



Legal Policy on determining the status of Armed Violence Groups in Papua: Separatist or Terrorist

Gracesy Prisela Christy,

Universitas Kristen Indonesia Paulus, Makassar, Indonesia

Marthen Nappang,

Universitas Hasanuddin, Makassar, Indonesia

Musakkir,

Universitas Hasanuddin, Makassar, Indonesia

Wiwik Heryani

Universitas Hasanuddin, Makassar, Indonesia

Email: gpchristy@ukipaulus.ac.id

Received: August 10, 2022; reviews: 2; accepted: November 12, 2022.

Abstract

Based on its history, before being labeled as a terrorist by the government, acts of violence committed by a group of people in Papua received different names, the number of armed conflicts that have been or are currently occurring in various countries in the world, this conflict can be divided into two, namely international armed conflict and international armed conflict. non-international armed conflicts (conflicts within the state) The Police call the Armed Criminal Group (KKB) while the Indonesian National Army uses the term Armed Separatist Group (KSB), but for the Free Papua Organization (OPM), the group is a fighter who wants to separate from Indonesia. The estuary of the conflict in Papua due to the actions of the Armed Criminal Group (KKB), which is a pro-independence group in Papua, prompted the government to take firmer action by establishing the Papuan KKB as a terrorism group. Of course, this brings pros and cons in various circles. This study aims to examine the determination of the KKB as an objective and appropriate terrorism group according to criminal law, especially when examined from the Terrorism Law. The research method uses normative research methods. Based on the results of the research, it is known that the government has correctly established the KKB as a terrorism group because the actions taken by the KKB indicate the fulfillment of the elements of terrorism in the Terrorism Act, although there are still several things. different from the criteria of terrorist groups in the world with their networks and movements with other groups. armed criminals who are currently designated as terrorists.

Keywords

KKB, Crime, Separatis, Terrorism.

I. INTRODUCTION

Indonesia since before and after independence has experienced various kinds of problems, both international and non-international problems. Although this problem can be resolved in various ways, there are parties who do not want to resolve it peacefully. If the conflict does not end, this can lead to the outbreak of wars born of existing conflicts, especially armed conflicts. The occurrence of armed conflict starts from a conflict of interest with other nations or ideological incompatibility between groups within their own nation. Indirectly this can be said as a form of national struggle or fighting for the interests of the state. Based on the number of armed conflicts that have occurred or are currently occurring in various countries in the world, these conflicts can be divided into two, namely international armed conflicts and non-international armed conflicts (conflicts within countries). Non-international war or better known as civil war is an armed conflict that occurs between rebels who are at war (belligerent) with a legitimate state government defense agency and occurs in the territory of a country from a country that is experiencing conflict. as is currently the case. in Papua carried out by the Free Papua Organization (OPM)¹.

The Free Papua Organization was founded in December 1961 with the aim of opposing Indonesia's control of Irian Jaya (currently Papua and West Papua) and they claim that Papua is an independent sovereign territory and wants to form an independent state. According to Indonesian law, the OPM can already be said to be an organization that is prohibited from circulating in Indonesia because it has an ideology to separate itself from Indonesia as stated in Article 87 of the Criminal Code concerning acts of treason. However, the OPM in its criminal acts can be classified as an Armed Criminal Group (KKB) for committing crimes together. However, the OPM can also be referred to as the Armed Separatist Criminal Group (KKSB) because it wants to separate itself from Indonesia and form a new government. The placement of the OPM armed group in its concept is still a problem in Indonesia. Some want them to be classified as a terrorist group which must be resolved in various ways. But on the other hand, some parties also want them to be included as a separatist group so that the TNI can intervene to solve the problem. The government as the other party as well as the highest authority still firmly refers to them as the Armed Crime Group (KKB)².

The peak of the political integration conflict in Irian Jaya began with differences of opinion between the Indonesian and Dutch parties at the end of 1949. During these negotiations the Indonesian and Dutch parties were unable to reach an

¹ Al-Rasyid, H. H. (2021). Radikalisme Berbasis Agama.hal -11

² <https://histori.id/sejarah-organisasi-papuamerdeka-opm>, Organisasi Papua Merdeka"/ diunduh pada tanggal 1 juni 2022

agreement regarding the Indonesian sovereign territory. The Indonesian delegation chaired by Moh. Hatta did not want to back down from the attitude he had held long before the proclamation, the territory of Indonesia covered the entire territory of the Dutch East Indies. The Dutch rejection of Indonesia's desire to incorporate Irian Jaya into Indonesian territory resulted in an agreement by both parties to postpone the talks until a year later, therefore Indonesia looked for another way, namely taking action outside the United Nations. As stated by the Minister of Foreign Affairs of the Republic of Indonesia, Dr. Soebandrio in his speech about the rejection of the UN General Assembly various negotiations between the Indonesian and Dutch governments regarding the status of the New Guinea region have never brought results for the Indonesian government, it can be seen that the Dutch government is adamant in defending the territory of New Guinea. Evidently, the Dutch government has partnered with Australia to formulate a joint plan, namely separating the territory of New Guinea from the Republic of Indonesia.³

Conditions worsened and the conflict became more widespread because the action of the KKB, which is a pro-independence group in Papua, prompted the government to take firmer action by establishing the KKB as a theoretical group announced by the government through an official. Coordinating Minister for Political, Legal and Security Affairs Mahfud MD at a press conference in Jakarta, Thursday, April 29, 2021, said KKB organizations and members were categorized as terrorist groups because they had committed massive violence. With the stipulation of this terrorist status label, the KKB group can be enforced through legal mechanisms and handling as regulated in Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Law jo. Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Law (hereinafter referred to as the Terrorism Act)⁴.

