

The Handling of Armed Criminal Groups in Papua: Ended with Secession?

Avi Lupi Rinasti^{1*}, M. Hanaan Alfarizi¹, Regita Ryan Noveliani¹,
Bagaskara Yonar Farhansyah¹, Zulfiani Ayu Astutik²

¹Faculty of Law Universitas Muhammadiyah Yogyakarta, Indonesia

²The Sea and Maritime Law Department, Ankara University, Turkey

*Corresponding Author: avi.lupi.law20@mail.umy.ac.id

DOI: <http://dx.doi.org/10.18196/iclr.v4i2.15122>

Abstract

The Papuan Armed Criminal Group (KKB) has been a hereditary problem for the Indonesian government. Their demand to secede from the Republic of Indonesia was the main reason why this group was formed. Because the Government has not responded to the demands of the KKB, it led this group to carry out acts of terror against the society in Papua. One of the cases that have recently attracted media attention is the KKB's attack that killed several workers in Beoga, Puncak district, Papua. The study aims to analyze and evaluate the settlement of terrorism cases carried out by KKB. This normative legal research relied on secondary data. The results of the study indicate that in international law, the context of referendum exists only in the context of decolonization and non-self-governing territory. The government's move by considering the KKB as a separatist terrorist group and not accepting KKB's demands for a referendum or mediation is one of the right steps. Acts of terrorism cannot be tolerated even though they are related to human rights because it is regulated in legislation.

Keywords: KKB; Papua; referendum; separatist; terrorism

1. Introduction

It is the duty of any country to maintain its territorial integrity. The maintenance of territorial integrity reflects the effort of a particular state to maintain its sovereignty. Sovereignty is the sole right to exercise legislative, judicial, and executive control over acts and occurrences inside a territory. Given that it is an exclusive prerogative, no other state can exercise formal political authority within that state. (Lee, 2021) There are so many obstacles that can be encountered in the effort to maintain state sovereignty, one of which is the separatist group. One of the separatist groups that are still a major problem for Indonesia is the Armed Criminal Group (KKB) in West Papua. This group demands secession from Indonesia and the establishment of new sovereignty.

The Indonesian government has just designated the Free Papua Movement as an Armed Criminal Group, or in other words a separatist terrorist group. This problem has long been a protracted problem even since post-independence Indonesia. This problem of course

raises the pros and cons among the community. Many think that what this group is doing is purely the government's fault, which is not too serious in handling and fulfilling the human rights of the West Papuan people so the group's desire to become independent through a referendum like what was done by Timor Leste in 1999. Although the reasons why Timor Leste held a referendum are different from those of the Armed Criminal Group in Papua, this can be a benchmark to avoid similar outputs.

The proclamation of Indonesian independence did not relieve internal conflicts that led to the desire for secession from various regions that were members of the Unitary State of the Republic of Indonesia (NKRI). One movement based on the spirit of wanting to separate from the Republic of Indonesia is the "Free Papua" movement, which is led by the Free Papua Movement (OPM). At that time, Papua was not yet officially part of the Republic of Indonesia, because administratively the territory was still under Dutch control. It was only in 1962 that Papua officially became one of the provinces under the Indonesian government after an agreement was reached between Indonesia and the Netherlands after going through a long process of struggle by the Indonesian government to make Papua into the territory of the Republic of Indonesia. Until the Indonesian government officially took over the Papua region in 1963, the condition worsened, which was when the Indonesian government responded to this chaos by carrying out strict supervision in the Papua region.

OPM is an organization that wants a process of liberation and the formation of an independent nation-state in Papua to be separated from the Unitary State of the Republic of Indonesia. They carried out various ways to gain independence, either through diplomacy and garnering international support, as well as through armed confrontation with the Indonesian government, and not infrequently the OPM movement used violence and carried out attacks that resulted in casualties from both the civil society and the civilian population. Indonesian government security apparatus (Kusuma et al., 2021). This resistance movement is what the Indonesian government calls the Free Papua Movement (OPM). Finally, the name in 1965 was used by the government to name the anti-government movement for every Papuan who contradicted his attitude and views towards the policies of the Government of the Republic of Indonesia.

The nationalism conflict occurred between three different groups. First, the conflict between Papuans as indigenous ethnic groups and the Dutch, which began in 1828-1962. Second, the conflict between Indonesia and the Netherlands occurred in 1946-1962. Third, is the conflict between Papuans and Indonesians that has happened from 1962 until now (Pekey, 2018). This then gave rise to a more massive resistance movement by carrying out various criminal activities. The change in the term OPM to Armed Criminal Group (KKB) is also intended to change the paradigm of handling separatists in Papua. If any of these Papuan KKB groups are caught, they will be detained for criminal reasons. Even so, the OPM is different from the Papuan KKB, where currently terror is spread armed with complete and up-to-date weapons, making it more difficult to control (Muslim, 2020). Because the purpose of the KKB was to free Papua from the Unitary State of the Republic of Indonesia, this group was considered a separatist movement, which could threaten the integrity of the country (Jubba, 2020).

