language he understands, if the sentence was not pronounced in his presence. The Detaining Power shall also

immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive his right of appeal.

Furthermore, if a prisoner of war is finally convicted or if a sentence pronounced on a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing:

1. The precise wording of the finding and sentence;
2. A summarized report of any preliminary investigation and of the trial, emphasizing in particular the elements of the prosecution and the defence;
3. Notification, where applicable, of the establishment where the sentence will be served.

The communications provided for in the foregoing subparagraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power.

Article 108

Sentences pronounced on prisoners of war after a conviction has become duly enforceable, shall be served in the same establishments and under the same conditions as in the case of members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women.

In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 78 and 126 of the present Convention. Furthermore, they shall be entitled to receive and despatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care required by their state of health, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in accordance with the provisions of Article 87, third paragraph.

PART IV TERMINATION OF CAPTIVITY

SECTION I DIRECT REPATRIATION AND ACCOMMODATION IN NEUTRAL COUNTRIES

Article 109

Subject to the provisions of the third paragraph of this Article, Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel, in accordance with the first paragraph of the following Article.

Throughout the duration of hostilities, Parties to the conflict shall endeavour, with the cooperation of the neutral Powers concerned, to make arrangements for the accommodation in neutral countries of the sick and wounded prisoners of war referred to in the second paragraph of the following Article. They may, in addition, conclude agreements with a view to the direct repatriation or internment in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity.

No sick or injured prisoner of war who is eligible for repatriation under the first paragraph of this Article, may be repatriated against his will during hostilities.

Article 110

The following shall be repatriated direct:

1. Incurably wounded and sick whose mental or physical fitness seems to have been gravely diminished.
2. Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.
3. Wounded and sick who have recovered, but whose mental or physical fitness seems to have been gravely and permanently diminished.

The following may be accommodated in a neutral country:

1. Wounded and sick whose recovery may be expected within one year of the date of the wound or the beginning of the illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.
2. Prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.

The conditions which prisoners of war accommodated in a neutral country must fulfil in order to permit their repatriation shall be fixed, as shall likewise their status, by agreement between the Powers concerned. In general, prisoners of war who have been accommodated in a neutral country, and who belong to the following categories, should be repatriated:

1. Those whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation;
2. Those whose mental or physical powers remain, even after treatment, considerably impaired.

If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the Model Agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war and in the Regulations concerning Mixed Medical Commissions annexed to the present Convention.

Article 111

The Detaining Power, the Power on which the prisoners of war depend, and a neutral Power agreed upon by these two Powers, shall endeavour to conclude agreements which will enable prisoners of war to be interned in the territory of the said neutral Power until the close of hostilities.

Article 112

Upon the outbreak of hostilities, Mixed Medical Commissions shall be appointed to examine sick and wounded prisoners of war, and to make all appropriate decisions regarding them. The appointment, duties and functioning of these Commissions shall be in conformity with the provisions of the Regulations annexed to the present Convention.

However, prisoners of war who, in the opinion of the medical authorities of the Detaining Power, are manifestly seriously injured or seriously sick, may be repatriated without having to be examined by a Mixed Medical Commission.

Article 113

Besides those who are designated by the medical authorities of the Detaining Power, wounded or sick prisoners of war belonging to the categories listed below shall be entitled to present themselves for examination by the Mixed Medical Commissions provided for in the foregoing Article:

1. Wounded and sick proposed by a physician or surgeon who is of the same nationality, or a national of a Party to the conflict allied with the Power on which the said prisoners depend, and who exercises his functions in the camp.
2. Wounded and sick proposed by their prisoners' representative.
3. Wounded and sick proposed by the Power on which they depend, or by an organization duly recognized by the said Power and giving assistance to the prisoners.

Prisoners of war who do not belong to one of the three foregoing categories may nevertheless present themselves for examination by Mixed Medical Commissions, but shall be examined only after those belonging to the said categories.

The physician or surgeon of the same nationality as the prisoners who present themselves for examination by the Mixed Medical Commission, likewise the prisoners' representative of the said prisoners, shall have permission to be present at the examination.

Article 114

Prisoners of war who meet with accidents shall, unless the injury is self-inflicted, have the benefit of the provisions of this Convention as regards repatriation or accommodation in a neutral country.

Article 115

No prisoner of war on whom a disciplinary punishment has been imposed and who is eligible for repatriation or for accommodation in a neutral country, may be kept back on the plea that he has not undergone his punishment.

Prisoners of war detained in connection with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of the punishment, if the Detaining Power consents.

