

HANDLING OF PAPUA ARMED CRIMINAL GROUPS: THE RESPONSIBILITY OF THE REPUBLIC OF INDONESIA

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ABSTRACT

The purpose of this study is to analyze and identify the responsibility of the republik of Indonesia in handling the armed criminal groups of Papua. This research is normative legal research with a conceptual and statutory approach. Determination of terrorist status is not a solution to resolve conflicts because the determination of this status does not only have consequences for the qualifications of the crimes committed but also related to the model of law enforcement. The Papuan Armed Criminal Group is a serious problem which, if not handled properly, has the potential for the disintegration of the Indonesian nation, which in the end could disrupt the integrity of the Unitary State of the Republic of Indonesia. The Indonesian government must immediately take appropriate steps to resolve this because the problem is not only a domestic problem, but has also become the concern of the international community. The settlement can use a welfare approach by carrying out development in all fields, a military operation approach as well as a just law enforcement approach.

Keywords: Responsibility to Protect, Papua, Indonesia.

1. INTRODUCTION

1.1 Background.

The struggle of the Papuan Armed Criminal Group in breaking away from the Unitary State of the Republic of Indonesia often carries out criminal movements and causes casualties, therefore the government took the initiative to form special autonomy with a large budget for Papua. However, it is a pity that the budget does not reach the wider community, because it is only enjoyed by the elite class. This infuriated and triggered a massive resistance movement carried out by the The struggle of the Papuan Armed Criminal Group, by means of committing various crimes and often costing lives.¹ In addition to this, if you look at the background, it can be suspected that one of the triggers for the Papua KKB is that there are differences in interpretation. According to the struggle of the Papuan Armed Criminal Group, West Papua had achieved its independence on December 1, 1961 which was declared by the New Guinea Raad so that Papua's entry into the Unitary State of the Republic of Indonesia was illegal. The struggle of the Papuan Armed Criminal Group then carries out

¹ Muhammad Andi Septiadi, Nazzira Gahitsya Sofa, Siti Syarah, Wanda Shakira, Kekejaman Kkb Papua Yang Melanggar Ham, *Jurnal Ilmu Sosial dan Ilmu Politik Malikussaleh (JSPM)*, Volume 3 Nomor 2, Juli-Desember Tahun 2022, h. 282.

activities by creating various problems and propaganda, so that it can threaten the territorial integrity of the Unitary State of the Republic of Indonesia.²

The struggle of the Papuan Armed Criminal Group has committed a series of crimes that have disturbed the community and have the potential to disrupt the integrity of the Unitary State of the Republic of Indonesia, namely by carrying out attacks and killings on civilians, soldiers of the Indonesian National Armed Forces and the Indonesian National Police. Many victims of The struggle of the Papuan Armed Criminal Group brutality included teachers, medical personnel, students who were studying, TNI and Polri soldiers, and others. Based on data available at the Papua Regional Police, since January 2021 there have been several acts of terror that have killed 12 civilians and 3 (three) TNI soldiers. Apart from that, they also destroyed public facilities and shot helicopters in Tembagapura.³

The struggle of the Papuan Armed Criminal Group in 2022 has attacked security forces 8 times, shooting trucks owned by PT. Marta Tunggal Teknik, shooting in Mimika, shooting of 8 (eight) workers who were repairing Transmitter Station 3 Tower Base Transceiver 3 Telkomsel, and so on.⁴

The emergence of the Papuan Armed Criminal Group occurred due to quite complex problems including failure to carry out development, violations of human rights, violence perpetrated by members of the military and police, indigenous Papuans who feel there are differences with Indonesian society in general so they withdraw, as well as problems the process of integration of Papua into Indonesia is considered problematic. In addition to this, one of the factors for the emergence of the Papuan Armed Criminal Group movement was due to the injustice of the state's treatment that was felt by the group.⁵ When viewed from its working pattern, the Papuan Armed Criminal Group is synonymous with armed resistance against security forces and the government of a country, as in the letter calling for open war made by the Papuan Armed Criminal Group to the TNI.

Richad Chauvel identified the source of the problems which became the basis for legitimacy for groups dissatisfied with the Indonesian government, which gave rise to groups demanding independence for the land of Papua, as follows:

- a. Feelings of disappointment for the people of West Papua to become part of the Unitary State of the Republic of Indonesia;

² Georgy Mishael, Kebijakan Opetasi Militer Tentara Nasional Indonesia terhadap Organisasi Papua Merdeka dalam Perspektif Hukum Humaniter Internasional, *Diponegoro Law Review*, Volume 5 Nomor2, Tahun 2016, h. 1.

³ SN Putri, MFN Utomo, RW Erlangga dan N Hikmah, Analisis Hubungan Antara Kelompok Kriminal Bersenjata (KKB) di Papua dengan Pelanggaran Hak Asasi Manusia (HAM), *Al-Hakam Islamic Law & Contemporary Issue*, No. 2, Vo. 3, 2022, h. 47.

