

A Juridical Study of the Policy for Determining Separatism in Papua as Terrorism



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ABSTRACT: This research goal was to find out the Government Policy on Establishing the Status of Free Papua Organization (*Organisasi Papua Merdeka* – OPM) or known as separatism in Papua through Law No. 5 of 2018 on Eradication of Criminal Acts of Terrorism. The policy aims to soak up the situation of conflict in Papua caused by separatism. The research method used in this research was normative juridical with the type of research conducted was legal research to seek and discover the principles and rules that regulate status, which was to be presented as a match between the rule of law and legal norms. The results of the research show that the government's actions through issuing a policy establishing the status of the Free Papua Organization or known as separatism as terrorism. The policy was also issued without looking at the factors or motives for the emergence of separatism in Papua. This determination will certainly have an impact on the actions of the apparatus who abuse their power, which in fact does not solve the problem in Papua, but will lead to human rights violations.

KEYWORDS: Separatism, Terrorism, Human Rights in Papua

A. PRELIMINARY

Papua is a province that has a government system that adheres to special autonomy¹ in the Republic of Indonesia. Papua is designated as a Special Autonomous Region through Law No. 21 of 2001 concerning Special Autonomy for Papua. The enactment of Law 21 of 2001 concerning Special Autonomy in Papua was caused by human rights problems experienced by indigenous Papuans through the military approach carried out by the Indonesian government in Papua² which has not been resolved since the incorporation of Papua into the Indonesian Territory in 1963.

Various rights that are ignored in Papua cause the community to demand (1) recognition of the nobility of Papuan identity and the values they hold; (2) Statement on the guarantee of the constitution of the Republic of Indonesia for diversity; (3) Recognition of the uniqueness of indigenous people and Papuan culture; (4) Recognition that the government has so far been very less in favor of the Papuan people and includes not giving proper respect and protection to the Human Rights of the indigenous Papuans; (5) Recognition that the rights of Papuans to natural resources and development have been ignored; (6) Recognition of the superiority of peaceful means adopted by Papuans in fighting for their rights.³

The presence of the Special Autonomy Law in Papua as a form of the seriousness of the Government of the Republic of Indonesia to answer the problems in Papua is not fully running well, the most basic thing is the Human Rights of the Papuan People carried out by the Government through a military approach without law enforcement. Article 1 number 1 of Law no. 39 of 1999 concerning Human Rights explains: *Human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His grace that must be respected and human dignity*⁴ This has caused conflicts to occur everywhere by a group known as the West Papua Liberation Army/Free Papua Organization (TPPB/OPM), which we know as Separatism. This organization has existed and was formed since 1965, since the beginning of the integration of Papua into the Unitary State of the Republic of Indonesia. According to Ikra Nusa Bhakti: *Separatism arose because of the wrong strategy of the Indonesian government*.⁵ It is this distrust of the Indigenous Papuans that demands or wants to be separated from the Unitary State of the Republic of Indonesia.

In the era of President Jokowi's government, through the Coordinating Minister for Political, Legal, and Security Affairs (Menko Polhukam) Mahfud MD, established the KKB, or known as separatists in Papua, as a terrorist group based on Law No. 5

¹ Frans Pikey, Papua Mencari jalan perdamaian, Penerbit buku Kompas, Jakarta, 2018, hal 3

² Frans Pikey Ibid Hal. XXi

³ Elias hence Thesia, Skripsi “*Penegakan Hukum Terhadap Kebersihan Di Kota Jayapura, Satyawaca, Salatiga, 2015, hal, 1*

⁴ Pasal 1 angka 1 Undang-undang No 39 Tahun 1991 Tentang Hak Asasi Manusia

⁵ Frans Pikey, Loc. Cip. Hlm XXi

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of 2018 concerning the Eradication of Criminal Acts of Terrorism, this can be seen through the CNN News source with the title: Government Officially Establishes KKB Papua Terrorists,⁶ based on the background of the problem above, the author was interested in writing and research with the title: "A Juridical Study of the Policy for Determining Separatism in Papua as Terrorism"