Conditions in Papua that continue like this often lead to distrust of Papuans towards the central government and regional governments. As a result of this distrust, they often fight and fight until now. Furthermore, increasingly in several parts of Papua, Papuans are now

protesting the referendum and the possibility of national disintegration, so that the state takes a security approach to deal with various conflicts in Papua. The inability of the State to balance political policies against the interests of the Papuan people formed the KKB as an effort to demand equality, independence, and human rights in the Papua region (Mardiani et al., 2021).

However, many people also think that this is an unconstitutional act and consider that this group is nothing but a terrorist group that disturbs the security and peace of the Papuan people, especially West Papua. From what has been described previously, the problem of the research is "how are the problems and efforts to resolve the KKB in Papua?". The study aims to study, analyze and determine the resolution of the problem of armed criminal groups in West Papua which is still a hereditary problem since post-independence Indonesia. The research also aims to be a basis or material for further research that can be useful for writers and readers.

2. Method

The type of the research was normative legal research. This normative legal research employed both statutory, analytical, conceptual approach, comparative approach, and case approach. The research also used a case approach by reviewing another related case, such as the case of Catalonia which held a referendum on secession from Spain because of the economic crisis that hit Spain (Mochammad et. al., 2020). In this case, Indonesia was unable to grant Papua's request for a referendum on secession from Indonesia, but the right thing is to designate KKB as a terrorist. The authors used library studies to identify regulations and theories relating to the topic discussed. Furthermore, the data that have been collected was analyzed, and then the authors tried to conclude from various sources such as books, journals, laws, regulations, and other related sources.

3. Discussion and Analysis

3.1. The Problems and Demands of KKB

KKB intends to break away from Indonesia. We can say that what is done by the KKB is included in a concept in international law known as Belligerent. Belligerent arises when there is a political conflict between civilians who form a resistance group and the legitimate government in a country. (Corn, 2013) The KKB also often voices about a referendum so that it can be independent of the Unitary State of the Republic of Indonesia. In fighting for the group's wishes, they several times carried out criminal movements that claimed lives. Therefore, the government then took the initiative to establish Special Autonomy for Papua with a large budget. Unfortunately, the budget is only used by the elite, not the wider community (Lekitoo, 2020).

This then triggered a massive resistance movement from the KKB by committing various crimes. One of the crimes committed by the KKB was in 1996 when they arrested several Europeans and Indonesians consisting of research groups and forest camps. Two hostages from the research group were killed, while the others were released. Because of its actions, the KKB is often labeled as a criminal organization. According to records, KKB often acts in mountainous areas in Papua. Several regencies that until now are considered vulnerable from their actions, such as Puncak, Yahukimo, Nduga, and Intan Jaya.

Meanwhile, five groups have been mapped out with their leaders, namely Lekagak Telenggen, Egianus Kogoya, Jhony Botak, Demianus Magai Yogi, and Sabinus Waker. Of the five groups, Lekagak Telenggen and Egianus Kogoya are considered the most dangerous. Until now, Papuan KKB is difficult to eradicate because they are armed with complete and up-to-date weapons. Several crimes that have been committed by the Papuan KKB include assaulting workers, stabbing, shooting, and burning houses and schools in several areas of Papua (Apomfires, 2019).

The incidents that often happen to the KKB in Papua are human rights violations that make the Papuan people restless. Action demands from the OPM who want Papua to separate from Indonesia took many victims. One of his actions took place in 2021, namely, KKB carried out violent acts 16 times. At the same time, 12 victims died including civilians, such as teachers, students, motorcycle taxi drivers, and ordinary people who were recorded as victims in this action. In addition, the TNI-Polri often become victims (detikcom team, 2021).

Similar incidents often occurred in 2019, 23 shooting cases were found in the Papua region. During that period, the cases occurred in the areas of Puncak Jaya Police, Jayawijaya Police, Mimika Police, and Paniai Police. In this case, up to 20 people died. Consisting of 8 military personnel, 2 police officers, and 10 civilians, they are ordinary people. However, compared to 2018 the number of people who died and were victims of violence was the result of the terror often carried out by the KKB. KKB carried out propaganda as the organization knew it was trying to get the international community to support the free West Papua movement. KKB is trying to find help because there have been many violations of human rights, torture, and even murder by the officers. (Sianturi & Hanita, 2020).

In addition to the issue of violence perpetrated by the OPM, on the other hand, allegations of violence and even human rights violations committed by Indonesian security forces have been raised in the actions carried out while carrying out security duties in Papua. From the information provided by the State Intelligence Agency (BIN), it is explained that the OPM has carried out attacks and several times shot dead civilians who later claimed that the people who were shot were people who were spies from the Indonesian National Army. This of course creates a very unsettling situation in the Papua region. Civil society activities in carrying out their daily lives have been disrupted due to the conflict conditions between the OPM and the Indonesian government (CNN Indonesia, 2021).

Therefore, the idea of separatism or the desire for independence is a problem that cannot be tolerated, because it is contrary to the constitution. The integrity of the state is a sacred thing. In other words, the main problem of the Papuan conflict is based on the thoughts of Indonesian nationalists towards the construction of the meaning of Papua as a colonial discourse that legitimizes Indonesia's presence. Therefore, the determination of the KKB as a terrorist is the right action because the elements contained in the Law on Combating Terrorism have been fulfilled.