The government's move to label and categorize the Papuan KKB as a terrorism group has in fact brought about various pro and contra attitudes that occur in the community. The Human Rights Commission considers that the embedding of terrorism does not solve the problem, it will only exacerbate conflict in society, also only adding other names, from KKB, an armed civilian criminal group, but the cycle of violence never stops. The assessment must be comprehensive in nature by taking into account the social, economic and legal impacts on Papuans in general. Until now, the definition of terrorism is still a debate even though there are experts who have formulated and formulated it in the legislation (Shipena, Mbukusa, & Sibanda, 2022).

The United States itself, which was the first to declare the "war on terrorism", has not yet provided a clear and firm definition so that everyone can

³ <https://www.kompas.id/baca/polhuk/2021/04/30/kkb-adalah-teroris-tingkatkan-sinergi-aparat/> diunduh pada tanggal 5 Juni 2022.

⁴ Hikam, M. A. (2016). Peran Masyarakat Sipil Indonesia Membendung Radikalisme-Deradikalisasi. Jakarta: Kompas.hal. 33-34

understand its true meaning without hesitation, not feeling discriminated against and marginalized. However, the absence of an international legal definition of terrorism does not necessarily negate the legal definition of terrorism, according to the national laws of each country, nor does it negate the evil nature of the act and thus means that the perpetrators of terrorism are free from prosecution. *Nullum crimen sine poena*, the old legal principle says, which means that no crime is allowed to go unpunished, but now that terrorism is no longer just an International Crime and has become an Internationally Organized Crime, it is very difficult to eradicate this type of crime. without cooperation and mutual understanding among countries. The term Terrorism in English is called Terrorism which comes from the word "Terror" and the perpetrator is called "Terrorist". Based on the Oxford Paperback Dictionary, terror is linguistically defined as "Extreme fear", "Terrifying person or thing" (Someone or something terrible), while "Terrorism" means "the use of violence and intimidation, especially for political purposes" (use of violence and intimidation). , mainly for political purposes).

Black's Law defines terrorism as "the use of the threat of violence to intimidate or cause panic, especially as a means to influence political behavior." In Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Terrorism, it regulates the problem of investigating and investigating cases of criminal acts of terrorism in Indonesia which has a high state institution or institution that is devoted to carrying out the procedure of this case and also has the authority separately (Singh & Kumar, 2022).

Among other things, from the police there is a special team for countering terrorism crimes, namely the Special Deasemen 88 Anti-Terror Team from the police, Densus 81 who are members of Kopassus, elite TNI AD, TNI AL. , and the Jamangkara Detachment (Denjaka) which is part of the Indonesian Air Force marine corps. There is the Bravo Detachment (Denbravo) which is part of the Indonesian Air Force Paskhas, elite Indonesian Air Force troops, while the State Intelligence Agency or abbreviated as BIN also has a shared table which is a representative of the anti-terror unit.

The government is currently placing TNI troops behind the National Police's anti-terror team. Densus 88 is the Leading Sector in the operation to eradicate terrorism in Indonesia. The placement of Detachment 88 as the vanguard of the prevention of criminal acts of terrorism sometimes creates jealousy among other anti-terror units. This condition often leads to open conflicts between anti-terror units in the field, especially regarding the handling of separatism in Aceh and Papua, as well as communal conflicts such as in Poso and Maluku, where the Anti-Terror Detachment 88 of the National Police, because it is under the Ditserse Police, is involved. also on the operation of these cases⁵.

⁵ Edon, S. F. L., & Hidayat, N. A. (2021). Kewajiban Pemerintah Indonesia terhadap Pelanggaran HAM yang Dilakukan Oleh Kelompok Kriminal Bersenjata (KKB) Di Papua. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9(3), 854–869

II. METHOD

This research uses normative juridical methods, namely legal research that uses secondary data consisting of legal materials which include primary, secondary, and tertiary legal materials. Legal materials obtained in the study will be collected, grouped according to their respective variables, for further qualitative juridical analysis with field data as additional data in this study. The approach method used in analyzing legal materials is the legal approach (Statue Approach) and the concept approach (Conceptual Approach) and the cultural approach (Culture Approach).

III. DISCUSSION

Indonesia regulates provisions regarding terrorism in Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism (Perppu Number 1 of 2002) which was later promulgated into Law with Law no. 15 of 2003. The formation of this law was based on various considerations, such as a series of bombings that occurred in Indonesian territory and resulted in the loss of life and created fear in the wider community. This series of events has a broad impact on social, economic, political and international relations. However, in this provision, terrorism has not been clearly defined. Only at the time of the revision of Law no. 5 of 2018, the definition of terrorism is included in the Act, namely Article 1 number 2. Terrorism in Indonesian positive law is defined as: "actions that use 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, the environment, and the environment. environment, public facilities, or international facilities with ideological, political, or security disturbance motives." This definition is considered problematic because it is rubbery and ambiguous. The main problem with this definition is the phrase 'with ideological, political or security motives'. Because in the formulation of the offense, the motive does not need to be included because it will result in difficulty in proving. In addition, the elements of the motive are also multi-interpreted and thick with nuances of political motives so that they have the potential to take action against political opponents of the government. terrorism can leave the government free to interpret the rules and can designate any organization or movement that is considered dangerous as a terrorist movement) commits terror and the consequences of that action (actus reus)⁶.

