

LEGAL CULTURE APPROACH IN TACKLING THE ARMED CRIMINAL GROUP AS TERRORISM CRIME IN PAPUA

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Abstract

The central government has failed to build prosperity in Papua, especially with the holding of a Military Operation by the central government to overcome the separatist rebellion in Papua which in fact has resulted in many human rights violations. The research is normative and empirical legal researches to examine the legal policies carried out by the government in establishing terrorist status against armed criminal groups in Papua. The results show that the terrorism status against the Armed Criminal Groups is not appropriate in resolving the conflict in Papua. Judging from the indicators used, they are fulfilled as a whole, when compared to terrorist groups in Indonesia. It seems the difference in goals and ideology with the Armed Criminal Groups. This determination of terrorist status has also triggered an increase in the actions of Armed Criminal Groups in Papua. This clearly has quite an impact on all aspects of the life of the Papuan people. Development policies and failures, history, and the impartiality of the government are sources of conflict in Papua. Hence, the concept of solution offered is to use a culture legal approach in society, in addition to the repressive settlement that has been used so far.

Keywords: Criminal Group; Legal Culture; Separatism; Terrorism

1. INTRODUCTION

Terrorism is an extraordinary crime and a serious violation of human rights, especially the right to life as most basic right. The element of funding is the main factor in every act of terrorism so that it is believed that efforts to combat terrorism crime will not succeed as expected without eradicating the funding. Efforts to eradicate terrorism crime as carried out by the government have been quite satisfactory. However, the efforts are limited to catching the perpetrators and less attention to the element of funding which is the main factor in every terrorism crime. In Indonesia, terrorism is a fairly complex problem.¹ This complexity can be seen from the efforts of experts to describe terrorism through various definitions to identify actions, characteristics and causes and from these various definitions, there is no single definition that can represent the phenomenon of terrorism throughout the world. Complexity also arises from the fact that the label of "terrorism" is used to identify a wide variety of phenomena with a wide scope.²

However, in understanding the causes of terrorism, the emergence of terrorist groups is not only caused by one factor but by several factors that are interrelated with one another. Both through a structural and individual approach, the factors that emerged were varied, and the emergence of terrorist groups or terrorism crime comes from interactions between these factors during the New Order era, eliminating aspirations and social actions by repressive governments became fertile fields for the rise of movements against non-freedom from government repression.

The upheavals that arise and occur in areas that are rich in natural resources are based on the same problem, namely being “exploited” to the fullest. Natural resources are exploited for the benefit of a handful of “*Cendana*” power elites in Jakarta, so that people in the regions do not get opportunities and opportunities to enjoy wealth in their regions.³ To achieving its goals, the Free Papua Organization (hereinafter abbreviated as *Organisasi Papua Merdeka* or *OPM*) has made efforts that are rebellious against the Indonesian government.⁴ The rebellion by OPM was a physical and non-physical rebellion.⁵ Non-physical rebellions by OPM against the Indonesian government, namely the rebellion in Arfai Manokwari, Sorong, Merauke, Jayawijaya, and Jayapura. The struggle of OPM to achieve its goals has also sought the support of the majority of the people of Irian Jaya, especially people who are anti-Indonesian or pro-Papua. Among the support given by the people of Irian Jaya to OPM is being involved in OPM actions, providing support for clothing, food, medicine and funds, providing moral support and encouragement to OPM to achieve its goals, namely the independence of West Papua, OPM seeks support for foreign policy in addition to its activities in the country (Irian Jaya).

Seeking for support abroad, as has been done by OPM since 1951, the aim of OPM is primarily to seek political support, and support for weapons.⁶ Various efforts have been carried out by the Indonesian government, namely to overcome the separatist people of Irian Jaya with the appearance and brutal actions of OPM. The Indonesian government’s efforts to quell the OPM have been carried out since the beginning of integration Irian Jaya with Indonesia in 1963⁷. The Indonesian government’s efforts to quell the OPM rebellion used two approaches namely security and welfare approaches. Both approaches have been carried out since Irian Jaya entered the territory of the Republic of Indonesia.

