

## Protection of Human Rights by Law Enforcement Officers Against the Actions of Armed Criminal Groups (KKB) in Papua

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### Abstract

A terrorist group called the Papuan Armed Criminal Group (KKB) located in Papua Province. KKB was formerly known as the Free Papua Organization (OPM) which was founded in 1965 with the aim of breaking away from Indonesia (committing separatist acts) and making various efforts to conduct a referendum in order to become independent from the Unitary State of the Republic of Indonesia. This Normative Legal Research Method is an internal research in the discipline of law that uses sources of legal material in the form of laws and regulations, court decisions / decrees, contract agreements, contracts, legal theories and opinions of scholars. The 1945 Constitution and humanitarian law also accommodate the protection of civilians in conflict areas. This basic principle upholds the basic principle of respect for individuals, as well as the protection of human rights victims. The Special Autonomy Law is considered a strategic policy in order to improve services, accelerate, develop, and empower all people in the Papua region. One of the obligations that must be fulfilled by the State is the protection of every citizen. Indonesia as a country that upholds human rights should protect all its citizens, not only fulfilling obligations, the state has also fulfilled the human rights of its citizens. The government has adopted several policies, one of which is Law Number 21 of 2001 concerning Special Autonomy for Papua, also known as Otsus Papua.

**Keywords:** human rights; papua; special autonomy

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## Introduction

Human rights are rights that have been obtained by a human being since they were in the womb. With the Declaration of Human Rights that was passed on 10 December 1948 by the United Nations after what had happened in the Second World War, major human rights crimes such as genocide, crimes against humanity, and slavery have agreed to be strongly rejected by at least 50 countries. Article 1 paragraph (1) of Law No. 39/1999 on Human Rights explains that human rights are a set of rights inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for the sake of honour and protection of human dignity. Human rights is a conception of humanity and social relations that was born by the history of human civilisation throughout the world. The concept of human rights and democracy must not conflict with the concept of the rule of law. Laws and regulations that apply should not only benefit one party, because this is contrary to the principles of democracy (Widyantara, 2022).

Indonesia as a state of law has the responsibility to fulfil the civil rights of its people as well as their political rights. Indonesia is also obliged to carry out its obligations in order to respect, protect and

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fulfil the human rights of all its citizens (Awaluddin, 2012). Indonesia as a country that essentially contains noble ideals should be in every policy issued in the administration of government must fulfil a sense of justice, welfare for all citizens. Frans Magnis Suseno said, "Human rights are a means of protecting modern man against threats that have proven their ferocity. These rights are realised as a reaction to the experience of the threat to the essential aspects of humanity. Through this understanding, it can be formulated in legal and political language (Suseno, 1992).

A terrorist group called the Papuan Armed Criminal Group (KKB) located in Papua Province. The KKB was formerly known as the Free Papua Organisation (OPM) which was founded in 1965 with the aim of breaking away from Indonesia (carrying out separatist actions) and making various efforts to hold a referendum in order to become independent from the Unitary State of the Republic of Indonesia. Furthermore, Richard Chauvel, a Papuan political historian in Muhammad Hafiz, states that currently it is believed that there are at least four issues that are sources of conflict, namely; (a) Disappointment because the land of Papua is part of Indonesia, (b) The perceived competition between the Papuan elite and officials from outside the land of Papua, (c) Different economic and government development in Papua, and (d) Marginalisation of indigenous Papuans due to the presence of migrants (Mambraku, 2016). But according to a youth leader from Papua. Ali Kabiay, the Free Papua Organisation is believed to be extinct and the violence that occurs there is the work of the Armed Criminal Group in the mountains (iNews.id, 2021). KKB's actions in Papua are often destructive in scope, such as attacking public facilities, damaging aircraft and attacking civilians, which are included as offences in the Terrorism Law in Indonesia.