If you look at the International Convention Against Terrorism adopted by the OIC in 1999, terrorism is defined as: "acts of violence or threats by individuals or groups with the aim of terrorizing people or threatening to harm them or

⁶ Ruslan Renggong, *Hukum Pidana Khusus memahami Delik-Delik di Luar KUHP*, jakarta: kencana, 2017. Hlm. 104.

endanger their lives, honor, freedom, their security or rights, or damage, occupy, or confiscate public facilities or private property, or endanger national resources, or international facilities, or threaten stability, territorial integrity, political unity, or state sovereignty." When compared between the formulation of the definition of terrorism above with the understanding contained in Law no. 5 of 2018, the striking difference lies in the formulation of the motifs listed. This confirms that the formulation of motives in the definition of terrorism is rarely done. Moreover, in the teachings of criminal law, it is not the main thing in determining criminal liability. 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 a terrorist group was set by the Constitutional Court, for example on Jamaah Ansharut Daulah (JAD)⁷ and the East Indonesia Mujahidin affiliated with ISIS. In addition, the terrorist stigma is also carried out by the security forces against Jamaah Islamiyah⁸.

In addition to the realm of definition, other problems in Law number 5 of 2018 are also related to the provisions of forced efforts which are regulated excessively. This is because Article 25 stipulates that detention of suspected terrorists can be carried out for a very long time. The total detention time stipulated in the regulation, starting from the investigation stage to the extension of detention is a maximum of 290 days. The length of time that exceeds the total detention period stipulated in the Criminal Procedure Code (KUHP) is 170 days⁹. This arrangement will of course have an impact on the actions of officials who abuse their power. This provision will open up the potential for the practice of torture in detention rooms which is currently common. In addition to detention, forced arrests are also regulated far beyond the provisions stipulated in the Criminal Procedure Code. Arrest in Law no. 5 of 2018 can be implemented for 14 days and can be extended for 7 days. The arrangement of the arrest period is very far when compared to the provisions in the Criminal Procedure Code which only allows investigators to arrest suspects for 1x24 hours.

Schmid and A. J. Jongman (2009), who conducted a survey by taking from several academics and practitioners in the field of terrorism studies related to the definition of terrorism. As a result, they found as many as 109 different definitions. From these various definitions, there are key generalities/similarities related to the definition of terrorism, namely: 1. the goals/agenda of terrorism are political, 2. have a strategic character, 3. are directed at broad targets, 4. have a strong psychological impact, 5. directed against the civilian population (non-combatants)¹⁰. Based on the many definitions of terrorism from experts, R. G. Frey and Christopher W. Morris suggest that there are at least three main characteristics

⁷ <https://www.merdeka.com/peristiwa/jamaah-anshor-daulah-jad-divonis-sebagai-kelompok-terlarang-dan-dibekukan.html> diakses 10 juli 2022

⁸ <https://www.bbc.com/indonesia/indonesia-56511113> diakses 9 juni 2022

⁹ <https://tirto.id/4-poin-dalam-uu-terorisme-baru-yang-berpotensi-jadi-masalah-cLcW>

¹⁰ Monograf, Revisi Atas Undang-Undang No. 15 Tahun 2003 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang No. 1 Tahun 2002, diterbitkan Habibie Center

of terrorism. First, fundamentally acts of terrorism have a political purpose. Second, the use of violence instruments that target randomly. Third, targeting innocent people, and carried out by non-state actors. The elements and characteristics of terrorism were reaffirmed through the agreement of several countries which stated that in an event of terrorism, there must be four elements, namely: (1) terrorism is a crime; (2) terrorism is carried out intentionally; (3) the main target of terrorism is civil society; (4) the main motive is to create fear¹¹.

From the various definitions mentioned above, several important elements can be drawn that an act is included in the concept of terrorism if it is associated with a political agenda, the method uses violence and/or threats of violence, carried out randomly, especially with targets. civil society, and above all to create a climate of fear. Departing from the definition of terrorism in Law number 5 of 2018 that the normative definition of terrorism is very abstract and ambiguous.

That way, the government can easily include the KKB as part of a terrorist organization. We analyzed the determination of the KKB as a terrorist group which departed from Law number 5 of 2018, implementation with However, if the government really wants to include the KKB as part of a terrorist organization, it must be ensured that all elements contained in the definition of terrorist contained in the Law no. 5 of 2018 has been fully fulfilled. These elements include¹²: 1. The existence of acts using violence or threats of violence; 2. Generating a widespread atmosphere of terror or fear; 3. Can cause mass casualties; 4. Causing damage or destruction to strategic vital objects, the environment, public facilities, or international facilities; 5. The motive for ideological, political, or security disturbances. From a number of elements that must be met above, there are some elements that are not in accordance with the activities carried out by the KKB.

Based on the explanation above, it can be compared the differences between the normative definition of terrorism and the activities carried out by the KKB in Papua. The comparisons are listed in the following table¹³:

ELEMENT	Definition of Terrorism According to Law no. 5 / 2018	KKB
METHOD	There are actions that use	Not always use
DESTINATION	violence or threats of violence	violence or threats of violence
TARGET	Creating an atmosphere of terror or feeling	Fear effect is not generated
IMPACT	widespread fear	widely
MOTIVE	Can cause serious casualties	The main target is the TNI and Polri to show resistance to the country they consider to be the invaders

In international law there is no definite definition and focus on the mode of attack and the variable types of targets for domestic and transnational terrorism,

¹¹ Heru Susetyo, <https://law.ui.ac.id/v3/kkb-kksb-dan-konstruksi-sosial-politik-terorisme-oleh-heru-susetyo/>

