Proceeding of the 5rd Malikussaleh International Conference on Law, Legal Studies and Social Sciences (MICoLLS) 2025

Between State Law and Human Rights: The Dynamics of Handling Armed Criminal Groups (KKB) in Papua

1st Darma Putra Nasution
1st Malikussaleh University
darma.247410101005@mhs.unimal.ac.id

2st Marlia Sastro
2st Malikussaleh University
Marlia@unimal.ac.id

3st Herinawati
3st Malikussaleh University
herinawati@uimal.ac.id

ABSTRACT

This study aims to analyze the dynamics of handling Armed Criminal Groups (KKB) in Papua from the perspective of state law and human rights (HAM). The research method employed is a normative legal approach with a qualitative specification through library research, which includes legislation, legal doctrines, and academic literature. The findings reveal a gap between *das sollen* (the prevailing legal norms) and *das sein* (the field practice), where the state's efforts to maintain sovereignty often lead to human rights violations. Predominantly repressive law enforcement weakens the state's legitimacy and fosters distrust among the Papuan people. In conclusion, a reformulation of policies is needed to balance the interests of preserving state integrity and protecting human rights. This study recommends a comprehensive approach based on progressive law, constructive dialogue, and equitable development as strategies for resolving the Papua conflict.

Keywords: state law; human rights; Papua; Armed Criminal Groups (KKB)

INTRODUCTION

The Proclamation of Indonesia's independence on August 17, 1945, became a momentum for the Indonesian nation to assert its sovereignty, including over the Papua region, which from the outset had sparked prolonged disputes. Differences in views between Indonesia and the Netherlands regarding the status of Papua led to international political tensions that culminated in the Act of Free Choice (PEPERA) in 1969. Although the result determined that Papua would remain with Indonesia, the process generated controversy and left dissatisfaction among some segments of the Papuan society.[1] From this context emerged a resistance movement that eventually led to the formation of the Free Papua Organization (OPM) and the actions of armed groups now known as the Armed Criminal Group (KKB).

The resistance movement in Papua reflects a tug-of-war between state law, which emphasizes sovereignty and territorial integrity, and the demands of the local community, who feel that their political rights have been neglected. According to Aditjondro, the emergence of the OPM cannot be separated from the experiences of the Papuan people with repressive actions by state apparatus, which further intensified the conflict.[2] This situation illustrates a classic dilemma: the state strives to enforce the law to safeguard sovereignty, while the people demand the protection of human rights (HR).

The theoretical framework of this study is based on the concept of *das sollen* and *das sein* in law. Normatively (*das sollen*), the state is obliged to guarantee human rights as stipulated in the 1945 Constitution, Law No. 39 of 1999 on Human Rights, and Law No. 26 of 2000 on Human Rights Courts. Certain rights, such as the right to life and the right not to be tortured, are non-derogable rights that cannot be reduced under any circumstances.[3] However, empirically (das sein), law enforcement in Papua often involves repressive actions by security forces that result in casualties, including innocent civilians.

In this context, a gap emerges between the ideality of the law and the reality on the ground. The state, as a legal subject, has the obligation to safeguard sovereignty, but it often faces a dilemma when law enforcement leads to human rights violations. Security forces are confronted with a difficult choice: acting firmly at the risk of violating human rights, or acting leniently at the risk of strengthening the influence of the armed separatist group (KKB).[4] This tension makes Papua a testing ground for balancing state law and humanitarian principles.

---

[1] Delvia Ananda Kaisupy, Skolastika Genapang Maing, Proses Negosiasi Konflik Papua, Jurnal Ilmu Sosial dan Humaniora, Vol. 10, No. 1, 2021, hlm. 83.

[2] Syamsul H. & Widjajanto, A. Disintegrasi Pasca Orde Baru : Negara, Konflik Lokal dan Dinamika Internasional. Jakarta: Yayasan Obor, 2007.hlm 37

[3] Naufal Yudawan, Perlindungan Hukum terhadap Warga Sipil (Papua) Terkait Non-International Armed Conflict dalam Perspektif Hukum Humaniter, Vol.28, No 8, 2022, hlm 2.