Actors of human rights violations committed by state actors and non-state actors. State actors are individuals or bodies that act as representatives of the state such as the legislature, executive and judiciary. Violations committed by state apparatus usually include not protecting, respecting and fulfilling the human rights of its citizens. Meanwhile, non-state actors or non-state apparatus are people or groups outside of state actors who become perpetrators of human rights violations in various specific actions. Usually these non-state actors have great power and capital.

The problems that have occurred since 1965 do not include Human Rights Violence, Mahfud MD at the time served as Coordinating Minister for Political, Legal and Security Affairs of the Republic of Indonesia argued that this separatist movement did not violate Human Rights, but with the previously mentioned incident and the recent incident of the strangulation of the pilot of the Susi Air airline who is a New Zealand national conducted in the Nduga region, Papua which occurred in February 2023 by demanding independence and not wanting other countries, non-governmental institutions and non-governmental organizations to interfere in this matter. If the rescue evacuation is carried out with violence, the fear is that it will attract international attention and the handling will not clash with human rights, this has also been agreed by the New Zealand Government to evacuate its citizens.

Personnel of the Indonesian National Army and the Indonesian National Police as the front guard in defending the security of the country are certainly victims of human rights violations by the KKB, the shooting carried out by the group with the pretext of wanting to show their strength to be able to break away from Indonesia is one of the threats of human rights violations. Having the ability to disguise themselves as civilians is a big challenge for the authorities to be able to distinguish between civilians and armed groups, so that in carrying out tasks in Papua they must have strong instincts and sensitivity.

TNI and Polri officers certainly have a set of rights inherent in their nature and existence as creatures of God Almighty and must be upheld, respected, and protected by the state, law, and government (Gumelar & Nachrawi, 2022). To protect human rights, the state must be built on the rule of law so that there are instruments to monitor and prosecute human rights violations and the people have a say in national life. Democracy involves the right to vote, be elected, and express opinions in the political system. According to Article 1 Point 6 of Law No. 39/1999 on Human Rights, a human rights violation is any act of a person or group of people including state apparatus, whether intentional or unintentional, or negligence that legally reduces, hinders, limits, or revokes the human rights of a person or group of people guaranteed by law and does not get, or is feared will not get, a fair legal settlement (Putri, Utomo, Erlangga & Hikmah, 2022). If interpreted, if there is a violation of human rights committed by Indonesian citizens or Indonesian citizens who become victims, the state is obliged to

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provide protection, respect and respect for the human rights of every person.

Crimes committed by separatist groups often violate human rights, it is inevitable that these groups will eventually bring legal consequences to their groups. The TNI and Polri as the front guard in Papua feel the weak protection of human rights to those who are victims of the group's separatist actions. Departing from this, the author is interested in researching with the title "Ham Protection of Law Enforcement Officials Against the Actions of Armed Criminal Groups (KKB) in Papua".

## Method

Methods are needed to collect the amount of material needed to find a problem solution. This Normative Legal Research Method is an internal research in the discipline of law that uses sources of legal material in the form of laws and regulations, court decisions / decrees, contract agreements, contracts, legal theories and opinions of scholars.

In short, normative legal research is a research process to examine and study the law as norms, rules, legal principles, legal principles, legal doctrines, legal theories and other literature to answer the legal problems studied and use library research that studies literature and other scientific works related to the problem under study to obtain a theoretical and legal basis related to the problem and discussion under study. The data collected will be processed by descriptive analysis with clear descriptions describing the protection of human rights with the principle of justice in the assignment in the Papua conflict area.

## Discussion

### Legal Protection Against Human Rights Violations By The Kkb In Papua

One of the obligations that must be fulfilled by the State is the protection of every citizen. Indonesia as a country that upholds human rights should protect all its citizens, not only fulfilling obligations, the state has also fulfilled the human rights of its citizens. Therefore, legal protection is needed for civilians who are in conflict areas.

According to CST Kansil, "legal protection is all legal efforts that must be provided by law enforcement officials in order to provide a sense of security, both mental and physical security from disturbances and various threats from any party" (Kansil, 1989).