⁴ Alinda Hardiantoro, Deretan Aksi Serangan KKB Papua sejak Awal 2022, <https://www.kompas.com/tren/read/2022/03/27/184500965/deretan-aksi-serangan-kkb-papua-sejak-awal-2022?Page=all>, diakses 8 Desember 2022 Jam 19.45

⁵ Fathurrohman Siliwangi, et.al, *Tinjauan Yuridis Kelompok Kriminal Bersenjata Terhadap Hak Asasi Manusia dan Hukum Pidana Indonesia*, Fakultas Hukum Universitas Islam Bandung, 2018

- b. There is a rivalry felt by the indigenous Papuan community elite with officials who come from outside Papua because they have dominated the government since Dutch colonialism;
- c. Government and economic development in the land of Papua that is different from other parts of Indonesia; And Indigenous Papuans are often disadvantaged by new arrivals.⁶

Although the Papuan Armed Criminal Group has committed various violations of law and terror which has disturbed the community, their status is still Indonesian citizens, so their handling must not violate the law and human rights. The Indonesian Coordinating Minister for Politics, Law and Security (Moh. Mahfud MD) hopes that the Papuan Armed Criminal Group will soon return to being part of the Unitary State of the Republic of Indonesia with the status of an Indonesian Citizen they still have.⁷ The Indonesian government always opens opportunities for members of the Papuan Armed Criminal Group who wish to return to the Republic of Indonesia.⁸

The problem of the Papuan Armed Criminal Group must immediately find a solution to resolve it otherwise there will be the potential for national disintegration so as to disrupt the integrity of the Unitary State of the Republic of Indonesia. Referring to the incidents and actions that have been taken by the Papuan Armed Criminal Group above, the Indonesian government needs to carry out eradication actions by considering various aspects (international and national) so that it does not become a boomerang like the case of the release of East Timor Province so that it is no longer part of the Unitary State of the Republic of Indonesia. Based on this background, the author takes the title Responsibility to Protect (R2P) Handling Papuan Armed Criminal Groups in the Context of the Unitary State of the Republic of Indonesia.

The phenomenon being investigated in this study has been previously examined by earlier research. The first research was conducted by Sabita Firgoria Luisa Edon and Nur Azizah Hidayat in the *Undiksha Journal of Civic Education* in 2021 with the title "The Indonesian Government's Obligations Towards Human Rights Violations Committed By The Armed Criminal Group (KKB) In Papua."⁹ The second research was conducted by Mohammad Imam Mubarak and Sutrisno in the *Legal Communication*

⁶ Boy Anugerah, Mengurai Konflik dan Merumuskan Solusi, *Jurnal Kajian Lemhanas RI*, Edisi 40, 2019, h.54.

⁷ Putra Dewangga Candra Seta, Mengapa Anggota KKB Papua Masih Tetap Berstatus WNI? Berikut Jawaban Mahfud MD dan Tito Karnavian, <https://surabaya.tribunnews.com/2020/07/24/mengapa-anggota-kkb-papua-masih-tetap-berstatus-wni-berikut-jawaban-mahfud-md-dan-tito-karnavian?page=all>, Diakses 09 Desember 2022 Pukul 16.00

⁸ Laksa Mahendra, Menko Polhukam tegaskan anggota KKB masih berstatus WNI, <https://papua.antaranews.com/video/1629398/menko-polhukam-tegaskan-anggota-kkb-masih-berstatus-wni>

⁹ Sabita Firgoria Luisa Edon dan Nur Azizah Hidayat, Kewajiban Pemerintah Indonesia Terhadap Pelanggaran Ham Yang Dilakukan Oleh Kelompok Kriminal Bersenjata (Kkb) Di Papua, *Jurnal Pendidikan Kewarganegaraan Undiksha*, Vol.9 No.1, 2021.

Journal in 2022 with the title "Legal Protection of Healthcare Workers from Armed Criminal Group Attacks."¹⁰

In several previous studies, it is evident that there are thematic similarities with this article, which is about the state's responsibility in dealing with armed criminal groups. However, there are differences in the previous studies; the first study focused solely on discussing the regulation of Human Rights (HR) and the Indonesian government's response to HR violations committed by the Armed Criminal Group (KKB) in Papua. On the other hand, the second study only focused on discussing the Government's Measures to Protect Healthcare Workers Serving in Conflict Areas. In contrast, this article specifically focuses on the Responsibility to Protect the Handling of the Armed Criminal Group in Papua in the Framework of the Unitary State of the Republic of Indonesia. Therefore, it can be concluded that the previous studies and this research do not share the same research object.

1.2 PROBLEM STATEMENT

Based on the background of the study above, the primary focus was on investigating how is the Republic of Indonesia responsibility in handling the armed criminal groups of Papua?

1.3 RESEARCH TARGET

The purpose of this study is to analyze and identify the responsibility of the Republic of Indonesia in handling the armed criminal groups of Papua.