B. RESEARCH METHOD

The research method used in this research was normative juridical by basing its analysis on the applicable laws and regulations.⁷ The research data used were secondary legal data consisting of primary legal materials, namely statutory regulations, such as Constitution of the Republic of Indonesia of 1945, Law No. 5 of 2018 concerning the Eradication of Terrorist Crimes, Law No. 39 of 1999 concerning Human Rights, Law No. 21 of 2021 concerning Special Autonomy. This study also used secondary legal materials, namely literature related to research problems. The legal data were obtained through a literature study which was then analyzed descriptively analytically⁸ to answer research problems.

C. DISCUSSION

1. The History and Purpose of Separatism

Separatism has been known for a long time, especially since the life of human society recognizes the formation of a large political community building, namely in the form of a state or kingdom and its supporting communities. The cyclical historical perspective views that the building of large political communities in the long run often experiences ups and downs and the laws of "born-grow-develop-decline" organisms. This is in line with the ups and downs of the birth and collapse of power that can unite and manage the state community and its supporting communities and the civilization it has built. For example, many great empires that once lived in the centers of ancient civilizations, such as the Ancient Egyptian empire in the Nile River Valley, the Babylonian empire in Mesopotamia, the Macedonian Empire, and the Ancient Roman Empire in the Mediterranean ended with a period of collapse after previously experiencing a period of birth, growth and development, and its glory (Rise and Fall) (Carton JH Hayes, 1961). The Kingdom of Macedonia, for example, succeeded in achieving its glory as a great empire under Alexander the Great, through expansion and invasion of other areas with military force. In about 200 BC the Macedonian Empire controlled the Mediterranean region to the West Asian region, such as Syria, Tunisia, Persia, Egypt, and even to the west bank of the Indus River. However, not long after Macedonia reached its heyday, Alexander the Great, who in Southeast Asia and Indonesia was also known as Raja Iskandar Zulkarnaen, died. Since then, the Macedonian Empire collapsed, and its former spheres of influence were divided, each region separating itself as an independent kingdom under its rulers who came from the former Alexander's warlords. Like Macedonia, the Roman Republic in the following period turned into the Ancient Roman Empire under its emperors who had the ambition to build a large empire by carrying out invasions and territorial expansion by military force. The territory of the Roman Empire also included parts of Western Europe, the Mediterranean, and Western Asia, including Egypt, Palestine, Syria, Mesopotamia, and Asia Minor. The Empire's territory was divided into two parts and each was divided into two sub-sections called prefectures, and each prefecture was further subdivided into smaller administrative units called dioceses and provinces. The government bureaucracy is arranged hierarchically from the center to the regions, while the officials assigned as regional heads are appointed from the center, and consist of prominent nobles and generals or emperor warlords. Around the 2nd century, the empire began to decline, and finally, around the 3-4th century, the Roman Empire collapsed. At that time also separatism occurred. The former empires one by one separated themselves into independent kingdoms. The former generals or Roman warlords also played an important role in the separatist movement in the former great empires of Europe in ancient times (Hayes, 1961; Crane Brinton, 1990). Separatism is also often found in the history of the old kingdoms in Indonesia. Similar to Macedonia and Ancient Rome, the Kingdom of Srivijaya (7th-11th century) and Majapahit (14th-15th century)⁹

The separatist movement in European history was also rife during the religious Reformation in Europe in the 16th century. The term separatists and dissidents have been applied to Protestant Christians who openly separated themselves from the power of the Roman Catholic Church in Rome have been influential in Europe for centuries. The title originally came from the Roman Church, of course. Meanwhile, the Protestants, led by Martin Luther, Zwingli, and Calvin, called themselves the Reformers or Purifiers (Puritan). Events of this secession began to occur when Martin Luther from Germany protested and criticized the Roman Church which was considered to have deviated from the true Christian teachings. Luther's protest and

⁶Di akses pada hari senin Jam 10.00 Wit| sumbe beritah CNN Indonesia | Kamis, 29/04/2021 12:50WIB| sumber Link:<https://www.cnnindonesia.com/nasional/20210429123128-12-636368/pemerintah-resmi-tetapkan-kkb-papua-teroris>.