Meanwhile, according to Satjipto Rahardjo, "Satjipto Rahardjo's theory of legal protection is inspired by the purpose of law proposed by Fitzgerald. The purpose of law according to Fitzgerald is to integrate and coordinate various interests in a society by regulating the protection and limitation of these various interests (Hadjon, Rahardjo, Soekanto, Kansil & Setiono, 2022).

Conflict areas are areas full of violence and hostility between opposing parties. Armed conflict itself is divided into two, namely international armed conflict and non-international armed conflict or domestic conflict (Adwani, 2012). Conflict will always cause casualties and inconvenience to residents in conflict areas. Civilians in conflict areas are often victims of the rebels' inhumanity. Like the conflict area in Papua where not a few civilians and state apparatus became victims in the conflict. Therefore, Indonesia as a state of law is obliged to respect and protect the human rights of civilians in the conflict area (Yudawan, 2022).

Chapter X on Human Rights has set out the following provisions for the protection of citizens in general:

Article 28I paragraph (1):

"The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognised as a person before the law, and the right not to be prosecuted on the basis of retroactive laws are human rights that cannot be reduced under any circumstances".

Article 28I paragraph (2):

"Every person shall have the right to be free from discriminatory treatment on any grounds whatsoever and shall have the right to protection against such discriminatory treatment".

Article 28I paragraph (4):

"The protection, promotion, enforcement and fulfilment of human rights are the responsibility of the state, especially the government".

Article 28J paragraph (1):

"Every person shall respect the human rights of others in the orderly life of society, nation and state".

The guarantee to be free from fear, torture or other degrading treatment and to receive social security is at the core of these articles. The 1945 Constitution explicitly establishes human rights that cannot be diminished. These include the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognised as a person before the law, and the right not to be prosecuted on the basis of retroactive laws (Suryokumoro & Ikaningtyas, 2020).

Humanitarian law also accommodates the protection of the civilian population within the conflict area. This basic principle upholds the basic principle of respect for the individual, as well as the protection of victims of war. Firstly, it is in the interest of the individual citizens of the warring states. Secondly, the principle of humanity itself expects that the relationship between citizens will be better (Effendi, 1994). Civilian protection is regulated in the 1949 Geneva Conventions in the IVth Convention. This convention serves as a guideline in providing protection to civilian populations in times of war. Article 4 of the Convention states:

"The persons protected by the convention are those who, in the course of an armed conflict or an event of occupation, at any given moment and in any manner whatsoever, are in the hands of a Party to the dispute or of an occupying power which is not their country."

Protection under the convention is divided into two: general protection and special protection. General protection given to civilians must not be discriminatory, in all circumstances, civilians are entitled to all personal respect, family rights, property, and the practice of religious teachings. In addition, Articles 27-34 also regulate actions, namely, (a) physical or mental coercion to obtain information (b) taking actions that cause physical suffering (c) imposing collective punishment (d) intimidation, terrorism and robbery (e) taking reprisals (f) taking them as hostages (g) taking actions that cause physical suffering or hostility towards protected persons.

**Special Protection** In addition to the general protection afforded to civilians in armed disputes as outlined above, some groups of civilians have special protection. These are usually civilians who belong to social organisations that perform social work to assist other civilians during armed conflict. These are ordinary people, members of the civil defence, and members of voluntary Aid Societies and National Red Cross Societies. As the Geneva Conventions protect the civilian population in armed conflicts, it also provides for the establishment of hospital areas and safety zones. By mutual consent of the parties concerned (Article 14 of Convention IV) (Permanasari, et al, 1999).

In addition, international humanitarian law stipulates that deprivation of rights and dignity during war is a crime against human values. Human efforts to protect one another and maintain human rights and dignity to live as decent human beings include regulating the protection of the population, limiting the development and use of firearms, protecting vital objects for the population, and regulating and fighting techniques on land, sea and air (Yudawan, 2022).