2. RESEARCH METHODS

The type of research used is normative legal research. The working mechanism is carried out by finding solutions to various problems on developing legal issues in order to provide prescriptions regarding what should be done on the issues raised. Normative legal research focuses on rules on legal principles which are conceptualized as norms or rules originating from statutory regulations, court decisions, and doctrines from leading legal experts.¹¹ The approach used is a conceptual and statutory approach.¹²

3. RESULT AND ANALYSIS

The Responsibility The Republik of Indonesia in Handling The Armed Criminal Groups of Papua

A. Definition and Development of Responsibility to Protect (R2P).

Responsibility to Protect (R2P) is another word for sovereignty as responsibility which is often interpreted as a norm based on the understanding that sovereignty is a

¹⁰ Mohammad Imam Mubarak dan Sutrisno, *Perlindungan Hukum Tenaga Kesehatan dari Penyerangan Kelompok Kriminal Bersenjata*, *Risalah Hukum*, Vol. 18, No. 2, 2022.

¹¹ Bachtiar, *Metode Penelitian Hukum*, Jakarta, Unpam Press, 2019, h. 57.

¹² Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta, Prenada Media, 2017, h. 131.

responsibility and cannot be considered as a burden. R2P is a principle in international relations aimed at preventing mass extermination, war crimes, ethnic cleansing and crimes against humanity. R2P is a new concept in international law. Secretary General UN document Doc A/63/677/2009 states that "Responsibility to Protect is a new concept in international law that encourages each country to perform its obligations to protect civilians residing in its territory". Responsibility to Protect is a new concept in International Law that encourages every state to fulfill its obligation to protect every civilian in its territory.

When viewed from a historical perspective, the development of R2P principles cannot be separated from the situation of the 20th century, which can be said to be the century of mass killings. Tens of millions of people in various parts of the world have become victims of killing, torture and starvation due to crimes known as genocide, war crimes, crimes against humanity and ethnic cleansing. R2P is a legal principle that has been internationally accepted by the international community and has been outlined in the norms in Paragraphs 138 and 139 of The Summit Outcome Document of 2005, and has been ratified by UN General Assembly Resolution (MUUN) No A/60/I dated 24 October 2005. This principle was reaffirmed in UN Security Council Resolution (UNSC) No. S/RES/1674 dated 16 April 2006.¹³

This R2P principle states that every country has the responsibility to protect its people from these four types of crime. R2P has 3 (three) important foundations, which are as follows:

- a. A state is responsible for protecting its population from genocide, crimes against humanity, war crimes, and ethnic cleansing;
- b. The international community is responsible for helping states fulfill their primary responsibilities; And
- c. If the state fails to protect its citizens from the four acts of violence above and fails to uphold peace, the international community is responsible for intervening through coercive measures such as military sanctions. Military intervention is considered a last resort.¹⁴

R2P prioritizes the state's obligation to protect citizens who are in its power on a national scale who are part of the international community. Sovereign government in a country, must at least carry 3 (three) main responsibilities related to its citizens, as follows:

- a. Responsible for carrying out the function of protecting the safety and life of its citizens, and guaranteeing their welfare;
- b. Responsible for its citizens and the international community through membership in the United Nations; And

¹³ Setyo Widagdo, Rika Kurniaty, Prinsip Responsibility To Protect (R2P) Dalam Konflik Israel-Palestina: Bagaimana Sikap Indonesia ? , *ARENA HUKUM*, Volume 14, Nomor 2, Agustus 2021, h. 317.

¹⁴ Badescu, Cristina G. *Humanitarian Intervention and the Responsibility to Protect: Security and Human rights* (Google eBook). New York, NY: Taylor and Francis e-Library. 2010. h. 110.

- c. Responsible for implementing the government is responsible for the actions and policies it takes.¹⁵

Gareth Evans stated that R2P is a norm that has the main objective of preventing mass atrocities or mass atrocities such as Genocide, war crimes, ethnic cleansing and crimes against humanity. Evans also explained that the basic guidelines of R2P imply that the responsibility to protect citizens lies within the country itself. However, if the citizens of a country suffer serious losses as a result of a deep-seated war, rebellion, repression and the country concerned is unable and unwilling, in the sense that the country concerned is unable or does not have the will to stop and prevent existing conflicts, the international community can take action.¹⁶

This R2P can be used as a means of resolving problems between the Papuan Armed Criminal Group and the Indonesian government, so that mutual benefits are obtained between the parties involved in the dispute. The politics of the Indonesian government in dealing with the problem of the Papuan Armed Criminal Group must be aligned with the needs and dynamics that occur in the Papuan community so that it becomes an effective and efficient step. In resolving these problems, it should minimize the victims of innocent civilians, and prioritize a persuasive approach rather than a repressive approach.

B. The existence of the Papuan KKB towards the integrity of the Unitary State of the Republic of Indonesia.

The Papuan Armed Criminal Group is categorized by the Indonesian government as terrorism, which was previously called the terrorist Armed Criminal Group or Armed Separatist Group that carries out separatist movements and commits insurgency. The reason for this mention by the Indonesian government is considered to meet the criteria as an act of terrorism stipulated in Article 1 Number 2 of Law Number 5 of 2018 concerning Eradication of Terrorism, the formulation of which is as follows: 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 vital objects, the environment, public facilities, or international facilities with ideological, political or security disturbance motives.

