

11-11-2021

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Recommended Citation

Napang, Marthen and Rohman, Syaiful (2021) "JURIDICAL-NORMATIVE REVIEW OF THE DESIGNATION OF ARMED CRIMINAL GROUPS (KKB) IN PAPUA AS TERRORIST GROUPS," *Journal of Terrorism Studies*: Vol. 3 : No. 2 , Article 1.

DOI: 10.7454/jts.v3i2.1035

Available at: <https://scholarhub.ui.ac.id/jts/vol3/iss2/1>

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JOURNAL OF
Terrorism Studies

**Juridical-Normative Review of the Designation of Armed Criminal Groups
(KKB) in Papua as Terrorist Groups**

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Abstract

There are differences of opinion among various groups after the stipulation of the Armed Criminal Group (KKB) in Papua as a terrorist group/organization. KKB has been identified with the West Papua National Liberation Army (TPNPB-OPM), which is one of the armed separatist movements in Papua. The determination based on armed violence carried out by the KKB has political, ideological, and security motives which are elements in the crime of terrorism. In the context of criminal law reform, the drafters of the Criminal Code separate criminal acts of terrorism and treason in different forms and concepts. Separately, they are categorized as special crimes and crimes against state security. By using the normative juridical method, the authors conclude that the determination of the KKB as a terrorist group/organization is the right policy of the Indonesian government. Based on the three motives above, the KKB can now be categorized as an ethnic-nationalist separatist terrorism group.

Keywords: Armed Criminal Groups (KKB), Terrorism, Papuan Human Rights Violations

INTRODUCTION

The Government of the Republic of Indonesia officially categorized the Armed Criminal Group (KKB) in Papua as a terrorist group/organization on April 29, 2021. It was conveyed by the Coordinating Minister for Political, Legal, and Security Affairs (Menko Polhukam) Mahfud M.D., at a press conference. The government considers organizations and people in Papua who commit massive violence to be categorized as terrorists. The Coordinating Minister for Political, Legal, and Security

Affairs stated that the labeling of terrorist organizations against KKB is by Law of the Republic of Indonesia Number 5 of 2018 concerning Eradication of Criminal Acts of Terrorism (Kompas, 2021). Based on this statement, it can be concluded that acts or acts of violence committed by KKB have fulfilled the elements of a criminal act of terrorism and can be categorized as acts of terrorism.

According to the Institute for Criminal Justice Reform (ICJR), juridically, the government bases its

decision on the provisions of Article 1 paragraph 2 of Law no. 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism. In that article, "politics" is mentioned as one of the motives that make actions, using violence or threats of violence that create an atmosphere of terror or fear in a broad sense, which can cause mass casualties and/or cause damage or destruction of vital strategic objects, the environment, public facilities, or international facilities, can be referred to as acts of terrorism (ICJR.or.id, 2021).

It should be remembered that the KKB has been identified with the West Papua National Liberation Army-Free Papua Organization (TPNPB-OPM) which has the aim of separating itself from the Unitary State of the Republic of Indonesia and establishing its state. According to Indonesian criminal law, this is a criminal act of treason against the territorial integrity of the Unitary State of the Republic of Indonesia. The crime of treason is a crime related to security issues for the state and state safety. The act of treason is regulated in Book II Chapter I of the Criminal Code on crimes against state security (Lukman, 2016).

In the context of criminal law reform, the drafters of the Criminal Code

separate criminal acts of terrorism and treason in different forms and concepts. Separately, they are categorized as special crimes and crimes against state security. The Criminal Code formulates criminal acts of terrorism in Chapter XXXIV on Special Crimes, Part Two on Criminal Acts of Terrorism, Articles 600-602. Meanwhile, the offense of treason is formulated in the Second Book of Chapter I on Crimes Against State Security. In particular, treason against the territory of the Unitary State of the Republic of Indonesia is regulated in paragraph 2, treason against the Unitary State of the Republic of Indonesia, Article 192 (Ali, 2012).

