

A VIEW ON MILITARY OPERATIONS AGAINST THE ARMED SEPARATISTS IN PAPUA FROM THE STATE POWER PERSPECTIVE

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Abstract

The ongoing conflict between the armed separatists (OPM) in Papua and the Indonesian government is a domestic disorder, friction, and disturbance which can endanger the state sovereignty, territorial integrity of the state, and the safety of the entire nation. If this situation is not handled seriously, it can develop into a permanent condition which surely can turn into a major threat for the national security. Currently, the government has conducted military operations to deal with the OPM rebellion. The research problem is to describe the use of military operations within the state power perspective; and whether the use of military operations against the armed separatists in Papua has already been in accordance with the state power principle. This present research is a normative juridical method within a qualitative approach in which the data are analyzed by using the interpretive method. It is also a descriptive-analytical research in which it describes the applicable legislation and relates it with legal theories and the implementation practices of the positive laws which are related to the research problem. By using a library research, the data related to the research problems, e.g. written legislation, conventions, agreements, theses, journals, and other documents from the legal experts, were collected and analyzed.

Keywords: separatists, state power, military operation

INTRODUCTION

A separatist movement is a rebellious act committed by a group of people or a community who are a part of a bigger society, and this insurgency serves some purposes, such as overthrowing the legitimate government and replacing it with a new one which is more in line with the rebels' intentions, separating and joining the group with another country, or seceding the region from a country and declaring it as a free

nation and an independent country.¹ In Indonesia, separatism has been on top of the agenda for the government to be solved. One of the separatist movements in Indonesia is committed by an armed separatist group called the Free Papua Movement (OPM) in Papua. It is generally accepted that whatever agenda and purposes it promotes, the OPM clearly violates the Indonesia's national laws since this group forces their own wills on the

¹ I Wayan Parthiana, 1990, *Pengantar Hukum Internasional*, Bandung: Mandar Maju, p. 370.

legitimate government just to serve their own purposes.²

Papua region began its incorporation into the Republic of Indonesia on 15 August 1962 when the government of the Netherlands signed the *New York Agreement* which stipulated that the Netherlands was to transfer the administrative control of West Papua to *United Nation Temporary Executive Authority* (UNTEA) on 10 October 1962 before UNTEA handed over Papua to Indonesia on 1 May 1963. With regard to the integration, Indonesia was obliged to hold a referendum in Papua which is known as the "Act of Free Choice" (PERPERA) whose results were approved by the UN General Assembly with the adoption of Resolution No. 2504 (XXIV) on 19 November 1969. Therefore, within the international law perspective, West Papua and Irian Jaya have officially been integrated into Indonesian territory since that date.³

In the early periods of integration, Irian Jaya's special operation agency (opsus) actively raised funds and conducted trainings for various apparatus which were considered necessary in order to stabilize the integration with Indonesia. On the other hand, there were also some Papua nationalist cadres who secretly coaxed the organizations or

associations of West Papua men and women to join forces in an underground movement whose purpose is to fight for the freedom of Papua (Irian Jaya) illegally from both the Netherlands government and Indonesian government.⁴

It is generally accepted that the inception of the Free Papua Movement (OPM) was the attack on the army barracks of the 751 Battalion (Brawijaya) in Manokwari on 28 Juli 1965 which was perpetrated by a group of Arfak tribe people.⁵ The attack was triggered by the rejection of PVK Papuan Battalion members from the Arfak and Biak tribes to be mobilized. Afterward this OPM uprising was spread to several regencies in Irian Jaya, such as Biak Numfor, Sorong, Paniai, Fakfak, Yapen Waropen, Merauke, Jaya Wijaya, and Jayapura. The OPM rebellious acts were marked with armed resistance, hostage-taking, demonstrations, hoisting the West Papua flag, distributing and attaching pamphlets, and various vandalism acts. These acts increased the frequency of people crossing the Indonesian border into Papua New Guinea.⁶

In the recent development, OPM has developed into a separatist organization

⁴ Tuhana Taufik Andrianto, 2001, *Mengapa Papua Bergolak*, Yogyakarta: Gama Global Media, p. 33.