### **The Role of The State in Stopping Human Rights Violations by The Kkb In Papua**

Human rights must be guaranteed by the state for every citizen, this is stated in Article 8 of the Human Rights Law which states

"The protection, promotion, enforcement and fulfilment of human rights are primarily the responsibility of the Government."

This means that the government's responsibility in protecting, promoting, and fulfilling human rights is the full responsibility of the government. In addition, the government's obligations in fulfilling human rights are also regulated in Article 71 of the Human Rights Law which states

"The government is obliged and responsible for respecting, protecting, upholding, and promoting the human rights stipulated in this Law, other laws and regulations, and international human rights law accepted by the Republic of Indonesia."

And in Article 72 of the Human Rights Law states

"The obligations and responsibilities of the Government as referred to in Article 71, include effective implementation measures in the legal, political, economic, social, cultural, national security defence, and other fields."

This means that the government is obliged to respect, protect, uphold, and promote human rights. In addition, laws and regulations, international human rights law, are also obliged to be enforced by the government (Edon & Hidayat, 2021). Under these regulations, the state has the responsibility to respect, protect, uphold and promote human rights. In general, the state has the primary responsibility to promote, protect and guarantee human rights for each of its citizens without discrimination, and this responsibility cannot be reduced for political, economic or cultural reasons.

The Papua conflict is an issue that is seen as having many aspects of conflict. When viewed broadly, one will find aspects of economic, political, social and cultural, defence and security, as well as ideological aspects that shape the position of the conflict. Solutions to the Papua problem must be made thoroughly, thoroughly, and comprehensively because of its multidimensional nature. Various solutions have been carried out by the government, as for some of the policies that have been carried out, namely, the establishment of special autonomy in Papua as outlined in Law No. 21 of 2001 concerning Special Autonomy for Papua (Otsus Papua), in which the provincial government and the people are given wider authority to regulate and manage their own regions.

The Special Autonomy Law is considered a strategic policy in order to improve services, accelerate, develop, and empower all people in the Papua region. This policy is expected to reduce the differences that exist between Papua Province and other provinces in the Republic of Indonesia (Mambraku, 2016). In addition, it is expected to provide opportunities for indigenous Papuans to participate in development and as subjects and objects of development (Rochendi & Saleh, 2017). The regulation contains several philosophical foundations as stated in the consideration, among others:

- a. Recognition of the ideals and goals of the Republic of Indonesia.
- b. Recognition that the Papuan people are creatures of God and part of civilised humanity.
- c. Recognition of the existence of special local government units in Papua.
- d. Recognition that the indigenous Papuan people are one of the families of the Melanesian race and are part of the ethnic groups in Indonesia which have a diversity of cultures, customs, histories and languages.
- e. Recognition that the administration of government and development of Papua Province has not fully fulfilled a sense of justice, enabled the achievement of people's welfare, supported the realisation of law enforcement, and has not fully shown respect for human rights.
- f. Recognition that the management and utilisation of the natural resources of Papua Province have not been used optimally to improve the standard of living of the indigenous Papuan people.
- g. Acknowledgement of the gap between Papua Province and other provinces in Indonesia (Rochendi & Saleh, 2017).

In addition, Otsus gives Papuans the responsibility to independently determine social, cultural,

economic and political development strategies in accordance with the characteristics and distinctiveness of Papuan human resources, as well as their natural and cultural conditions. The central government also authorises the Papuan Regional Government to promote the socio-cultural and economic potential of Papuans. This includes giving Papuans an adequate role through regional adat, religious and women's representatives.

This role is achieved through participation in the formulation of local policies and the determination of development plans by maintaining equality and diversity in Papuan society, preserving local culture and conserving Papua's nature (Anugerah, 2019). The Indonesian government managed to dampen the Papuan people's desire for independence by creating the Papua Special Autonomy Law. The Indonesian government has succeeded in convincing the Papuan people that Otsus is the best option and demonstrating their commitment to correcting any shortcomings in the development process that has been carried out so far.