3.2. The Comparative Study of Referendum Case in the World

Separatist movements have often occurred in Indonesia since the early days of independence. In addition to the Papuan Armed Criminal Group, the separatist movement that once shocked Indonesia was the Free Aceh Movement (GAM). The goal of GAM is also no different from the KKB, which is to separate from the Unitary State of the Republic of

Indonesia (Sari, et. al. 2019). The conflict between GAM and the Government of Indonesia has been going on since 1976. Hasan Di Tiro, who was then the leader of GAM, issued a statement of resistance against the Indonesian government which was carried out in the Pidie Regency area on December 4, 1976 (Ali, et. al. 2022)

GAM carried out armed resistance to realize its goal of secession from Indonesia. The armed resistance was warmly welcomed by the Indonesian government. The Indonesian government held a military operation called the Military Operations Area in Aceh. The Aceh Military Operations Area took place between 1990 and 22 August 1998 (Akob & Nuryanti, 2019). This military operation in Aceh is also often known as "Operation Red Nets" aimed at fighting GAM. DOM has caused great terror and trauma among the people. During the implementation of the military operation, all forms of gross human rights violations were experienced by the people of Aceh, especially those who were considered to be a security nuisance, and more specifically to those who were considered to be involved in GAM.

With the pretext of keeping the community safe from disturbances by the Security Disruption Movement (GPK) and ensuring the operation of large companies in Aceh, the Governor of Aceh at the time, Ibrahim Hasan, in 1989 explicitly asked the central government to increase the number of ABRI personnel in Aceh. This request marks the start of the establishment of Aceh as a Military Operations Area (DOM). From 1989 to 1990, about 6,000 troops were stationed in Aceh, and since the July 1990 period this was added to bring the total number to 12,000 troops, including two Kopasus (Special Forces Command) battalions. The Aceh Military Operation involved violence perpetrated by two parties between the TNI and GAM. The violence carried out by the Aceh Military Operation killed more than 9,000 to 12,000 people, and most of them were civilians (Herningtyas, et. al. 2021).

The Indonesian government finally invited GAM to negotiate. This is because the path of violence gave birth to a vengeful generation which then further strengthened the resistance against the government. The Indonesian government and GAM entered into an agreement in 2005 known as the Helsinki agreement. The Helsinki MoU was signed in Helsinki, Finland on August 15, 2005 (Mukti, et. al. 2020). The agreement is a statement of commitment between the Indonesian government and GAM for a peaceful, comprehensive, sustainable and dignified settlement of the Aceh conflict for both parties. The Helsinki MoU consists of several parts, among which Aceh is given the authority to exercise authority in all public sectors, which will be carried out in conjunction with civil and judicial administration, except in the fields of foreign relations, foreign defense, national security, monetary and physical matters, judicial power. and religious freedom (Lee, 2020).

From this agreement emerged the special autonomy agreement in Aceh between the Indonesian government and GAM to achieve peace. Through the Helsinki Accord, GAM agreed to lay down its arms and abandon its demands to release Aceh from Indonesia. The results of this agreement were confirmed in Law Number 11 of 2006 concerning the Government of Aceh. However, after 14 years of the Helsinki MoU, not all of the articles in it have been implemented.

The case of an independence referendum has also occurred in Catalonia, Spain. Catalonia is the driver of the Spanish economy, such as maritime, textile trade, finance, services, and technology industries. Catalonia wants to separate itself from Spain because the economic crisis that hit Spain and Catalonia became the hope of the economy. Catalonia

held a referendum aimed at giving the right to choose to secede from Spain or remain part of Spain. Spain did not approve of Catalonia seceding. This Catalonia referendum took a toll because Spain arrested people who supported the referendum. Furthermore, the secession desired by Catalonia would cost Spain which lost 20 percent of its economic output. Since 1979, Catalonia has been granted special autonomy from the Kingdom of Spain. With this special autonomy, Catalunya has its system of government but remains under the Kingdom of Spain. The Generalitat of Catalonia is the holder of executive power in Catalonia which is subject to the Statute of Catalonia and the Spanish Constitution. Meanwhile, the legislative power is held by the Catalan Parliament which is elected through general elections every 4 (four) years. Local Catalan parties have seats in the Catalan Parliament. The history of granting special autonomy to Catalonia dates back to the emergence of the Catalan Republic within the Spanish Second Republic. The Second Spanish Republic granted special autonomy to the region of Catalonia in 1931 (Herr, 1974).

The leader of the Left Republican Party of Catalonia (ERC), Francesc Macia, became the first President of the Catalan Generalitat. The emergence of the Spanish Civil War in 1936-1939 caused Catalonia to begin to lose its special autonomy. This was because the Generalitat of Catalunya sided with the Republic, so the Spanish Nationalists attacked Catalunya. After the end of the Spanish Civil War and the Spanish Nationalists winning, all of Catalonia's special autonomy was abolished. The whole of Catalan culture is forbidden to be displayed in public.