⁷Kornelius Benuf and Muhamad Azhar, 'Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer', Gema Keadilan, 7.1 (2020), 20–33. Hlm. 24.

⁸Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif Suatu Tinjauan Singkat (Jakarta: PT Raja Grafindo Persada, 2004). Hlm. 35.

⁹Djoko Suryo, Separatisme dalam Perspektif Sejarah, eJournal, hlm. 6

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critique were formulated in a placard containing 95 propositions for the error and deviation of the Roman Church from the truth of the true teaching of the Bible in 1517. The radical separatists then founded a congregation and chose their pastor, form, and manner of worship. Included in the place of worship, namely the Protestant Church. Otherwise, the separatist movement of the Protestant followers was answered later by the Roman Catholic Church with the Counter-Reformation movement, by carrying out purges and reorganizations into the interior strictly. The Protestant separatism movement in the past received support from the nationalists in Europe, who were trying to establish national states or kingdoms by separating themselves from the emporiums of the great empires, by claiming independence and establishing their own kingdom based on their own national identity in the form of the idea of unity, their language, and cultural traditions. Protestant Christianity became fully equipped to become a symbol of the political separatism of the unity of the great empires of the time (Hayes, 1961; Brinton, 1990).¹⁰

2. The History and Purpose of Separatism in Indonesia

In Indonesia, signs of separatism have at least appeared since the late 1990s, after the end of the New Order government. As reflected in the problems of the Free Aceh Movement (GAM), the Free Papua Movement, as well as the issues of Free Riau, the Republic of South Maluku (RMS), and the separation of East Timor province into East Timor. For the history of the Republic of Indonesia, such an event is not new. When traced further back in time, such events have happened a lot. Since the time of the Young Republic, namely the Revolutionary period (1945-1949) and the post-Revolutionary period, namely in the 1950s.¹¹

The legal events of political upheaval tended to oppose or separate themselves from the state of the Republic of Indonesia which had been proclaimed on August 17, 1945. Some of them were, for example, the events of the formation of the State of Pasundan, the State of East Sumatra, and the State of East Indonesia, which were formed by Van Mook after the Renville negotiations, as well as the Madiun PKI Rebellion in 1948. These events can be categorized as a separatist movement against the Republic of Indonesia. Likewise, the DI (Darul Islam) and TII (Tentara Islam Indonesia - Indonesian Islamic Army) Rebellions in West Java and Aceh, PRRI (Pemerintahan Revolusi Republik Indonesia) in Sumatra, Permesta (Perjuangan Semesta), and the Kahar Muzakar Movement in Sulawesi which occurred in The 1950s was also an event of regional upheaval that had a separatist tone against the Republic of Indonesia. It should not be forgotten that the formation of the Republic of Indonesia through the Proclamation of Independence on August 17, 1945, was essentially also the success of the Indonesian nationalism movement in achieving its goal of achieving independence by breaking away from all ties of colonialism and the building of the colonial state of the Dutch East Indies¹² owned by the Kingdom of the Netherlands since several centuries earlier (MC Rickieffs, 2001)¹³

3. The History and Purpose of Separatism in Papua Province

The emergence of separatism or rebellion in Papua was initiated when the Province of Papua was joined since 1963 into the Unitary State of the Republic of Indonesia, through the Transmigration Program with a Military Approach under Suharto's leadership to carry out security measures, but the actions taken by the military in Papua led to Human Rights violations. Several factors in the Land of Papua led to the ongoing conflict;

The tragedy of human rights consists of:

- a. **Migrants enter Papua through the transmigration program in Papua on a large scale without any coordination with regional parties**

