

Separatism In The Perspective Of International Law And National Security: A Case Study Of The Armed Criminal Group (Kkb) In Papua

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Abstract

The separatist movement in Papua, known as the Armed Criminal Group (KKB), has been a phenomenon in recent years. The KKB is a group of armed individuals advocating for the independence of West Papua from Indonesia. They engage in a series of activities including attacks on security forces, extortion, facility burnings, and human rights violations. Addressing the separatist movement of the KKB in Papua involves efforts to resolve the conflict peacefully, promote dialogue, strengthen regional autonomy, and address the root causes of the conflict. Long-term solutions require collaboration between the Indonesian government, Papuan community leaders, and separatist groups willing to adopt peaceful political approaches and respect international law. This paper will investigate the issue of separatism in the context of international law, focusing on the case study of the armed criminal group in Papua. The research aims to analyze the international legal responses to separatist movements that employ violence and illegal methods to achieve their goals, involving the analysis of international law concerning state sovereignty, human rights, and enforcement of international law. The data used in this study includes international legal instruments in decision-making.

Keywords: *Separatism, Perspective of International Law, Armed Criminal Group, National Security.*

INTRODUCTION

Political separatism is a movement to achieve sovereignty and separate a territory or group of people from one another. This term is usually not accepted by separatist groups themselves as they consider it derogatory and prefer more neutral terms such as self-determination. Separatism has long been a highly complex issue in the context of international law. The separatist movement involves individuals or groups attempting to break away from an existing state with the goal of establishing a new political entity or a new nation. One interesting case study to examine is the armed criminal group in Papua, which advocates for the independence of West Papua from Indonesia.

The separatist movement in Papua, known as the Armed Criminal Group (KKB), has been a phenomenon in recent years. The KKB is a group of armed individuals advocating for the independence of West Papua from Indonesia. They engage in a series of activities including attacks on security forces, extortion, facility burnings, and human rights violations. The separatist movement of the KKB in Papua has created tension and conflict in the region. The Indonesian government, in safeguarding national integrity and maintaining public security, has implemented law enforcement efforts against the KKB. These actions involve security operations and law enforcement to address the threats posed by this group.

In the context of international law, the issue of separatism in Papua raises various questions related to human rights, state sovereignty, autonomy, and conflict resolution. The perspective of international law emphasizes the importance of maintaining state sovereignty and integrity while also ensuring the protection of human rights. It is important to note that

international law does not explicitly recognize the right to separatism. However, international law recognizes the right of people to peacefully express their political opinions and guarantees universal human rights. At the same time, violent actions and the use of force Unlawful actions, such as those carried out by the KKB, are contrary to the principles of international law.

Further study and in-depth analysis of the KKB separatist movement in Papua from an international law perspective will provide better insights into the challenges faced in resolving this conflict and evaluating efforts made to achieve stability and reconciliation in the region. This study aims to analyze the international law perspective on separatist movements that employ violence and illegal methods. This is important because the issue of separatism has significant impacts on political stability, security, and human rights in the affected areas.

In this introduction, we will discuss the historical background of the Papua conflict, including the political, economic, and cultural context that influences the dynamics of the separatist movement in the region. We will also explain the relevant international legal framework, including the principles of state sovereignty and human rights that form the basis of this research. Furthermore, we will outline the objectives of this research, which are to explore the international legal responses to the armed separatist movement in Papua. In this context, we will consider the legal aspects related to the use of violence and illegal methods to achieve separatist goals.

It is expected that the findings of this research will provide a better understanding of how international law addresses the challenges faced in handling armed separatist movements. The results of this research can also provide insights for states and international institutions in formulating effective policies in dealing with separatist cases in the future. To achieve these objectives, this research will employ an approach of international legal analysis that combines a review of international legal instruments, decisions of international courts, and expert opinions in this field. Through this analysis, constructive recommendations are expected to be identified in addressing the issue of armed separatism in Papua and the broader context of international law.

RESEARCH METHODS

The method used in this study is to use qualitative methods with secondary data collection methods and literature review. In connection with this study, the authors use a descriptive qualitative approach to create an understandable picture. The data collection is based on literature studies and secondary data from related government agencies and is validated by collecting information to form the basis of theory and design that is used by researchers through literature studies such as journals, books, papers, theses, and internet documents.

