

**LEGAL ANALYSIS OF ARMED SEPARATIST CONFLICTS CARRIED OUT BY
THE FREE PAPUA ORGANIZATION FROM THE PERSPECTIVE OF LAW
NUMBER 5 OF 2018 CONCERNING THE ERADICATION OF CRIMES OF
TERRORISM**

By

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ABSTRACT

Armed Separatist Group (KSB). The Free Papua Organization (OPM) considers this group to be fighters trying to separate themselves from Indonesia. A series of attacks by the KKB/KSB/OPM against security forces in Papua prompted the government to designate such acts of violence as a criminal act of terrorism. The phenomenon of armed separatist conflict carried out by the Free Papua Organization in the perspective of Law Number 5 of 2018 concerning the Eradication of Terrorism Crimes is that OPM, which is a separatist movement, often commits violent acts that are categorized as terrorism, especially if the act meets the elements regulated in the Law. The designation of OPM as a terrorist organization has significant legal implications, including the application of criminal sanctions for terrorism for its members.

Keywords: *Conflict, Armed Separatists, Terrorists.*

**ANALISIS HUKUM TERHADAP KONFLIK SEPARATIS BERSENJATA YANG
DILAKUKAN OLEH ORGANISASI PAPUA MERDEKA DARI PERSPEKTIF
UNDANG-UNDANG NOMOR 5 TAHUN 2018 TENTANG PENANGGULANGAN
KEJAHATAN TERORISME**

ABSTRAK

Kelompok Separatis Bersenjata (KSB). Gerakan Papua Merdeka (OPM) menganggap kelompok ini sebagai pejuang yang mencari pemisahan diri dari Indonesia. Serangkaian serangan yang dilakukan oleh KKB/KSB/OPM terhadap pasukan keamanan di Papua mendorong pemerintah untuk menetapkan tindakan kekerasan ini sebagai tindakan terorisme. Konflik bersenjata separatis yang dilakukan oleh OPM dari perspektif Undang-Undang Nomor 5 Tahun 2018 tentang Pemberantasan Tindak Pidana Terorisme ditandai dengan OPM, sebagai gerakan separatis, sering melakukan tindakan kekerasan yang dikategorikan sebagai terorisme, terutama jika tindakan tersebut memenuhi unsur-unsur yang diatur dalam undang-undang. Penetapan OPM sebagai organisasi teroris memiliki implikasi hukum yang

signifikan, termasuk penerapan sanksi pidana terorisme terhadap anggotanya.

Kata kunci: Konflik, Separatis Bersenjata, Teroris.

INTRODUCTION

The issue of terrorism in the 1945 Constitution is not explicitly regulated. However, the spirit of eradicating terrorism can be derived from several articles related to the function of the state, namely the state has the function of protecting the entire Indonesian nation and all Indonesian bloodshed, as well as advancing the general welfare and educating the nation's life (Preamble to the 1945 Constitution). Terrorism is clearly contrary to these functions because it threatens the security and welfare of the community. The 1945 Constitution mandates the state to maintain sovereignty and territorial integrity. Acts of terrorism can threaten state sovereignty and national integration. Although terrorism is a crime, its countermeasures must still take into account human rights principles. The 1945 Constitution guarantees the rights of every citizen, and countering terrorism must not violate those rights.

In more detail, the regulation of terrorism in Indonesia is regulated in Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes into Law, which was later updated with Law Number 5 of 2018. This law regulates measures for the prevention, prosecution, and countermeasures of terrorism crimes, including the authority of law enforcement and related agencies. In this context, it can be concluded that although the 1945 Constitution does not specifically regulate terrorism, the spirit of eradicating terrorism is in line with the state's goal to protect the entire nation and maintain state sovereignty, which is then described in more detailed laws and regulations.