The death of the Spanish dictator Francisco Franco provided a breath of fresh air for Catalunya. King Juan Carlos I as head of state of the Kingdom of Spain provided the opportunity for several regions of the Kingdom of Spain to obtain special autonomy through an amendment to the Spanish Constitution in 1978. The Statute of Catalonia was reinstated in 1979 until then an amendment was made in 2006 which gave Catalonia great autonomy to govern itself. However, not long after the Constitutional Court overturned this decision in 2010, arguing that as long as Catalans are "citizens" of Spain, Catalonia cannot be called a nation or a state. October 1, 2017, was a new chapter in the stalemate of the political process between the Spanish Government and the autonomous region of Catalunya for years. The Catalan authorities have long wanted independence because they think the Spanish government is being unfair by extracting Catalan wealth and denying the right to self-determination. The Spanish government with the support of the Spanish courts declared that the Catalan independence referendum was illegal and unconstitutional. Spanish authorities say Catalan's separatist government has encouraged voters to break the law. An independence referendum has been planned since June 2017 and was approved by the Catalan parliament on 6 September 2017. Because of this parliamentary decision, Catalan Leader Carles Puigdemont insisted that neither the courts nor the central government could delay the Catalan government's decision to independence. The Spanish government under Prime Minister Mariano Rajoy criticized the Catalan referendum as unlawful and urged the Constitutional Court to postpone the decision that had been passed by the Catalan Parliament (Wangke, 2018).

Today, the issue of a referendum on West Papua has come up again. The result of the issue movement carried out by the Organization under Benny Wenda and the Independence Referendum to separate from the Unitary State of the Republic of Indonesia (NKRI) which was carried out was the desire of Benny Wenda on behalf of West Papua. The

petition for a referendum on West Papua's independence has been submitted to the United Nations High Commissioner for Human Rights by the United Liberation Movement for West Papua or the United Liberation Movement for West Papua (ULMWP), led by Benny Wanda. The demand for an independence referendum to separate West Papua from Indonesia which is often echoed by some of the people of West Papua is not something new, the voice appeared in 1969.

Before discussing the issue of the referendum further, it is necessary to know the history of the sequence of events that eventually gave rise to the referendum. After Indonesia declared its independence, then the British and Dutch returned to Indonesia to settle prisoners of war and take over the government from the Japanese army. The Dutch did not recognize Indonesia's independence and considered it a puppet made by Japan. Indonesia's bargaining position at that time was quite weak, although in 1947 international support for Indonesia began to arrive. After Indonesia's war of independence during the period 1945-to 1949, through the Round Table Conference (KMB) held in The Hague, the Netherlands recognized Indonesia's independence. However, in the process of transferring sovereignty, the political status of West Papua was suspended for one year until further negotiations were held. The Dutch only recognized Indonesian sovereignty from Aceh to Maluku. Meanwhile, the Netherlands is trying to continue the status quo of West Papua while continuing to govern.

Indonesia, through various negotiations, has tried to place West Papua as an international problem. At its peak in 1956, Indonesia unilaterally canceled the KMB agreement as a result of the attitude of the Netherlands to maintain the status quo of West Papua. The conflict between Indonesia and the Netherlands worsened in the late 1950s when both sides armed themselves.¹⁴ On December 1, 1961, the Netherlands unilaterally proclaimed the establishment of the State of Papua and inaugurated the New Guinea Council. In response to the Dutch action, President Soekarno proclaimed the Tri Komando Rakyat (Trikorra) in Yogyakarta Square on December 18, 1961.

The election of John F. Kennedy as President of the United States caused the United States' support for the Netherlands to change. The United States pressured the Netherlands to immediately resolve the West Papua issue through the United Nations. On the other hand, Indonesia was ready to carry out a large-scale landing operation at the end of 1962. The Dutch impasse was finally broken after Elsworth Bunker submitted his proposal in April 1962. In his proposal, Elsworth Bunker proposed that West Papua be handed over to Indonesia through an interim government run by United Nations to further implement a people's opinion determination. Elsworth Bunker's proposal was reluctantly accepted by the Netherlands. On August 15, 1962, Indonesia and the Netherlands agreed on the Elsworth Bunker proposal and signed the New York Agreement. In the New York Agreement, it was stated that the Netherlands would hand over the tasks of governance in West Papua to the United Nations Temporary Executive Authority (UNTEA) which would then hand over the government in West Papua to Indonesia. Indonesia will accept the government of West Papua from UNTEA on May 1, 1963, and then Indonesia is obliged to hold a determination of the opinion of the people of West Papua before 1969 ends.

With the change of the Old Order regime to the New Order, President Soeharto ordered the Minister of Home Affairs, Amir Machmud, to prepare for the determination of the people's opinion as mandated by the New York Agreement. Together with the Regional

Level I and Level II Regional Gotong Royong (DPR-GR) Councils, AmirMachmud formed the PEPERA Deliberative Council (DMP) to implement PEPERA. The members of the DMP consist of tribal chiefs, community leaders, and political and government elements by President Suharto's directives. The United Nations sent representatives led by Dr. Ortiz-Sanz to oversee the PEPERA in August 1968. Before the implementation of the PEPERA, Indonesia proposed to change the PEPERA mechanism from the previous "one man, one vote" to "I" because it was by the principle of deliberation adopted in Pancasila Democracy (Suryana & Kamsori, 2017). With the change in the PEPERA mechanism, polemics have arisen both at home and abroad. However, the Secretary-General of the United Nations, U Thant, considered that the change was okay, considering the clause in the New York Agreement that stated the deliberation system in determining people's opinions.