Comparison of the Number of Migrants Entering and Exiting since 1971-2000

No	Year	Incoming Migration	Outcoming Migration
1.	1971	33,513	6,445
2.	1980	93,030	15,559
3.	1990	261,308	30,786
4.	2000	332,015	46,824
Total		719,866	99,614

Source: Data processed from the BPS Population Census, 1971, 1980 and 2000

Based on the table above, it can be seen that in 1971 the migration into Papua was 33,513 people, while the migration that left in the same year was 6,446 people. Then in 1990, the incoming migration was 93,030 people and the outgoing migration was 15,555 people. The same condition also occurred in 2000, with the migration of 332,308 people and 46,824 people leaving the migration. When viewed from the data above, the number of Papuans leaving Papua Province is very small compared to the number of outsiders entering Papua. This of course can cause the number of indigenous Papuans to be less than the number of

¹⁰ Ibid

¹¹ Loc.Cip Djoko Suryo, Separatisme dalam Perspektif Sejarah, eJournal, hlm. 4

¹² Ibid.hlm 4

¹³ Ibid hlm. 5

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people from outside Papua, so it is not surprising that problems of migrant bias often occur in the public¹⁴ apart from several humanitarian tragedies in Papua.

b. Enarotali Incident

After the Act of Free Choice (Pepera), many violations occurred to the rights of Papuans, especially the rights mentioned in Article 22 of the New York Agreement which relate to rights including the right to freedom of speech, freedom of movement, freedom of assembly, non-recognition of indigenous peoples and the right to participation. Although efforts to win the Pepera had been made, there were resistances in several places, such as in Erambo (Merauke), Dubu/Ubrub (near the border), Enarotali, and Wahgete (Paniai). In Enarotali the more intense resistance was carried out by launching armed movements and openly refusing to join Indonesia, led by AR Wamafma, Senen Mote, Mapia Mote, and Thomas Douw. The movement was also supported by several police officers who sided with the local population. To stop this movement, the Commander of the Sarwo Regional Military Command, Edi Wibowo, ordered the destruction of the armed group in which 634 residents indicated in this incident were killed.

c. Timika Incident

The accumulation of resistance from the Amungme community over the various arbitrariness of PT. Freeport Indonesia occurred in 1977. At that time, the community held a peaceful demonstration in Agimuga to voice their protest against the company's actions that had seized customary lands without regard for the community's rights. The community protest action was met with violence, namely by carrying out operations by airplane. An estimated 30 civilians were killed as a result of these actions.

d. The Bloody Biak Incident, July 6, 1998

On July 6, 1998, there was a violent incident that caused injuries and disappeared. This incident began when hundreds of people gathered in the field near the Biak Water Tower on July 1, 1998.

e. The Murder of Theys Eluay

The death of Theys Eluay, a Papuan traditional leader who is also the Chairman of the Presidium of the Papuan Council, was first revealed after the statement by the Papuan Police Chief, Inspector General (pol) Made Mangku Prastika, at the National Police Headquarters, Jakarta, Tuesday, January 15, 2002.

f. The Murder of Arnold AP

The murder of Arnold Ap, a Papuan culturalist who is restoring Papuan identity through Papuan cultural symbols and developing and shaping the nation's imagination (Melanesian culture). Finally, he was arrested by the authorities, and¹⁵ his body was found at Pantai Pasir 6 Jayapura, on 26 April 1984.

Several human rights issues that are currently happening in Papua have not been resolved, other than that other actions by the authorities such as perpetrators of victims of racism in East Java in 2019 along with the termination of the internet Optical cable network, the forcibly disbanding by the officers against students who took demonstration action unilaterally.

