



CRIMINAL ACTIONS OF THE ARMED CRIMINAL GROUP (KKB) OF THE PAPUA REGION IN THE PERSPECTIVE OF POSITIVE CRIMINAL LAW AND ISLAMIC LAW

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Abstract: The rise of conflict in Papua was caused by the actions of the Armed Criminal Group (KKB) in which the group was pro-independence for the land of Papua which pushed the government to take a more assertive action by establishing the Papuan KKB as a terrorist group. Of course this brings pros and cons in various circles. This research is intended to examine the separatist movement of the Armed Criminal Group (KKB) in the Papua region from the perspective of positive criminal law and Islamic law. This research method uses a normative juridical method which is based on the rule of law as well as the schools of thought of jurists by means of analysis from primary legal sources. In addition to primary legal materials, secondary legal materials used in this research are books and journals that contain rebels, treason and terrorism. Based on the positive law, the KKB in the Papua region is subject to Articles 104 – 110 of the Criminal Code, while based on the Islamic Criminal Law, jarimah hudud is in the form of Rebellion (Al-Baghyu).

Keywords: Armed Groups; Separatism Movement; Positive Criminal Law; Islamic Criminal Law.

1. INTRODUCTION

The Papuan Armed Criminal Group (KKB) is a group that wants Papua to break away from the Republic of Indonesia. Therefore, this group can already be called a separatist movement because it threatens the territorial integrity of the Republic of Indonesia. Separatism movement which means a group whose goal is to separate itself from a region or a country. The separatist movement was carried out by several elements by carrying out rough and brutal actions against a military takeover that occurred before. (Hartati, 2010)

In several countries there are many terrorist groups that consider the separatist movement as an act whose goal is to seek freedom and independence. The separatist movement in Islamic criminal law is called *Bughat* which means rebellion against the government. (Ali, 2007, p. 134)

Ibn Arafah al-Maliki defines *Bughat* as defiance of a lawful and just state, even though it has reasons. Whereas in Islamic law what is meant by *Bughat* is an attempt or movement carried out by a group with the aim of overthrowing a legitimate government. (Ali, 2007)

There are also views from other figures regarding *Bughat*, Khatib Syarbini in the book *al-Iqna' fi Halli Alfazh Abi Syuja'*, there are three conditions regarding *Bughat*, namely first, those who rebel have power. The power possessed by the group uses weapons, logistics, masses, discourse, and the like. Second, they rebelled against the heads of state so that they came out of obedience to the legitimate rulers. If what is possessed is only a power, but is not interspersed with disobedience to legitimate rulers or priests, it is not categorized as *Bughat*. Third, they use false interpretations or *ta'wal*. (Muhammad, 2001, p. 78) That is, in fighting a legitimate leader or head of state they use this interpretation whose purpose is to justify it. Meanwhile, if we analyze this interpretation, it does not have the right side when viewed from the perspective of the benefit of society, the possibility of chaos, anarchy, and so on.

Bughat actions fall into the category of political leadership or *al-imârah*. In this case the principle is very clear, as stated in the verse of the Qur'an which states that "Obey to Allah, obey the Messenger, and ulil amri among you." (QS. An-Nisa', 4: 59). This is where the leader as the legitimate ruler, and therefore must be obeyed.



The act of separatism or bughat is one of the crimes that is forbidden in Islamic criminal law, as stated in the Hadith of the Prophet Muhammad: "Whoever comes out of obedience (to the caliph) and separates himself from the congregation and then dies, then his death is in a state of jahiliyyah death." (HR. Muslim).