The implementation of PEPERA began on July 14, 1969, in Merauke Regency and ended on August 2, 1969, in Jayapura City. In the implementation of PEPERA, the DMP in each district stated that the people of West Papua remained independent under the auspices of the Republic of Indonesia. The PEPERA results were ratified at the UN General Assembly on November 19, 1969, through UN Resolution No. 2504 (XXIV) with the result that 84 UN member states accepted, and 30 UN member states abstained and none refused.

The Indonesian government rejected this referendum because the Indonesian government considered that the referendum had been carried out in 1969 and was legally processed through the UN General Assembly Resolution. In addition, a referendum cannot be held in an area that is part of a legitimate state such as West Papua. This area is different from East Timor which is not registered as Indonesian territory according to the United Nations.

An independence referendum is a type of referendum in which the people of a region decide whether the territory should become a sovereign independent state or not. The independence referendum that resulted in a majority vote for independence did not always achieve independence. held by holding a direct, public, free, and secret vote of the people's opinion (Mochammad, et. al, 2020).

The Indonesian National Law does not regulate an independence referendum, however, Indonesia prohibits a referendum on independence according to the 1945 Constitution and Law Number 12 of 2005. Indonesia has formulated a referendum on constitutional changes, namely the legislation in question, namely the Decree of the People's Consultative Assembly. Number IV/MPR/1983 concerning Referendum and Law Number 5 the Year 1985 concerning Referendum which finally these two laws and regulations have been revoked respectively by Decree of the People's Consultative Assembly Number VIII/MPR/1998 concerning Revocation of Decision of the People's Consultative Assembly Number IV / MPR/1983 concerning theReferendum and Law Number 6 of 1999 concerning the Revocation of Law Number 5 of 1985 concerning the Referendum. Because of this, the implementation of the independence referendum that was ever carried out by theState of Indonesia was through the Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor which was signed on May 5, 1999, because the State of Indonesia did not regulate the regulations for the independence referendum (Adi, 2021).

The establishment of a state is inseparable from the way the state is formed. The state can be formed through three things, namely through the proclamation of independence,

through the underlying international agreement, or self-determination. Self-determination is a principle enshrined in the United Nations Declaration and enshrined in the United Nations Charter, in which every nation has the right to determine its destiny. The principle of self-determination in the United Nations Charter was then implemented through Resolution 1514 (XV) of the United Nations General Assembly on September 14, 1960. In Resolution 1514 (XV) it was stated that the state and the people of the colony had the right to self-determination. In other words, the colonial state is obliged to carry out decolonization of the colonial state through the transfer of sovereignty. The United Nations General Assembly then issued Resolution 1541 (XV) as the basis for implementing decolonization as stated in Article 73 of the United Nations Charter.

On 1 October 2017, the Catalan Generalitat held a referendum on Catalan independence under the Catalan Referendum and Self-Determination Act which was passed by the Catalan Parliament on 6 September 2017 (Smith, 2017). In the Catalan independence referendum, the pro-independence party received 92% of the vote. However, the Catalan independence referendum was deemed unconstitutional. In addition, according to Joan Ventro, the United Nations did not recognize the implementation of the Catalan independence referendum because it was deemed not to meet the requirements for implementing self-determination.

The referendum organized by the Generalitat of Catalunya was considered contrary to the Spanish Constitution. In the Spanish Constitution, it is stated that Spain does not recognize the implementation of a referendum on independence in areas recognized by the international community as the territory of the Kingdom of Spain. The Spanish Constitution only recognizes a referendum to make changes to the Spanish Constitution.

In contravention of the Spanish Constitution, the Spanish Constitutional Court overturned the Catalunya Referendum and Self-Determination Act on 7 September 2017. In addition, Spain's Constitutional Court ordered that the implementation of the independence referendum should be stopped. Even the Catalan High Court ordered the Catalan Police to arrest and detain anyone involved in the successful implementation of the referendum.

Apart from being contrary to the Spanish Constitution, the procedure for passing the law is contrary to the Statute of Catalonia. In the Statute of Catalonia, it is stated that at least 90 (ninety) people or two-thirds of the members of the Catalan Parliament are required to make decisions regarding the status of Catalonia. In reality, the ratification of the law was only attended by 72 (seventy-two) members of the Catalan Parliament who were pro-independence.

The implementation of the Catalan independence referendum has been the subject of debate. This is because there is no voter threshold in the referendum in determining the fate of Catalonia. In this case, the result of the referendum will immediately be binding by an absolute majority. In addition, the absence of an international observer appointed and recognized by the United Nations to oversee the proceedings of the referendum caused the results of the referendum to be questioned. This is because there is a difference in the number of ballots with the "YES" option and the number of voters registered in 71 municipalities. Due to legal defects in the implementation of the Catalan independence referendum, especially since it was contrary to the Spanish Constitution, the referendum held on October 1, 2017, was not recognized by the international community.

Indonesia and Spain both have had a history of secession. We can compare the cases that occurred in Indonesia with Spain in the eyes of international law. Procedures for Implementing a Referendum in International Law are as can be found in the Code of Good Practice on Referendums, that the implementation of a referendum is based on the principles of universality, equality, freedom, and confidentiality, It is carried out peacefully, The freedom of opinion and press is enforced and must there is the neutrality of the government, there is supervision from international observers to oversee the process of the referendum, but in reality this rule is not binding and coercive where this rule is only a guideline that can be applied by countries. The United Nations (United Nations) and its subordinate organs can provide assistance in the implementation of a referendum, either in assisting the implementation or supervising the implementation of a referendum in which the assistance and supervision carried out by the United Nations must be carried out at the request of the country itself.

