

Legal Review Regarding the Designation of Papuan Armed Criminal Groups as Terrorists in the Perspective of International Criminal Law



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ABSTRACT: The Papuan Armed Criminal Group has been officially designated as a terrorist organization on April 29, 2021 by referring to the Law of the Republic of Indonesia Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 Concerning the Eradication of Criminal Acts of Terrorism Becomes Law by the Indonesian government. This is thought to have caused the conflicts and tensions that have been occurring in Papua to continue to escalate until early 2023, to be precise, after the determination was made. The designation as a Terrorism organization certainly has an effect related to its status according to the provisions of International Criminal Law. In international criminal law, the status of the Papuan armed criminal group after being designated as terrorists has the same consequences when this group is referred to as KKB (Armed Criminal Group). His actions do not include international crimes that fall under the criminal jurisdiction of the International Criminal Court (ICC) as regulated in the 1998 Rome Statute, however, terrorism crimes can be tried by the ICC if a terrorism case meets the requirements of an international crime. This research method uses a normative juridical method where the research is carried out by examining literature and secondary data, doctrines and principles in the science of law. The approach used in this research is a literature study which includes Primary Legal Materials, Secondary Legal Materials, and Tertiary Legal Materials. To support secondary material, data was obtained from documents or research journals regarding the Papuan KKB case.

KEYWORDS: Papua; KKB; Terrorism; Legal Status; International Criminal Law

I. INTRODUCTION

The conflicts and tensions that have occurred in Papua have recently escalated, especially at the beginning of 2023. The case that has not been resolved until now is the hostage-taking of the pilot and crew of the Susi Air plane with flight number PK-BVY carrying 5 passengers flying from Timika, it is suspected that the hostage-taking carried out by the Armed Criminal Group or KKB Papua known as the National Army for the Liberation of West Papua-Free Papua Organization or abbreviated (TNPPB-OPM). This is allegedly because the Coordinating Minister for Politics, Law and Security (Menko Polhukam), Mahfud MD, has officially established an Armed Criminal Group or KKB Papua known as the National Army for the Liberation of West Papua-Free Papua Organization or abbreviated (TNPPB-OPM).) as a terrorist organization since April 29, 2021 with reference to the Law of the Republic of Indonesia Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulation in lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism to Become Law -Invite. This was done because the Indonesian government apparently had limitations in suppressing acts of terror accompanied by violence that had been carried out by the KKB. The government hoped that through this new status it would be possible to block access to funding for the KKB group. It is also hoped that the implementation of the status of the Papuan Armed Criminal Group known as the National Army for the Liberation of West Papua-Free Papua Organization or abbreviated (TNPPB-OPM) from the Armed Criminal Group to terrorists will make law enforcement more comprehensive, making it easier for the government, especially law enforcers. In addition to these reasons, the increasingly massive killings and violence allegedly committed by the Papuan Armed Criminal Group has made the Government feel that this matter must be resolved immediately so that no more victims fall.

Terrorism itself is an extraordinary crime which is classified as crimes against humanity (Crime Against Humanity). The crime of terrorism in the perspective of international criminal law is a form of crime that not only threatens individual safety, but also threatens the sovereignty of a country. As an extraordinary crime (Extra Ordinary crime), Terrorism requires handling by utilizing extraordinary methods (Extra Ordinary Measures) as well.

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The designation of Papuan Armed Criminal Groups as terrorists invites pros and cons, because some think that imposing this status could lead to an increase in violence in Papua and innocent civilians could be affected, so the government was asked to take another approach. However, a separatist movement that develops into a terrorist cannot be justified because it can threaten the sovereignty of the Unitary State of the Republic of Indonesia.

Based on the description, two problems will be described, namely:

- 1) What are the rules regarding the Crime of Terrorism in the Perspective of International Criminal Law?
- 2) How is the status of the Papua Armed Criminal Group determined after being designated as terrorists in International Criminal Law?