From the perspective of Indonesian Criminal Law, if we take a more concrete look into the elements of the KKB crime in Papua, it can be categorized into general crimes and/or special crimes. General crimes, the actions taken by the KKB include the crime of treason which is regulated in articles 104-129 of the Criminal Code. Meanwhile, if we categorize it into special criminal law, then the actions taken by KKB Papua are classified as criminal acts of terrorism contained in Law Number 5 of 2018 concerning Criminal Acts of Terrorism. However, this discussion will tend to focus on articles 104-129 of the Criminal Code, which means that the discussion of the actions taken by the KKB are considered as crimes against state security or commonly known as treason. (Book of the Criminal Code, nd, p. 58)

In addition to legal review, there is a process to prevent acts of separatism which is an important part of the government in realizing a safe and peaceful Indonesia. The achievement of national development in all regions of the country within the framework of the Unitary State of the Republic of Indonesia must be combined with comprehensive efforts to prevent and overcome separatism. One of the precautions taken is for example tightening land and security at regional boundaries. The territorial boundaries of a country occupy an important position in terms of geographical, legal and political aspects.

There is a problem that has become the focus of the attention of the Indonesian people which until now it was not thought that problems related to the separatist movement would start to increase in several regions or territories of the Unitary State of the Republic of Indonesia (NKRI). The separatist movement in the Papua region has so far become unclear news because it has not yet found a solution point based on a strategy from the government and is not yet dynamic because it has not adapted to developments in Papua. Finally, the Armed Criminal Group (KKB), some of its members are still spreading terror, resulting in unrest among civilians and state security forces, the TNI and POLRI. (Sianturi & Hanita, 2020, p. 231)

2. METHOD

The research method in this journal uses normative juridical analysis by seeking a coherent truth, namely whether the rules contained in the terrorism law or the Criminal Code are in accordance with legal norms and whether legal norms are in accordance with legal principles. (Supriadi, 2008, p. 5) This writing is based on legal rules and the thoughts of jurists (doctrine) by analyzing primary legal sources, such as Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism and the rules contained in Articles 104 - 129 of the Indonesian Book of Laws (KUHP) on Treason (rebellion). In addition to using primary legal sources, the analysis of this study uses secondary legal sources, namely by finding sources from books and journals, scientific writings, both writings kept from certain institutions and general literature.

This study uses an approach in the form of a statutory approach, a conceptual approach, and an approach by way of analyzing cases and used together whose purpose is to examine based on legislation, the thoughts of experts (doctrine) and concepts regarding several views in law crime accompanied by cases related to the KKB in the Papua region. The legal material was obtained through a literature study and then analyzed using a deductive method from general matters to specific matters, in this case the establishment of terrorist status within the Armed Criminal Groups in the Papua region. (Supriadi, 2008)

3. ANALYSIS OF STUDY FINDINGS



Previous studies on the separatist movement of the Armed Criminal Group (KKB) in Papua tend to discuss three issues. First, a study that discusses maximizing the duties of the state security apparatus in eradicating Armed Criminal Groups in Papua and government policies in efforts to prevent and prevent KKB in Papua. (Sianturi & Hanita, 2020) Second, studies showing the implications of the Papuan separatist conflict on Indonesia's diplomatic relations with Australia. (Dr. Vladimir, 1967) Third, the study explaining the legal analysis determines that the Papuan Armed Criminal Group is a criminal act of terrorism viewed from the perspective of national criminal law. (Rachman, 2018, p. 96) Of the three issues above, there is no study that explains the legal analysis of armed criminal groups in Papua from the perspective of Islamic law.

3.1. CASE STUDY

This rebellion began on July 28, 1965 in West Papua, which occurred in Manokwari City and was carried out by an armed criminal group with an attack on several Arfak tribes against Barak Battalion troops consisting of 751 Brawijaya members where three people who were members of the unit were killed. The cause of the attack was that members of the Papua Battalion became provocateurs of people from the Arfak tribe because they complained against the leaders or authorities in the area because of very high unemployment accompanied by hunger that had occurred in the Arfak tribe for two years. (Orborne, 2001, p. 76) The chief leaders of this movement were Johan Ariks, along with the two brothers Mandatjan (Military Command) Lodewijk and Barends, as well as the two brothers Awom, Ferry and Perminas. So, those who carried out the fighting force for the movement were former members of the PVK, or what is known as the Papua Battalion.