The right of self-determination related to the independence referendum is that in practice the right of self-determination is used as the basis for realizing the implementation of an independence referendum. The connection itself can be seen where the right to self-determination is a collective right where in the exercise of that right

This is not the will of an individual so that the approval of the whole community is needed. This is where the function of the referendum can be found, namely that the referendum is a means for the community to give their opinion whether they agree or disagree regarding the act of separating and liberating themselves carried out by their territory, but the results of the implementation of the independence referendum itself it is not definitive, which means that even though the results of the independence referendum were won by a vote of approval, the region did not automatically become independent and vice versa.

The legality of the implementation of the 2017 Catalan independence referendum according to the perspective of international law is that there are no binding and coercive international legal rules governing the independence referendum, meaning that it cannot be definitively stated that this Catalan action is an act that is permissible or not in the context of international law. In the ICCPR and ICESCR there is the right to self-determination and the right to participate in public policy which can be carried out through means such as a referendum where this is one of the legal bases of Catalonia while Spain refers to its country's constitution where the Catalan action is considered to violate Article 1 and Articles of the Spanish Constitution. Both parties each provided their legal arguments based on the rules in international law and national law.

3.3. Government Efforts to Resolve KKB

Indonesia is a state of the law by Article 1 Paragraph (3) of the 1945 Constitution which reads "The State of Indonesia is the State of Law". That means, whatever happens, or problems that exist in Indonesia, must still be viewed in the eyes of law, be it conventional law, religious law, or customary law. In the sociology of law, people who deviate from the law are people who do not have legal awareness which is the basis for all interactions between humans and also problem-solving (Tauratiya, 2018).

Likewise with all forms of government efforts in resolving cases of Armed Criminal Groups in West Papua. All efforts must be based on existing legislation. This is also in the

interest of maintaining the unity and integrity of Indonesia. The KKB request, namely a referendum on independence and the formation of a new state, was never approved by the Indonesian government.

In the process of self-determination, a referendum is often used. The referendum is a general and direct vote to provide views on policies to be taken by the Government. In the implementation of the referendum, the people who have met certain criteria set by the Government are entitled to cast their votes. Everyone is entitled to only one vote in a referendum.

The word referendum comes from the Latin refers which means to return. The use of the word refers cannot stand alone, but becomes a unity in the sentence "proposition quod referendum est popular", which means "a proposal that must be returned to the people". The use of a referendum was first recorded in the 16th century in Switzerland, where the Graubunden region implemented a democratic system through direct elections which were named "referendum".

Indonesia as a member country of the United Nations recognizes the principle of self-determination. In practice, self-determination has been held in West Irian or West Papua through the Popular Opinion in 1969 and East Timor through the East Timor Independence Referendum in 1999. The 1945 Constitution of the Republic of Indonesia does not regulate the holding of a referendum in decision-making. decision on a policy.

The implementation of the Popular Opinion in West Irian or West Papua and the East Timor Independence Referendum is not regulated by laws and regulations but through mutual agreement. This collective agreement involves the supervision of the United Nations. The parties that may implement the collective agreement are only subjects of international law. In the case of the Determination of Popular Opinion in 1969, there was an agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West Papua (West Irian) as the basis for its implementation. Meanwhile, the implementation of the East Timor Independence Referendum in 1999 was based on the Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor.

Although Indonesia does not regulate the implementation of a referendum in the 1945 Constitution of the Republic of Indonesia, Indonesia has formulated laws and regulations governing the referendum on constitutional changes. The legislation in question is the Decree of the People's Consultative Assembly Number IV/MPR/1983 concerning the Referendum and Law Number 5 of 1985 concerning the Referendum. These two laws and regulations have been revoked respectively by Decree of the People's Consultative Assembly Number VIII/MPR/1998 concerning Revocation of Decision of the People's Consultative Assembly Number IV/MPR/1983 concerning Referendum and Law Number 6 of 1999 concerning Revocation of Law Number 5 of 1985 concerning Referendum.

Although the right to self-determination is enshrined in the Charter of the United Nations and followed by various treaties and resolutions of the United Nations, there is no single rule in international law that regulates how self-determination is carried out. The use of a referendum in self-determination is solely based on international custom, where a referendum is considered to represent the will of the people because it uses a one-man-one-vote system. This is because international law works on the principle of respect for state sovereignty (bisariyadi, 2017).

Over time, there have been holdings of referendums on self-determination in various countries in the world. However, not all the results of its implementation are approved by the United Nations General Assembly. This is because international law respects the sovereignty of a country. This is especially true if the territory that carries out the referendum in the context of self-determination is recognized internationally as a unitary state of a sovereign state. An example is the Catalunya Referendum.

The problem in Papua is very complex because it consists of various aspects. Therefore, its solution requires synergy between the central government, regional governments, and the Papuan people. The government's step in establishing the KKB as a terrorist organization is a right effort. With the determination of armed criminal groups (KKB) as terrorist groups/organizations, law enforcement officers can easily carry out countermeasures against crimes committed by these groups. After that, what the government needs to do is take a soft approach with dialogue, build prosperity, and enlighten ideology as well as various other peaceful efforts.