However, on 27 April 2021, the Coordinating Minister for Politics, Law and Security emphasized that organizations and people in Papua who carry out massive violence are categorized as terrorists⁸. The reason for the designation of the organization previously referred to by the government as the Armed Criminal Group (*Kelompok Kriminal Bersenjata* or *KKB*) as a terrorist, because it was considered to have fulfilled the elements of a terrorist crime as referred to in Act No. 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism.

Based on history, before being labeled as terrorists, acts of violence committed by groups of people in Papua received different names, depending on who made the statement, the Police referred to them as the Armed Criminal Group as their crimes were considered criminal, while the Indonesian National Armed Forces uses the term Armed Separatist Group (*Kelompok Separatis Bersenjata* - *KSB*), a term for the word *separatist* as desire to separate from the Republic of Indonesia.⁹ Various approaches have been taken by the government to resolve conflicts that have occurred for years in Papua.¹⁰ Various attacks by the Armed Criminal Group against law enforcement officers on duty in Papua forced the government to strictly designate acts or groups that commit violence in Papua as criminal acts of terrorism, thus the long history of the separatist movement in Papua by OPM changed its status to no longer being treason but turned into terrorism.¹¹ Therefore, this research seeks to describe the criminal act of terrorism from various perspectives as well as the legal responsibility for the crime committed by the Armed Criminal Group which has now been designated as a terrorism crime.

2. METHOD OF RESEARCH

The research is normative and empirical legal researches to examine the legal policies carried out by the government in establishing terrorist status against armed criminal groups in Papua. The data analysis technique used is qualitative through reasoning and legal arguments against the materials obtained. The data is processed and presented prescriptively.

3. ANALYSIS AND DISCUSSION

3.1. Legal Policy of Terrorism Status Against Armed Criminal Groups

The central government has failed to build prosperity in Papua, especially with the holding of a Military Operation by the central government to overcome the separatist rebellion in Papua which in fact has resulted in many human rights violations. This strengthens the people of Papua who wish to break away from the Republic of Indonesia. Apart from the economic aspect, separatism in Papua is also triggered by conflicts that originate from historical community disappointment, socio-cultural marginalization, Papuan nationalism and discrimination in politics and law¹².

In view of past disappointments, separatism in Papua was driven by the Free Papua Organization (*Organisasi Papua Merdeka - OPM*), which was followed by the formation of the Papua Presidium Council (*Presidium Dewan Papua - PDP*). It is known that this movement has existed since 1965 by carrying out activities sporadically in military movements involving the community. The resistance of OPM was marked by reclamation, mass demonstrations, flag-raising and sticking up pamphlets, vandalism and violations across national borders. Unfavorable social and political conditions in Papua have forced several Papuans to leave their country. This was the main reason why 42 Papuans asked the Australian government for political asylum in 2006. They left Papua by boat and took advantage of the weaknesses in maritime control of Indonesia.¹³ This group was originally named the Free Papua Organization (*Organisasi Papua Merdeka - OPM*) which was a separatist movement founded in 1965 which aimed to achieve the independence of western Papua from Indonesian rule. Before the reform era, the province which now consists of Papua and West Papua was called Irian Jaya.¹⁴ OPM feels that they have no historical connection with the rest of Indonesia or other Asian countries. The unification of this region into the Unitary State of the Republic of Indonesia since 1969 was the result of an agreement between the Netherlands and Indonesia in which the Dutch handed over the territory that had so far been under their control to its independent former colony, Indonesia. The sharp social gap between migrants and indigenous people and the indiscriminate exploitation of Papua's natural resources add to the list of justifications for this separatist movement. The central government must be serious about dealing with this, not only with military approaches, it would be better if diplomacy efforts were put forward and approaches to concern for the welfare of indigenous Papuans who are still largely untouched from the hustle and bustle of development¹⁵. At this time, OPM was growing in almost all areas of Papua, the establishment of OPM as an armed separatist group was followed by an increase in the number of troops and their weapons.