This study focuses on acts of violence and/or armed violence perpetrated by armed criminal groups (KKB) in Papua. Previously, there have been several studies with the object of conflict in Papua using other scientific approaches, which generally discuss the separatist movement of the Free Papua Organization (OPM) and the West Papua National Liberation Army (TPNPB). Poltak Partogi Nainggolan (2014), with the title "International Activities of the Papuan Separatist Movement", concluded that there was a tendency to increase Papuan separatism movements in international forums in recent years (Nainggolan, 2014).

Nomensen ST. Mambraku (2015) entitled “Conflict Resolution in Papua in a Political Perspective” concludes that the conclusions of the process and results of conflict resolution in Papua since the Old Order regime to the Reformation regime for more than fifty years in terms of the political aspect of conflict resolution show that the Government is up to currently still using elements of violence that are contrary to the values upheld by Pancasila and the 1945 Constitution of the Republic of Indonesia, namely: equality, peace, justice, respecting differences and differences, protecting minorities, and upholding the law and human rights. (Mambraku, 2015).

Based on the background above, there are two problem formulations. First, what is the underlying motive for the actions of the KKB affiliated with the TPNPB in the category of terrorism and treason? Second, why does the government consider the crime of KKB as a crime of terrorism? The purpose of reviewing two problem formulations, namely to find out and understand the reasons for the policy of criminalizing criminal acts by the KKB as a crime of terrorism.

RESEARCH METHODS

The researcher uses the normative juridical method to examine these two problems with a statutory and conceptual

approach. The statutory approach is used to look at the regulation of criminal acts of terrorism and treason in Indonesian criminal law, as well as a comparison between the two. This approach analyzes crimes committed by armed criminal groups (KKB) in Papua based on the formulation and elements of the regulation of these two things. Meanwhile, the author uses a conceptual approach to analyze the background of the Indonesian government in deciding (KKB) in Papua as a terrorist group/organization. In addition, this approach is also used to see what forms or types of terrorism are carried out by the Armed Criminal Group (KKB) in Papua.

RESULTS AND DISCUSSION

The formulation of Terrorism in Law Number 5 of 2018. Formally, terrorism is described in Article 6 of Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism, namely:

“Setiap orang yang dengan sengaja menggunakan kekerasan atau ancaman kekerasan yang menimbulkan suasana teror atau ketakutan yang meluas, yang dapat menimbulkan korban massal, dan/atau menimbulkan kerusakan atau kehancuran

terhadap obyek vital yang strategis, lingkungan hidup, fasilitas umum atau fasilitas internasional, dipidana dengan pidana penjara paling singkat 5 (lima) tahun dan paling lama 20 (dua puluh) tahun, pidana penjara seumur hidup, atau pidana mati.”

“Every person who intentionally 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 vital objects, the environment, public facilities or international facilities, shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years, life imprisonment, or the death penalty.

Article 1 paragraph (1) of Law no. 5 of 2018 provides a juridical definition of criminal acts of terrorism as all acts that meet the elements of a criminal act following the provisions of the Terrorism Act. In paragraph (2) of the law, terrorism is defined as 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 vital objects, the environment, public facilities, or international facilities with ideological, political, or security disturbance motives (Ali, 2012).

In the definition of terrorism above, there are several elements of criminal acts of terrorism, three of which are any person, violence or threats of violence, and political motives. These three things will be the focus of the discussion in the following sub-chapters. Quoted from his book, Mahruz Ali divides the elements of criminal acts of terrorism into four elements. First, the act is in the form of behavior, both active and passive which results in the emergence of a thing or condition that is prohibited by law; Second, the behavior and consequences that arise must be against the law both in a formal and material sense; Third, there are certain things or conditions that accompany the occurrence of behaviors and consequences that are prohibited by law; and Fourth, regarding the criminal penalties as referred to in Article 340 of the Criminal Code (Ali, 2012).