⁵ George Junus Aditjondro, 2000, *Cahaya Bintang Kejora: Papua Barat dalam Kajian Sejarah, Budaya, Ekonomi, dan Hak Asasi Manusia*, Jakarta: ELSAM, p. 35.

⁶ John R.G. Djopari, 1993, *Pemberontakan Organisasi Papua Merdeka*, Jakarta: Grasindo, p. 1-2.

² *Ibid.*

³ Syamsuddin Haris, 1999, *Indonesia di Ambang Perpecahan*, Jakarta: Erlangga, p. 4.

which intends to separate itself from the Unitary State of the Republic of Indonesia (NKRI). OPM has slightly evolved into a more organized separatist movement although OPM tends to act sporadically, which has become its trademark. For the Indonesian government, OPM acts are considered as attempts to rebel against the legitimate and sovereign government. Furthermore, the government is of the opinion that OPM is an armed separatist movement which threatens the sovereignty of NKRI and disrupts the spirit of nationalism.⁷

To deal with this problem, the Indonesian government has used the military force which is in accordance with Law No. 34/2004 on the Indonesian National Armed Forces (TNI), and, accordingly, various military operations have been launched to maintain stability in Papua. Based on this background, the writer intends to raise the issue on the state power role in employing military operations against the armed separatist group in Papua as specified by the Law No. 34/2004 on TNI: A View on Military Operations against the Armed Separatists in Papua from the State Power Perspective.

PROBLEM STATEMENT

The two research problems are as follows:

1. How is the use of military operations conducted within the state power perspective?
2. Has the use of military operations against the armed separatists in Papua already been in accordance with the state power principle?

RESEARCH METHOD

A research methodology is a scientific discipline which pertains to finding a set of methods used to conduct a research. A research is a careful and systematic attempt to discover new facts or information about a subject.⁸ A research in law is a scientific activity based on certain methods, systematization, and concepts, and the activity is aimed to study one or more legal phenomena by analyzing them.⁹ The present research employs a research methodology which consists of a research method, a data collection method, a data analysis method, and an approach.

The nature of the present research is a descriptive-analytical research in which it describes the applicable legislation and relates it with legal theories and the implementation practices of the positive laws which are related to the research problem. In addition, this

⁷ *Ibid.*

⁸ Hotma Pardomuan Sibuea and Heryberthus Sukartono, 2009, *Metode Penelitian Hukum*, Jakarta: Krakatau Book, p. 45.

⁹ Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum*, Jakarta: UI Press, p. 43.

research also employs a normative juridical method to study the legal principles as stated in the legislation. The normative juridical method attempts to synchronize the pieces of applicable legislation and legal principles with the implementation practices of those legislation in the field.

A normative legal research is a type of legal science research which conceptualizes the law as a set of principles. Furthermore, it is generally accepted that a legal science research which is conducted merely by doing a library research or examining secondary data is put under the label of normative legal science research or library research.¹⁰ Normative research is aiming at finding out and collecting data which have been documented earlier.¹¹

Data Collection Method

This research employed a library research by collecting and studying secondary data or library data which had been processed and documented earlier.¹² For legal research, the useful library data include any legal materials such as written legislation, court decisions, agreements, legal books, legal research journals, and the results of legal research in the forms of undergraduate

theses, master's theses, doctoral dissertations, and other documents from the legal experts.¹³

These secondary data are as follows:

- a. Primary legal materials are any legally binding regulations which are relevant to the object of research or research problems, i.e. state power in its relation with the state defence and the laws and regulations which are related to the research problem.
- b. Secondary legal materials are any resources which give further explanations or reasoning about the primary legal materials, e.g. legislation drafts, research results, books, scientific journals, etc.
- c. Tertiary legal materials are any resources which can further clarify the primary and secondary legal materials, such as dictionary of law, language dictionaries, encyclopedia, newspapers, magazines, etc.