Before the start of the armed rebellion, Ariks was the leader of a political party called the United New Guinean Party (PONG) whose base was in Manokwari. The United New Guinean Party (PONG) originally consisted of people from the Arfak tribe. This party has a goal, namely to achieve full independence in the West Papua region. (Orborne, 2001)

After the KKB Papua rebellion which was carried out for four years in the Bird's Head region, one of which included the province of West Papua. Then came the second uprising that occurred on July 1, 1971 which had headquarters in Desar Waris, Jayapura Regency, on the border of the State of Papua New Guinea. Headquarters located in the area nicknamed Headquarters Victoria. the initiator at Victoria's headquarters came from the armed forces, who were trained by Indonesian soldiers who had the rank of Non-commissioned Officer, named Seth Jafet Roemkorem. Seth jafet Roemkorem became annoyed at witnessing several human rights violations during the 1969 People's Consultation (Pepera). This prompted Roemkorem to go into the forest with several activists from the Jayapura KKB area. (Afrizal, 1945) Finally, Roemkorem carried out a rebellion by reading the text of the proclamation of the territory of the Republic of West Papua. Roemkorem also has the position of President of the Republic of West Papua with the rank of Brigadier General.

Then in 1980 the Indonesian government had the initiative to deal with the resistance to the KKB movement by gathering the strength of the Indonesian National Armed Forces on a large scale to increase the active role of intelligence. Especially the Command for the Restoration of Security and Order (KOPKAMTIB) whose members come from the military but do not really understand the law on civilian ownership of their land. (Orborne, 2001) Then in 1988, they got together at the Mandala Stadium located in Jayapura City, around 60 people witnessed the reading of the text of the "OPM proclamation" which was accompanied by "the raising of the OPM flag". The person who read out the text of the proclamation, namely Thomas Wanggai and the founding of the state "West Melanesia" by flying the new flag sewn by Mrs. Teruko Wanggai (Thomas Wanggai's wife). Thomas Wanggai received very wide and open attention by the people of Irian Jaya because he was a supporter who had the highest education at that time.

There is something unique about the people in the Papua region, they have a very complex ritual, namely creating several sacred symbols. These sacred symbols are taken from living things that are around the tribal areas of the local indigenous people. The sacred symbol is the Bird of Paradise. Until now it is used as an icon for the Papua region. At that time there was a large-scale hunting of birds of paradise, because there were several benefits from birds of paradise. One of them is the feathers of the bird of paradise used as a decoration for women's hats in



Europe.(Orborne, 2001)Then the sale of assets in the Papua region was carried out by the New Order government. The assets being sold were copper fields with a mixed gold content of 2.5% which were sold by the New Order government to PT Freeport Indonesia Inc.(Frans H Winarta, 2009, p. 24)Then there was the confiscation of land rights owned by the Papuan people which was announced by the New Order government so that the Papuan people fled to the State of Papua New Guinea and the Papuan people supported the separatist movement carried out by the Armed Criminal Group (KKB). These causes were known when the Act was in progress.(Taskarina et al., 2021)

There is a problem that has become the focus of the attention of the Indonesian people which until now it was not thought that problems related to the separatist movement would start to increase in several regions or territories of the Unitary State of the Republic of Indonesia (NKRI). The separatist movement in the Papua region has so far become unclear news because it has not yet found a solution point based on a strategy from the government and is not yet dynamic because it has not adapted to developments in Papua.(Rianda et al., 2018)Papua, in this context is West Papua or Irian Jaya, is one of the areas experiencing upheaval which until now has not been resolved. For example, the Papuan Armed Criminal Group (KKB) is clearly known by the Indonesian (non-Papuan) people as a form of rebellion.(Purwanto Day, SH, 2021)

Papua is a region that has various disintegration, political and security problems which are considered to be quite strong when compared to other parts of Indonesia.(Kaisupy & Maing, 2021, p. 12)Over time, at the time of reform in Indonesia, problems in Papua were again intensified in various circles from the national, regional and even international levels.(Rianda et al., 2018)This has a negative impact in the era of globalization. The reason for this is due to the emergence of individual and ethnic interests which have resulted in patterns of relations with other countries becoming increasingly critical of Indonesia's demands as the protector of citizens' lives.(Ishaq, 2020)