The legal subject in Law Number 5 of 2018 is every person, both individuals, and corporations. Everyone is an Indonesian or a foreigner who commits a crime. People who commit acts of terrorism even though they are not in Indonesia can

still be charged with committing a criminal act of terrorism (Rahmawati, 2006). Soedarto said that someone who is abroad can also commit a crime in Indonesia (Soedarto, 1990). Meanwhile, Article 1 point 10 of the law formulates the definition of a corporation as an organized collection of people and/or assets, both legal entities and non-legal entities.

Recognition of corporations as subjects of criminal law has been worldwide. This can be seen at the 14th International Conference with the theme of Corporate Criminal Liability in Athens which was held from July 13 to August 6, 1994. For example, Finland is one of the countries that regulate corporations as subjects of criminal law and can be accounted for. The formulation of the corporation as a subject of criminal law is motivated by the different history and experiences of each country, including Indonesia (Ratomi, 2018).

Pujiyono stated that the role of corporations as non-state actors, national or trans-or multinational companies in modern society in this globalization era has a strategic function not only in the economy but also has a significant influence on

political and defense policies. Corporate crime is a complex crime with the characteristics of “crime by power” because it is committed by actors who have financial and political power. Corporate crime is also a type of “white-collar crime” (Pujiyono, 2016). Jonkers said that in the Netherlands there has been a conceptual development of the corporation, wherein in 1976, the legislators amended Article 51 of the Dutch Criminal Code based on the Law dated June 23, 1976, State Gazette no. 337. According to this new provision, all criminal acts can be committed by individuals and corporations (Jonkers, 1987).

In the records of law enforcement for criminal acts of terrorism, several terrorist corporations (read: groups/organizations/agencies) have been designated by the Government of Indonesia as terrorist organizations or groups. As an illustration, below are several terrorist organizations based on data processed from the Police's List of Suspected Terrorists and Terrorist Organizations (DTTOT) with Number:DTTOT/P7a/149/II/RES.6.1./2021.

Table.3.1. List of Terrorist Organizations

NO	Terrorist Organizations	Explanation
1	Jemaah Islamiyah (JI)	The group was designated as a terrorist organization based on the Central Jakarta District Court Decision Number: 13/Pen/Pi-DTTOT/2020/PN.Jkt.Pst on October 14, 2020.
2	Jemaah Anshorut Tauhid (JAT)	
3	Mujahidin Indonesia Timur (MIT)	
4	Abu Sayyaf Group (ASG)	
5	Al-Qaida (AQ)	
6	Al-Qaida in Iraq (AQI)	
7	Jemaah Anshorut Daulah (JAD)	
8	Islamist State in Iraq and the Levant (ISIL)	
9	Kelompok Kriminal Bersenjata (KKB)	Designated a terrorist organization on April 29, 2021

Source, POLRI 2021

The determination of the KKB as a terrorist organization if we look at the list is different from the groups above it. The eight terrorist organizations other than KKB are organizations based on religious ideology for their terrorist acts, which are also called religious terrorism. The determination of the KKB as a terrorist organization makes law enforcement against criminal acts of terrorism more widespread, namely acts of terrorism based on the ideology of ethnonationalism (Anakotta, 2021).

It is hard to deny that the activities of the KKB are affiliated with the West Papua National Liberation Army or the Free Papua Organization (TPNPB/OPM) which have carried out acts of armed violence intending to separate some parts of Indonesia (Papua) from the Unitary State of the Republic of Indonesia. This can be

proven by referring to several court decisions on treason cases committed by members and/or people; affiliated with TPNPB/OPM. Thus, the Armed Criminal Group can be referred to as the Armed Terrorist Criminal Group or the Armed Criminal Terrorist Group (KKTB) with a background in the struggle for independence with the ideology of ethnonationalism.