Data Analysis Method

This present research is a qualitative research which analyzed the data by using the interpretive method. The interpretive method is an argumentation which justifies the formulation of a regulation.¹⁴ There are several types of interpretive methods: grammatical, systematic or logical, historical, and teleological (or sociological). A

¹⁰ Soerjono Soekanto and Sri Mamudji, 2009, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: Rajawali Pers, p. 13-14.

¹¹ Hotma Pardomuan Sibuea and Heryberthus Sukartono, *Op. Cit.*, p. 80.

¹² *Ibid*, p. 70.

¹³ *Ibid*. 73.

¹⁴ Sudikno Mertokusumo, 1986, *Mengenal Hukum: Suatu Pengantar*, Yogyakarta: Liberty, p. 155.

grammatical-interpretive method is a method which is used to interpret the meaning of a legislation and explain the meaning by using an ordinary everyday language.¹⁵ A systematic- or logical-interpretive method interprets a piece of legislation by linking the legislation in question with other related pieces of legislation or legal regulation or with the entire legal system.¹⁶ A historical-interpretive method interprets the meaning of a piece of legislation by analyzing the history of how the legislation came into existence.¹⁷ Kusumaatmadja is of the opinion that people tend to define this historical-interpretive method or the history interpretation as the interpretation of legislation history or the history of how a piece of written legislation come into existence.¹⁸ Within a teleological- or sociological-interpretive method, it is the judge who interprets the legislation in accordance with the objective of the legislation makers. Accordingly, the judge pays more attention to the objective of the legislation than the wording as stated in the legislation.¹⁹

¹⁵ Sudikno Mertokusumo, 2009, *Penemuan Hukum: Sebuah Pengantar*, Yogyakarta: Liberty, p. 74.

¹⁶ *Ibid.* 74.

¹⁷ *Ibid.* 77-78.

¹⁸ Mochtar Kusumaatmadja and B. Arief Sidharta, 2000, *Pengantar Ilmu Hukum: Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum*, Bandung: PT. Alumni, p. 101.

¹⁹ Sudikno Mertokusumo, *Op. Cit.*, p. 79.

The three objectives of the interpretation are as follows:

- a. To determine the meanings of the legal norms.
- b. To expose the contents of the legal norms which can be a command (*gebod*), a prohibition (*verbod*), or a permission (*mogen*).
- c. To establish a relation between the contents of a legal norm which is being studied with those of other legal norms, or, in other words, to determine the validity scope of a legal principle.²⁰

Approach

This present research used the statute approach within the normative juridical method which can be applied as a legal rule.²¹

DISCUSSION

The Use of Military Operations within State Power

The Preamble to the 1945 Constitution specifies the national interests which are to protect the nation's sovereignty, to defend the territorial integrity of the Unitary State of the Republic of Indonesia (NKRI), to safeguard the security and honor of the nation, and to involve actively in the establishment of the

²⁰ Hotma Pardomuan Sibuea and Heryberthus Sukartono, *Op. Cit.*, p. 38.

²¹ *Ibid.* p. 305.

world order.²² To accomplish these national interests, Indonesia as a state must guarantee the national security in order to ensure the survival of this nation and state from any domestic and foreign threats.

As a state institution, the Indonesian National Armed Forces (TNI) is a part of the general public which is specifically prepared to carry out the tasks of defending the state and the nation as well as maintaining the national defence and security.²³ This is in accordance with Article 5 of Law No.34/2004 on the Indonesian National Armed Forces (TNI) in which it specifies that TNI is the state apparatus in defence, and in the implementation of its tasks, TNI acts based on political policies and decisions of the state.²⁴

Subsequently, Article 6 of Law No.34/2004 states that TNI functions as a deterrent against any forms of domestic or foreign military threats and armed threats which endanger the nation's sovereignty, territorial integrity, and safety. Furthermore, the article also specifies TNI as the security enforcer which responds to all the threats and

restores the state security conditions after being disturbed by any security disorder.²⁵