II. RESEARCH METHODS

The research method used is normative juridical (normative legal research method). Namely library law research conducted by examining library materials or secondary data.¹ This research was conducted to obtain materials related to the subject matter such as theories, concepts, legal principles and legal regulations. Normative juridical (library research) is a type of problem approach that is carried out based on the main law, which is carried out based on the main legal material, as well as reviewing some theoretical matters relating to legal principles, legal doctrine, regulations and the legal system related to the problem What is being discussed using secondary data includes principles, rules, norms, and legal rules contained in laws and regulations and other regulations.²

III. DISCUSSION

A. An Overview of the Crime of Terrorism in the Perspective of International Criminal Law

Many experts define international criminal law, one of which is Antonio Cassese who defines international criminal law as part of international rules regarding the prohibition of international crimes and the obligation of states to prosecute and punish several crimes (*International criminal law is a body of international rules designed both to prescribe international crimes and impose upon States the obligation to prosecute and punish at least some of those crimes*)³. George Schwarzenberger, as quoted by Romli Atmasasmita, gave six definitions of international criminal law. First, international criminal law in the sense of the territorial scope of national criminal law. Second, international criminal law in the sense of international aspects which are applied as provisions in national criminal law. Third, international criminal law in the sense of international authority as stipulated in the national criminal law. Fourth, international criminal law in the sense of national criminal law provisions that are recognized as proper law in the life of a civilized nation. Fifth, international criminal law in the sense of international cooperation as a mechanism for the administration of national justice. Sixth, international criminal law in the material sense of the word.⁴

The term International Criminal Law or International Criminal Law or international Strafprozessrecht was originally introduced and developed by international legal experts from Europe such as: Friederich Meili in 1910 (Switzerland), Georg Schwarzenberger in 1950 (Germany), Gerhard Mueller in 1965 (Germany).), J.P Froncois in 1967, Rolling in 1979 (Netherlands), Van Bemmelen in 1979 (Netherlands), then followed by legal experts from the United States such as: Edmund Wise in 1965 and Cherif Bassiouni in 1986 (United States of America).⁵

So based on the various definitions of international criminal law, as has been stated, there are two important things from international criminal law, namely:

1. Material international criminal law are acts which according to international law-both based on customary international law and based on international conventions-are international crimes.
2. The formal international criminal law in the sense of enforcing international criminal law is an international aspect in national criminal law.

In short, international criminal law is defined as a set of rules concerning international crimes which enforcement is carried out by the state on the basis of international cooperation or by the international community through an international institution, both permanent and ad-hoc in nature.⁶

Terrorism itself is an extraordinary crime which is of concern to the world today which is classified as crimes against humanity (Crime Against Humanity), and is a serious threat to the sovereignty of every country because terrorism is already an international crime which poses a danger to security, world peace and detrimental to the welfare of the community, it is necessary

¹ Soerjono Soekanto dan Sri Mahmudj, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2003), pp. 13.

² Muhammad Abdulkadir, *Hukum dan Penelitian Hukum*, (Bandung: Citra Aditya, 2004), pp. 134

³ Antonio Cassese, 2003, *International Criminal Law*, (Oxford University Press), Hlm.141 dalam Eddy O.S. Hiariej, *Pengantar Hukum Pidana Internasional*. (Jakarta: Erlangga: 2009), pp. 7

⁴ Shinta Agustia, 2006, *Hukum Pidana Internasional*, (Padang: Andalas University Press), hlm. 14-15 dalam Eddy O.S. Hiariej, *Pengantar Hukum Pidana Internasional*. (Jakarta: Erlangga; 2009), pp.8

⁵ Romli Atmasasmita, *Pengantar Hukum Pidana Internasional*, (Bandung: Refika Aditama), 2006.