Terrorism has recently become a very important thing to talk about. Criminal acts that have created chaos in the middle of a country, have made the world community miserable from various religious backgrounds, sects and organizations. According to Muladi, terrorism is an *extraordinary crime* that requires handling by using extraordinary *measures* because terrorism is an act that creates *the greatest danger* to human rights, terrorism is *random* or *indiscriminate* which tends to sacrifice innocent people, the possibility of the use of weapons of mass destruction by taking advantage of modern technological advances, the tendency to

occur negative synergies between national terrorist organizations and international organizations, the possibility of cooperation between terrorist organizations and well-organized crimes of a national and transnational nature can endanger international peace and security.

Terrorism is a crime against humanity and a crime against civilization that is a threat to all nations and enemies of all religions in the world. Terrorism in its development has built an organization that has a global network where terrorist groups operating in various countries have been co-opted by an international terrorism network and have relationships and cooperation mechanisms with each other both in terms of infrastructure operations and support *infrastructure*. Terrorism as an act of crime is a very scary thing because it does not see the victim as a mistake of the act and does not discriminate against the victim. Thus, people who do not know the purpose of the mission and purpose of the terror maker will become an innocent *victim*.

RESEARCH METHODS

The type of legal research used is normative juridical and is a research that places norms as the object of research, both legal norms in laws and regulations, legal norms that originate from a law. It is also called doctrinal law research, which is legal research that uses secondary data. Normative legal research is known as qualitative legal research.

This research is descriptive analysis, namely research that describes, examines, explains and analyzes laws and regulations related to the purpose of this research. The purpose of descriptive research is to accurately describe the characteristics of a particular individual, condition, symptom or group, or to determine the frequency or spread of a symptom or the frequency of a particular relationship between symptoms and other symptoms in society. The main purpose of the analysis of legal materials is to find out the meaning contained by the terms used in the legal rules conceptually, as well as to know their application in practice.

RESULTS AND DISCUSSION

The fundamental phenomenon of this problem is the protracted conflict in Papua, involving the Free Papua Organization (OPM) group that wants to separate from Indonesia. This

conflict has historical roots in the Dutch colonial period in Papua and conflicts related to the political status of the region.

The issue of conflict in Papua has been a concern in Indonesia for a long time, even internationally. The OPM group that wanted to separate from the Republic of Indonesia was repeatedly involved in rebellion with the domestic security enforcement apparatus. Problems between the OPM and other factions that want Papua to become independent from Indonesia also often take civilian casualties. That is why the current conflict in Papua involves allegations of human rights violations. OPM and the Indonesian government state that they do not violate human rights, but in fact, both the Indonesian security forces and the OPM engage in the use of violence that could result in human rights violations.

The background of OPM (Free Papua Organization) began during the Dutch colonial period in Papua. According to Ali Muhammad, the Dutch colonial government from the beginning prepared Papua to become an independent state, thus giving rise to a nationalist spirit among the Papuan people. When Indonesia proclaimed its independence, Papua at that time was not yet officially part of the Unitary State of the Republic of Indonesia. Administratively, its administrative area is still governed by the Dutch government.

In 1962, Papua was officially recognized as one of the provinces under Indonesian rule after an agreement was reached between Indonesia and the Netherlands. This process involved a long struggle led by the Indonesian government to integrate Papua as part of the territory of the Unitary State of the Republic of Indonesia. Success in this struggle was only realized after the "New York Agreement," which was signed by the Dutch and Indonesian governments. The essence of the agreement was the surrender of the territory of Papua into the Unitary State of the Republic of Indonesia.

The approval of the handover of Papua from the Netherlands to Indonesia was recognized by the UN General Assembly through Resolution No. 21 on September 21, 1962, Number 1752 (XVII). Afterwards, the Netherlands ceded authority in the Papua region to the United Nations, and in response to this situation, the United Nations Temporary Executive Authority (UNTEA) was formed on 1 October 1962. The following year, on May 1, 1963, the provisional government of UNTEA was transferred to the Indonesian government.

Some Papuans are dissatisfied with this agreement and want full independence from

Indonesia. In 1965, the Free Papua Organization (OPM) was formed as an effort to protest against the Indonesian government. OPM is led by Nicolaas Jouwe and Seth Jafeth Rumkorem.

