

CHAPTER I

INTRODUCTION

A. Background

“The final bloody moments of Muammar Gaddafi's life were still shrouded in confusion today as conflicting reports emerged about who that fired the shot that actually killed him” is the sentence on daily Mail Online with title “Who shot Gaddafi? New video shows blood pouring from dictator immediately before death but mystery surrounds coup de grace” related with the conflict of Libya.¹ The Libyan civil war (also referred to as the Libyan revolution² and the Libyan uprising³), was an armed conflict in the North African state of Libya, fought between forces loyal to Colonel Muammar Gaddafi and those seeking to oust his government.⁴

The war was preceded by protests in Benghazi beginning on Tuesday, 15 February 2011, which led to clashes with security forces that fired on the crowd. The protests escalated into a rebellion that spread

¹http://www.dailymail.co.uk/news/who_shot_Gaddafi?New_video_shows_blood_pouring_from_dictator_immediately_before_death_but_mystery_surrounds_coup_de_grace.html accessed on April 11, 2012 at 03.14 pm.

²http://www.pbs.org/newshour/multimedia/libya_9months/index.html accessed on April 11, 2012 at 03.26 pm.

³<http://www.reuters.com/article/2011/08/22/us-libya-events-idUSTRE77K2QH20110822> accessed on April 11, 2012 at 03.47 pm.

⁴<http://www.guardian.co.uk/commentisfree/2011/mar/29/vision-democratic-libya-interim-national-council> accessed on 11 April, 2012 at 04.02 pm.

across the country, with the forces opposing Gaddafi establishing an interim governing body, the National Transitional Council.⁵

As the conflict in Libya appears to be drawing to a close, more allegations are surfacing that war crimes have been committed, and fears have been expressed that reprisals may occur. The allegations made against the Gaddafi forces of torture and willful killing are grave and alleges that Libyan dissident forces have unjustifiably damaged property, beaten individuals, and looted hospitals, homes and shops, is also disconcerting.⁶

In August, rebel forces began a coastal offensive, taking back territory lost weeks before and ultimately capturing the capital city of Tripoli, while Gaddafi evaded capture and loyalists engaged in a rearguard campaign. On 16 September 2011, the National Transitional Council was recognized by the United Nations as the legal representative of Libya, replacing the Gaddafi government. Muammar Gaddafi remained at large until 20 October 2011, when he was captured and killed attempting to escape from Sirte. The National Transitional Council "declared the liberation of Libya" and the official end of the war on 23 October 2011.⁷

⁵ <http://www.independent.co.uk/news/world/africa/amnesty-questions-claim-that-gaddafi-ordered-rape-as-weapon-of-war-2302037.html> accessed on April 11, 2012 at 04:22 pm.

⁶ Iain Scobbie, Operationalising the Law of Armed Conflict for Dissident Forces in Libya. *European Journal of International Law*. Taken from www.ejiltalk.org, accessed on March 15, 2012 at 10.16 am.

The conflict ended by two important events for Libya and the peoples. The event is declaration from National Transitional Council which was recognized as the representative of Libya by United Nations and died of former Libya leader, Muammar Gaddafi. Related with how Gaddafi died based on the *USA TODAY* there is much version about it.⁸

War; like what happened in Libya, is an abnormal situation that similar with normal situation which need rules to govern how to conduct it. In the perspective of laws, war governed by International Law that also have branches under it that related to issue of war. The specific law chapter under International Law that governs war is International Humanitarian Law. On the development, International Humanitarian Law has a big correlation with other branch of International Law called International Human Right Law; even both have a mutualism and overlap in the enforcement.⁹

International humanitarian law is a set of rule which protect person who do not take a part in the hostilities (civilians, medical personnel, aid workers) and those who can no longer fight (wounded, sick, shipwrecked

⁸ Michael Winter, 2011, *Latest: How Gadhafi died still unclear*, USA TODAY, taken from <http://usatoday.com> accessed at April 1, 2012 at 12.33 pm.