Dialogue is an instrument that can encourage changes in relationship patterns from the conflict stage to the post-conflict stage. It is at this point that the conflict can be declared over. Separatist thoughts and mutual suspicion can be eliminated. Without dialogue, the people of Indonesia and Papua, especially the elites of Jakarta and Papua will continue to be divided and fail to build a common future. The format of political relations can be refreshed through compromise and agreements as outlined in the new Law as an improvement from Law no. 21 of 2001 concerning Special Autonomy which is disabled, even considered dead. As with the Aceh conflict, after going through a dialogue process that resulted in the 2015 Helsinki MoU, then Law no. 18 of 2001 on Aceh's special autonomy was renewed by Law no. 11 of 2006 concerning the Government of Aceh.

If the peaceful approach does not work, then another option can be used, namely, a hard approach carried out by law enforcement. Law enforcement is carried out by the Police. However, the government must not completely kill KKB because it is a violation of human rights, the state must try to stop human rights violations by enforcing the law through the courts. Respecting human rights does not mean being soft on the KKB in Papua. Every individual has the right to a fair trial by taking into account the presumption of innocence (Suatmiati & Kastro, 2020). "Killing" or "eliminating" KKB in Papua is tantamount to colonizing the nation's biological children.

The Indonesian government has made some efforts to eradicate the KKB by increasing the amount of the Indonesian National Armed Forces (TNI) and Indonesian National Police (Polri) in the Papua area. However, it turns out that this step adds to the death toll from both the KKB and the TNI and/or Police. Both from the TNI and/or Polri who were victims of the KKB atrocities, as well as the KKB parties who became victims of the TNI and/or Polri during military operations.

Therefore, the government must adopt a more humanist approach, not using militaristic and violent methods. The conflict resolution approach must be comprehensive and touch the root of the problem (Santoso, 2020). The government must find common ground and develop and choose ways of dialogue with all stakeholders in Papua to find a way out so that the conflict in Papua ends soon, and so that victims do not continuously increase.

In addition to establishing KKB as a terrorist organization, not accepting KKB's demands for a referendum or mediation is also the right step in handling the KKB case. The fulfillment of this request can be considered as the acceptance of the KKB as a representative of the people of Papua. Acts of terrorism cannot be tolerated even though they are related to human rights because it is regulated in legislation (Gunawan et al, 2022). Therefore, a more humanist approach is the most effective way to end antagonistic political relations to become cooperative.

4. Conclusion

Based on the formulation of the problem that has been discussed and analyzed above, the authors conclude that crimes committed by armed criminal groups (KKB) in Papua can be regarded as terrorism offenses. Therefore, the policy of the Indonesian government to designate them as a terrorist group is the right policy. In its regulation in Indonesia, Indonesian criminal law distinguishes the terrorism offenses and treason offenses with different formulations and elements. In addition to establishing KKB as a terrorist organization, not accepting KKB's demands for a referendum or mediation is also the right step in handling the KKB case. The secession itself is not regulated in any International treaties or regulation. Even if secession is not "prohibited," international law supports the territorial integrity of the parent state and generates a presumption against its success.

Acts of terrorism carried out by the separatist Armed Criminal Group in Papua cannot be tolerated even though they are related to human rights because it is regulated in legislation. Therefore, the government must adopt a more humanist approach, not using militaristic and violent methods. The conflict resolution approach must be comprehensive and touch the root of the problem by taking a soft approach through dialogue, building health, and ideological enlightenment.

References

- Triyogo, B. A. T. (2021). *Referendum Kemerdekaan dalam Konteks Hukum Nasional Indonesia dan Hukum Internasional*. Universitas Jember.
- Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor, 1999.
- Akob, B., & Nuryanti, R. (2019). Behaviour and Mentality of Inong Balee in the Military Operations Area (Dom) 1989-1998. *International Journal of Innovation, Creativity, and Change*, 9 (4).
- Ali, M. (2022). Patterns of Political Communication Between Government Institutions to the Trust of the Acehnese People. *International Journal for Educational and Vocational Studies*, 4 (2).
- Anakotta, M. Y. (2021). The Criminal Acts by Armed Criminal Group in Papua, "Treason" or "Terrorism"? *Jurnal Komunikasi Hukum*, 7 (2).
- Apomfires, F. (2019). Makanan Pada Komuniti Adat Jae: Catatan Sepintas-Lalu Dalam Penelitian Gizi. *Jurnal Antropologi Papua*, 1(2).
- BIN: OPM Dicap Teroris karena Serang Masyarakat Sipil. (2021, April 26). CNN Indonesia.