Parties to the conflict shall communicate to each other the names of those who will be detained until the end of the proceedings or the completion of the punishment.

Article 116

The costs of repatriating prisoners of war or of transporting them to a neutral country shall be borne, from the frontiers of the Detaining Power, by the Power on which the said prisoners depend.

Article 117

No repatriated person may be employed on active military service.

SECTION II

RELEASE AND REPATRIATION OF PRISONERS OF WAR AT THE CLOSE OF HOSTILITIES

Article 118

Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

In either case, the measures adopted shall be brought to the knowledge of the prisoners of war.

The costs of repatriation of prisoners of war shall in all cases be equitably apportioned between the Detaining Power and the Power on which the prisoners depend. This apportionment shall be carried out on the following basis:

- (a) If the two Powers are contiguous, the Power on which the prisoners of war depend shall bear the costs of repatriation from the frontiers of the Detaining Power.
- (b) If the two Powers are not contiguous, the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as its frontier or its port of embarkation nearest to the territory of the Power on which the prisoners of war depend. The Parties concerned shall agree between themselves as to the equitable apportionment of the remaining costs of the

repatriation. The conclusion of this agreement shall in no circumstances justify any delay in the repatriation of the prisoners of war.

Article 119

Repatriation shall be effected in conditions similar to those laid down in Articles 46 to 48 inclusive of the present Convention for the transfer of prisoners of war, having regard to the provisions of Article 118 and to those of the following paragraphs.

On repatriation, any articles of value impounded from prisoners of war under Article 18, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be despatched to the Information Bureau set up under Article 122.

Prisoners of war shall be allowed to take with them their personal effects, and any correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of repatriation so require, to what each prisoner can reasonably carry. Each prisoner shall in all cases be authorized to carry at least twenty-five kilograms.

The other personal effects of the repatriated prisoner shall be left in the charge of the Detaining Power which shall have them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power on which the prisoner depends.

Prisoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceedings, and, if necessary, until the completion of the punishment. The same shall apply to prisoners of war already convicted for an indictable offence.

Parties to the conflict shall communicate to each other the names of any prisoners of war who are detained until the end of the proceedings or until punishment has been completed.

By agreement between the Parties to the conflict, commissions shall be established for the purpose of searching for dispersed prisoners of war and of assuring their repatriation with the least possible delay.

SECTION III

DEATH OF PRISONERS OF WAR

Article 120

Wills of prisoners of war shall be drawn up so as to satisfy the conditions of validity required by the legislation of their country of origin, which will take steps to inform the Detaining Power of its requirements in this respect. At the request of the prisoner of war and, in all cases, after death, the will shall be transmitted without delay to the Protecting Power; a certified copy shall be sent to the Central Agency.

Death certificates in the form annexed to the present Convention, or lists certified by a responsible officer, of all persons who die as prisoners of war shall be forwarded as rapidly as possible to the Prisoner of War Information Bureau established in accordance with Article 122. The death certificates or certified lists shall show particulars of identity as set out in the third paragraph of Article 17, and also the date and place of death; the cause of death, the date and place of burial and all particulars necessary to identify the graves.

The burial or cremation of a prisoner of war shall be preceded by a medical examination of the body with a view to confirming death and enabling a report to be made and, where necessary, establishing identity.

The detaining authorities shall ensure that prisoners of war who have died in captivity are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who depended on the same Power shall be interred in the same place.

Deceased prisoners of war shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased.

In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and for records of any subsequent moves of the bodies shall rest on the Power controlling the territory, if a Party to the present Convention. These provisions shall also apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

STATE ISLAMIC UNIVERSITY ARTICLE 121

Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. Statements shall be taken from witnesses, especially from those who are prisoners of war, and a report including such statements shall be forwarded to the Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.

PART V
**INFORMATION BUREAUX AND RELIEF SOCIETIES FOR PRISONERS
OF WAR**

Article 122

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. Neutral or non-belligerent Powers who may have received within their territory persons belonging to one of the categories referred to in Article 4, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is provided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall be at liberty to employ prisoners of war in such a Bureau under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.

Within the shortest possible period, each of the Parties to the conflict shall give its Bureau the information referred to in the fourth, fifth and sixth paragraphs of this Article regarding any enemy person belonging to one of the categories referred to in Article 4, who has fallen into its power. Neutral or non-belligerent Powers shall take the same action with regard to persons belonging to such categories whom they have received within their territory.

The Bureau shall immediately forward such information by the most rapid means to the Powers concerned, through the intermediary of the Protecting Powers and likewise of the Central Agency provided for in Article 123.