¹² 1 Pasal 1 angka 2 UU No. 5 Tahun 2018

¹³ R. G. Frey dan Christopher W. Morris, Violence, Terrorism, and Justice, New York: Cambridge University Press, 1991, hlm.1.

in their research, Santifot and Sandler argue that based on the GTD (Global Terrorism Database) we can separate the mode of attack and the type of target from each. each 9 into 22 categories. We divide attack modes into four categories¹⁴: Kidnapping, hostage taking, bombing (eg bombing and mail bombing) armed attack, and assassination (politically motivated murder). Unarmed attacks and unidentified attacks are excluded from consideration as we cannot attribute them to specific types of attacks. The target types are divided into four categories: private parties, businesses, officials, and the military. Violent terrorists and political parties are excluded as targets because we are concerned about terrorist attacks being carried out against non-terrorist targets. Finally, other and unknown targets are excluded because they are not associated with a single type of goal.

Transnational terrorists have a similar pattern. The bombings showed a disproportionate influence on the changing terrorist campaigns during the 1970s¹⁵. However, during the 1980s and 1990s, armed attacks and assassinations were the catalyst for change. During this decade, state-sponsored attacks became important and fundamentalist terrorists became the dominant driver of transnational terrorism. State-sponsored terrorists (eg, the Abu Nidal Organization) used armed attacks (eg, the massacres at Vienna's Schwechat Airport and Rome's Fiumicino Airport on 27 December 1985) to make headlines and create anxiety. Moreover, unlike left-wing terrorists, religious fundamentalists are ready to be slaughtered. With this motive there is a change in tactics and ideals in accordance with the hypothesis. During their rise to prominence, fundamentalist terrorists increased their use of armed attacks and assassinations in the early 1980s and early 2000s. With this explanation, it can describe the changes and movements of developing acts of terrorism.

Canadian legal arrangements as a Comparison: Canada participates in various terrorist listing regimes mandated by the UN under its Chapter VII powers. Two Canadians have been caught in the 1267 listing regime which is based on the sharing of secret intelligence and intergovernmental decision-making. Liban Hussein's name was added to the 1267 and US and Canadian lists shortly after 9/11 but was subsequently removed from those lists.¹⁶ Although Hussein's lawyers were prepared to challenge his extradition and listing in Canada, they would have been powerless to obtain a remedy from the 1267 committee had the US not agreed that it had listed him in error. Abousfian Abdelrazik continued to be on the 1267 list despite receiving a strong domestic remedy that held he should be allowed to return to Canada after he was tortured in Sudan and denied travel documents. In that case, Justice Zinn strongly criticized the 1267 listing process as Kafkaesque, but was of course not able to provide a direct remedy against UN listing.¹⁷

¹⁴ Hamm, M. S. (2007). *Terrorism as crime: from Oklahoma City to Al-Qaeda and beyond* (Vol. 7). NYU Press.

¹⁵ Santifort, C., Sandler, T., & Brandt, P. T. (2013). Terrorist attack and target diversity: Changepoints and their drivers. *Journal of Peace Research*, 50(1), 75-90.

¹⁶ Dosman, E. A. (2004). For the Record: Designating Listed Entities for the Purposes of Terrorist Financing Offences at Canadian Law. *U. Toronto Fac. L. Rev.*, 62, 1.

¹⁷ Clarke, L. (2010). Federal Court of Canada (Abdelrazik v Minister of Foreign Affairs and Attorney General of Canada, First instance judgment, 2009 FC 580). *International Law in Domestic Courts*, 2010.

The Abdelrazik case and other domestic challenges have contributed to significant reforms of the 1267 listing process, including the creation of an Ombudsperson. In December 2011, Mr. Abdelrazik was removed from the UN list as a result of a delisting recommendation made by the Ombudsperson. This recommendation had presumptive force under Security Council Resolution 1989 and was not overturned by the 1267 committee or the Security Council.¹⁸ Each country, however, retains control over the secret intelligence said to support the listing.¹⁹ No reasons were given for the delisting and Canada did not take a position on the delisting apparently on the basis that it had not seen the intelligence used to list its own citizen and despite leaking CSIS documents prior to the delisting that suggested that electronic surveillance had revealed that Mr. Abdelrazik had discussed acts of terrorism in 2000.²⁰ The reliability of the intelligence—including allegations that Mr. Abdelrazik was “closely associated” with abu Zabadayah, who was repeatedly waterboarded by the CIA—may have been suspect, but that is only conjecture given the absence of meaningful reasons for both the listing and delisting.

The Canadian courts provided a domestic remedy in 2009 that allowed Mr. Abdelrazik to return to Canada, but it took an additional 2.5 years for him to be delisted by the UN and his lawsuit against the Canadian government continues. Counter-terrorism Beyond Borders The Omar Khadr case also illustrates the limits of domestic remedies. Khadr’s

Canadian lawyers won a number of cases and restrained Canadian officials from continuing to interrogate him at Guantanamo.²¹ They also won two Supreme Court victories that concluded that Canadian officials violated both international law and the Charter when they interrogated Khadr at Guantanamo in 2003 and 2004, the latter after extensive sleep deprivation.²² Khadr’s victories were, however, hollow. The disclosure remedy first ordered by the Court was limited by national security confidentiality claims, including arguments rejected by the court that disclosure would adversely affect Canada’s relations with the United States.²³ In the second case, the Supreme Court overturned the trial judge’s remedy that Canada be required to request Khadr’s repatriation on the basis that it interfered too much with Canada’s diplomatic affairs with the United States.²⁴

¹⁸ Security Council Committee, United Nations Security Council Resolution 1989, UNSCOR, 2011.