The main tasks of TNI which have been stipulated under Article 7 (1) of Law No.34/2004 are to uphold the sovereignty of the state, to defend the territorial integrity of NKRI based on Pancasila and the 1945 Constitution, and to protect the entire territory of Indonesia from any threats and disturbances which endanger the unity of the nation and state.²⁶

The details of TNI main tasks are specified under Article 7 (2) of Law No.34/2004 in which the tasks are divided into military operation for war (MOW) and military operation other than war (MOOTW). All the military operations are subject to political policies and decisions of the state. This means TNI cannot launch unilateral military actions for MOW and MOOTW without official policies and decisions of the state. This is in accordance with Law No. 3/2002 on State Defence in which the president stipulates the general policy on state defence which acts as the reference for the planning, implementation, and monitoring of the state defence system as specified under Chapter IV

²² Departemen Pertahanan RI, 2003, *Mempertahankan Tanah Air Memasuki Abad 21*, Jakarta: Dephan RI, p. 43.

²³ Faisal Farhan, 2011, "Tindak Pidana Disersi Ditinjau dari Prespektif Hukum Pidana Militer," Undergraduate Thesis, Universitas Pasundan, p. 1

²⁴ The Republic of Indonesia, Law No. 34/2004 on Indonesian National Armed Forced (TNI)

²⁵ *Ibid.*

²⁶ *Ibid.*

of the law which specifies the management of the state national defence.²⁷

The deployment and exercise of TNI force ultimately depends on the situation of the state. In the state of emergency situation in Indonesia, the legal basis is stipulated in the Regulation in lieu of Law No.23/1959 (promulgated on 16 December 1959) on the Revocation of Law No.74/1957 on the Declaration of State of Emergency. In the Regulation No. 23/1959, it is stipulated that only the president as the commander-in-chief of the Armed Forces (TNI) who has the authority to declare the state of emergency; thus, the procedure for TNI deployment in the state of emergency in Indonesia must be preceded by a declaration of state of emergency by the president as the head of state.

The Use of Military Operations against the Separatists in Papua within the State Power Principle

Since its inception in 1965, the Free Papua Movement (OPM) has rebelled against the Unitary State of the Republic of Indonesia (NKRI) in their efforts to fight for the freedom of Papua and separate itself from NKRI. There are several causes of this separatist attitude which have been identified. They are the negligence of development in the regions of

Papua, the domination of migrants over the native Papuans, the fact that the non-Papuan state officials often disparage the West Papuan people and consider them as second-class citizens, the fact that the transmigrants from other regions often receive more aids than the native Papuans, the fact that the employment opportunities for native Papuans are very restricted, and the fact that the economic, social, and political situations as well as the defence and security problems in Papua are quite similar to those during the transition period to NKRI.²⁸

In West Papua, TNI has launched various operations with security approach or military approach in its efforts to quell the OPM rebellion since its inception. In this region, TNI has launched three type of military operations: intelligence operations, territorial operations, and combat operations. It is interesting to note that TNI has launched more combat operations than the other operation types although so far there has been no evidence showing a declaration of state of emergency on West Papua since the integration of West Papua into Indonesia. This is different from the way the Indonesian government dealt with the separatists in Aceh in which the government had followed the correct legal procedure by declaring the state of

²⁷ The Republic of Indonesia, Law No. 3/2002 on State Defence

²⁸ Tuhana Taufik Andrianto, 2001, *Mengapa Papua Bergolak*, Yogyakarta: Gama Global Media, p. 199.