[4] Kartika Dewi, Meysyta. Tanggung Jawab Negara Terhadap Kejahatan Kelompok Kriminal Bersenjata Di Papua (Doctoral dissertation, Universitas Jambi).2023.hlm 8

The analysis of Papua's dynamics also shows that a purely security-based approach is never sufficient. Ardli Johan Kusuma et al. (2022) note that despite the government's efforts through development and diplomacy, violence continues to recur. This indicates the need for a comprehensive strategy that not only emphasizes law and security but also prioritizes social justice and humanity. Papua is not merely a territorial issue but also a problem of legal legitimacy and respect for human dignity.[5]

The problem posed in this study is: how are the dynamics of the tug-of-war between state law and human rights in addressing the KKB issue in Papua, and how is the gap between *das sollen* and *das sein* reflected in the practice of law enforcement? This question is crucial, given that failure to maintain a balance between these two aspects has the potential to prolong cycles of violence, erode public trust, and undermine Indonesia's standing in the international arena.

The novelty of this study (state of the art) can be highlighted as follows: Previous research provides diverse perspectives on the dynamics in Papua. Delvia Ananda Kaisupy (2021) emphasized the historical aspect of Papua's integration into Indonesia, particularly the political process from the post-independence period up to the 1969 Act of Free Choice (*Pepera*), which remains controversial. [6]In contrast, Syamsul H. & Widjajanto (2007) examined the role of violence by security forces, which they argue exacerbated the conflict, as repressive approaches fostered public distrust toward the government and strengthened separatist movements.[7] Meanwhile, Ardli Johan Kusuma et al. (2022) focused more on the social impacts of the armed conflict, including casualties, community trauma, and mass displacement, indicating that the Papua conflict is not only a security issue but also a humanitarian one.[8]

RESEARCH METHOD

This study employs a normative legal approach with a qualitative specification. Its purpose is to identify rules, principles, and legal doctrines relevant to addressing the issues of handling Armed Criminal Groups (KKB) in Papua.[9] The approaches used include the statute approach, to examine statutory regulations; the conceptual approach,

[5] Ardli Johan Kusuma, dkk, Perubahan Status Organisasi Papua Merdeka (opm) Menjadi Organisasi Teroris oleh Pemerintah Indonesia, Jurnal Of Government, Vol. 7, No 1, 2022, hlm. 3.

[6] Delvia Ananda Kaisupy, Skolastika Genapang Maing, Proses Negosiasi Konflik Papua, Jurnal Ilmu Sosial dan Humaniora, Vol. 10, No. 1, 2021, hlm. 83.

[7] Syamsul H. & Widjajanto, A. Disintegrasi Pasca Orde Baru : Negara, Konflik Lokal dan Dinamika Internasional. Jakarta: Yayasan Obor, 2007.

[8] Ardli Johan Kusuma, dkk, Perubahan Status Organisasi Papua Merdeka (opm) Menjadi Organisasi Teroris oleh Pemerintah Indonesia, Jurnal Of Government, Vol. 7, No 1, 2022, hlm. 3.

[9] Peter Mahmud Marzuki, Penelitian Hukum, Jakarta : Kencana Prenada Group, 2007, hlm 35

to study legal doctrines and theories;[10] and the historical approach, to understand the development of legal and human rights policies related to the KKB issue.[11]

The type of research used is library research, where data are obtained from primary, secondary, and tertiary legal materials. Primary legal materials include laws and international legal instruments; secondary materials comprise books, journals, and scholarly works; whereas tertiary materials consist of legal dictionaries and encyclopedias that help in understanding legal terminology. This method allows the research not only to inventory regulations but also to assess the coherence between legal norms and principles.[12]

Data collection was conducted through a literature review, critically examining and selecting legal sources relevant to the research problem.[13] Data analysis utilized normative-qualitative analysis, which involves sorting, classifying, and interpreting legal materials to comprehensively answer the research questions. Consequently, this study is expected to provide both theoretical and practical contributions to the development of law and policy for handling KKB in Papua within the framework of state law and human rights.

DISCUSSION

The handling of Armed Criminal Groups (KKB) in Papua presents a legal and humanitarian dilemma for the state. On one hand, the state is obligated to maintain territorial integrity, as stipulated in Article 1 paragraph (1) of the 1945 Constitution of Indonesia, which declares Indonesia a unitary state. On the other hand, the state has a constitutional responsibility to protect human rights, as stated in Article 28I paragraph (4) of the 1945 Constitution, which affirms that human rights protection is the government's duty. This tension creates a challenging situation in formulating policies to address KKB in Papua.

[10] Jonny Ibrahim, Teori dan Metodelogi Penelitian Hukum Normatif , Malang Bayumedia 2007, hlm 307.