- Bisariyadi. (2017). Membaca Fenomena Referendum untuk Merdeka. *Rechtsvinding*, 2(6).
- Corn, G. S., Blank, L. R., Jenks, C., Jensen, E. T. (2013). Belligerent Targeting and the Invalidity of a Least Harmful Means Rule. *International Law Studies*, 89.
- Effendi, T., & Panjaitan, A. C. D. (2021). Konsekuensi Penetapan Status Kelompok Kriminal Bersenjata (KKB) Papua sebagai Teroris Menurut Hukum Pidana. *RechtIdee*, 16(2).
- Gunawan, Y., Sienda, R. M., Anggriawan, R., & Salim, A. A. (2022). The Rights to Nationality for Ex ISIS Combatants Repatriation Under International Law. *Jurnal Hubungan Internasional*, 10(2), 108-120.
- Herningtyas, R., Kurniawan, N. I., Dafri., & Surwandono. (2021). Sovereignty in Crisis: Deterritorialization of State Sovereignty After Tsunami Aceh 2004. *Sociologia Y Tecnociencia*, 11 (2).
- Herr, R. (1974). *A Historical Essay on Modern Spain*. Berkeley: University of California Press.
<https://www.cnnindonesia.com/nasional/20210426131800-12-634799/bin-opm-dicap-teroris-karena-serang-masyarakat-sipil>
- Jubba, H. (2020). The Display of Religious Symbols in Public Space: The Contestation of Muslim and Christian Identities in Jayapura, Papua. *Humanities and Social Sciences Reviews*, 8(1).
- KKB Papua Teroris, 12 Warga Dibunuh-Sekolah Dibakar Selama 2021.(2021, April 30). DetikNews. <https://news.detik.com/berita/d-5552813/kkb-papua-teroris-12-warga-dibunuh-sekolah-dibakar-selama-2021/2>
- Kusuma, A. J., Setiawan, M. C. A., Ilmar. A., & Situmeang, N. (2021). Perubahan Status Organisasi Papua Merdeka (OPM) Menjadi Organisasi Teroris oleh Pemerintah Indonesia: Sebuah Analisis dalam Perspektif HAM. *Jurnal of Government*. 7(1).
- Kusumawardhani, I., & Afriansyah, A. (2019). Free Papua Organization: Belligerent, Combatant, or Separatist?. *Advances in Economics, Business and Management Research*, 130.
- Lee, D. (2021). Defining the Rights of Sovereignty. *AJIL Unbound*, 115.
- Lee, T. (2020). Political Orders and Peace-Building: Ending the Aceh Conflict. *Security & Development*, 20 (1).
- Lekitoo, H. (2020). *Kitorang Tra Maju-Maju: Marginalisasi Orang Papua di Kampung Sendiri*. Universitas Gadjah Mada: FIB.
- Ma'arif, M. A., Dewanto, W. A., & Tarigan, M. I. (2020). Rencana Pemisahan Catalonia dari Spanyol Ditinjau dari Prinsip Self- Determination. *KELUWIH: Jurnal Sosial dan Humaniora*, 1(1).
- Mukti, T. A., Warsito, T., Ahmadi., S., Cipto, B., & Amriyanto, H. (2020). The Future of Peace Between Aceh and Jakarta Under Helsinki Agreement 2005. *Humanities & Social Science Reviews*, 8 (3).
- Muslim, A. (2020). *Dakwah Peka Kultur Ala Aipon Asso; Papua., Potret Keberislaman Pegunungan Tengah*. Makassar: Balitbang Agama Makassar.

- Napang, M., & Rohman, S. (2021). Juridical- Normative Review of The Designation of Armed Criminal Groups (KKB) In Papua as Terrorist Groups. *Journal of Terrorism Studies*, 3(2).
- Pekey, F. (2018). *Papua Mencari Jalan Perdamaian: Telaah Konflik dan Resolusi di Bumi Cenderawasih*. Jakarta: Kompas Media Nusantara.
- Santoso, T. (2020). Parties to Crime: Development and Comparison. *Indonesian Comparative Law Review*, 2(2), 67-79.
- Sari, C. M. A., Sari., & Efendi. (2019). The Internalisation Process and Pattern on Ideology Ethnonationalism from Five Leaders of the Free Aceh Movement to Their Children. *International Journal of Innovation, Creativity, and Change*, 7 (8).
- Sianturi, B. H., & Hanita, M. (2020). Optimalisasi Peran Polri dalam Penanganan Kelompok Kriminal Bersenjata di Papua. *Jurnal Keamanan Nasional*, 6(1).
- Smith, B. (2017). *The Catalan Independence Vote 2017, CBP 8078*. London: House of Commons Library.
- Suatmiati, S., & Kastro, E. (2020). Legal and Institutional Framework on Counter-Terrorism in Indonesia. *Jurnal Media Hukum*, 27(1), 68-78.
- Suryana, A. Y., Suwirta, A., & Kamsori, M. E. (2017). Peranan Amir Machmud dalam PEPERA. *FACTUM*, 6(2).
- Tauratiya. (2018). Faktor Penyebab Timbulnya Kepatuhan Masyarakat Terhadap Hukum (Legal Obedience). *Asy Syar'iyah: Jurnal Ilmu Syariah dan Perbankan Islam*, 3(2).
- United Nations General Assembly, "Declaration on the Granting of Independence to Colonial Countries and Peoples," United Nations General Assembly 1514 (XV) (1960).
- United Nations Security Council Resolution 1246 (1999), 1999.
- Wangke, H. (2017) Referendum Kemerdekaan Catalunya Dari Spanyol. *Majalah Info Singkat Hubungan Internasional*, 20th ser., II, no. IX (Oktober).