Violence or Threats Of Violence

Article 6 of Law Number 5 of 2018 formulates the element of violence as one of the elements of a criminal act of terrorism. Violence is a form of prohibited action. Materially, the element of violence is a criminal act of terrorism is formulated as an act of abusing physical strength with or without using methods that are against the law and endanger the body, soul, and

independence of people, including making people faint or helpless. The crime of terrorism is a crime that is prohibited by the Terrorism Act. In short, Moeljatno defines a criminal act as an act that is prohibited by law and is threatened with a criminal offense if anyone violates the prohibition (Moeljatno, 1955). Meanwhile, the meaning of the word 'action' in the phrase 'criminal act' according to Noyon and Langemeijr that the act in question can be positive and negative. Positive action means doing something, while negative action means not doing something.

In his book, Mahruz Ali divides the elements of evil into four elements. First, the act is in the form of behavior, both active and passive which results in the emergence of a thing or condition that is prohibited by law; Second, the behavior and consequences that arise must be against the law both in a formal and material sense; Third, there are certain things or conditions that accompany the occurrence of behaviors and consequences that are prohibited by law; and Fourth, regarding the criminal penalties as referred to in Article 340 of the Criminal Code (Ali, 2012).

Based on the division above, violence in the phrase 'violence and threats of violence can be interpreted as 'active' behavior. The result of this active behavior

is the emergence of an atmosphere of terror or widespread fear, causing mass casualties, and causing damage or destruction to strategic vital objects, the environment or public facilities, or international facilities. This is in line with the view that the offense formulated in Article 6 of the Terrorism Law is a material offense, which emphasizes the final result of the behavior of a person and/or group of people who are against the law of a criminal act (Ali, 2012).

In this context, if we look at several shootings against civilians and members of the Indonesian National Armed Forces and Police (TNI/Polri) as well as the burning of public facilities such as schools, which were carried out by KKB, then these actions can be categorized as active acts and/or active acts committed by the KKB. against the law. Regarding the element of violating the law, the formulation of the criminal act of terrorism adheres to the nature of violating the law in general, because it is not stated explicitly or explicitly in the formulation of the articles in the Terrorism Law.

Political Motivation

The third element of this subsection is a political motive. Article 1 number 2 of Law Number 5 of 2018 formulates political motives as one of three motives in criminal

acts of terrorism, two of which are ideology and security disturbances. In Article 5 of the Law, the crime of terrorism must be considered not a political crime. While political motives can be said to be related to political crimes because their actions are driven by the belief that the order of society or the state or leaders must be changed following ideals.

Fanaticism on something that he thinks is true gives birth to radicalism. Radicalism is understood as an inner attitude that reflects beliefs about a truth that is sometimes difficult to understand. Beliefs about something "right", make adherents want to make it happen in all aspects of life, where life is carried out according to "right". In the context of criminal acts of terrorism, realizing these changes can be done in various ways, such as bomb attacks, kidnapping, murder, sabotage, and other forms of terrorism (Reskoprojo, 2018).

According to Black's Law Dictionary, motive means an intentional desire, which directs a person to act; can also be called hidden intentions (Gardner, 2009). In Indonesian criminal law, it is possible only for acts of terrorism that formulate a firm or explicit motive in the formulation of a crime. Because, in general, the motive is not formulated explicitly in the formulation of a crime. However, in its

application, the motive is used to prove the existence of a subjective element against the law, or to prove the existence of an intentional element in a criminal act. That is, the motive is also the basis for determining the crime and political crimes of a group or individual.

Regarding the definition of political crime, several experts define it. Some of them, namely Jan Rummelink. He stated that the difference between political crimes and general crimes can be seen from the motives that control their actions. Political criminals are driven by altruistic motives or concern for others. This motive is driven by his belief that the order of society or the state or its leaders must be changed according to their ideals. Meanwhile, general crime is dominated by egoistic motives (Rummelink, 2003).