There are several criminal acts committed by members of the Armed Criminal Group (KKB), as follows:

- a. There were shootings by KKB members at civilians and security forces in several areas including Puncak Jaya Regency, Jayawijaya Regency, Mimika Regency, Paniai Regency, Jayapura City which is on the border between the Republic of Indonesia - Papua New Guinea.
- b. The target of the attack was the Indonesian National Armed Forces and Police posts.
- c. Members and members of the public who were patrolling the area were also attacked.
- d. They carried out the destruction by burning buildings and government facilities, the TNI and Polri, and even the community
- e. Confiscation of firearms owned by police and military personnel

The KKB movement created physical conflicts that claimed many victims. In addition, they have beliefs that have been fought for in a peaceful way by trying to spread the ideology of Free Papua.(Sianturi & Hanita, 2020)Even though they have little support, all elements of society regarding an open Free Papua still have indications that support for Papuan independence is very clear.

In the Papuan issue, we must pay attention to comprehensive national issues according to what has been mandated in the 1945 Constitution.(Noor, 2018)So that an unconstitutional attitude emerged, in which a mutual disregard for the problems that exist in the Papua region, both in all the provinces in Papua and West Papua. The government is very aware of the constitutional messages contained in the 1945 Constitution, therefore it is necessary to make efforts to improve the handling of the KKB case. During the reformation period, many were aware of the KKB case such as the government, non-governmental organizations (NGOs), observers of Papuan issues both domestically and abroad, although many were still experiencing problems with this problem. However, that does not mean there is stagnation in the attention and efforts made by the government for the people of Papua to build towards a better direction.

3.2 KKB Separatist Crime in the Papua Region in a Positive Legal Perspective



In other countries there are problems of obstacles that threaten state security, one of these problems arises in Indonesia. In Indonesia, there is a movement that wants to separate itself from the territory of Indonesia. One of them is the KKB separatist movement in the Papua region. The KKB separatist movement is still agitated for wanting to separate its territory from Indonesia. The KKB is referred to as an act of committing an evil act that threatens the Indonesian state, whose case is in the Papua region. Violence that occurs in Papua still occurs every year until now. At that time, the KKB was an ordinary organization, over time it was accompanied by several problems that resulted in rebellions, the KKB turned into a separatist movement. (Kompasiana, "The cruelty of the Free Papua Organization," Kompasiana, accessed April 12, 2015, www.hankam.kompasiana.com.)

Based on the analysis of the KKB in the Papua region which wants to carry out a split from the territory of the Unitary State of the Republic of Indonesia which threatens the security of the state that can be subject to punishment under Law no. 5 of 2018 concerning Eradication of Criminal Acts of Terrorism and Articles 104 – 129 of the Criminal Code Chapter I – State Security crimes.(Siregar, 2020)However, the discussion this time will focus on the crime of treason which is more likely to be contained in Articles 104 – 110 of the Criminal Code. This is a form of protection for Indonesia from various forms of opposition to authorities or separatist movements where such treatment threatens the interests and security of the country. The state has the power to make laws and regulations, high powers in determining crime and punishment.(Mulia et al., 2020, p. 335)

The crime of rebellion or treason, then the conditions for the occurrence of an act, must fulfill certain elements, as stipulated in Article 53 paragraph 1 of the Criminal Code, which states that:(Book of the Criminal Code, n.d.)

"... Trying to commit a criminal crime, if the intention for it has been evident from the start of the execution, and not the completion of the execution, not solely because of his own will..."

An overview of acts of treason seen from Article 53 paragraph 1 of the Criminal Code, that the existence of another crime is a process that begins with the existence of a will or marriage to carry it out by realizing various behaviors consisting of preparation before committing the act and execution when committing the act until the crime is continues even to the end.(Chazawi, 2002, p. 9)Therefore, the notion of treason is explained in Article 87 of the Criminal Code which reads:(Book of the Criminal Code, n.d.)

"... It is said that there is treason to commit an act, if the intention to do so has been evident from the start of the implementation as referred to in Article 53..."