⁶ Eddy O.S. Hiariej, *Pengantar Hukum Pidana Internasional*, (Jakarta: Erlangga.) 2009, pp. 23

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to carry out eradication in a planned and sustainable manner so that the human rights of the masses can be protected and upheld which in its development can then lead to jurisdictional conflicts that can disrupt international relations between countries that have an interest in handling cases of dangerous criminal acts of a criminal nature. across territorial boundaries.⁷

More specifically regarding terrorists, Muladi argued⁸:

- a) Terrorism is an act that creates the greatest danger to human rights. In this case the human right to life (the right to life) and the human right to be free from fear.
- b) The target of terrorism is random or indiscriminate which tends to victimize innocent people.
- c) The possibility of using weapons of mass destruction by utilizing modern technology.
- d) There is a tendency for negative synergies between national terrorist organizations and international organizations.
- e) The possibility of cooperation between terrorist organizations and organized crime both national and transnational.
- f) May endanger international peace and security

The United Nations has provided arrangements for acts of terrorism by stipulating this matter in several conventions and UN Security Council resolutions. International conventions that regulate terrorism include:

1. International Convention for These prevention, and Panishment of Terrorism 1937 (*International Convention on the Prevention and Punishment of Terrorism*);
2. International Convention for the Suppression of Terrorist Bombing 1997 (*International Convention on Against Terrorist Bombings*);
3. International Convention for the Suppression of the Financing of Terrorism 1999 (*International Convention on Against Financing for Terrorists*);
4. Important UN Security Council resolutions regarding combating terrorism, namely Resolution number 1368 of 2001 concerning UN expressions of sympathy for the victims of the September 11, 2001 tragedy, the WTC tragedy.

The definition of terrorism in the world does not yet have uniformity, of course, because of an ideological view that differs from each country towards criminal acts of terrorism. This is because it is difficult to formulate a precise definition that can be universally accepted. In the international realm, the United Nations provides legal protection for legal certainty even though the United Nations has not stipulated that the crime of terrorism is an international crime, but in the Convention for the Prevention and Punishment of Terrorism in 1937 it was stated “*acts of terrorism*” means criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, a group of persons or the general public” (Terrorism is any form of crime aimed directly at the state with the intention of creating a form of terror against certain people or groups of people or the general public)⁹

From the description above, it can be concluded that the Crime of Terrorism in the Perspective of International Criminal Law is a crime that not only threatens individual safety but also is a threat to state sovereignty. So that it can be said, acts of terrorism as an Extraordinary crime. The crime of terrorism from the point of view of international criminal law can be said to be a crime against humanity and an extraordinary crime which is equivalent to blatant violations of human rights such as genocide, ethnic cleansing and other forms of serious human rights crimes. The rules regarding Crimes Against Humanity itself are contained in article 7 (1) of the Rome Statute which contains the definition of crimes against humanity. One of the characteristics of these crimes against humanity is that they were committed intentionally as part of a widespread and systematic attack, involving many parties, and targeting all citizens, under the political compulsion of the state or organization to commit the crime, carried out in a systematic manner. in accordance with the developed policy, it can be said so although explicitly the legal status of terrorism is not yet an international crime as stated in the Rome Statute.

Apart from this, even though the definition of terrorism in the world does not yet have uniformity because there is an ideological view that differs from each country, and even though the explicit legal status of terrorism is not yet an international crime, the UN Security Council issued a resolution calling for this terrorism issue to be obtain the full attention and cooperation of States. This means eradicating and preventing terrorism is not only a concern for victims or those who are threatened, but rather a collective responsibility of the international community.

B. Legal Status of the Papuan Armed Criminal Group after being designated as terrorists in International Criminal Law

The Coordinating Minister for Politics, Law and Security (Menko Polhukam), Mahfud MD, has officially designated the armed criminal group (KKB) in Papua a terrorist organization on April 29, 2021 by referring to Law Number 5 of 2018 concerning Amendments to the Law Number 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism to Become Law. The decision or enactment of the status of the Armed

⁷ Romli Atmasasmita. *Pengantar Hukum Pidana Internasional bagian II*. (Jakarta: Hecca Press). 2004.