In Press Release No.72/ SP/ HM.01.02/ POLHUKAM/ 4/ 2021 the Coordinating Minister for Politics, Law and Security emphasized that organizations and people in Papua who commit mass violence are categorized as terrorists.¹⁷ This nomenclature when viewed from the perspective of national interests, the labeling and existence of the Papuan Armed Criminal Group as terrorists can be understood by Indonesian society. Determining the terrorist status is not a solution to resolve the

¹⁵ Gareth Evans, Mohamed Sahnoun, *ICISS, The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty, 2001*, h. 11-16.

¹⁶ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, Brookings Institution Press, Washington, D.C, 2008, h. 40

¹⁷ Humas Kemenkopolkam, Organisasi dan Orang-orang di Papua yang lakukan Kekerasan Masif Dikategorikan Teroris, <https://polkam.go.id/menko-polhukam-organisasi-orang-orang-papua-lakukan-kekerasan-masif/>

conflict because the determination of the status does not only have consequences for the qualifications of the crimes committed, but also related to the model of law enforcement carried out against KKB/KSB/OPM. If the KKB/KSB/OPM are declared terrorists, then the criminal law instrument that applies is no longer the Criminal Code but the Terrorism Eradication Law. In addition, the parties involved in handling KKB/KSB/OPM are no longer the Police/TNI but more broadly, namely the BNPT, Polri, TNI and Intelligence.¹⁸

The perception of the Indonesian government is different from the international community which classifies the Papuan Armed Criminal Group as belligerent so that its existence is recognized as a subject of international law. With this acknowledgment, the potential for interference from the international community in handling it is very large so that it has the potential to harm the national interests of the Indonesian nation (the integrity of the Unitary State of the Republic of Indonesia). With these considerations in mind, the Indonesian government swiftly labeled it a terrorist group in order to avoid foreign interference and the international community, even though issues and problems on Cenderawasih have become the center of world attention.¹⁹

This designation is to ward off the perception of some people who categorize them as unlawful combatants or insurgents on the grounds that the group is not combatants even though they hold weapons, and does not originate from the Armed Forces of a country or a High Contracting Party as stipulated in the 1949 Geneva Convention. The categorization as belligerent is based on the consideration that one of the parties involved in a non-international armed conflict is more relevant when compared to insurgency, because in reality it is a conflict that endangers world peace. Referring to the escalation of the conflict, the mention of terrorists is closer to illegitimate belligerents than the mention of insurgency. The grouping of the Papuan KKB as terrorism which fulfills belligerent is actually more appropriate with considerations in accordance with the formulation of the norms of Article 43 Additional Protocol I of 1977, which are as follows:

- a. The terrorist group is led by a commander who is responsible for his subordinates;
- b. Carrying weapons openly;
- c. Have a sign or symbol that can be recognized remotely;
- d. The group complies with and is subject to the rules and customs of humanitarian law; And

¹⁸ Tolib Effendi, Konsekuensi Penetapan Status Kelompok Kriminal Bersenjata (KKB) Papua sebagai Teroris Menurut Hukum Pidana, *RechtIdee*, Vol. 16, No. 2, Desember 2021, h. 242-243.

¹⁹ Muhammad Hafiz, Tinjauan Hukum Penetapan Kelompok Kriminal Bersenjata Papua Sebagai Teroris Dalam Perspektif Hukum Pidana Nasional, *Jurnal Fakultas Hukum Universitas Padjadjaran*, Vol. 7, No. 1 - Juni 2021, hal 94.

- e. Recognition from a country regarding the existence of the terrorist group as a rebel, then the KKB terrorist group can be said to be a lawful belligerent, which means it is also a lawful combatant.²⁰

The existence of the Papua Armed Criminal Group is international because the current conditions involve the international community. Some evidence that the international community already has a role, including that on 3 May 2016 several British Government Officials, members of Parliament, academics and their supporting countries gathered at the London Parliament Building to express their support for a vote supervised by the international community for the self-determination of the Papuan people West. The meeting then declared a request for the people of West Papua who have a desire to separate from the Unitary State of the Republic of Indonesia, with the following reasons:

- a. Declare that the continued human rights violations in West Papua are unacceptable;
- b. A warning that without international action, the people of West Papua are threatened with extinction;
- c. Affirming the right to self-determination of the people of West Papua;
- d. Declared the 'Act of Free Choice' of 1969 to be a gross violation of this principle; And
- e. Call for an internationally controlled vote on self-determination in accordance with United Nations General Assembly Resolutions 1514 and 1541 (XV).²¹

Benny Wenda as the Interim President of the Papuan Armed Criminal Group stated that Indonesia had done this to us many times before. In 1963, they invaded our land. They passed the fraudulent Act of No Choice in 1969, against the wishes of all West Papuans. At every turn, they treated us like colonized people, less than human. We were called monkeys, spat on, forced off our land. Therefore, as of 1 December 2020, we have rejected all Indonesian laws and formed the Provisional Government of the United Liberation Movement for West Papua (ULMWP), We are no longer subject to Jakarta's rules, I call on all my people to unite and reject all Indonesian laws , We are building our own sovereign government.²²