This information shall make it possible quickly to advise the next of kin concerned. Subject to the provisions of Article 17, the information shall include, in so far as available to the Information Bureau, in respect of each prisoner of war, his surname, first names, rank, army, regimental, personal or serial number, place and full date of birth, indication of the Power on which he depends, first name of the father and maiden name of the mother, name and address of the person to be informed and the address to which correspondence for the prisoner may be sent.

The Information Bureau shall receive from the various departments concerned information regarding transfers, releases, repatriations, escapes, admissions to hospital, and deaths, and shall transmit such information in the manner described in the third paragraph above.

Likewise, information regarding the state of health of prisoners of war who are seriously ill or seriously wounded shall be supplied regularly, every week if possible.

The Information Bureau shall also be responsible for replying to all enquiries sent to it concerning prisoners of war, including those who have died in captivity; it will make any enquiries necessary to obtain the information which is asked for if this is not in its possession.

All written communications made by the Bureau shall be authenticated by a signature or a seal.

The Information Bureau shall furthermore be charged with collecting all personal valuables, including sums in currencies other than that of the Detaining

Power and documents of importance to the next of kin, left by prisoners of war who have been repatriated or released, or who have escaped or died, and shall forward the said valuables to the Powers concerned. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full particulars of the identity of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Other personal effects of such prisoners of war shall be transmitted under arrangements agreed upon between the Parties to the conflict concerned.

Article 123

A Central Prisoners of War Information Agency shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency.

The function of the Agency shall be to collect all the information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of war or to the Power on which they depend. It shall receive from the Parties to the conflict all facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross, or of the relief Societies provided for in Article 125.

Article 124

The national Information Bureaux and the Central Information Agency shall enjoy free postage for mail, likewise all the exemptions provided for in Article 74, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.

Article 125

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organization assisting prisoners of war, shall receive from the said Powers, for themselves and their duly accredited agents, all necessary facilities for visiting the prisoners, distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes, and for assisting them in organizing their leisure time within the camps. Such societies or organizations may be constituted in the territory of the Detaining Power or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the effective operation of adequate relief to all prisoners of war.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

As soon as relief supplies or material intended for the above-mentioned purposes are handed over to prisoners of war, or very shortly afterwards, receipts for each consignment, signed by the prisoners' representative, shall be forwarded to the relief society or organization making the shipment. At the same time, receipts for these consignments shall be supplied by the administrative authorities responsible for guarding the prisoners.

PART VI
EXECUTION OF THE CONVENTION

SECTION I
GENERAL PROVISIONS

Article 126

Representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.

Representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure.

The Detaining Power and the Power on which the said prisoners of war depend may agree, if necessary, that compatriots of these prisoners of war be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited.

Article 127

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.

Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions.

Article 128

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Article 129

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention.

Article 130

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

Article 131

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Article 132

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

SECTION II FINAL PROVISIONS

Article 133

The present Convention is established in English and in French. Both texts are equally authentic. The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Article 134

The present Convention replaces the Convention of 27 July 1929, in relations between the High Contracting Parties.

Article 135

In the relations between the Powers which are bound by The Hague Convention respecting the Laws and Customs of War on Land, whether that of July 29, 1899, or that of October 18, 1907, and which are parties to the present Convention, this last Convention shall be complementary to Chapter II of the Regulations annexed to the above-mentioned Conventions of The Hague.

Article 136

The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Convention of July 27, 1929.

Article 137

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Article 138

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

Article 139

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

Article 140

Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Article 141

The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

Article 142

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with the release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

Article 143

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

IN WITNESS WHEREOF the undersigned, having deposited their respective full powers, have signed the present Convention.

DONE at Geneva this twelfth day of August 1949, in the English and French languages. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.



Lampiran V: Konvensi Den Haag.

Masalah tawanan perang dalam Konvensi ini hanya terdapat di dalam Hukum Kebiasaan Perang di Darat. Oleh karena itu, pada lampiran ini tidak disebutkan Konvensi Den Haag secara keseluruhan, melainkan hanya pasal-pasal yang terkait tentang masalah tawanan perang.

Pasal-pasal tersebut berjumlah 16 pasal, yaitu dari pasal 4 sampai 20, sebagaimana di berikut ini.⁷

Laws and Customs of War on Land (Hague II); July 29, 1899 Prisoners of War

Article 4

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them. They must be humanely treated.

All their personal belongings, except arms, horses, and military papers remain their property.