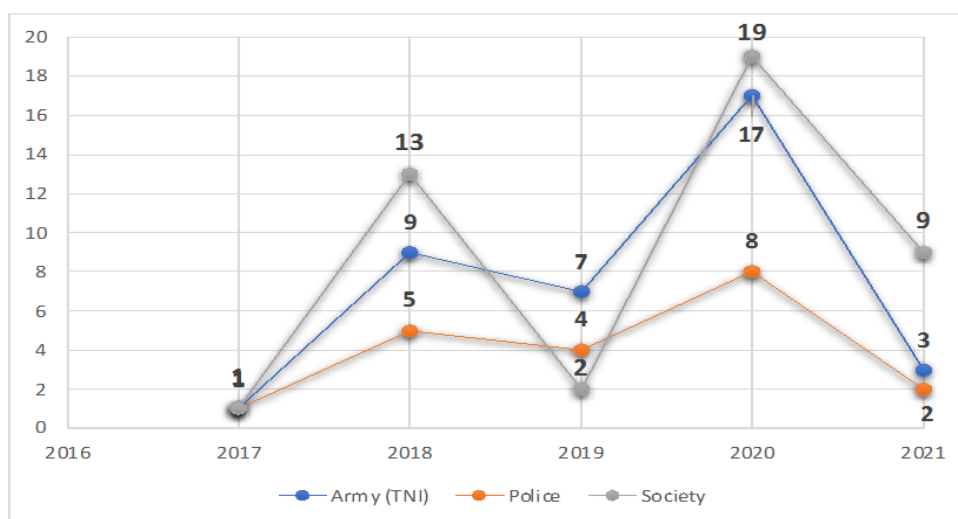
In the author's view, in the case of the killings in Papua, society is no longer seen as an order but as an irregularity which is called conflict. In the paradigm of Marx about conflict said that a view of conflict cannot be said to be something bad, destructive or divisive, precisely the presence of conflict can contribute many things to the sustainability of society and strengthen the relationship of each of its members. Thus, the society that uses this conflict theory starts from the fact that there are at least 2 (two) major groups within it, namely the group in power and the group that is controlled. Because these two major groups inevitably lead to different interests. If the interests are different then a clash is born, namely conflict.¹⁶

In order to understand how conflict theory works, it is also necessary to present a bit of a panorama of what and how structural-functional theory understands society. The functional structural view (or often called *functionalism*) was promoted by Talcott Parsons, which was previously initiated by Auguste Comte, the father of sociology. From the very beginning of his career as a sociologist, Parsons was impressed by the orderly state known as society. The orderliness of society is caused by the existence of shared cultural values. These values are then symbolized as social norms, and then canceled by each individual to become motivations.¹⁷

In the functional structure paradigm, society is understood as an organic unit formed by consensus, which means that society must have a common goal in building something new. To achieve this there needs to be cooperation, mutual assistance and hand in hand. In this case there is no conflict of interest because this ideology contains norms that aim to achieve the common good. In this line of thinking, it is expected that equilibrium is a normal thing, while conflict is abnormal. If seeing from the point of view of structural-functional theory, it is very different from the perspective of Karl Marx, as Dewantara has written, saying that Karl Marx's views turned out to be very different from the mindset of the adherents of functionalism. Where Karl Marx's point of view leaned a lot towards the Free Papua Organization group, because this group rebelled to maintain its identity so that it would not be known by other people. Therefore, OPM made the decision to kill all workers so that OPM image would not be threatened.

In the eyes of the author, Karl Marx's point of view that a rebel or suspect is not necessarily guilty because he must first investigate what caused them to commit the act.¹⁸ Although from a naked eye the act of killing is clearly wrong, barbaric and dishonorable. Based on the data as found, KKB is identic with resistance to the apparatus and the government. For example, KKB in Papua, which last February issued an open war call letter to TNI. The stigma of KKB in Papua is mainly aimed at the Free Papua Organization. This labeling began to emerge during Tito Karnavian era as the Papuan Regional Police Chief,¹⁹ namely in 2015-2016. The reason for the stigma of OPM as KKB is that the government wants to prioritize clarity in efforts to resolve problems, as well as abandon curative efforts.²⁰ In 2017, Wiranto served as the Coordinating Minister for Politics, Law and Human Rights changed the label of KKB to the Armed Separatist Criminal Group (*Kelompok Kriminal Separatis Bersenjata - KKSB*). He added that the separatist label was intended to legalize the involvement of TNI in handling KKB.²¹

Simply put, the name of KKB is a stigma given to OPM who commit acts of violence using firearms. Meanwhile, those accused of being separatists for fighting for independence and holding weapons called themselves the West Papua National Liberation Army (*Tentara Pembebasan Nasional Papua Barat - TPN-PB*).²²



Data 1: Injured victims by KKB

Source: Papua Police General Investigation Unit, Secondary Data, 2022.