In addition to asking the British government and parliament for support, that the leaders of the Papuan Armed Criminal Group also hold a meeting in Vanuatu on 7 December 2014, various factions of the independence movement gathered to form a new body. The faction group consists of the Federal Republic of West Papua (NRFPB),

²⁰ Rifki Fakhudin, Consequences of Labeling Terrorists in Papuan Armed Violence Groups: An Examining Belligerent Perspective on the Subject of International Law, Universitas Negeri Semarang, *Jurnal Scientia Indonesia*, 2021, Vol. 7, No.2, h. 148

²¹ ULMWP, *Westminster Declaration* dalam <https://www.ulmwp.org/westminster-declaration> diakses 2 Januari 2023 Pukul 09.31

²² Benny Wenda, *Interim President: Refuse creation of three provinces and all Indonesian law* dalam <https://www.ulmwp.org/interim-president-refuse-creation-of-three-provinces-and-all-indonesian-law>, diakses pada 03 January 2023 Pukul 14.00

the National Coalition for Liberation (WPNCL) and the West Papua National Parliament (PNWP), they united to form the United Liberation Movement for West Papua (ULMWP). In December 2020, the ULMWP announced the formation of an interim administration of West Papua, which operates under a presidential system and is guided by the principles of a green democracy. The complete cabinet consisting of 12 departments in West Papua was announced on 1 May 2021.²³

The Papua Armed Criminal Group uses two ways in carrying out their actions to gain world recognition, namely by terrorizing TNI-POLRI officials, civil society living in Papua, and by diplomacy such as establishing the ULMWP International secretariat office at Winston Churchill Street, 1571 Port Vila, Republic of Vanuatu.²⁴ Benny Wenda also stated that the Indonesian Government did not take serious steps in resolving disputes that occurred in West Papua. The interim President of ULMWP wants a number of things to be considered by the Indonesian government, which are as follows:

- a. The West Papuan people's longstanding demand for an independence referendum is on the agenda of the meeting.
- b. The meeting is organized through the mediation of a third party (eg the host United Nations or an agreed third country);
- c. The UN High Commissioner for Human Rights can visit West Papua, as requested by the 18 Pacific States at the 50th Pacific Islands Forum in August 2019.
- d. All 16,000 TNI and Polri troops stationed after August 2019 will immediately withdraw.
- e. Release of all political prisoners including Buchtar Tabuni, Bazoka Logo, Steven Itlay, Surya Anta, Agus Kossay and all students arrested during the recent uprising
- f. All restrictions on access by international media and non-governmental organizations to West Papua are lifted.²⁵

Benny Wenda also said that Indonesia always ignores the wishes of the West Papuan people. In 1962 the Netherlands, the United States and the United Nations handed us over to Indonesia without consulting any West Papuans. In 1969 we were promised a free and fair referendum and the Indonesian state took it from us. Since then, Indonesia has ignored our calls for freedom, justice and a referendum. In order for us to believe that this has changed, Indonesia must show sincerity and accept our

²³ ULMWP, One People, One Soul dalam <https://www.ulmwp.org/ulmwp>. Di akses pada 04 Januari 2023 Pukul 18.00

²⁴ ULMWP, Contact dalam <https://www.ulmwp.org/contact> diakses pada 04 Januari 2023 Pukul 18.15

²⁵ United Liberation Movement For West Papua Provisional Government International Secretariat, Winston Churchill Street, 1571 Port Vila, Republic of Vanuatu. Dalam <https://normshedpapua.com/united-liberation-movement-for-west-papua-provisional-government-international-secretariat-winston-churchill-street-1571-port-vila-republic-of-vanuatu/>. Diakses pada 05 Januari 2023 Pukul 21.00

preconditions. Our desire to hold a democratic referendum and defend our right to self-determination has never been stronger.

The existence of the Papuan Armed Criminal Group, if not monitored and managed properly by the Indonesian government, has the potential for disintegration which in the end will disrupt the integrity of the Unitary State of the Republic of Indonesia. The experience of the release of East Timor (now Timor Leste) as part of the Province of Indonesia and the handling of the Free Aceh Movement (GAM) can be used as a reference in solving the problem of the Papuan Armed Criminal Groups. In addition to these mechanisms, it is still possible to use other methods that are adapted to the psychological, historical, sociocultural problems and conditions of the Papuan people themselves.