Article 5

Prisoners of war may be interned in a town, fortress, camp, or any other locality, and bound not to go beyond certain fixed limits; but they can only be confined as an indispensable measure of safety.

Article 6

The State may utilize the labor of prisoners of war according to their rank and aptitude. Their tasks shall not be excessive, and shall have nothing to do with the military operations.

Prisoners may be authorized to work for the Public Service, for private persons, or on their own account.

Work done for the State shall be paid for according to the tariffs in force for soldiers of the national army employed on similar tasks.

When the work is for other branches of the Public Service or for private persons, the conditions shall be settled in agreement with the military authorities. The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

⁷ "The Hague," <http://google/data/The%20Hague.htm>, akses Jum'at 7 Mei 2004.

Article 7

The Government into whose hands prisoners of war have fallen is bound to maintain them.

Failing a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

Article 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State into whose hands they have fallen.

Any act of insubordination warrants the adoption, as regards them, of such measures of severity as may be necessary.

Escaped prisoners, recaptured before they have succeeded in rejoining their army, or before quitting the territory occupied by the army that captured them, are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping are again taken prisoners, are not liable to any punishment for the previous flight.

Article 9

Every prisoner of war, if questioned, is bound to declare his true name and rank, and if he disregards this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

Article 10

Prisoners of war may be set at liberty on parole if the laws of their country authorize it, and, in such a case, they are bound, on their personal honor, scrupulously to fulfill, both as regards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases, their own Government shall not require of nor accept from them any service incompatible with the parole given.

Article 11

A prisoner of war can not be forced to accept his liberty on parole; similarly the hostile Government is not obliged to assent to the prisoner's request to be set at liberty on parole.

Article 12

Any prisoner of war, who is liberated on parole and recaptured, bearing arms against the Government to whom he had pledged his honor, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the Courts.

Article 13

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers, contractors, who fall into the enemy's hands, and whom the latter think fit to detain, have a right to be treated as

prisoners of war, provided they can produce a certificate from the military authorities of the army they were accompanying.

Article 14

A Bureau for information relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States, and, when necessary, in the neutral countries on whose territory belligerents have been received. This Bureau is intended to answer all inquiries about prisoners of war, and is furnished by the various services concerned with all the necessary information to enable it to keep an individual return for each prisoner of war. It is kept informed of interments and changes, as well as of admissions into hospital and deaths.

It is also the duty of the Information Bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the battlefields or left by prisoners who have died in hospital or ambulance, and to transmit them to those interested.

Article 15

Relief Societies for prisoners of war, which are regularly constituted in accordance with the law of the country with the object of serving as the intermediary for charity, shall receive from the belligerents for themselves and their duly accredited agents every facility, within the bounds of military requirements and Administrative Regulations, for the effective accomplishment of their humane task. Delegates of these Societies may be admitted to the places of interment for the distribution of relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an engagement in writing to comply with all their Regulations for order and police.

Article 16

The Information Bureau shall have the privilege of free postage. Letters, money orders, and valuables, as well as postal parcels destined for the prisoners of war or dispatched by them, shall be free of all postal duties both in the countries of origin and destination, as well as in those they pass through.

Gifts and relief in kind for prisoners of war shall be admitted free of all duties of entry and others, as well as of payments for carriage by the Government railways.

Article 17

Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be repaid by their Government.

Article 18

Prisoners of war shall enjoy every latitude in the exercise of their religion, including attendance at their own church services, provided only they comply with the regulations for order and police issued by the military authorities.

Article 19

The wills of prisoners of war are received or drawn up on the same conditions as for soldiers of the National Army.

The same rules shall be observed regarding death certificates, as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

Article 20

After the conclusion of peace, the repatriation of prisoners of war shall take place as speedily as possible.



Lampiran VI: Curiculum Vitae

CURICULUM VITAE

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Ayah : Drs. Mahfuz Siddiq

Ibu : Zartamah

Pekerjaan : Keduanya pensiunan PNS

Riwayat Pendidikan

1. SDN 93 Palembang, lulus tahun 1989.
2. SMPN 17 Palembang, lulus tahun 1992.
3. MA di Ponpes. Raudhatul Ulum Sakatiga OKI Sum-Sel, di sini hanya sampai kelas 2 MA, yaitu dari tahun 1992-1994, kemudian pindah ke PM. Darussalam Gontor JATIM.
4. PM. Darussalam Gontor JATIM, dari tahun 1994 hingga lulus tahun 1998.
5. UIN Sunan Kalijaga Jogjakarta, Fakultas Syari'ah jurusan Perbandingan Mazhab dan Hukum, masuk tahun 1999.