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Legal Status of Armed Criminal Groups in the Perspective of International Humanitarian Law

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ABSTRACT

The shooting case in Nduga Papua killed dozens of civilians. On December 1st and 2nd 2018, the civilians who working on Trans Papua bridge construction project become the victim to weapons by Free Papua Organization Armed Criminal Group (KKB-OPM). The purpose of this research is to answer the problems regarding armed conflict in Nduga Papua. The research method used in making this scientific journal is to use normative juridical methods that examines legal issues as well as provides a prescription regarding the examined case. This research will indicates the influence of power character with the shift based on Pancasila. Intially, Indonesia's raison d'être was to liberate the colonized peoples from imperialism. Unfortunately, it reversed from that spirit that become into an imperialistic spirit in its implementation. By returning to its original spirit, Papua must be maintained as part of the sovereignty of Unitary State of Republic of Indonesia. The most prominent national security issues are terrorism, transnational security threats, and communal conflicts. Several preventive, repressive, and restorative legal solutions are necessary in order to confront the armed criminal groups and ensure their responsibility for the crimes committed.

Keywords: Armed Criminal Groups, Legal Status, Nduga, Papua

INTRODUCTION

The shooting incident in Nduga Papua victimized many of civilians. On December 1st and 2nd, 2018, the civilians who working on Trans Papua bridge construction project were gunned down by Armed Criminal Group-Organization of Free Papua (KKB-OPM). The shooting incident conducted by KKB-OPM was allegedly because a Trans Papua bridge construction worker took a photo of the anniversary celebration ceremony of National Liberation Army-Organization of Free Papua (TPN-OPM) which made them angry and affected other workers.

However, other information stated that the shooting incident conducted by KKB-OPM was a rebellion against the government's efforts to implement the infrastructure development. The infrastucture development of papua might not have been able to resolve Papua's desire for independence. Moreover, the shooting incident of Trans Papua bridge construction became the main headline for several media and news.

This shooting incident has attracted considerable attention among the public, including academics and researchers. In 2019, Suropati conducted a research which also addressed the 2018 shooting incident in Nduga, Papua.¹ Suropati's research aims to contribute ideas to provide a comprehensive solution towards a New Papua, which is a conflict-free, developed and prosperous Papua. Furthermore, Simamora and Budihardja also conducted a research in 2021 with a similar topic.² Simamora and Budihardja's research focuses on the lack of decisive action from the government to resolve the shooting incident in Nduga, Papua. Simamora and Budihardja considered that the lack of decisive action from the government regarding the shooting incident in Nduga, Papua as something that contradicts the ideology of Indonesia which should have upheld human rights. The third relevant research is Nurhidayat et. al.'s research, which focuses on the government's security approach to resolving conflicts involving armed criminal groups in Papua.³ Research by Nurhidayat et. al. indicates that the conflict resolution undertaken by the Government to resolve conflicts in Papua still tends to adopt a security approach which still shows insignificant outcomes.

Papua itself has many local media that are able to obtain information on shooting incidents easily, four of which are in accordance with factual press council are Cenderawasih Pos, Harian Pagi Papua, Bisnis Papua, and Jubi. In addition, tabloidjubi.com is a local media that reports many cases of shooting

¹ Untung Suropati, "Solusi Komprehensif Menuju Papua Baru: Penyelesaian Konflik Papua Secara Damai, Adil Dan Bermartabat," *Jurnal Lemhannas Republik Indonesia* 7, no. 1 (2019): 73–89, <https://doi.org/https://doi.org/10.55960/jlri.v7i1.52>.

² Andrian Gregorius Pandapotan Simamora and Georgius Ivan Budihardja, "Prinsip Penegakan Hukum Dan Hak Asasi Manusia: Studi Kasus Penembakan Militer Terhadap Masyarakat Nduga Papua," *Jurist-Diction* 4, no. 2 (2021): 499–518, <https://doi.org/https://doi.org/10.20473/jd.v4i2.25750>.

³ Nurhidayat et al., "Menilik Politisasi Konflik Papua: Dilema Isu Keamanan Indonesia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 234–46.

incident of Trans Papua bridge construction workers, which related to shooting conflict that occurred in Nduga Papua.

On the one hand, the State has never officially announced the status of security conditions in Papua. Based on Kontras' monitoring, the government has deployed officers from both the police and the TNI 39 times since 2020. To support this data, Kontras has sent the requests for Public Information Disclosure (KIP) to National Police (Mabes), TNI, and President through the Ministry of State Secretariat (Kemensetneg). As a result, the police did admit that there was a deployment of officers through Nemangkawi Operation from January 1st to June 30th which aimed to confront KKB in Papua. The apparatus deployed in the operation totaled 1,128 people 235 TNI personnel and 893 Polri personnel.