¹⁹ Roach, K. (2011). Counter-terrorism in and outside Canada and in and outside the anti-terrorism act. *Rev. Const. Stud.*, 16, 243.

²⁰ *Ibid*, 244.

²¹ Macklin, A. (2010). The Supreme Court of Canada: *Khadr v. Canada*. *International legal materials*, 49(3), 907-921.

²² Rangaviz, D. (2011). Dangerous deference: The supreme court of Canada in *Canada v. Khadr*. *Harv. CR-CLL Rev.*, 46, 253.

²³ *Khadr v Canada (AG)*, 2008 FC 807 at para 89. Note, however, that the precise parameters of the disclosure are not revealed in the public reasons.

²⁴ *Khadr v Canada*, 2010 FC 715. Khadr persisted and won a trial judgment that held the government had breached a common law duty by not consulting him before issuing a diplomatic note that the United States not use the Canadian interrogation in his Guantanamo proceedings. The decision also noted that the United States did not comply with Canada’s request and concluded that if necessary to provide an effective remedy, the courts could require Canada to request Khadr’s repatriation. This judgment, however, was stayed pending appeal and the appeal declared moot given Khadr’s guilty plea before a military commission. See *Khadr v Canada*, 2010 FCA 199; *Khadr v Canada (Prime Minister)*, 2011 FCA 92.

Canadian courts are, however, not always powerless to provide effective remedies for abuses in transnational terrorism investigations. Khadr's brother, Abdullah, was captured, beaten and detained in Pakistan before eventually being released and allowed to return to Canada. The US then sought to extradite him to face material support of terrorism charges. The Canadian courts, however, stayed extradition proceedings in response to various abuses committed against him in Pakistan. The Ontario Court of Appeal upheld the stay and stressed that Canada could prosecute Abdullah Khadr in Canada.²⁵ This decision underlines how a purely domestic Canadian approach can be the most rights protective. At the same time, the case also likely placed pressures on Canadian/American relations no less severe than in the Omar Khadr case and the government sought, but was denied, leave to appeal the judgment to the Supreme Court. The remedy obtained by Abdullah Khadr largely depended on the fact that he, unlike his younger brother, was fortunate enough to be present in Canada.

3.1 The legal policy of determining the status of a terrorist against KKB in terms of the Terrorism Act.

If you look at the background behind the Papuan KKB action, it can be assumed that one of the triggers is differences in interpretation. According to the Papuan KKB, West Papua had achieved its independence on December 1, 1961, which was declared by the New Guinea Raad so that the entry of Papua into the Republic of Indonesia was invalid. Then the Papuan KKB made various problems and propaganda, and this was seen as a threat to the territorial integrity of the Republic of Indonesia. Furthermore, in April 2021, the government officially designated the Papuan KKB as a terrorist group. According to the government, the determination of terrorism is supported by the existence of a number of crimes committed by the KKB so that it often results in civilian casualties. The terrorist labeling of the KKB seems to be based on the government's view that it is not enough to place the organization as an Armed Criminal Group alone.

However, this status needs to be increased again considering the track record of those who have carried out acts of terror by causing many casualties. In addition, in carrying out its actions, the KKB also uses weapons like military forces and is carried out in an organized manner using tactics such as war. Therefore, the usual handling that only uses a security approach by law enforcement officers is deemed inadequate so it is necessary to embed terrorist status on the Papuan KKB so that law enforcement officers, the Police and the TNI can synergize in overcoming them.²⁶

In the initial discussion, it will be discussed first whether it is appropriate for the government to designate KKB as a terrorist in the armed conflict in Papua. To answer this, appropriate, measurable and objective criteria are needed. Because

²⁵ United States of America v Khadr, 2011 ONCA 358 at para 76, leave to appeal to SCC refused, 34357 (November 3, 2011)

²⁶ Ibid, Edon, S. F. L., & Hidayat, hal. 867

the government through the coordinating minister for Political, Legal and Security Affairs uses the criteria of Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, in this case the researcher also uses the same statutory approach plus a conceptual approach and a case approach. The history of legal regulation in Indonesia regarding criminal acts of terrorism is regulated in Government Regulation in Lieu of Law (Perpu) Number 1 of 2002 in the post-Bali Bombing 1 period on October 12, 2002²⁷. These provisions are used to ensnare perpetrators where the provisions in the Criminal Code cannot be used as a legal basis to ensnare terrorists and provide legal protection to victims. This Perpu Number 1 of 2002 was later ratified as 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, became Law, and amended by Law Number 5 of 2018 concerning Amendment to Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Law (hereinafter referred to as the Law on Combating Terrorism). According to Article 1 number 2 of the Law on Combating Terrorism, "Terrorism is an act that uses violence or threats of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to strategic places, vital objects, environment, public facilities, or international facilities with ideological, political, or security disturbance motives.

Crimes of terrorism are often planned and organized crimes, even though this form of crime has an international dimension. Therefore, according to Muladi, this crime is called an extraordinary crime which requires handling efforts that use extraordinary methods. This is because terrorism has great potential to become a serious threat to national security and stability. The impact of this crime threatens the public interest because the victims are not only one or two people, but en masse. If referring to the Black's Law Dictionary, terrorism is an activity in which there is an element of violence or consequences that endanger human life that violate criminal law, and are intended to intimidate the civilian population, influence government policies and their implementation in certain ways such as murder or kidnapping. Based on some literature, several important elements will be found related to criminal acts of terrorism, including: 1. It is carried out with violence or threats of violence; 2. The violence committed is against the law; 3. It is committed against a person or group or property or public facilities; 4. Aims to change the ideology and political direction of the country²⁸.