C. Responsibility to Protect Indonesia in Resolving the Problems of Papuan Armed Criminal Groups.

R2P is closely related to the obligations and responsibilities of the state/government in solving problems within its jurisdiction. There are fundamental differences in the meaning of obligations and responsibilities, but they are a unit that cannot be separated from one another. Huala Adolf explained that state responsibility is generally interpreted as an obligation to make reparation, which can be caused by an action, due to violation of international obligations. State responsibility is closely related to responsibility and liability. These two terms have different meanings but are closely related. The term responsibility is used to indicate an obligation, while liability can be used to refer to a consequence in a failure or mistake to carry out an obligation or to meet a certain size or limit that has become a benchmark.²⁶

The meaning of the second obligation is the obligation of a state to respect human rights which can be divided into two, namely direct obligations and progressive obligations. Actions of the state's direct obligations towards human rights can be seen in a juridical form, while progressive obligation actions are actions that can be abandoned if there is a shortage of supporting resources. State action with the aim of carrying out the obligation to respect and protect human rights is seen as a direct obligation, there is also a direct legal obligation to act in protecting human rights. This legal obligation is manifested in the first two forms. The obligation to increase, which is manifested in state policies, the establishment of public institutions for the fulfillment of these rights. The second is the obligation to provide something, such as the provision of resources that are enjoyed by the public for the fulfillment of human rights. This legal obligation is part of the progressive obligations of the state in International Human Rights Law.²⁷

The political will of the Indonesian government to seriously handle the Papuan KKB began in 1999 with the changing of the name Irian Jaya to Papua and continued with the implementation of the special autonomy for the Papua region. Prior to attempts to approach the development method which culminated in granting special autonomy and changing the name of Irian Jaya to Papua, the government's efforts to

²⁶ Yustitiantingtyas, Pertanggungjawaban Negara Dalam Perspektif Hukum Humaniter Dalam Tindakan Agresi (Studi Kasus; Agresi Israel ke Lebanon Tahun 2006), *Perspektif Hukum*, Vol.14, No.1, 2014, h. 35.

²⁷ Christanugra Philip, Tanggung Jawab Negara Dalam Perlindungan Hak Asasi Manusia Menurut Hukum Internasional, *Lex Privatum*, Vol.6, No.9, 2019, h.36

deal with the separatist movement were carried out in ways that actually caused resistance, namely by carrying out military operations. The obligation of the state, especially the government, for any action caused by the Papuan KKB which disturbs the public from human rights violations to diplomatic steps taken by the United Liberation Movement of West Papua in the international sphere actually takes preventive steps in accordance with applicable law from national to international law.

The Preamble to the 1945 Constitution states that the Unitary State of the Republic of Indonesia has the goal of protecting the entire Indonesian nation and all of Indonesia's bloodshed, and to promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice. The existence of the Papuan KKB is contrary to the state's goals because it commits acts of terror that interfere with the state's goal of protecting Indonesia's homeland.

Handling the problem of the Papuan Armed Criminal Group must not conflict with human rights. The 1945 Constitution places human rights issues in CHAPTER XA Article 28 letters a to j. The 1945 Constitution mandates in Article 28 letter i paragraph (4), that it is explicitly stated that the protection, promotion and fulfillment of human rights is the responsibility of the state, especially the government. Based on this, the State is burdened with the obligation to protect Papuan civil society, especially the rights regulated in Article 28 letter i of the 1945 Constitution.

In Law Number 1 of 2023 concerning the Criminal Code (KUHP) it is explained that any person or organization that assists an armed criminal group or part of an armed criminal group itself that aims to overthrow the Indonesian government will be punished with the death penalty or at most light 10 years imprisonment. In International Law it is explained that the state has an obligation to take preventive action against any terror committed by armed criminal groups with the aim of protecting the rights to life, freedom and safety of the Papuan civil society which are listed in the Universal Declaration of Human Rights. The main problems in the land of Papua are social jealousy, neglected development, exploitation of natural resources on a large scale whose results are not enjoyed by the region itself, supported by the domination of immigrants and considering indigenous people as second-class citizens, making the Papuan Armed Criminal Group increasingly received support and sympathy from those who initially rejected it.²⁸

In order to solve the problem of the Papuan Armed Criminal Group, the Government of Indonesia has made various efforts by issuing the following political policies:

a. Territorial Expansion.

The President of the Republic of Indonesia Joko Widodo emphasized that the division of the territory of the state of Papua is one of the efforts towards equitable development. In addition, it is hoped that the existence of three new autonomous regions, namely the Province of Southern Papua, Central Papua Province and Papua Highlands Province, will facilitate the distribution of services throughout the vast territory of Papua. According to President Joko Widodo, the division of the Papua

²⁸ Sefriani, Separatisme dalam Perspektif Hukum Internasional: Studi Kasus Organisasi Papua Merdeka, *Jurnal Unisia*, XXVI/1 (47), 2003, h. 41-53.

region is the aspiration of the Papuan people themselves which have been going on for several years and come from several community groups in various regions. Although in practice there are definitely pros and cons to this policy.²⁹

In April 2022, the Leaders of the Papuan People's Council (MRP) stated that there were 4 (four) reasons that required the Law on the South Papua Province, the Law on the Province of Central Papua and the Law on the Province of the Papua Mountains to be postponed. One of the reasons is that the formation of the New Autonomous Region was carried out using a centralized top-down approach. Of course, this approach means eliminating the involvement of the Papuan people directly. Therefore, the Petitioners asked the Court to declare the three laws on the division of the province of Papua contrary to the 1945 Constitution. In this case, the Petitioners in their petition submitted to the Constitutional Court argued that the Papuan People's Council (MRP) is a representative of the Indigenous Papuan people (OAP).) who should have been involved in the formation of the three laws. Because regarding the government wanting to make changes or a development in an area, studies and opinions from the local community are certainly needed.³⁰

b. Infrastructure Development in the Land of Papua.