[11] Peter Mahmud Marzuki, Penelitian Hukum, Cet, 7, Jakarta : Kencana, T 2011, hlm 134

[12] Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group, 2017), hlm. 47

[13] Soejono Soekanto, penelitian Hukum Normatif Suatu Tinjauan Singkat, Jakarta : Rajawali Pers, 2009, hlm 15.

Legally, KKB actions can be considered acts of treason under Article 106 of the Indonesian Criminal Code, providing legitimacy for the state to take legal action against them. However, repressive measures must not be executed recklessly, as they risk harming uninvolved civilians. Therefore, the principles of caution and proportionality should guide all law enforcement operations.

Military involvement in handling KKB is regulated under Article 7 paragraph (2) letter b of Law No. 34 of 2004 on the Indonesian National Armed Forces (TNI), allowing military operations beyond wartime, including addressing armed separatists. Nevertheless, the National Police (Polri) remains the primary law enforcement institution under Law No. 2 of 2002 on the Police. Misalignment between TNI and Polri authorities often creates implementation friction, weakening operational effectiveness. According to Hadjon (2005), clear institutional authority is essential to prevent maladministration that harms society.[14]

Beyond legality, the humanitarian dimension is often neglected. Article 3 paragraph (2) of Law No. 39 of 1999 on Human Rights asserts that everyone has the right to recognition, protection, and fair legal certainty. This principle should guide all enforcement operations in Papua. Yet, field realities often contradict this: security operations result in casualties among both law enforcement personnel and civilians. According to Asshiddiqie (2006), human rights protection must not be compromised under any circumstances, including security threats.[15]

Ironically, the rationale of protecting human rights is sometimes used to justify security operations that result in casualties. Many law enforcement officers have died in armed encounters, while civilians frequently become unintended victims. The rhetoric of human rights protection thus contrasts with actual practice, eroding Papuan trust in state law and reinforcing KKB propaganda that the state neglects fundamental human rights.

This phenomenon highlights a legal legitimacy problem. State law, meant as an instrument of justice, is perceived as a tool of repression. Rahardjo (2009) argues that

[14] Hadjon, P. M. *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gadjah Mada University Press,2005. hlm. 92.

[15] Asshiddiqie, J. *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Konstitusi Press,2006. hlm. 145.

progressive law requires placing humans at the center of legal orientation, not merely state interests. Security operations should not compromise human dignity and rights, as law loses its binding power without moral legitimacy.[16]

Another critical issue is the recognition of Papuan indigenous rights. Article 18B paragraph (2) of the 1945 Constitution states that the state acknowledges and respects indigenous communities and their traditional rights. In practice, these rights, particularly regarding customary land and resource exploitation, are often ignored. This structural injustice exacerbates conflict, which KKB exploits to strengthen its support base.

From the perspective of responsive legal theory, law should address the real needs of society, not merely serve as a state control instrument. If law fails to meet justice demands, society will seek legitimacy outside state law. Ibrahim (2007) emphasizes that conceptual legal approaches are vital, especially when positive law cannot address complex social dynamics like those in Papua.[17]

Historically, repressive patterns in Papua are not new. From the New Order era to the Reform era, militaristic approaches have dominated policies but failed to resolve root problems, even strengthening societal resistance to the state. This demonstrates that positive law alone is insufficient and must be accompanied by welfare-oriented and reconciliation-focused humanistic approaches.

Implementation issues are also prominent. Many reports of alleged human rights violations remain unaddressed transparently. Accountability mechanisms for officials accused of violations remain weak, leading society to perceive the state as protecting officials over citizens. This undermines the credibility of state law and reinforces the perception that law is sharp downward but blunt upward.

From an international law perspective, Indonesia ratified the International Covenant on Civil and Political Rights through Law No. 12 of 2005, affirming the state's obligation to protect the right to life, freedom, and access to justice for all citizens. Excessive

[16] Rahardjo, S. *Hukum Progresif: Hukum yang Membebaskan*. Jakarta: Kompas,2009. hlm. 22.

[17] Ibrahim, J. *Teori & Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia,2007. hlm. 47.

repressive actions in Papua may thus violate international standards integrated into national law.

The main challenge in handling KKB is the fragile balance between safeguarding state sovereignty and fulfilling human rights. The state often emphasizes security under the guise of protecting human rights, but field realities show many casualties among both law enforcement and civilians. This raises serious questions about the state's consistency in upholding the rule of law.