In 1969, a Pepera survey was conducted to find out the opinions of the Papuan people. Pepera was implemented to determine whether the Papuan people wanted to remain part of Indonesia or secession. However, the Pepera process is considered controversial by some Papuans and OPM. They consider Pepera to be unfair and does not represent the true wishes of the Papuan people. After Pepera, the conflict between OPM and the Indonesian government continued. OPM launched an armed struggle for Papuan independence. This conflict continues to this day, despite mediation and dialogue efforts between the Indonesian government and Papuan separatist groups.

In the Papua region, disputes are still frequent and have not been fully resolved. In the period between the New Order and the beginning of the Reform era, there were a number of incidents involving disputes between separatist groups that supported Papuan independence and the security forces. The unresolved Papuan armed conflict was reported by nasional.tempo.com on February 18, 2021. Below are examples of disputes that have arisen to date.

There were several major conflicts that occurred during this period. One of the events occurred in Wamena on October 3, 2000. The rules for raising the morning star flag have been revealed as a form of independence of the Papuan nation. This hoisting only occurred from October 3 to October 6, 2000 due to the lowering of the flag by the security forces. There were at least 30 casualties, 40 injured and several residents displaced. The incident occurred again in the same place in April 2003, this time involving the robbery of several firearms at the headquarters of the Kodim/1792 Wamena. One of the robbers and two TNI personnel were killed in this incident. There was a chase, Dandim/1702/JWY asked for additional assistance from Kostrad and Kopassus as many as 158 troops. As a result of the chase, there were acts of torture and murder of local residents. In addition, there are records of incineration incidents of residential areas that helped the National Commission on Human Rights team conclude that the incident was a serious human rights violation because it specifically targeted Wamena residents.

In the village of Wonoboyo, Wasiolu, four civilians, namely Felix Urban, Daud Jomaki, Guntur Samberi, and Enokh Malani, were reported killed on June 13, 2001. According to documents from the Commission on Missing Persons and Victims of Violence, they were executed outside the legal process by security forces. In addition, 39 people were tortured as a result of the incident, five were exiled, and one person was sexually assaulted. The National Human Rights Commission identified this incident as one of the most significant human rights violations after the reform era. However, the Attorney General's Office did not follow up on this case.

Gross human rights violations occurred again on March 16, 2006. Students from Cendrawasih University in Abepura held continuous demonstrations in protest against PT Freeport Indonesia. Many deaths were reported, including security officers and students. Violence also occurred in Fakfak, Mimika, and Manokwari as a result of the protests. A week later, Dayai and Jayapura in Papua province were also hit by riots. Both among the security forces and the general public, there were a number of casualties. To stop the spread of false information in the region, authorities in Papua have even imposed restrictions on internet networks.

Pastor Jeremiah Zanambani died in an increasingly heated gun battle between the OPM and the security forces. Two Indonesian military personnel had previously been shot and killed by the OPM. Initially, the military and OPM blamed each other for Jeremiah's death. However, the government-formed Fact-Finding Team (TGPF) and the National Human Rights Commission (Komnas HAM) found the involvement of military forces in the incident. In addition, the investigation revealed that there was an armed battle in Intan Jaya that resulted in the death of two additional civilians and the destruction of houses by security forces. Many residents in Intan Jaya choose to leave their homes to avoid the difficult situation there at this time.

The Indonesian government's response to the Free Papua Organization (OPM) has changed over time. Initially, the Indonesian government considered the Free Papua Organization (OPM) as a separatist movement that undermined national security and threatened the territorial integrity of Indonesia. However, in 2021, the Indonesian government announced changes to the Free Papua Organization (OPM), which was initially considered a separatist movement, to be declared a terrorist organization. Quoted from the words of Mahfud MD as

the Coordinating Minister for Political, Legal and Security Affairs, stated that the change in the status of the Free Papua Organization (OPM) to a terrorist organization was carried out because the Free Papua Organization (OPM) had been involved in acts of violence and mass killings. This is considered a measure to protect national security. The Indonesian government also believes that changing the status of the Free Papua Organization (OPM) to a terrorist organization will support their efforts to gain domestic and international recognition in fighting the OPM. By designating OPM as a "terrorist" entity, the Indonesian government can use the normative framework of the "war on terror" to justify operational actions in handling OPM.