Apart from Jan Rummelink, it can also be seen from the theory in determining political offenses put forward by Hazewinkel Suringa. He mentioned, there are four theories in determining political offenses. The four theories are:

1. The objective theory (absolute theory), that political crimes are directed against the State and the functioning of State institutions;
2. Subjective theory (relative theory), that in principle all general crimes

committed with political goals, backgrounds, and objectives are political crimes;

3. Dominant Theory, namely the theory that limits the objective and subjective theory. In this case, pay attention to what is dominant in an action. If the dominant crime is general, then the act is not called a political crime; or
4. Political Incident Theory, that this theory sees actions that are considered as part of political activity (Loqman, 1993).

In addition, he also considers political crimes as acts based on belief. In political crimes, the perpetrator has the belief that his views on law and the state are more correct than the views of the state or what is currently prevailing.

The act of terrorism to disrupt the government order or the legitimate government is identical to treason, which in other words is called treason. The term betrayal comes from the Dutch language "aanslag", which in English means "attack" or "aanval" which means "attack with bad intentions" (Misdadige Aanranding). In the Criminal Code, there is no definition of treason. Based on Indonesian criminal law, the crime of treason is regulated in Articles 104-129 of the Criminal Code. However, the provisions of several articles (Articles

104, 106, 108, 139a, 139b) directly mention treason. However, what is meant by treason is not formulated in the Criminal Code.

As quoted by the Institute for Community Studies and Advocacy (ELSAM, 2016), states that in several Dutch dictionaries, aanslag is defined as gewelddadige aanval, which in English means "violent attack". The word aanslag has the same meaning as onslaught which in English also means "violent attack", "fierce attack", or "vigorous attack". Makar is generally understood as an evil act or evil conspiracy that is carried out in secret to harm others. Thus, treason is an evil act or conspiracy to kill, oppose the president and vice president, overthrow the legitimate government to attack or resist.

M. Sudradjat Bassar stated that treason is defined as an "attack". The definition of treason is specifically contained in Article 87 of the Criminal Code which states that treason for an act already exists if the will of the perpetrator has appeared in the initial form of implementation in the sense intended in Article 53 of the Criminal Code. Preparatory actions are not included in the meaning of treason. So what is included in the act of treason is only the act of execution.

However, this understanding still does not provide an understanding of treason. In a narrow sense, the crime of treason consists of three forms, namely treason against the President and Vice President, treason against the territory of the State, and treason against the Government of Indonesia. This study focuses on the formulation of the crime of treason against the territory of the state. The crime of treason, which is committed with the intention of bringing all or part of the country under foreign rule or to separate part of the territory of the state, has been regulated by lawmakers in Article 106 of the Criminal Code whose formulation in Dutch reads as follows:

“De aanslag ondernemen bertemu het oogmerk om het grondgebied van den staat geheel dari gedeeltelijk onder vreemde heerschappij te brengen dari om een deel daarvan afscheiden, wordt gestraft met levenslange gevangennistrاف dari tijt tijdel tijke kembaran dari ten hoogdel (Engelbrecht, 1954)”

“Those who are committed with the intention of bringing all or part of a country's territory under foreign rule or to separate part of a state's territory shall be

punished with life imprisonment or maximum imprisonment of twenty years”

KKB As a Terrorist Organization

At the end of this paper, the author feels the need to redefine the KKB and relate it to the context of the reasons why the label “terrorist” is attached to this group. Referring to the statement of Komjen Pol. Boy Rafli Amar, Head of the National Counter-Terrorism Agency, said there were two reasons behind the determination of the KKB as a terrorist group/organization, namely:

1. Based on UN Security Council Resolution No. 1373 (2001).
2. The existence of political motives, ideology, and security disturbances.

First, internationally, every country has the right to classify a group into a terrorist list. The determination of an organization/group into the List of Suspected Terrorists and Terrorist Organizations is based on UN Security Council Resolution no. 1373 (2001) and refers to the List of Procedures and Guidelines of the United Nations Committee on the implementation of United Nations Security Council Resolution No. 1267 (1999), 1989 (2011), and 2253 (2015) (Ppatk.go.id, 2017).