This is related to the provisions for criminalizing attempts to commit a crime which can be regulated in Article 53 of the Criminal Code, this is clearer that rebellion (treason) has been promulgated in Article 87 of the Criminal Code as a form of behavior that has fulfilled certain elements and provisions, which includes an intention to fight law Article 53 of the Criminal Code. Therefore, we can analyze that the crime of treason is an act that has fulfilled the elements as stipulated in Article 53 of the Criminal Code. Attempting to commit a crime is punishable, if the intention for this has been evident from the beginning of the implementation, and not the completion of the implementation, not merely eyes of his own accord.(Rachman, 2018)

The crime of treason which threatens the security and safety of the territory of the Unitary State of the Republic of Indonesia (NKRI) has been published in Chapter I Book II of the Criminal Code (KUHP), which has three forms as follows:(Chazawi, 2002)

1. An act of treason whose aim is to attack the leader or head of state and his deputies.
2. An act of treason whose aim is to attack territorial integrity
3. An act of treason whose aim is to attack the state civil apparatus.

The rebellion carried out by the KKB included elements or elements of the criminal act of treason as stated in Articles 106, 108 and 110 of the Criminal Code.(Lani Sujiagnes Panjaitan, 1967)With the emergence of attacks carried out by people from the Arfak tribe who were affected by incitement regarding the head of the Arfak tribe who was imprisoned accompanied by rampant joblessness or unemployment and a crisis of basic commodities for the needs of the people of Papua. Several Arfak ethnic groups and the Biak people led by the Papua Battalion (PVK)



who broke away from the territory of the state were subject to Article 106 of the Criminal Code which reads:(Book of the Criminal Code, n.d.)

"Treason with the intention that or part of the territory of the state, is punishable by life imprisonment or temporary imprisonment for a maximum of 20 (twenty) years."

They also carried out rebellion against the government, which was subject to Article 108 (1) of the Criminal Code which reads:(Book of the Criminal Code, n.d.)

"Whoever is guilty of rebellion, is threatened with imprisonment for a maximum of 15 (fifteen) years."

Then the KKB members were also subject to Article 110 of the Criminal Code for entering into an agreement to commit an act whose purpose was to carry out a crime as according to Articles 106 and Article 108 of the Criminal Code.

We can analyze from Roemkorem's actions when he read the text of the proclamation accompanied by the position of President of West Papua at that time. With the rank of general. What Rumkorem has done can be punished under Article 106 of the Criminal Code which includes elements of the act of dividing the Papua region from Indonesian territory. Furthermore, Thimas' actions violated the Law contained in Articles 106 and 110 of the Criminal Code. By creating a new country, namely the State of "West Melanesia" by way of a very evil agreement because at the time of reading the text of the proclamation that presented 60 people to gather at the time of reading the proclamation.(Effendi & Panjaitan, 2021, p. 128)

After analyzing the discussion above and several articles in Chapter I book II of the Criminal Code, offenses against state security crimes are "smell" of politics. Makar is regulated in Article 104 of the Criminal Code wherein killing or depriving the president or vice president of independence so that they are no longer strong enough to govern can be subject to criminal penalties in the form of imprisonment for 20 (twenty) years or within a certain period and capital punishment or life imprisonment.(Effendi & Panjaitan, 2021)Article 106 of the Criminal Code "... treason to surrender the country's territory to the enemy's hands or to secede from the territory of the country can be subject to a criminal sanction of life imprisonment or a specified period of up to 20 years..." ; Article 107 of the Criminal Code "...to overthrow a legitimate government can be subject to a maximum penalty of 15 years and leaders who violate these provisions can be subject to life imprisonment or in a certain period of time a maximum of life..." ; Article 108 of the Criminal Code regarding "...armed rebellion against the state government, are actions that are closely related to political activities.(Syafuruddin, 2014)Can be subject to imprisonment for a maximum of 15 years and the leader of the crime can be subject to imprisonment for life or in a certain period a maximum of 20 years...". As explained in the Criminal Code Article 110 of the Criminal Code that the emergence of an intention to agree in committing an evil act in the Criminal Code has been determined by several articles, namely Articles 104-108 which carry a penalty of 6 years in prison, if the act is accompanied by confiscation of goods then the punishment is doubled .(Mulia et al., 2020)