RESEARCH METHODOLOGY

The research method used in this research is normative juridical method, that examines legal issues and provides the perspective of the issue itself.⁴ This research uses a conceptual approach that refers to legal principles from legal scholars or legal doctrines, and a case approach based on cases that are or have occurred to answers the problem statement in this research. A conceptual approach in legal research involves analyzing legal concepts and their theoretical implications. It focuses on understanding the underlying principles and ideas behind legal phenomena, rather than just examining their practical application.⁵ Meanwhile, a case approach in legal research involves the systematic analysis of specific cases to support legal decision-making.⁶ It is a method of inquiry that allows researchers to gain a holistic understanding of a case within its real-life context.⁷ The sources of legal materials in this research consist of primary legal sources which include laws, regulations, legal theories and secondary legal sources based on official documents and law publications including textbooks, legal dictionaries, and legal journals.

The method of collecting legal materials consists of a study of laws and regulations is an effort to examine the laws and regulations that governing the problem formulation in this research. Moreover, the literature studies are used to find concepts, theories, and opinions related to problem formulation in this

⁴ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Jakarta: Kencana, 2016).

⁵ Milenio Januar Putra and Herma Setiasih, "The Role of Indonesian Police Intelligence in Preventing Mass Soccer Spectators' Riot Based on The Regulation of The Head of Security Intelligence Agency of Indonesian National Police No. 2/2013," *IUS POSITUM: Journal of Law Theory and Enforcement* 2, no. 3 (2023): 45–54, <https://doi.org/https://doi.org/10.56943/jlte.v2i3.358>.

⁶ Robert Stake and Merel Visse, "Case Study Research," in *International Encyclopedia of Education (Fourth Edition)*, 2023, 85–91, <https://doi.org/https://doi.org/10.1016/B978-0-12-818630-5.11010-3>.

⁷ Siti Ngaisah and Andi Setiawan, "Legal Protection for Grabfood Drivers Against Fictitious Orders as Default Actions: A Civil Law Perspective," *YURIS (Journal of Court and Justice)* 1, no. 3 (2022): 52–63, <https://journal.jfpublisher.com/index.php/jcj/article/view/149>.

research. The collected materials are analyzed by identifying the law and eliminating things that are not relevant in resolving the legal issues. In addition, the researchers are collecting non-legal material that have relevance to the issue in this research along with examining the legal issues. Then, the researchers concluding them in the form of legal arguments in answering the legal issues with providing the perspective based on the argument itself.

RESULT AND DISCUSSION

The Definition of Armed Criminal Group

An armed criminal group is an organization that uses weapons to commit crimes. These groups usually have an organized hierarchical structure and use violence and threats to achieve their goals, such as wealth acquisition, political influence, or control of a particular territory. Members of armed criminal groups are have military skills or expertise in the use of weapons. In committing their crimes, they use firearms, sharp weapons, or even explosives their criminal location. In addition, they are often involved in activities such as armed robbery, drug trafficking, kidnapping, extortion, murder, or other forms of violent crime.

Armed criminal groups has the connection to larger crime organizations or they can operate independently. They often try to control over a particular territory, extort protection from local businesses, or engage in illegal trade of weapons or drugs.⁸ Armed criminal groups are often considered a serious threat to community and national security. Then, the government and law enforcement are collaborating to overcome these groups through law enforcement, policing operations and crime prevention efforts.

The legal status of armed criminal groups can be very different based on the jurisdiction of a particular country. Generally, almost all countries consider armed criminal groups as a illegal entities that violate the law. In most countries, armed criminal groups are considered a threat to public safety and order. Moreover, laws usually prohibit the formation, membership or activities of such groups. In addition, every country usually have laws that criminalize activities such as robbery, murder, extortion, drug trafficking, and other violent acts committed by armed groups.

However, Indonesian legislation does not specifically regulates the armed criminal groups in Papua. Furthermore, the existence of armed groups in Papua that engage in acts of violence or illegal activities is considered unlawful and prosecuted under the general provisions of Indonesian law.⁹

The Legal Status of Armed Criminal Groups in Indonesia

⁸ Ahmad Syafii Mufid, "Peta Gerakan Radikal Di Indonesia," 2013.

⁹ Mustika Maharani, "Analisis Masalah Pada Konflik Papua Merdeka Dalam Kaitan Dengan Kesenjangan Sosial Warga Indonesia," *Antropocene : Jurnal Penelitian Ilmu Humaniora* 2, no. 1 (2022).

The determination of terrorist status against KKB / KSP / OPM in armed conflict in Papua certainly does not only for status change, but it has consequences based on the perspective of Indonesian criminal law, both material and formal criminal law. In addition, the criminal acts committed by KKB / KSP / OPM have received both preventive and repressive responses from Indonesian government. The government has issued several effort to resolve the conflict in Papuan, including the security improvement and public order that supported by the development of all aspects in society's life.