In its development, normatively regulating elements/elements of criminal acts of terrorism are regulated in Article 6 of the Terrorism Law which reads: "Everyone who intentionally uses violence or threats of violence that creates an atmosphere of terror or widespread fear of people, causes mass victims by how to seize independence or loss of life and property of others, or cause damage or

²⁷ Government Regulation in Lieu of Law (Perpu) Number 1 of 2002

²⁸ Satria, H. (2014). *Anatomi Hukum Pidana Khusus*. Yogyakarta: Uii Press Yogyakarta. Hal.101

destruction of Vital Strategic Objects, the environment or public facilities or international facilities, shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 5 (five) years. 20 (twenty) years, life imprisonment, or death penalty. That is, the offense is considered completed with the emergence of consequences that are prohibited by law. So it can be said that the occurrence of acts of terrorism that must be proven is the result of: 1. The emergence of an atmosphere of terror or widespread public fear; 2. Cause mass casualties by depriving the liberty of or loss of life and property of others; or 3. Causing damage or destruction to strategic vital objects, the environment or public facilities or international facilities. As a result, there is a causal relationship with the actions of the perpetrators who intentionally use violence or threats of violence. And the intentional element in question must be driven by ideological, political, or security disturbances (Vide Article 1 point 2 of the Terrorism Law). If viewed from the perspective of national interest, the labeling of KKB as a terrorist is very understandable. The reason is, before being designated as a terrorist, the Papuan KKB was labeled as an Armed Criminal Group that carried out separatist movements and carried out rebellions. If allowed to continue, it is not impossible that the KKB will become a belligerent whose existence is recognized as a subject of international law, thus allowing other countries to intervene in its handling. This will certainly harm the national interest given the interference of other countries in handling Indonesia's internal affairs. For this reason, the government is quick to label it as a terrorist group so that it can be avoided even though the issues that occur in Papua are quite the center of world attention.²⁹

The government has a fairly strong juridical basis in establishing the Papuan KKB as a terrorist group. This is because in the field it can be said that the KKB is indicated to fulfill the elements of a criminal act of terrorism because the actions taken by the KKB have created an atmosphere of widespread terror against civil society in Papua, which is driven by a political motive, namely breaking away from the Unitary State of the Republic of Indonesia. However, Article 5 of the Terrorism Law states that the criminal act of terrorism is not a political crime. This is because to facilitate law enforcement so that mutual cooperation and extradition efforts can be requested as stated in the applicable statutory provisions.

If viewed from the point of view of the national interest, it will benefit the national interest. In addition, the Papuan KKB has taken various actions that are suspected to be able to fulfill the elements of offense contained in the Terrorism Law. Coordinating Minister for Political, Legal and Security Affairs Mahfud MD said the Papuan KKB had claimed hundreds of lives with 95 people dead. This shows the fulfillment of the element of mass casualties. In addition, the Papuan KKB has also created an atmosphere of terror or fear in the wider community.³⁰

²⁹ Wibowo, A. (2012). Hukum pidana terorisme: kebijakan formulatif hukum pidana dalam penanggulangan tindak pidana terorisme di Indonesia. *Graha Ilmu*.hal.3

³⁰ Rohim, N. (2015). Optimalisasi Otonomi Khusus Papua Dalam Peningkatan Kesadaran Hukum Masyarakat Guna Meredam Konflik Dan Kekerasan. *FIAT JUSTISIA:Jurnal Ilmu Hukum*, 8(1), 80-100. <https://doi.org/10.25041/no1.289>

3.2 Law Enforcement Against Criminal Acts committed by KKB in Papua according to Indonesian Criminal Law

The determination of the KKB terrorist status in the armed conflict in Papua is certainly not merely a change of status, but the determination has consequences when viewed from Indonesian criminal law, both material criminal law and formal criminal law. Based on the practices carried out so far, the criminal acts committed by the KKB have received both preventive and repressive responses from the Indonesian government. Various efforts to resolve the conflict in Papua have been carried out by the government, especially with the development approach model by continuously improving the security and public order conditions that are supported by development in all aspects of life.

Strategic steps for resolving the Papua problem include: a) strengthening the paradigm of change that is oriented towards justice and welfare with all its derivatives; b) accelerated improvement in the quality of human life; c) provide broad access and opportunities for the Papuan people to play a role; d) creating social involvement for all elements in Papua; e) strengthen equal law enforcement for the whole community; f) involve more Papuans in decisions or policies that are important to them; g) recognition of customary rights and freedom of expression on those rights; h) maximum protection of human rights; i) forming a special envoy who is responsible for bridging the interests of all elements that play a role in the land of Papua; and j) strengthening dialogue networks with various interested parties to improve the standard of living of the Papuan people, both at home and abroad. everyday life.