3.3 KKB Separatist Crime in the Papua Region in the Perspective of Islamic Law

The case of the Armed Criminal Group (KKB) in Papua in the perspective of Islamic law is included in the hudud finger in the form of Rebellion (Al-Baghyu). Because in this case it is a form of separatist movement that threatens the unity and security of the Republic of Indonesia. The actions taken by the Armed Criminal Group (KKB) are increasingly agitated, however, in the case of the KKB, so far there has not been a bright spot in its resolution.(Sianturi & Hanita, 2020)

In the view of Islamic law, an act is said to be a hudud finger of rebellion if it fulfills 3 elements, namely defiance against the head of state, defiance carried out with force, and intention to violate the law.(Marsaid, 2020)If seen from the case study above, the criminal acts committed by the KKB have fulfilled its elements.

First, defiance of the head of state. This is evidenced by acts of vandalism or rioting, several government and private facilities were completely burned, repression was accompanied by confiscation of firearms owned by police and army officers, flying the Morning Star flag and embezzlement of firearms or trade in firearms. The actions taken by the KKB have violated several rules that have been determined by the Government in the Criminal Code.(Marsaid, 2020)



Second, Defiance is done by force. We can ensure that all the actions carried out by the Armed Criminal Group (KKB) using force aimed at committing rebellion or in positive law the form of special criminal offenses committed are forms of terrorism. (Marsaid, 2020)

Third, the last al-baghyu element is the intention to violate the law. From the presentation of the case study above, it is very clear that his actions were against the law. In addition to the physical conflict that brought casualties, this conflict also resulted in the psychological condition of the people around the area where the attack occurred (Marsaid, 2020)

So that it can be concluded from the above analysis that in Islamic criminal law actions committed by armed criminal groups can be subject to hudūd punishment. However, in the finger of rebellion, the forms of criminal and civil accountability are (Marsaid, 2020):

1. Accountability before mugholabah and after

This means that the person who carried out the rebellion is burdened with responsibility for all the crimes he committed before the mugholabah (battle), both civil and criminal. Likewise when the jarimah that occurs after the completion of the mugholabah (battle). In this case, the responsibility that must be carried out by the KKB is the shooting of civilians and security personnel which results in the loss of a person's life, it will be punished with jarimah qisash.

2. Accountability for actions during mugholabah

In accountability for actions during mugholabah it is again divided into 2 forms, namely criminal acts related to rebellion and criminal acts that are not related to rebellion. In the KKB case, they destroyed public facilities, starting with the vandalism and burning of government and private facilities. Then the perpetrators can be held accountable in the form of ta'zir punishment. (Ali, 2007)

If associated with a positive criminal law perspective, the actions taken by the KKB Papua can already be categorized as crimes that threaten state security or rebellion. But if in Islamic law the punishment/responsibility is based on before or after the mugholabah is carried out. (Permana et al., 2016) So in Islamic law it can be concluded that KKB can be subject to 2 responsibilities at once. Meanwhile, in positive criminal law, it is subject to life imprisonment or a maximum of 20 years depending on the category of crime committed, besides that there are also additional penalties in the form of confiscation of certain goods, etc. (Marsaid, 2020)

4. CONCLUSION

The separatist movement by the Armed Criminal Group (KKB) in Papuan cannot be justified from the perspective of positive law in Indonesia or from the perspective of Islamic law. A separatist movement is a movement carried out by a group or groups of people who aim to separate themselves from a territory of the country. So it can be concluded that the emergence of the idea of separatism resulted in the disintegration of the nation.

In positive criminal law, KKB's actions can be categorized as crimes committed by the state/treason and/or can also be categorized as criminal acts of terrorism. Both treason and terrorism, both have accountability that must be given to the KKB in Papua. Besides that, Islamic law also has its own perspective in determining accountability to the Papua KKB.

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