⁹ Haryomataram, 1997, *Hukum Humaniter: Hubungan dan Keterkaitannya dengan Hukum Hak*

troops, and prisoners of wars). Its primary purpose is to limit and prevent human suffering in times or armed conflict.¹⁰

On other hand, international human rights which generally divided into three main categories (1) civil and political rights; (2) economic social and cultural rights; and (3) group or people's rights;¹¹ exists to protect the right of human being in any situation, anytime, and anywhere including-war. Both international humanitarian and international human rights law strive to protect the lives, person and dignity of human beings although from different angle,¹² including the conflict in Libya and the died of the former Libya leader, Muammar Gaddafi. Under International Humanitarian Law there is special provision that protect status of Muammar Gaddafi during on arrestment, namely Prisoner of War. The moment before past away, Gaddafi categorized as prisoner of war which have right to fulfilled.

Based on International Human Rights Law concerning to the protection of human being also provides by article 3 and 5 of Universal Declaration of Human Rights, as follow:¹³

¹⁰ Peter Malanczuk, 1997, *Akehurst's Modern Introduction to International Law*, Routledge: London, p. 443.

¹¹ J Shestack, The Jurisprudence of Human Rights in T Meron (ed), 1984, *Human Rights in International Law: Legal and Policy Issues*, Oxford, Clarendon Press, p. 70-71.

¹² Mohammad Naqib Ishan Jan, 2008, *Principles of Public International Law: A Modern Approach*, International Islamic University Malaysia Press, p. 288.

Article 3

Everyone has right to life, liberty and security person.

Article 5

No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

The Universal Declaration of Human Rights that explicitly protecting the life and the dignity of human being. In Libya civil war, Gaddafi is object of present declaration, means he have rights to be protected like explained.

Compare to similar case, Gaddafi's faith is very different. Saddam Hussein, fifth president of Iraq on 14 December 2003, had indeed been captured.¹⁴ Saddam catching up alive even bring to the front of the Tribunal and imposed by death penalty. Although finally he died, but in perspective of law it is a legal died different with Gaddafi. These be strong background to support and begin the research of The Treatment of Prisoners of War Under International Human Rights and Humanitarian Law; Gaddafi's Custody Case Study.

B. Problem Formulation

How the International Human Rights Law and International Humanitarian Law on Treatment of Prisoner of Wars Perspective response the improprieties in the Gaddafi's custody?

C. Research Objective

The aim of the research is to understand deeply about how the treatment and what are the rights of prisoners of war based on related convention under international human rights and international humanitarian law. On other hand, by arrestment of Gaddafi case, the researcher tries to make a correlation between the convention and the implementation thought this case.

D. Research Benefits

This research will give benefit as follow:

1. Theoretically.

The research will deeply learn about what specific law under international human rights and international humanitarian law, which rule the treatment of prisoner of war by related convention. Theoretically, the research will made clear and easier to be understood whether or not the law under international human rights and humanitarian laws govern and protect the human being, especially in the war situation; for prisoner of war.

2. Practically.

The result of the research increase the urgency and the understanding about how people treated well, in this case is prisoner of war. Also the research will spread out the idea and develop the knowledge of the people on the international law issue, especially for international human rights and international humanitarian law.

E. Outline of Writing

In this undergraduate thesis author will elaborate the topic systematically by divided into five chapters. Chapter one; introduction will elaborate the general matter, such as background, problem formulation, research objective, research benefits, and systematic accountability of writing. The background contains the history of the topic which is the Libya conflict until Gaddafi capture. The problem which author focus on is the capture of Gaddafi that will be analyzed with International Humanitarian Law and International Human Rights Law.

Chapter two is literature review, which author will elaborate each variable on this undergraduate thesis. The Definition of International Human Rights Law and International Humanitarian Law, more specifically the issue of prisoner of war; treatment and relation with Gaddafi capture. The next chapter; chapter three, author will show the research method

method of collecting data and method of data analysis are containing on this chapter.

Chapter four is result and discussion. The author will show the result of the research and analysis the Gaddafi with the normative approach. The focus of research is on the death of Gaddafi, which author believes that on his death there are improprieties. What improprieties and how the International Humanitarian Law and International Human rights Law by conventions and/or additional protocols govern will be elaborate on this chapter. The last chapter; chapter five contain the suggestion and