The Indonesian government's political interest in dealing with Papuan conflict began in 1999 with the renaming of Irian Jaya to Papua and the implementation of special autonomy for Papua. Moreover, the regional development in Papua regarding the special autonomy has not had significant achievements yet, even though it has been running for twenty years.¹⁰ Before the development strategy, which resulted in granting of special autonomy and renaming of Irian Jaya to Papua, the government's effort to handle the separatist movements were implemented with the methods that resulting in counteraction, particularly by conducting military operations.

The complexity of Papua's problems leads to two perspective, the agreed parties state that the determination of terrorist status is appropriate based on Law Number 5/2018 on the Eradication of the Criminal Acts of Terrorism. Meanwhile, the disagreement parties stated that the determination of terrorist status is problematic since the actions of Papuan KKB are political actions, and should not be interpreted as criminal acts of terrorism. In addition, the disagreement parties stated that the determination of terrorist status would worsening the conflict in Papua and perpetuate the stigmatization of Papuans.

Pancasila as the basis and the philosophy of law enforcement is the navigator for every regime of power in Indonesia. It is not acceptable for a power to be used arbitrarily, disregarding the applicable law, and deviating from Pancasila as the foundation of state life. In Indonesia, armed criminal groups are strictly prohibited by law. The Indonesian government considers armed criminal groups as a serious threat to the national security and stability. The involvement in the activities of armed criminal groups can be considered a serious criminal offense and subjected to severe legal sanctions.

Indonesian government has issued various laws and regulations to confront armed criminal groups. For example, Law No. 5/2018 on the Amendment to Law No. 15/2003 regarding the Eradication of Criminal Acts of Terrorism, which provides a strong legal basis to combat terrorist groups and armed criminal groups. Furthermore, the law enforcement against armed criminal groups is implemented by police and other law enforcement institutions.

¹⁰ Indra Pratama Putra Salmon et al., "Buruknya Layanan Dalam Kerangka Otonomi Khusus: Apakah Papua Masih Memiliki Kesempatan Untuk Berkembang?," *Jurnal Ilmu Sosial Dan Humaniora* 11, no. 3 (November 2022): 367–80, <https://doi.org/10.23887/jish.v11i3.40754>.

The enforcement efforts are including the investigation, arrest and prosecution of group members as well as efforts to disassociate the networks of criminal activities. In addition, the government is also active in prevention and deradicalization to prevent individuals or groups from contributing in armed criminal activities. The rehabilitation and reintegration programs are implement to involve former members of armed groups in the process of social reconciliation and community development. Moreover, armed criminal groups are prohibited in Indonesia, and their activities are criminal offenses that punishable by law. Indonesian government is committed in confronting these groups through strict law enforcement, prevention efforts, and rehabilitation programs.

Basically, Indonesia's *raison d'être* was to liberate colonized countries from the imperialism. Unfortunately, it become imperialistic mindset in its development. The sovereignty of Republic Indonesia must be protected by defending Papua by maintaining its historic identity. Meanwhile, terrorism, international security concerns, and intercommunal conflict are the most significant security challenges for Indonesia.

Some countries are still have interstate conflicts based on territorial claims, along with domestic conflicts with vertical and horizontal dimensions that occurs in several countries of Southeast Asian. Meanwhile, transnational security threats such as terrorism, armed robbery, and illegal fishing are the most dangerous security issues. There are also internal conflicts based on ethnicity, religion and race; separatism and anarchic radicalism in several countries.

Indonesia is included in a region that is experiencing the security issues. For example, terrorist attacks that occurred on September 11th, 2001 have changed the paradigm of global security. The issue of terrorism has affected relations between countries by strengthening the actions conducted by armed criminal groups. Terrorist activities are committed regardless of the organization or individuals involved. The determination of armed criminal group as a terrorist caused the pros and cons in society, because there are those who think that this status can lead to increased violence in Papua and affected innocent civilians.

The separatist movements that develop into terrorists cannot be justified since they threaten the sovereignty and integrity of Republic Indonesia. The status of Free Papua Organization as an armed criminal group and terrorist organization is based on Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 regarding the Stipulation of Government Regulations in Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism. The enforcement the status of Armed Criminal Group become a terrorist organization is appropriate in legal perspective and the criteria for terrorism in Indonesia law.

According to Article 1 Paragraph 2 of Law No. 5/2018 on the Amendment to Law No. 15/2003 on the Stipulation of Government Regulation Law Number 1 of 2002 on the Eradication of Criminal Acts of Terrorism states that, terrorism is an act that uses violence or threats, causing an atmosphere of terror, fear, mass

victims, the destruction to strategic vital objects, environment, public and international facilities with ideological, political motives, including security disturbances.