emergency first before resolving the rebellion with TNI forces.²⁹

CLOSING

Conclusion

- a. In protecting national interests within the state power perspective, the Indonesian National Armed Forces (TNI) conducts its tasks, functions, and roles by means of military operations for war (MOW) and military operation other than war (MOOTW) as stipulated under Article 7 (2) of Law No.34/2004 on TNI; and all the military operations are conducted based on the political policies and decisions of the state. This means TNI cannot launch unilateral military actions for MOW and MOOTW without official policies and decisions of the state.
- b. The military (combat) operations in Papua have not followed the proper legal procedure because up to now there has been no evidence showing a declaration of state of emergency on West Papua since the integration of West Papua into Indonesia. This is different from the way the Indonesian government dealt with the separatists in Aceh in which the government had followed the correct legal

procedure by declaring the state of emergency first before resolving the rebellion with TNI forces

Suggestions

- a. To prevent the nation disintegration in Papua, the separatism in Papua should be solved with welfare approach, and good governance practices must be continued comprehensively, whereas security approach should be applied to a minimum. The security forces should realize that any repressive measures against the Papuan people can easily be exposed by global mass media, and this only benefits the separatist movement and anti-Indonesia parties, particularly if there is an indication of major human rights violation against the educated groups and scholars.
- b. Based on Indonesia's experience of dealing with the Free Aceh Movement (GAM) in Aceh, the Indonesian government should deal with the separatists in Papua by establishing an MoU with the Free Papua Movement (OPM) in the hope that the MoU can bring an understanding and an agreement as well as a solution for both parties. The MoU can be reached if the Indonesian government can reduce the number of its military personnel in Papua as an act of good will which can promote trust

²⁹ Georgy Mishael, Joko Setiyono, Soekotjo Hardiwinoto, 2016, "*Kebijakan Operasi Militer Tentara Nasional Indonesia terhadap Organisasi Papua Merdeka dalam Perspektif Hukum Humaniter Internasional*," *Diponegoro Law Review*, Vol. 5, No. 2, p.7.

between the related parties in Papua, and, with this act, it is hope that eventually OPM can fully trust the Indonesian government to bring prosperity to the people of Papua.

BIBLIOGRAPHY

- George Junus Aditjondro, 2000, *Cahaya Bintang Kejora: Papua Barat dalam Kajian Sejarah, Budaya, Ekonomi, dan Hak Asasi Manusia*. Jakarta: ELSAM.
- Tuhana Taufik Andrianto, 2001, *Mengapa Papua Bergolak*. Yogyakarta: Gama Global Media.
- Departemen Pertahanan RI, 2003, *Mempertahankan Tanah Air Memasuki Abad 21*. Jakarta: Dephan RI.
- John R.G. Djopari, 1993, *Pemberontakan Organisasi Papua Merdeka*. Jakarta: Grasindo.
- Faisal Farhan, 2011, *"Tindak Pidana Disersi Ditinjau dari Perspektif Hukum Pidana Militer."* Undergraduate Thesis. Universitas Pasundan, Bandung.
- Syamsuddin Haris, *Indonesia di Ambang Perpecahan*. Jakarta: Erlangga, 1999.
- Mochtar Kusumaatmadja and B. Arief Sidharta. *Pengantar Ilmu Hukum: Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum*. Bandung: PT. Alumni, 2000.
- Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Liberty, 1986.
- _____, *Penemuan Hukum: Sebuah Pengantar*. Yogyakarta: Liberty, 2009.
- Georgy Mishael, Joko Setiyono, and Soekotjo Hardiwinoto, 2016, "Kebijakan Operasi Militer Tentara Nasional Indonesia terhadap Organisasi Papua Merdeka dalam Perspektif Hukum Humaniter Internasional." *Diponegoro Law Review*. Vol. 5, No. 2.
- I Wayan Parthiana, 1990, *Pengantar Hukum Internasional*. Bandung: Mandar Maju.
- Hotma Pardomuan Sibuea and Heryberthus Sukartono, 2009, *Metode Penelitian Hukum*. Jakarta: Krakatauw Book.
- Soerjono Soekanto and Sri Mamudji, 2009, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers.
- Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum*. Jakarta: UI Press.
- The Republic of Indonesia. Law No. 3/2002 on State Defence.
- The Republic of Indonesia. Law No. 34/2004 on Indonesian National Armed Forced (TNI).