Therefore, handling KKB in Papua requires reformulating legal policies oriented toward balance. Security measures remain necessary to protect sovereignty but must strictly observe human rights principles. Welfare-oriented approaches, dialogue, and reconciliation must be integrated so that state law serves not only as an instrument of repression but also as an instrument of justice.

Thus, the dynamics of KKB management in Papua reveal a fundamental problem in the relationship between state law and human rights. Excessively repressive state law without human rights consideration risks prolonged conflict. Conversely, law that prioritizes human rights protection strengthens state legitimacy in the eyes of Papuan society. Achieving this balance is essential for law enforcement to truly provide solutions rather than generate new problems.

CONCLUSION

This study emphasizes that the dynamics of handling Armed Criminal Groups (KKB) in Papua lie at the complex intersection between state law enforcement and the obligation to protect human rights. The state has constitutional legitimacy to safeguard sovereignty and national security, as stipulated in Article 30 paragraph (1) of the 1945 Constitution, which affirms citizens' rights and obligations to participate in national defense and security efforts. However, policy implementation on the ground often creates a paradox, where the rationale of maintaining security stability results in human rights violations, including the loss of civilian lives due to law enforcement actions.

Second, the discussion shows that, normatively, both national and international legal instruments regulate human rights protection principles, such as Article 28I of the 1945 Constitution and Law No. 39 of 1999 on Human Rights. In practice, however, handling

armed conflict in Papua often reveals a misalignment between regulations and field realities. This is reflected in repressive actions by authorities that frequently exceed limits, fostering public distrust in the state. This condition highlights the gap between legal norms and policy implementation. Moreover, handling KKB also poses a serious dilemma, as many law enforcement officers have fallen in the line of duty. The situation becomes more complex because firm actions against KKB are often perceived as human rights violations, while restraint may endanger both officers and civilians.

Third, the study underscores the importance of applying a justice-oriented, human rights-based legal approach in managing KKB in Papua. The state must prioritize progressive law with humanistic, participatory, and responsive principles, as advocated by Satjipto Rahardjo. Such an approach is expected to minimize human rights violations, strengthen legal legitimacy, and foster Papuan public trust in the state. Therefore, an ideal solution for handling KKB dynamics is not merely militaristic but requires comprehensive policies that uphold human rights, promote constructive dialogue, and ensure equitable development for all communities in Papua.

REFERENCES

Asshiddiqie, J. (2006). *Konstitusi dan konstitusionalisme Indonesia*. Jakarta: Konstitusi Press.

Dewi, M. K. (2023). *Tanggung jawab negara terhadap kejahatan kelompok kriminal bersenjata di Papua* (Doctoral dissertation, Universitas Jambi).

Hadjon, P. M. (2005). *Pengantar hukum administrasi Indonesia*. Yogyakarta: Gadjah Mada University Press.

Ibrahim, J. (2007). *Teori & metodologi penelitian hukum normatif*. Malang: Bayumedia.

Kaisupy, D. A., & Maing, S. G. (2021). Proses negosiasi konflik Papua. *Jurnal Ilmu Sosial dan Humaniora, 10*(1).

Kusuma, A. J., et al. (2022). Perubahan status Organisasi Papua Merdeka (OPM) menjadi organisasi teroris oleh Pemerintah Indonesia. *Journal of Government, 7*(1).

Marzuki, P. M. (2007). *Penelitian hukum*. Jakarta: Kencana Prenada Group.

Marzuki, P. M. (2011). *Penelitian hukum* (Cet. 7). Jakarta: Kencana.

Marzuki, P. M. (2017). *Penelitian hukum*. Jakarta: Kencana Prenada Media Group.

Naufal, Y. (2022). Perlindungan hukum terhadap warga sipil (Papua) terkait non-international armed conflict dalam perspektif hukum humaniter. *Jurnal Hukum, 28*(8).

Rahardjo, S. (2009). *Hukum progresif: Hukum yang membebaskan*. Jakarta: Kompas.

Soekanto, S. (2009). *Penelitian hukum normatif: Suatu tinjauan singkat*. Jakarta: Rajawali Pers.

Syamsul, H., & Widjajanto, A. (2007). *Disintegrasi pasca Orde Baru: Negara, konflik lokal dan dinamika internasional*. Jakarta: Yayasan Obor.