The National Commission on Human Rights for Disappeared and Victims of Violence (KontraS) gives a sharp focus on the violations of Human Rights (HAM) that continue to occur in Papua. The series of violent events in Papua never stopped. During the 2016-2020 period, KontraS found at least 391 cases of violence in Papua such as shootings, torture, arbitrary arrests, forced disbandment, intimidation, and inhumane acts committed by several actors, dominated by the police officers.¹⁶ Please note that international law does not punish rebellion or revolution as stated by Visser, *neitherinsurrection norrevolution is condemned by international law*.¹⁷

4. Determination of the Status of Separatism in Papua to Terrorism

The word 'terrorism' is derived from the English word terror, or terrere in Latin, which means to shake. Some interpret it as an activity or action that can frighten the other party. The word terrere is a verb from the word terrorem which means extreme fear, scare or threaten to frighten.¹⁸ At Law No. 5 of 2018,¹⁹ the notion of terrorism is included in the law, namely in Article 1 number 2. Terrorism in Indonesian positive law is defined as: "that creates an atmosphere of terror or a sense of action that uses violence or threats of violence to fear widely, which can cause mass casualties. , and/or causing damage or destruction to strategic vital objects, the environment, public facilities, or international facilities with ideological, political, or security disturbance motives.

¹⁴ Natalius Pigai, "SOLUSI DAMAI DI TANAH PAPUA (MENGUBUR TRAGEDI HAM DAN MENCARI JALAN KEDAMAIAN), Ejournal administrasi Publik, tahun 2014, hlm. 35

Ibid.loc cip hlm.

¹⁶ Catatan Kritis, E-Journal, Jakarta, 2021, hlm.1

¹⁷ Visscher, Charles de. 1985. Theory and Reality in Public International Law, Princeton, hlm.336

¹⁸ Agus Surya Bakti, Ebook "perkembangan Terorisme di Indonesia", Jakarta, 2013, hlm1

¹⁹ Pasal 1 angka 2 Dalam UU No. 5 tahun 2018 tentang pemberantasan tindak pidana teror

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The International Convention Against Terrorism adopted by the OIC in 1999 defines terrorism as: "an individual or group act of violence or threat with the aim of terrorizing persons or threatening to harm them or endanger their life, honor, freedom, security or rights, or damage, occupy, or seize public facilities or private property, or endanger national resources, or international facilities, or threaten the stability, territorial unity, political unity, or sovereignty of the state."

So far, due to the definition of terrorism, several groups have been designated as terrorist groups. Through the List of Suspected Terrorists and Terrorist Organizations Number: DTTOT/P-5a/719 /IV/RES.6.1/2018, as many as 88 groups were declared as terrorist organizations. The label of the terrorist group was determined by the Court, for example on Jamaah Ansharut Daulah (JAD) and the East Indonesia Mujahidin affiliated with ISIS. In addition, the terrorist stigma has also been carried out by security forces against Jamaah Islamiyah.

D. CONCLUSIONS AND SUGGESTIONS

Based on the background and conclusions above, the author can conclude that: KKB is a term that is usually applied by the media and the government to groups who want to separate themselves from the state, such as the Free Papua Organization (OPM) and the Free Aceh Movement (GAM) in carrying out their criminal activities. One of the factors in the emergence of movements that are considered KKB is the injustice of state treatment felt by these groups. If we look at the pattern, KKB is synonymous with resistance to the state apparatus and government. For example, the KKB in Papua, which in February last year made an open call for war to the TNI. In this context, the KKB or OPM did not cause widespread fear for the people, especially in Papua. when compared to the activities and propaganda carried out by ISIS, its objectives are, among others, to spread views and teachings, recruit members, and spread threats and fear in society. Based on the conclusions above, the authors provide suggestions (1) Law enforcement must be enforced as fairly as possible against the perpetrators who cause the problem of human rights violations in Papua to be resolved to the roots; (2) A dialogue between the Central Government in Jakarta and the Regional Government in Papua must be carried out, involving traditional leaders, Free Papua Liberation Army/OPM, Religious Leaders in Papua, and representatives of indigenous peoples in Papua; (3) Determination of KKB in Papua as terrorism in Papua needs to be subject to material testing, so as not to cause new human rights violations in Papua through Military Operations. Considering that the State is not an entity that provides human rights, but a protector of human rights for its citizens.

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