RESULT AND DISCUSSION

Separatism

Separatism is a term derived from the English word "separate," which means to be apart. According to the Kamus Besar Bahasa Indonesia (the official dictionary of the Indonesian language), separatism is an ideology or movement for self-separation (establishing one's own state). Separatism is also an ideology, while separatists are individuals or groups who desire to separate themselves from a union or seek support for their cause. Therefore, those who engage in separatism are also referred to as separatists. In simple terms, separatism is a movement with the objective of separating a region or group from a particular territory or country. This is done to

achieve independence and establish a new sovereign entity or state. The factors contributing to separatism include:

1. Ideological factors can emerge in line with the emergence of new understandings of societal order. The failure of secular states in organizing human life may drive people to seek alternative ideologies.
2. Political oppression is another factor. Totalitarian governments do not provide sufficient room for their citizens to express their demands and political interests. Even if there are rituals of general elections, they tend to be used as a means to perpetuate and legitimize the ruling regime. Such political regimes often suppress the aspirations and desires of certain groups in society, while sometimes exploiting the majority. The heavy political repression can, to some extent, trigger the emergence of separatist movements.
3. Economic factors also play a role. During the early days of the reform era, several resource-rich regions that produced oil and timber demanded fair treatment from the government. However, local economic interests are not the sole motive that can drive separatism. The economic interests of foreign countries also play a significant role in separatist movements in many nations. From the history of world politics, we can observe the involvement of the United States and Europe (especially the United Kingdom and France) in various separatist movements. Economic interests always take precedence. These economic interests also serve as a significant factor in the entry of foreign intervention or involvement.
4. Foreign intervention. Former Director of Intelligence of BAKIN, Dr. AC Manullang, in an interview with Koran Tempo, stated that there has been involvement of the US intelligence agency, CIA, in various riots such as those in Aceh, Sampit, Pangkalan Bun, Ambon, Irian, and other regions. The goal is to create chaos in Indonesia. There are also allegations of Dutch involvement in the Ambon case.

This literature review provides an overview of separatism as an ideology and the factors that contribute to its emergence, including ideological, political oppression, and economic factors. Understanding these factors is crucial in comprehending the dynamics and complexities of separatist movements, as well as their implications for governance, stability, and conflict resolution.

Separatism in the Perspective of International Law

The history of separatist movements in Indonesia dates back to the Dutch colonial era. One of the well-known separatist movements is the Free Aceh Movement, which has been active since the early 20th century. This movement was triggered by the dissatisfaction of the Acehnese people with the Dutch colonial government, which they believed was depriving them of their rights. After Indonesia's independence in 1945, separatist movements continued to emerge in several regions. In 1961, the Trikora movement, led by President Soekarno, was launched to reclaim West Irian from Dutch rule. This movement eventually succeeded in 1963, and West Irian officially became part of Indonesia.

The perspective of international law on separatism, including the case of the Free Papua Movement (KKP) in Papua, can vary depending on the views and approaches adopted by countries and international institutions involved. Generally, the basic principles of international law uphold respect for state sovereignty and territorial integrity. Most countries and the international community tend to support these principles, emphasizing the importance of maintaining stability and the territorial integrity of nations as the foundation for peace and

international cooperation. In the context of Papua, this means supporting the sovereignty and territorial integrity of the Republic of Indonesia.

However, there are also differing views and approaches in cases of separatism, particularly when there are allegations of human rights violations or unfair treatment of certain ethnic or cultural groups. In such situations, some international institutions, human rights organizations, or advocacy groups may argue that oppression or unfair treatment of specific groups can fuel desires for independence or self-determination. Overall, the issue of separatism is complex and sensitive, and the international legal perspective on it depends on various factors. However, the dominant principles in international law revolve around respecting state sovereignty and territorial integrity.

Development of the Armed Criminal Group (KKB) Separatism in Papua

The emergence of the Armed Criminal Group (KKB) is a result of problems or disputes between the society and the government in a sovereign state. Protests, violence, conflicts, rebellions, and resistance are forms of problems arising from separatist movements. These acts of rebellion can have various negative impacts on the security and sovereignty of the legitimate state. Issues such as material losses and loss of lives are negative consequences stemming from rebellious actions. The term "rebellion" refers to armed resistance or unarmed resistance movements against the legitimate government. Rebellious actions will persist until they achieve success in occupying territory and establishing their own power. The emergence of the armed criminal group (KKB) in Papua is rooted in the historical integration differences, social and economic conditions between Papua and Indonesia. Another factor is the support from South Pacific countries to Papua as a form of trust that Papua can break free from Indonesia as an independent state.