Second, nationally, this provision is part of the implementation of Law Number 9 of 2013 concerning the Prevention and Eradication of the Financing of Terrorism Crimes which is the implementation of the international recommendations of The Financial Action Task Force (FATF) 40 Recommendations (FATF, 2012). In addition, it has been mentioned above that political motives, ideology, and security disturbances are also the basis for determining terrorist organizations/groups. Third, the motive is a motive for committing a criminal act of terrorism as stated in Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism.

Regarding the second reason above, it can be briefly said that acts of violence and or armed violence carried out by KKB with political motives are based on the ideology of ethnonationalism which has caused security disturbances for both the community and the community. the territorial sovereignty of the Unitary State of the Republic of Indonesia. Therefore, below is an analysis of the relationship between violence and/or armed violence with political motives, ideologies, and security disturbances carried out by the KBB so that the Indonesian Government designated the group as a terrorist group.

First, political motives. The head of the National Counterterrorism Agency (BNPT) claimed that the armed criminal group was the West Papua National Liberation Army (TPNPB-OPM), which has now joined the United Liberation Movement for West Papua (ULMWP) led by Benny Wenda. It was also stated that currently five KKB groups are being targeted by law enforcement, namely the Lekagak Telenggen Group, the Murib Military Group, the Egianus Kogoya Group, the Goliat Taboni Group, and the Sabinus Waker Group. All of this is in the mountains. In political terminology, the actions taken by the TPNPB-OPM are referred to as separatism, namely efforts to separate themselves from a country or state. The act of separatism intends to separate from and/or join other countries (Effendi, 2013).

Apart from separatism in the form of violence and/or armed violence, political motives are manifested in various forms of propaganda covering four non-traditional issues, namely human rights, democracy, environmental degradation, as well as equality, and racial background. The four issues were carried out through three channels, namely online media, political discussions and campaigns, and a personal approach to strategic figures in the Melanesian Spearhead Group (MSG)

(Putra et.all, 2019). MSG is a South Pacific subregional organization synonymous with the Melanesian race-based in Port Vila, Vanuatu.

The second, the ideological motive. According to Mubyarto, ideology is several doctrines, beliefs, and symbols of a group of people or nations that serve as guidelines and guidelines for work (or struggle) to achieve the goals of that society or nation (Mubyarto, 1991). In the case of these armed criminal groups, the doctrine underlying their struggle is ethnonationalism. An ideological construction that emerged when elements of nationalism (Indonesianness) began to fade on the one hand and an increase in elements of regional essential primordialism (Papuan) on the other.

Third, the motive for security disturbances. The existence of political motives and or ideological motives made the KKB struggle carried out in various ways. One of them is through the use of violence and/or armed violence. This causes security disturbances and creates an atmosphere of terror in society. This security disturbance can be seen from several attacks or shootings, both against security forces (TNI and Polri) and civilians. The Papuan Police noted that from January 2021 to April, KKB had committed sixteen times of violence and/or

armed violence. The victims were civilians, teachers, and motorcycle taxi drivers, as well as security forces (TNI and Polri) (Suwandi, 2021). The existence of these security disturbances can hinder development in Papua which will have an impact on various aspects of growth in Papua, ranging from economic aspects, education, health, to the provision of social mobility facilities and infrastructure for the Papuan people. Two examples that can be used as references are the shooting of civilians in June 2021, and the death of a member of the Indonesian Army. Generals and members of Brimob-Polri in a shootout that occurred in April 2021. In 2020 alone there were 100 incidents of conflict occurring with 40 battles, 2 riots, 38 violence against civilians, and 57 deaths.

CONCLUSION

Based on the problem formulation and discussion above, it can be concluded that crimes committed by armed criminal groups (KKB) in Papua can be regarded as criminal acts of terrorism. Therefore, the policy of the Indonesian government to designate them as a terrorist group is the right policy. Acts of violence and or armed violence carried out by armed criminal groups have political motives, ideological motives, and security motives for disturbance.

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