In addition, there are other actors who play an important role in maintaining stability and enforcing the law in Papua, namely members of the TNI / Polri who carry out security in Papua. These personnel are tasked with gathering information from various sources, including witnesses and suspects. This is useful for finding the best solution to resolve the conflict in Papua. Members of the TNI / Polri are also the main actors who face directly with the KKB and civil society in conflict situations (Sugandi, 2008).

Regulation of the Minister of Defence of the Republic of Indonesia No. 13 of 2016 concerning assistance in the use of deployment of Indonesian national army forces in handling social conflicts regulates the presence of the TNI in handling conflicts in order to support the world maritime axis, protect border areas, and support TNI duties in eastern Indonesia which covers a wide area. Pasmars 3 also adheres to Law No. 3 of 2002 concerning State Defence, which states that the TNI as the main component and instrument of state defence faces threats both from within and outside the country (Munua, 2021). According to Article 7 paragraph (1) of Law Number 34 of 2004 concerning the Indonesian National Army which states

"The main tasks of the TNI are to uphold the sovereignty of the state, to maintain the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and to protect the entire nation and the entire homeland of Indonesia from threats and disturbances to the integrity of the nation and state."

TNI members also have various skills to gain public support. Not only do they have combat capabilities, but they also have the ability to conduct mass medication for the local population, improving their health through agriculture, animal husbandry, and farming. In other places, staff members are also trained to help youth in the area identify KKB gangs that could pose a threat. Therefore, the government will take responsibility and continue to provide maximum protection for all citizens. In addition to security efforts, the central government continues to encourage the improvement of people's welfare in Papua (Wanzira, 2022).

## Conclusion

According to Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia is a state of law. Of course, law enforcement in this country is based on Pancasila as the philosophy of nation and state, including the enforcement of Human Rights itself is a basic right owned by every individual human being or can be called human rights (Human Rights). In short, Human Rights are basic rights or basic rights that humans carry since they are still in the womb of a mother for the blessing or gift of God which cannot be removed from the life of a human being. One of the obligations that must be fulfilled by the State is the protection of each of its citizens. Indonesia as a country that upholds human rights should protect all its citizens, not only fulfilling obligations, the state has also fulfilled the human rights of its citizens. Therefore, legal protection is needed for civilians in conflict areas.

The government has adopted several policies, one of which is Law Number 21 of 2001 on Special Autonomy for Papua, also known as Otsus Papua. This law gives the provincial government and the

people of Papua more power to run their own affairs within the Republic of Indonesia. The government is responsible and continues to provide maximum protection to every citizen, as well as various other policies. In addition to security efforts, the central government continues to strive to improve the welfare of the Papuan people. The government as the main actor in stopping cases of human rights violations in Papua must take action to stop as part of law enforcement efforts that can be carried out through existing court institutions in Indonesia. The government must take this action as part of its responsibility in the context of human rights