Based on the data 1, injured victims due to gunfire by Armed Criminal Groups in Papua tend to fluctuate every year. This is because the Armed Criminal Group will move and take action when there are certain issues or policies from the government that are considered unfavorable Papua or even detrimental to Papua, also on political issues such as elections for governors, village heads or local customary leaders. In the last five years, the highest number of injured victims was in 2020.

In essence, terrorism is a term that is very difficult to find a definition. Even the international world has never explicitly defined the meaning of terrorism.²³ However, the definition of terrorism is so important to formulate. The reason is that this definition will become the parameter and basis for evaluating whether a particular action falls into the category of terrorism or not.²⁴

There are hundreds of definitions of terrorism that are not exactly the same as one another. The term terrorism is related to the word terror and terrorist, which in general do not yet have a standard and universal understanding or definition.

There are key commonalities related to the definition of terrorism, namely:

- a. The aim or agenda of terrorism is political
- b. Strategic character
- c. Broad target
- d. Strong psychological impact
- e. Directed against civilians with a certain religion and race (*non-combatants*).²⁵

Departing from the definition of terrorism in Act No. 5 of 2018 that the normative definition of terrorism is very abstract and ambiguous. By this, the government can easily include KKB as part of a terrorist organization.

3.2. Measuring the Concept of Conflict Resolution: Analysis of Historical and Development Failure Factor

Papua is one of the areas of separation conflict or secession in Indonesia, like Aceh in the past. However, unlike in Aceh, the separation conflict here has its own characteristics and dynamics. Indeed, the success of peace in Aceh is tempting and encouraging to continue it in Papua. However, success in Aceh is not easy to apply in Papua, because of the different characteristics and dynamics of the conflict, even though various opportunities for peace still exist. The separatist conflict in Papua has been going on for quite a long time, since Papua officially joined as part of Indonesia in 1969. There are groups and a number of community leaders in Papua who do not want to join, wanting Papua to stand as an independent country.²⁶ Most of these groups and figures later joined the Free Papua Organization which still exists and continues to fight, even with gun violence in fighting for it.²⁷

Officially, Papua is indeed part of Indonesia, and the UN has also recognized it in 1969. Together with other Papuan groups and figures who supported the merger, the Indonesian government has since carried out various economic, political, social, security and cultural developments there, as has been done in other regions. It's just that the response, dynamics and success are very different from other regions, one of the main reasons is because there is still resistance and separation conflicts there.

Separatist feud in Papua, using OPM as the main driving force, is still ongoing until now, has not received specific peace handling from the Indonesian government. In general, conflicts occur due to development failures and demands for the distribution of political and economic authority between the center and the regions through decentralization policies.²⁸ Unjust treatment received by Papuans regarding economic aspects includes exploitation of natural resources, low participation of indigenous people, domination of immigrants in government and the economy, cultural suppression and biased development of human resources, and military violence.²⁹ Specifically, for military violence, military oppression manifested itself in several forms, such as intimidation, terror, torture and murder. Killings are generally carried out against people who are militant, fighting for democracy, law, culture and humanity, including demands for an independent Papua. In line with the various sources of conflict

described by researchers and other research teams, the author tries to draw a common thread or outline from the sources of conflict in Papua, including by drawing correlations and relevance to contemporary government policies.³⁰

According to the author, the main source of the outbreak of Papua conflict lies in 2 (two) things, namely the implementation of Pepera 1969 and the development process that is taking place in Papua itself. Based on Pepera, there is a comparison of historical narratives that live in society. The dominant narrative informed by the Government of Indonesia is that the political status of the land of Papua as part of the Unitary State of the Republic of Indonesia is legal because it goes through a formal process and UN resolutions. On the other hand, Papuans have a different narrative.