Law enforcement is carried out against KKB when committing violence/other law violations by the Police as the authorized party in carrying out the legal process as referred to in Article 2 of Law Number 2 of 2002 concerning the Indonesian National Police, namely as follows: one of the functions of government state in the field of maintaining security and public order, law enforcement, protection, protection, and service to the community. The determination of the status of the KKB to become a terrorist by the government triggers new problems in terms of material criminal law and formal criminal law. In material criminal law, the legal instrument to be applied is no longer the Criminal Code but has changed to the Law on Combating Terrorism. In terms of overcoming it, there is a difference between political crimes such as treason and rebellion (separatists) and terrorism. The parties involved in overcoming the separatists are the Police and the TNI, especially if there are Military Operations Other than War as has been done many times in the previous era. In its status as a terrorist, the parties involved are the Police, the TNI, and the National Counterterrorism Agency (BNPT)

In theory, according to Clark McCauly, there are two models in handling terrorism, namely the criminal justice model approach and the war model approach. In the criminal justice model approach, terrorism is seen as a form of law violation, so that efforts to overcome it are carried out through law

enforcement. The second approach, namely the war model, views terrorism as a threat to state sovereignty, thus placing the use of military instruments in its handling efforts.

In Indonesia, based on Presidential Regulation Number 46 of 2010 placing BNPT as the authorized party to formulate and make policies and strategies as well as become the coordinator in the field of counterterrorism. In the policy aspect, BNPT has three areas, namely prevention, protection and deradicalization: the field of enforcement and capacity building as well as the field of international cooperation. In carrying out its duties, BNPT places more emphasis on integrated and comprehensive counter-terrorism efforts, namely by prioritizing a persuasive approach. The National Police itself has a Special Detachment (Densus) 88 which is a special anti-terror unit with special competencies to deal with various types and forms of terrorism. Meanwhile, the TNI itself has a Counter-Terrorism Detachment (Dengultor), the Indonesian Army has 5 Anti-Terror Groups, and the 81st Army Special Forces Detachment, the Jalamangkara Detachment (Denjaka) of the Marine Corps belonging to the Indonesian Navy, the Air Force's Bravo Detachment (Denbravo) and the Anti-Terrorism Unit. State Intelligence Agency Terror. The State Intelligence Agency also plays a very important role in efforts to combat terrorism in Indonesia, because with data and information sources from the State Intelligence, acts of terrorism can be prevented and eradicated. These institutions synergize with each other to eradicate terrorism in Indonesia not only by relying on a hard approach, namely by enforcing rules and enforcement agencies but also with a soft approach to the Indonesian people by preventing the thought of radicalism as its origin. the emergence of the terrorism movement in Indonesia. Indonesia.

Judging from the forms and actions that have been taken by the KKB so far, it would be excessive to enforce the law if law enforcement against perpetrators of violence and armed conflict in Papua had to reduce all powers held by the government. Therefore, it is too excessive if the government assigns a terrorist status to the KKB because the scope of the crimes committed does not have a transnational aspect as a terrorist group that has disrupted the stability of Indonesia's national security, the implementation of overcoming the crime of KKB in Papua according to the Directorate General of Crime and Crime of the Papua Police, the Criminal Team in particular is still using the Criminal Code, this is triggered by the existence of several differences between the KKB in Papua and known terrorists, although the consequences and consequences that appear to have met the elements in the law, data from the Papua Police Criminal Investigation Team explains that there are differences in the networks owned by KKB, the position in the network they have is more of a royal structure where there is a supreme leader, there are advisors, guards, commanders, and their respective members, this is certainly different from terrorism, also in their recruitment and goals. poses do the action so far.

The head of the Papua Police Crime Investigation Unit explained that the

conditions of the people and the climate in Papua greatly affect their attitudes and understanding, basically the Papuan people give the highest respect to elders or tribal chiefs or people who are seen as wise people to lead their village or village so it is not difficult if the leaders those who already have the KKB ideology invite or re-recruit members from their villages to join this separatist group. Considering that their average income is ranchers and farming, when they are invited to join this separatist group, they are lured with lots of money, good food, and all facilities are provided, such as vehicles, communication tools and weapons.

IV. CONCLUSION

In essence, the definition is a terminology that is very difficult to define. Even the international community has never officially defined the definition of terrorism. In fact, the definition is very important to formulate. This is because the definition will be the parameter and the basis for whether an action is included in the category or not. In fact, there are hundreds of definitions that are not exactly the same as others. The term is related to the words terror and terrorist, which in general also do not have a standard and universal meaning or definition. If referring to several expert opinions who formulate the definition according to definition, Henry Campbell Black states that the definition used is intended to a. affect the civilian population, b. influence the regulations and policies issued by the government, or c. influence the implementation and administration of local government by means of kidnapping and murder.

The act of embedding terrorist status in the Papuan KKB is based on the actions taken by the Papuan KKB which are indicated to have fulfilled the element of offense as stipulated in the Terrorism Act. The Papuan KKB is considered to have caused a widespread atmosphere of terror against civil society in Papua, such as causing mass casualties with the death toll of 95 people, the destruction of schools which are public facilities, and others. In addition, the Papuan KKB also uses weapons such as the TNI so that it is not enough to use the usual procedures in dealing with them. With these facts, the Government has a strong juridical basis to attach terrorist status to the Papuan KKB as stipulated in the Terrorism Law. Terrorism is an extraordinary crime (extraordinary crime) which also requires handling efforts that utilize extraordinary measures. In general, ordinary crimes only involve the police as law enforcement officers. However, the crime of terrorism has a difference, namely the possibility of military involvement in handling it through Military Operations Other than War. This has great potential to cause human rights violations so that limits are needed so that they are not carried out excessively, let alone arbitrarily. In addition, it must also be emphasized that this criminal act of terrorism is regulated in the Terrorism Law so that the perpetrators must be brought to justice to account for their actions.

Law enforcement against Papuan KKB groups, the State, and the central government must also resolve the root causes of conflicts such as equitable development and economy in Papua through optimizing Papua's special autonomy

and taking affirmative action against the Papuan people, especially in terms of access to proper education, proper health. a decent life and the opportunity to occupy government positions in the Papua region.