Former Minister of Defense Prof. Juwono Sudarsono has provided thoughts on a comprehensive national security system that relies on four ideal functions of government, as follows:

1. State Defense: The function of the government in facing external threats to uphold the nation's sovereignty, safety, honor, and the integrity of the Unitary State of the Republic of Indonesia.
2. State Security: The function of the government in dealing with domestic threats.
3. Public Security: The function of the government in maintaining and restoring the safety, security, and order of society through law enforcement, protection, guidance, and public services.
4. Human Security: The function of the government in upholding the basic rights of citizens.

The polemics surrounding the terminology and concept of national security have garnered significant attention from experts and practitioners. Retired Lieutenant General Agus Widjojo from the Indonesian National Armed Forces (TNI) stated that the term national security developed in the post-World War II era. With the experience of various interstate wars, the security of a nation was placed in relation to or in overcoming threats from other nations. According to Agus Widjojo, the focus of security lies in the state and its target is perceived sovereignty as a right of a nation. Simply put, national security consists of defense and domestic security.

On the other hand, domestic national security refers to a nation's efforts to address internal threats that endanger its existence. Since a nation has a national legal system, any threat arising from within the country is fundamentally a violation of the law that should be responded to through law enforcement. The problem arises when a state, although functioning well, does not guarantee the enforcement and protection of human rights for its citizens, leading to the emergence of the concept of human security. In this concept, state sovereignty is reinterpreted as

a state's obligation to protect and uphold the human rights of its citizens. Meanwhile, the concepts of collective security and regional security operate at the inter-state level.

Defense refers to a nation's efforts to preserve the continuity of its relations and sovereignty from military threats from foreign countries. On the other hand, security Besides direct measures against the Armed Criminal Group (KKB), the government also strives to strengthen its presence in Papua through development programs, infrastructure investments, public services, and enhancing communication ties with the Papuan people. These steps are intended to reduce dissatisfaction, alleviate tensions, and provide long-term solutions to issues in the region. Additionally, it is important to encourage dialogue and reconciliation between the government, KKB groups, and the Papuan community. Inclusive political approaches and ongoing dialogues can help address underlying conflicts and promote long-term peaceful resolutions. The success of maintaining national security and addressing the armed group KKB in Papua requires close cooperation between the government, security forces, and the Papuan community. Through a holistic and sustainable approach, stability, peace, and prosperity for all people in Papua are expected to be achieved.

Law Enforcement Against the KKB in Papua in Relation to Human Rights

The issue of Papua is an issue concerning the Indonesian nation that needs to be comprehensively addressed in accordance with the mandate of the 1945 Constitution. The ideology of Papua and Papua Merdeka (Free Papua) continues to be disseminated by the KKB through its supporters and sympathizers to the younger generation, and it can be said to be more effective compared to the efforts of the Indonesian government in promoting the Pancasila ideology to achieve a solid political integration. The applied law must guarantee the interests and aspirations of the people to ensure the well-being of all citizens. Therefore, in the conflict in Papua (KKB Papua), the government must take decisive steps to address the protracted conflict.

On the other hand, in the pursuit of law enforcement, it must be the most suitable paradigm for handling armed conflicts in Papua's KKB (Armed Criminal Group) is the concept of the criminal justice system (SPP). This paradigm ensures greater accountability in law enforcement and human rights compared to the internal security model that emphasizes intelligence roles, as seen in Malaysia and Singapore, where arrests without due process are permitted. In the implementation of law enforcement, there are two government agencies authorized to handle these issues: the Indonesian National Police (Polri) and the Indonesian National Armed Forces (TNI). Article 7 of Law No. 34 of 2004 concerning the Indonesian National Armed Forces (TNI) regulates the authority of the TNI. Furthermore, within the Indonesian Criminal Code (KUHP), punishments for treason are described in several forms, as punishment in criminal law depends on the severity of the offense committed. If the rebels are pursued by the government for negotiation or reconciliation, amnesty can be granted without any punishment.

Law enforcement against rebel groups based on the provisions of the Indonesian Criminal Code (KUHP) is covered in Article 106 and Article 107, which state that rebellion (makar) committed with the intent to fully subjugate a state's territory or place it under foreign governance, or with the intention to separate that region, is punishable by life imprisonment or temporary imprisonment for a maximum of twenty years. If the rebellion aims to overthrow the government (omwenteling), the punishment is imprisonment for a maximum of fifteen years, with life imprisonment or temporary imprisonment for a maximum of twenty years for the leaders or organizers of the rebellion. However, if the rebellion against the government involves the use of weapons or joining other armed groups, the punishment is imprisonment for a maximum of fifteen

years, while the leaders or organizers of the rebellion are sentenced to life imprisonment or a maximum of twenty years in prison.