⁸ Muladi, *Penanggulangan Terorisme Sebagai Tindak Pidana Khusus, bahan seminar Pengamanan Terorisme sebagai Tindak Pidana Khusus*, Jakarta, 28 Januari 2004.

⁹ Zdzislaw Galicki, *International Law and Terroris*, di download :<http://www.sagepub.com/lippmanstudy/articles/Galicki.pdf> didownload pada tanggal 01 juni 2023

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Criminal Group to become terrorists was taken after the government received support from various parties, such as the Indonesian National Armed Forces, the Indonesian National Police, the State Intelligence Agency, the government, and community and traditional leaders, in eradicating acts of violence that have recently appeared in Papua.

The definition of terrorism itself according to Law of the Republic of Indonesia Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism Into Law is an act that uses violence or threats of violence that create an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, the environment, public facilities, or international facilities with ideological, political, or disturbance motives security. If examined more deeply, the labeling of the Free Papua Organization (OPM) as a terrorist organization on April 29, 2021 with reference to RI Law Number 5 of 2018 concerning Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism was carried out because the Indonesian government apparently has limitations in quell acts of terror accompanied by violence that have been carried out by the KKB.

According to Article 43I paragraph (1) of the Law of the Republic of Indonesia Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism to Become Laws, the TNI can involved in handling terrorism as part of military operations other than war whose implementation is further regulated by Presidential Regulation. With the implementation of the status of the Free Papua Organization from an Armed Criminal Group to a terrorist, it is hoped that blocking access to funding for the KKB group will also make law enforcement more comprehensive, making it easier for the government, especially law enforcers, to carry out their duties and functions. The Government's goal of establishing the status of the Free Papua Organization from an Armed Criminal Group to being a terrorist is in accordance with the Preamble to the 1945 Constitution of the Republic of Indonesia (1945 Constitution) in which it is emphasized that one of the objectives of the Republic of Indonesia is to protect the entire nation of Indonesia and all of Indonesia's bloodshed. Indonesia. This means that the state (government) must strive for maximum action in protecting the lives of citizens from all threats that endanger the lives of citizens, one of these threats is acts or movements of terrorism which are latent threats or can suddenly threaten society.

In international criminal law, the status of the Papuan armed criminal group after being designated as terrorists has the same consequences when this group is referred to as KKB (Armed Criminal Group). His actions do not include international crimes that fall into the criminal jurisdiction of the International Criminal Court (ICC) regulated in the Rome Statute of 1998, however, terrorism crimes can be tried by the ICC if a terrorism case has met the requirements of an international crime, including¹⁰

- 1) Has a broad influence, not just one country or a region
- 2) It becomes the concern of the international world and creates an impact on a global scale so that it requires international handling

Even though the explicit legal status of the perpetrators of terrorism is not yet an international crime, the resolution issued by the UN Security Council calls for the issue of terrorism to receive full attention and cooperation from countries. This means eradicating and preventing terrorism is not only a concern for victims or those who are threatened, but also a shared responsibility of the international community.

IV. CONCLUSION

The Indonesian Government's implementation of the status of the Free Papua Organization from an Armed Criminal Group to a terrorist group aims to block access to funding for the KKB group. In addition, it is hoped that law enforcement can be carried out more comprehensively so as to make it easier for the government, especially law enforcers, to carry out their duties and functions. The definition of terrorism in the world does not yet have uniformity, of course, because there is an ideological view that differs from each country and the legal status as a terrorist for an armed criminal group in Papua is explicitly not an international crime so that it has not entered into the criminal jurisdiction of the International Criminal Court (International Criminal). Court/ICC) regulated in the Rome Statute of 1998, however, the international community still needs to view crimes committed by Armed Criminal Groups which are currently designated as terrorists in Papua as a form of crime that not only threatens individual safety but is a threat to sovereignty. a country.

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