Apart from the development process, there is also a narrative comparison. The narrative that grows in Indonesia is that the process of development in the land of Papua has succeeded in prospering, educating and empowering the Papuan people. Meanwhile, the counter-narrative raised by Papuans is that the development carried out by the Indonesian government has not been able to realize the welfare and prosperity of a kind of national goal. For the Papuan people themselves what is happening in Papua is a form of exploitation, marginalization of the indigenous population, environmental damage due to irresponsible exploitation by foreign companies, as well as various violations of human rights in the name of political stability and security.³¹

Based on its history, issues of Papuan identity and nationalism are also a concern. It must be recognized that socially and culturally, indigenous Papuans are different from Indonesian society. If the majority of Indonesian people are dominated by Malay race, physically the Papuan people belong to the Melanesian and Negroid races in the Pacific.³² Likewise, socially Papuans have certain thoughts and ways of life. Papuans have a certain authority that is unique in controlling, increasing needs and resolving problems based on customary law which burdens the customary rights and obligations of the individuals so that they experience little trouble when there is a cultural clash with what is practiced by most Indonesians. In the context of Papuan identity and nationalism, there is friction between the Papuan people and migrants. This friction can be seen empirically in the dynamics of bureaucratic life and the daily economic activities of Papuans.

In the life of the bureaucracy or government, the main positions are always given to outsiders or newcomers with the argument that the Papuan people are still unable to get started. To occupy a position, Papuans are subject to severe conditions, while this is not the case for migrants. In traditional Papuan markets, migrants use the main facilities, while native Papuans sell on the sides and in the overhangs of the market.³³

The issue of Papua has been going on for more than five decades since this province was integrated with Indonesia. Throughout that age, Papua has been engaged in various developments in a number of fields. The obvious development is particularly evident in 4 (four) areas, namely, physical infrastructure, education, economy and health. The conflict in Papua continues to this day. These two things, development and peace have a very strong connection

and can lead to two directions: the emergence of disturbances to peace such as rampant acts of violence that can thwart development, more than that the failure of development will also lead to the loss of peace. The rampant acts of violence and the activities of the Armed Criminal Group and the increasingly incessant movement of ULMWP (*The United Liberation Movement for West Papua*) show that there is a paradox of development and peace in the land of Papua. Once again, development has indeed shown its form, but it still cannot be said that development has reaped success, let alone created an atmosphere of peace for all Papuans.³⁴

The sources of the conflict triggered a number of problems such as political, economic, human resource, and security issues. In the political realm, there are a number of problems ranging from the performance of democracy, the Special Autonomy of Papua, the unequal power relations between actors, and the construction of “nationalism” versus “separatism.” Muridan S. Widjojo has an analysis for the last problem.³⁵ From a “nationalist” point of view, this discourse supports a strong military presence in Papua, and may even justify acts of violence to keep the country united.

Thus, violence serves to perpetuate nationalist discourse. On the opposite side, various pro-independence groups often exaggerate the incidents of violence in Papua and link these incidents to the governments as well as military strategy, which is intentional to annihilate the Papuan people. The term genocide has even become a key word in the discursive strategy of separatist groups recently. This is especially evident when acts of violence by the military and police are criticized without fully considering whether the incidents were politically motivated or purely criminal.

Sociologically, labeling terrorists to KKB will ignite ongoing racism and discrimination against Papuans in general. This label will further hurt the feelings of the Papuan people and strengthen the stigma against the Papuan people. In the short and medium term this will erode the trust of the Papuan people in the government, and in the long term it will increase the complexity of resolving the Papuan conflict.

4. IMPLICATIONS AND RECOMMENDATIONS

Determination of terrorism status against the Armed Criminal Groups is not appropriate in resolving the conflict in Papua. Judging from the indicators used, they are fulfilled as a whole, when compared to terrorist groups in Indonesia. It seems the difference in goals and ideology with the Armed Criminal Groups. This determination of terrorist status has also triggered an increase in the actions of Armed Criminal Groups in Papua. This clearly has quite an impact on all aspects of the life of the Papuan people. Development policies and failures, history, and the impartiality of the government are sources of conflict in Papua. Hence, the concept of solution offered is to use a culture legal approach in society, in addition to the repressive settlement that has been used so far.

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Declaration of Interest

Authors declare there are no competing interests in this research and publication.

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