## References

- Adwani, A. (2012). Perlindungan terhadap Orang-Orang dalam Daerah Konflik Bersenjata Menurut Hukum Humaniter Internasional. *Jurnal Dinamika Hukum*, 13(1). <http://dx.doi.org/10.20884/1.jdh.2012.12.1.109>
- Anugerah, B. (2020). Papua: Mengurai Konflik dan Merumuskan Solusi. *Jurnal Lembannas RI*, 7(4), 51-65. <https://doi.org/10.55960/jlri.v7i4.111>
- Awaluddin, H. (2012). *HAM Politik, Hukum dan Kemunafikan Internasional*. Jakarta: Kompas Media Nusantara
- Edon, S. F. L., & Hidayat, N. A. (2021). Kewajiban Pemerintah Indonesia Terhadap Pelanggaran Ham Yang Dilakukan Oleh Kelompok Kriminal Bersenjata (Kkb) Di Papua. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9(3), 854-869. <https://doi.org/10.23887/jpku.v9i3.39160>
- Effendi, M. (1994). *Hukum Humaniter Internasional dan Pokok-Pokok Doktrin Hankamrata*. Surabaya: Usaha Nasional
- Gumelar, I., & Nachrawi, G. (2022). Perlindungan Hukum Bagi Anggota Tni Berdasarkan Undang-Undang Hak Asasi Manusia (Studi Kasus Gerakan Separatis Organisasi Papua Merdeka). *JISIP (Jurnal Ilmu Sosial dan Pendidikan)*, 6(2). <http://dx.doi.org/10.58258/jisip.v6i2.3110>
- Hadjon, P. M., Rahardjo, S., Soekanto, S., Kansil, C. S. T., & Setiono. (2022). *Tim Hukum Online, Teori-Teori Perlindungan Hukum Menurut Para Ahli*. Hukum Online. Retrieved from <https://www.hukumonline.com/berita/a/teori-perlindungan-hukum-menurut-para-ahli-lt63366cd94dcbc/iNews.id>, T. (2021). *Tokoh Papua Ini Sebut OPM Sudah Punah, Hanya Ada KKB Di Pegunungan*. I News Papua. Retrieved from <https://papua.inews.id/berita/tokoh-papua-ini-sebut-opm-sudah-punah-hanya-ada-kkb-di-pegunungan>
- Kansil, C. S. T. (1989). *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Jakarta: Balai Pustaka
- Mambraku, N. (2016). Penyelesaian Konflik di Tanah Papua dalam Perspektif Politik. *Jurnal Kajian*, 20(2), 75-85.
- Munua, H. Y. (2021). Peran Marinir TNI AL dalam Penanganan Konflik Papua. *Jurnal Maritim Indonesia (Indonesian Maritime Journal)*, 9(3), 241-262.
- Putri, S. N., Utomo, M. F. N., Erlangga, R. W., & Hikmah, N. (2022). Analisis Hubungan Antara Kelompok Kriminal Bersenjata (Kkb) Di Papua Dengan Pelanggaran Hak Asasi Manusia. *Al - Hakam Islamic Law & Contemporary Issues*, 3(2), 42-53. Retrieved from <https://ejournal2.undip.ac.id/index.php/ilj/article/view/16040>
- Rochendi, S., & Saleh, K. A. (2017). Hubungan pemerintah pusat dan daerah dalam otonomi khusus di Provinsi Papua Barat. *POLITIK*, 13(1).
- Sugandi, Y. (2008). *Analisis konflik dan rekomendasi kebijakan mengenai Papua*. Friedrich-Ebert-Stiftung.
- Suryokumoro, H., & Ikaningtyas. (2020). Perlindungan Penduduk Sipil Saat Terjadi Konflik Bersenjata Berdasarkan Hukum Humaniter Internasional dan Hukum Pertahanan Indonesia. *Rechtidee*, 15(2). <https://doi.org/10.21107/ri.v15i2.8576>
- Suseno, F. M. (1992). *Filsafat Kebudayaan Politik, Butir-Butir Pemikiran Kritis*. Jakarta: Gramedia Pustaka Utama
- Wanzira, A. M. (2022). *Perlindungan Pemerintah Indonesia Terhadap Pelanggaran HAM di Papua*. Disertation UIN Ar-Raniry
- Widyantara, I. G. H. (2022). Penegakan Hukum Terhadap Pelanggaran Hak Asasi Manusia Dalam Mewujudkan Keadilan di Papua. *Jisos: Jurnal Ilmu Sosial*, 1(7), 585-600.
- Yudawan, N. (2022). Perlindungan Hukum Terhadap Warga Sipil (Papua) Terkait Non-International Armed Conflict Dalam Perspektif Hukum Humaniter. *Dinamika Jurnal Ilmiah Ilmu Hukum*, 28(5).