REFERENCE

- Al-Rasyid, H. H. (2021). Radikalisme Berbasis Agama.hal -11
<https://histori.id/sejarah-organisasi-papuamerdeka-opm>, Organisasi Papua Merdeka"/ diunduh pada tanggal 1 juni 2022
- <https://www.kompas.id/baca/polhuk/2021/04/30/kkb-adalah-teroris-tingkatkan-sinergi-aparat/> diunduh pada tanggal 5 Juni 2022.
- Hikam, M. A. (2016). Peran Masyarakat Sipil Indonesia Membendung Radikalisme-Deradikalisasi. Jakarta: Kompas.hal. 33-34
- Edon, S. F. L., & Hidayat, N. A. (2021). Kewajiban Pemerintah Indonesia terhadap Pelanggaran HAM yang Dilakukan Oleh Kelompok Kriminal Bersenjata (KKB) Di Papua. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9(3), 854–869
<https://www.bbc.com/indonesia/indonesia-56511113> diakses 9 juni 2022
- Heru Susetyo, <https://law.ui.ac.id/v3/kkb-kksb-dan-konstruksi-sosial-politik-terorisme-oleh-heru-susetyo/>
<https://www.bbc.com/indonesia/indonesia-56511113> diakses 9 juni 2022
<https://tirto.id/4-poin-dalam-uu-terorisme-baru-yang-berpotensi-jadi-masalah-cLcW>
- Monograf, Revisi Atas Undang-Undang No. 15 Tahun 2003 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang No. 1 Tahun 2002, diterbitkan Habibie Center
- Heru Susetyo, <https://law.ui.ac.id/v3/kkb-kksb-dan-konstruksi-sosial-politik-terorisme-oleh-heru-susetyo/>
1 Pasal 1 angka 2 UU No. 5 Tahun 2018
- R. G. Frey dan Christopher W. Morris, *Violence, Terrorism, and Justice*, New York: Cambridge University Press, 1991, hlm.1.
- Hamm, M. S. (2007). *Terrorism as crime: from Oklahoma City to Al-Qaeda and beyond* (Vol. 7). NYU Press.
- Santifort, C., Sandler, T., & Brandt, P. T. (2013). Terrorist attack and target diversity: Changepoints and their drivers. *Journal of Peace Research*, 50(1), 75-90
- Dosman, E. A. (2004). For the Record: Designating Listed Entities for the Purposes of Terrorist Financing Offences at Canadian Law. *U. Toronto Fac. L. Rev.*, 62, 1.
- Clarke, L. (2010). Federal Court of Canada (*Abdelrazik v Minister of Foreign Affairs and Attorney General of Canada*, First instance judgment, 2009 FC 580). *International Law in Domestic Courts*, 2010.
- Security Council Committee, United Nations Security Council Resolution 1989, UNSCOR, 2011.
- Roach, K. (2011). *Counterterrorism in and outside Canada and in and outside the*

- anti-terrorism act. *Rev. Const. Stud.*, 16, 243.
- Macklin, A. (2010). The Supreme Court of Canada: *Khadr v. Canada*. *International legal materials*, 49(3), 907-921.
- Rangaviz, D. (2011). Dangerous deference: The supreme court of Canada in *Canada v. Khadr*. *Harv. CR-CLL Rev.*, 46, 253.
- Khadr v Canada (AG)*, 2008 FC 807 at para 89. Note, however, that the precise parameters of the disclosure are not revealed in the public reasons
- Khadr v Canada*, 2010 FC 715. *Khadr* persisted and won a trial judgment that held the government had breached a common law duty by not consulting him before issuing a diplomatic note that the United States do not use the Canadian interrogation in his Guantanamo proceedings. The decision also noted that the United States did not comply with Canada's request and concluded that if necessary to provide an effective remedy, the courts could require Canada to request *Khadr's* repatriation. This judgment, however, was stayed pending appeal and the appeal declared moot given *Khadr's* guilty plea before a military commission. See *Khadr v Canada*, 2010 FCA 199; *Khadr v Canada (Prime Minister)*, 2011 FCA 92
- United States of America v Khadr*, 2011 ONCA 358 at para 76, leave to appeal to SCC refused, 34357 (November 3, 2011)
- Government Regulation in Lieu of Law (Perpu) Number 1 of 2002
- Satria, H. (2014). *Anatomi Hukum Pidana Khusus*. Yogyakarta: Uii Press Yogyakarta. Hal.101
- Wibowo, A. (2012). *Hukum pidana terorisme: kebijakan formulatif hukum pidana dalam penanggulangan tindak pidana terorisme di Indonesia*. Graha Ilmu. hal.3
- Rohim, N. (2015). Optimalisasi Otonomi Khusus Papua Dalam Peningkatan Kesadaran Hukum Masyarakat Guna Meredam Konflik Dan Kekerasan. *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 8(1), 80–100. <https://doi.org/10.25041/no1.289>
- Shipena, D., Mbukusa, N., & Sibanda, T. (2022). Student Profiling and Key Dimensions-Enhancing Higher Education Learning and Teaching in Namibia. *American Journal of Creative Education*, 5(1), 1-9. <https://doi.org/10.55284/ajce.v5i1.603>
- Singh, A. K., & Kumar, S. (2022). Measuring the Factors Affecting Annual Turnover of the Firms: A Case Study of Selected Manufacturing Industries in India. *International Journal of Business Management and Finance Research*, 5(2), 33-45. <https://doi.org/10.53935/26415313.v5i2.211>