Looking at the history of the causes of the Papuan Armed Criminal Group (KKB) movement, it can be concluded that there are many causes of this movement, one of the causes of the movement is a difference of views on history. According to the views of the Papuan KKB, West Papua had achieved its independence in December 1961 through a declaration made by the Nieuw-Guinea Raad. Therefore, the process of assimilating Papua into the Unitary State of the Republic of Indonesia is considered legally unofficial. From the perspective of the Papuan KKB, this has resulted in the emergence of a number of problems and the submission of opinions that are considered to be a disturbance to the integrity of the Unitary State of the Republic of Indonesia. Then in April 2021, the government officially declared the status of the Papuan Armed Criminal Group (KKB) as a movement that leads to terrorism. The government claims that this decision is based on the fact that the KKB is involved in a number of crimes that often cause victims, namely the general public. The labeling of terrorists to the KKB stems from the government's belief that simply using the term "Armed Criminal Group" is not enough to reflect the threat they present.

Regarding threats in the form of acts of terrorism, it is often considered a crime that has an organized plan, to the point of having international complexity. Therefore, Muladi argues that this criminal act can be categorized as an extraordinary crime that requires handling measures outside the usual norm. This is due to the great potential for terrorism crimes to be a disturbance to domestic security and peace. The consequences of this crime are a very dangerous threat to the general public, because the victims produced are massive, not just one or two people.

Referring to the definition of Black's Law Dictionary, terrorism is an activity that includes the use of force or threats, this is an act that violates criminal law and endangers human life. The purpose of these actions is to create fear among the general public, then try to influence the government's decisions and change its course by using measures such as murder or kidnapping. There are several things that are the background for the occurrence of terrorism according to A.C, Manullang, he said that one of the causes of terrorism is the high level of tribal nationalism which leads to separatist movements. This is very similar to what happened to the Papuan Armed Criminal Group (KKB). Therefore, conclusions can be drawn regarding the reason for labeling the Papuan Armed Criminal Group (KKB) as terrorists.

Based on Article 6 of Law Number 15 of 2003 concerning the Eradication of Terrorism Crimes that "Every Person who deliberately uses Violence or Threats of Violence that creates an atmosphere of terror or fear of people widely, causes mass casualties by depriving others of their independence or loss of life and property, or results in damage or destruction to Strategic Vital Objects, environment or Public Facilities or international facilities shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years, life imprisonment, or the death penalty." Judging from the content of the law, it is clear how severe the criminal threat is for terrorism perpetrators. Where the elements contained in the law also show the conditions that occurred in the case of the Papuan Armed Criminal Group (KKB). However, in reality, this does not make the KKB in Papua stop to commit its crimes.

CONCLUSION

The phenomenon of armed separatist conflict carried out by the Free Papua Organization in the Perspective of Law Number 5 of 2018 concerning the Eradication of Terrorism Crimes is that OPM, which is a separatist movement, often commits violent acts that are categorized as terrorism, especially if the act meets the elements regulated in the law. The designation of OPM as a terrorist organization has significant legal implications, including the application of criminal sanctions for terrorism for its members.

The Indonesian state's efforts in dealing with armed separatist conflicts carried out by the Free Papua Organization are carried out through security, development, and dialogue

approaches, increasing the preparedness and ability of security forces in dealing with the threat of separatism, law enforcement against perpetrators of criminal acts committed by the OPM group, and the implementation of the Papua Special Autonomy Law to give greater authority to the regions in regulating their own households, as well as the allocation of special funds for development, infrastructure development, welfare improvement, a dialogue approach to peaceful conflict resolution and a humanitarian approach.

The obstacles to the management of armed separatist conflicts carried out by the Free Papua Organization are the dominant security approach, the lack of trust between the government and the Papuan people is the main obstacle in conflict resolution efforts. The mutual suspicion and stigmatization between the two sides complicate dialogue and cooperation. limited access to information, differences in perceptions, involvement of third parties, limited resources, lack of understanding of humanitarian law and dominance of security approaches.

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