Infrastructure development is regional development that has strategic potential in a region. Potential areas can be called urban areas which are centers of regional economic activity, rural areas, industrial areas, tourism areas, and special economic zones. Potential areas have an important role in improving the regional economy. To increase the productivity of the area, it is necessary to support appropriate and adequate infrastructure. Plans for regional infrastructure needs made on the basis of regional development need to be implemented in the form of infrastructure development. In order for regional infrastructure development to be carried out efficiently and effectively, it is necessary to integrate infrastructure development from planning and programming.³¹

Development of border infrastructure is also important for enforcing cross-border trade regulations imposed by the government to guarantee the physical security of the people of Papua. will ensure that products that enter Indonesian territory through the Papua border are free from pests and diseases. damaged, but also the physical safety of the people on the Papua border will be threatened, especially from a health perspective.³²

According to Galko, infrastructure is a basic element for channeling energy, transportation, water and sanitation to the community which directly or indirectly

²⁹ BPMI Setpres, Presiden Jokowi: Pemekaran Wilayah di Papua untuk Pemerataan Pembangunan dalam laman <https://menpan.go.id/site/berita-terkini/daristana/presiden-jokowi-pemekaran-w>

³⁰ Lulu Anjarsari P., Minim Partisipasi Masyarakat, Tiga UU Pemekaran Papua Digugat Dalam <https://www.mkri.id/index.php?page=web.Berita&id=18552>

³¹ Admin, Program Pembangunan Infrastruktur wilayah dalam <https://dispuprkim.baliprov.go.id/> program-pembangunan-infrastruktur-wilayah/, diakses pada 19 January 2023 Pukul 11.03

³² Melyana R. Pugu, etal, Pembangunan Infrastruktur Di Perbatasan Papua: Upaya Menjamin Human Security dan Melawan Perdagangan Ilegal Lintas Batas, *Masyarakat Indonesia*, Vol. 45, No.1, 2019, h. 83

affects their lives. This basic element is a key factor in promoting economic development and an important facilitator in changing the structure of the economy. Therefore, the development of border infrastructure aims to develop communal economic activities that encourage economic cohesion in border areas and improve the welfare of border residents in West Papua without compromising human security. In addition, cross-border infrastructure development also indirectly affects the stability of relations between the two neighboring countries.³³

D. Carry out Military Operations, both War Military Operations (OMP) and Military Operations Other Than War (OMSP).

1) War Military Operations.

Article 7 paragraph 2 letter b Law Number 34 of 2004 concerning the Indonesian National Armed Forces (UU TNI) explains the meaning of War Military Operations (OMP) are all forms of deployment and use of TNI forces, to fight against other countries' military forces that carry out aggression against Indonesia, and/or in an armed conflict with another or more countries, which was preceded by a declaration of war and is subject to international laws of war. Basically, the role of the military is anti-humanity.³⁴

The use of War Military Operations is in the framework of national defense, so it must be a political decision from the state. Article 20 paragraph 1 of the TNI Law explains that the use of TNI forces in the context of carrying out military operations for war is carried out for the benefit of implementing national defense in accordance with statutory regulations. Twelve military operations carried out by the TNI against War Military Operations have been carried out, as follows: (a). Operation Wisnumurti; (b). Conscious Operations; (c). Operation Bharatayuda; (d). Ultimate Operation; (e). Koteka Operation; (f). Smile Surgery; (g). Operation Crow I; (h). Operation Crow II; (i). Operation Cassowary I; (j). Operation Cassowary II; (k). Operation Rajawali I; and (l). Operation Eagle II.³⁵

The series of military operations carried out by the Indonesian government left traces of human rights violations committed by the government against the people of Papua. Between 1963-1969 the victims of the Papuan people by military operations were estimated at 2,000-3,000 people, while Eliaser Bonay, the former Governor of Papua in 1981, once stated that the victims were around 30,000 people. Jan Warinussy, Executive Director of LP3BH Manokwari in 2006 estimated that there were nearly 100,000 victims since the Pepera 1969 – 2006.³⁶

2) Military Operations Other Than War.

³³ Galko, S, Cross-Border Cooperation Programme Poland-Belarus-Ukraine 2007-2013. Thematic handbook no. 5, Border Crossings Infrastructure Development, 2015, h.6

³⁴ Diandra Megaputri Mengko, Problematika Tugas Perbantuan TNI, *Jurnal Keamanan Nasional* Vol. 1, No. 2, 2015, h. 177.

³⁵ Mishael Et.al, Kebijakan Operasi Militer Tentara Nasional Indonesia Terhadap Organisasi Papua Merdeka Dalam Perspektif Hukum Humaniter Internasional, *Diponegoro Law Review*, Vol 5, Nomor 2, 2016, h. 7.

³⁶ Rahab, A. al. Operasi-Operasi Militer di Papua: Pagar Makan Tanaman? *Jurnal Penelitian Politik LIPI*, Vol. 3, No. 01, 2016, h. 21.