The terrorism by armed criminal group are considered to have fulfilled these elements above, including causing massive victims, damaging public facilities, causing anxiety and threatening the safety and security of Papua and West Papua citizens. The criminal act conducted by the group is based on the rebellion against legitimate government (treason) by spreading terror. Then, the law enforcement efforts are legitimate and can be immediately enforced that need to be harmonized with aspects of human rights in their implementation.

The enforcement of Free Papua Organization's status from armed criminal group to terrorist has caused many pros and cons from both domestically and internationally. The enforcement of this status also has legal consequences as the result of an action in obtaining an effect desired by perpetrator and regulated by law. The legal consequences are all the consequences that occur from all legal actions conducted by legal subjects against legal objects or other consequences caused by certain events by relevant law that have been determined or considered as legal consequences.

Armed criminal organizations are identified as illegal organizations that commit a variety of crimes. In addition, all the countries have laws and regulations that criminalize illegal armed groups in national level, including the formation and operation of armed groups that use violence to achieve their goals. The states have the authority and obligation to prosecute individuals or members of armed criminal groups in their national courts based on the national criminal laws. At international level, armed criminal groups are not recognized their legal status formally. However, their activities often involve violations of international law, such as human rights violations, crimes against humanity, or war crimes. In this context, international courts, such as International Criminal Court, may have jurisdiction to prosecute the individuals involved in serious crimes committed by armed groups.

The Legal Status of International Armed Criminal Groups

In this context, West Papua (Irian Jaya) is one of the regions in Indonesia that has suffered from struggles that still cannot be resolved. For example, the Papuan KKB is known by Indonesian people as a form of rebellion against the government and the state. The conflict began with the invasion of Battalion 751 Brawijaya in Manokwari, which killed three TNI soldiers. Then, the KKB rebellion spread to a number of districts in Irian Jaya such as Biak Numfor, Sorong, Paniai, Fakfak, Yapen Waropen, Merauke, Jayawijaya and Jayapura. The rebellion is characterized by acts of physical violence using weapons, hostage, demonstrations, flag-raising in West Papua, pamphlet distribution, and various acts of destruction. The KKB has continually declared West Papua as an

independent nation. Meanwhile, Indonesia still insists that the sovereignty of Republic Indonesia is from Sabang to Merauke and West Papua is included in it. Meanwhile, the KKB is trying to propagandize the international community to support Free West Papua action.

Various ways were taken to gain support, such as when one of the KKB representatives, Benny Wanda, gave a speech at the Tedx Sydney 2013 event. Benny revealed that he was trying to seek asylum because there were many human rights violations, torture, and even murder committed by the authorities. The efforts made by the KKB were also exposed in various Australian mass media. Such as the coverage conducted by ABC TV entitled rare look inside Papua Independent Movement. This case cannot be separated from the right to self-determination, which is a dynamic right that continues to develop in controversial principles in modern IR. Article 1 Paragraph 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights states that all people have been granted the freedom to determine their political status, economic, social and cultural development.

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CONCLUSION

Armed criminal groups are a group of individuals who are engaged in illegal activities involving the use of weapons. They often use violence or the threat of violence to achieve their goals. In addition, armed criminal groups frequently represent a serious threat to public safety and require substantial work on law enforcement to overcome with and eliminate them. The legal status of armed criminal groups in Indonesia is considered serious criminals and is subjected to severe punishment by authorities. The Indonesian government is taking a strict approach towards armed criminal groups with the aim of maintaining security and order in the country. The legal status of armed criminal groups at international

level is that they are considered a serious threat to global peace and security. The international community generally recognizes the need for decisive action to confront the armed criminal groups and ensure their responsibility for the crimes committed.

The preventive legal solutions against armed criminal groups is that prevention efforts need to be comprehensive and proactive. Some solutions that can be taken include strengthening laws and law enforcement, increasing border security, developing deradicalization and reintegration programs, empowering social and economic conditions, and establishing strong diplomacy and international cooperation.

The repressive legal solutions against armed criminal groups is that strict and firm legal action is needed to deal with the threat caused by armed criminal groups. Some of the repressive legal solutions that can be taken include strengthening the law enforcement, conducting fair and transparent trials, conducting asset confiscation and deprivation of funding sources, conducting international cooperation, and establishing adequate and deterrent punishment.

The restorative legal solutions to armed criminal groups is that approaches that focus on restoration, reconciliation, and reintegration can help reduce crime and facilitate the positive transformation of members of such groups. Some of the restorative legal solutions that can be applied include rehabilitation and integration programs, mediation and reconciliation, compensation and restitution, inclusive community building, and community education and awareness.

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