The legal status of the Papua KKB (Armed Criminal Group) according to international law.

In this discussion, West Papua (Irian Jaya) is one of the regions in Indonesia that has experienced ongoing turmoil and remains unresolved. One of the issues is the presence of the armed criminal group (KKB) in Papua, which is known by the Indonesian people as a form of Papuan society's rebellion against the government and the state. The resistance began with the attack on Battalion 751 Brawijaya in Manokwari, which resulted in the deaths of three Indonesian National Army (TNI) soldiers. The KKB rebellion subsequently spread to several districts in West Papua, such as Biak Numfor, Sorong, Paniai, Fakfak, Yapen Waropen, Merauke, Jayawijaya, and Jayapura. The rebellion involved physical acts of armed resistance, hostage-taking, demonstrations, raising the West Papua flag, distributing and posting pamphlets, as well as various acts of destruction.

The KKB continues to declare West Papua as a separate nation, while Indonesia maintains its insistence that West Papua is part of the sovereignty of the Republic of Indonesia from Sabang to Merauke. The KKB seeks to garner international support for the Free West Papua movement through propaganda efforts. One example is when one of the KKB representatives, Benny Wenda, delivered a speech at the 2013 Tedx Sydney event. Benny expressed his attempt to seek asylum due to the occurrence of human rights violations, torture, and even killings by authorities in West Papua. The KKB's efforts have also been exposed in various Australian media outlets, such as the coverage by ABC TV titled "Rare Look Inside Papua Independent Movement." This case cannot be separated from the right to self-determination, which is a dynamic and controversial principle in modern international law. Article 1(1) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights state that everyone has the right to determine their political status and pursue their economic, social, and cultural development. In other words, each nation is free to determine its own socio-cultural changes without interference from other nations. Indonesia has classified the Free Papua Movement from an armed criminal group to a terrorist organization after receiving support from various parties, including the Indonesian National Army, the Indonesian National Police, the State Intelligence Agency, the government, and the local community leaders, in combating the recent surge of violence in Papua.

The acts of terrorism by the Armed Criminal Group are considered to fulfill the elements specified in Article 1(2) of Law No. 5 of 2018 concerning Amendments to Law No. 15 of 2003 on the Application of Government Regulation in Lieu of Law No. 1 of 2002 on the Eradication of Terrorism. The labeling of the Papua KKB as terrorists has sparked both support and controversy domestically and internationally. On the other hand, the enactment of the Counterterrorism Law for the Armed Criminal Group will enable more comprehensive law enforcement since the law employs two approaches, namely the soft approach and the hard approach. The group engaging in opposition can be referred to as an insurgency and at a certain stage may fall under the category of belligerency (rebellion). Under International Law, belligerency falls within the category of legal subjects, which means that international law has rights and obligations in addressing such issues. The emergence of one party engaging in war (belligerent) within a state is preceded by insurrection, a small-scale rebellion that later expands into a rebellion (rebelli). Furthermore, for this rebellion to change its status to a belligerent party, certain conditions must be met.

CONCLUSION

Safeguarding national security in the case of the armed group KKB in Papua is a priority for the Indonesian government. To achieve this goal, the government has involved security forces in law enforcement operations aimed at addressing and countering the threats posed by the group. Security operations involve the police and military forces working together to conduct patrols, monitoring, and taking action against KKB members. The main objectives are to maintain order and security in conflict-affected areas, protect civilian populations, and disrupt criminal activities and destabilization efforts by the group.

Law enforcement is not primarily concerned with national security but rather with ensuring social order and justice, which are integral aspects of well-being. The concept of Polri's role in siskamrata (the Integrated Security and Public Order Operation) is no longer relevant in the current era. In a democracy that upholds human rights and humanity, the notion of people power is no longer commonly adopted. Siskamrata, in the context of the 1945 Constitution, is understood as a universal defense system. Meanwhile, the definition based on the National Security Bill (RUU Kamnas) is the nation's commitment to simultaneous, consistent, and comprehensive efforts of all citizens serving the nation's components to effectively and efficiently protect and maintain the existence, integrity, and sovereignty of the nation and the state from all threats, encompassing their nature, sources, dimensions, and spectrums. This conception demands and places the responsibility for national security on all components of the nation, not solely on the Indonesian National Army (TNI) and the Indonesian National Police (Polri).

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