Military Operations Other Than War can simply be understood as a type of operation carried out by the military outside the context of war. The goal is to maintain world peace or prevent war. According to Presidential Regulation Number 66 of 2019 concerning the Organizational Structure of the TNI in Article 1 number 11 it explains that Military Operations Other Than War, hereinafter abbreviated as Military Operations Other Than War, are the deployment of TNI forces to carry out military operations not in the framework of war with other countries, but to carry out non-combat tasks, such as humanitarian tasks, dealing with the aftermath of disasters and for other national interests, as well as carrying out combat tasks such as overcoming armed rebellions, separatist movements, overcoming transnational crimes and peacekeeping tasks.

In the context of Military Operations Other than War, the involvement of the military's role must be placed as a response to limited situations, namely when there are limitations to civilian agencies in dealing with certain situations. This capability, which is not possessed by civilian agencies, is owned by the military, so it is deemed necessary to involve the military as a form of assistance to these civilian agencies. Therefore, the author agrees that the role of the military in the context of Military Operations Other Than War needs to be limited because this is a form of assistance from the military to civilian agencies, in this case the police, to suppress acts of terrorism by the Papua Armed Criminal Group.³⁷

The elucidation of the article describes that Military Operations Other than War from the TNI are non-military activities which have the aim of preventing war, resolving domestic and foreign disputes by seeking international peace and supporting the government or other civil apparatus in overcoming state security and as operations. that support or assist the activities of civil authorities in general to strengthen the capacity and capability of civil institutions. In Article 7 paragraph 2 (b) of the TNI Law, it is explained that the types of Military Operations Other Than War consist of 14 types of operations, as follows: (a). overcoming armed separatist movements; (b). overcoming armed rebellion; (c). overcoming acts of terrorism; (d). secure the border area; (e). secure strategic national vital objects; (f). carrying out world peace tasks in accordance with foreign policy policies; (g). securing the President and vice president and their families; (h). empowering the defense area and its supporting forces early in accordance with the universal defense system; (i). assist the task of government in the region; (j). assisting the Indonesian National Police in the framework of the tasks of security and public order regulated by law; (k). help secure heads-level state guests and representatives of foreign governments currently in Indonesia; (l). assisting in coping with the consequences of natural disasters, displacement, and providing humanitarian assistance; (m). assist search and rescue in accidents (search and rescue); as well as (n). assist the government in securing shipping and aviation against piracy, robbery and smuggling.

The main task of the Indonesian National Armed Forces is to carry out War Military Operations and Military Operations Other Than War which must be based on the State's governing political policies and presidential regulations. Military Operations Apart from War carried out by the TNI are assisting civilian authorities by looking at

³⁷ Muhammad Hafiz, Surya Muki Pratama, Tinjauan Hukum Penetapan Kelompok Kriminal Bersenjata Papua Sebagai Teroris Dalam Perspektif Hukum Pidana Nasional, *Jurnal Hukum Mimbar Justitia*, Vol. 7 No. 1 – Juni 2021, h. 100.

the surrounding conditions, urgent needs, and the TNI's function as humanitarian assistance, assistance to police officers to help carry out security and public order duties and assistance to civilian authorities whose implementation is carried out with activities that combat and non-combat. Muladi explained that the Regulations mentioned in article 7 paragraph 2 (b) of the TNI Law were based on state policies and political decisions. Implementation requirements related to the implementation of Military Operations Other Than War in dealing with criminal acts of terrorism, are as follows:

- a. Anti-terrorism, namely minimizing damage to vital organs (unnecessary suffering);
- b. Counter terrorism, namely dealing offensively in terror attacks;
- c. Consequences of management in the form of stabilizing the situation after the terror attack and assisting the civilian government;
- d. Understanding of the military besides being a combatant, namely the functions of Peacekeeper and Constable (law Enforcement); and
- e. Understanding of humanitarian law which is proportional and humanity (humanity principle), to reduce unnecessary suffering³⁸

The legal basis governing duties and functions in Military Operations Other Than War is regulated in Article 7 paragraph (2) of the TNI Law and Article 10 paragraph (3) of Law Number 3 of 2002 concerning National Defence, as well as Article 43I of Law Number 15 of 2003 jo Law Number 5 of 2018 Concerning the Eradication of Criminal Acts of Terrorism. These laws and regulations authorize the TNI to handle acts of terrorism in the framework of military operations other than war which are carried out in accordance with the duties and missions of the TNI based on presidential orders or state political policies.

4. CONCLUSION.

The Papuan Armed Criminal Group is a serious problem which, if not handled properly, has the potential for the disintegration of the Indonesian nation, which in the end could disrupt the integrity of the Unitary State of the Republic of Indonesia. The Indonesian government must immediately take appropriate steps to resolve this because the problem is not only a domestic problem, but has also become the attention of the international community. The solution can use a welfare approach by carrying out development in all fields in the land of Papua as well as a just law enforcement approach.

³⁸ Muladi, *Demokratisasi, Hak Asasi Manusia, dan Reformasi Hukum di Indonesia*, Jakarta, *Habibie Center*, 2002, h. 41.

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