

# The Criminal Acts by Armed Criminal Group in Papua, "Treason" or "Terrorism"?

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<https://ejournal.undiksha.ac.id/index.php/jkh> Program Studi Ilmu Hukum Fakultas Hukum dan Ilmu Sosial Universitas Pendidikan Ganesha Singaraja  
[The Criminal Acts by Armed Criminal Group in Papua, "Treason" or "Terrorism"? Marthsian Yeksi](#) Anakotta<sup>1</sup> <sup>1</sup>Faculty of Law, Universitas Katolik Darma Cendika, Surabaya, Indonesia E-mail : marthsiananakotta@ukdc.ac.id  
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Corresponding Author: Marthsian Yeksi Anakotta, E-mail: marthsiananakotta@ukdc.ac.id [Abstract The designation of armed criminal groups \(KKB\) in Papua as a terrorist group/organization raises pros and cons because the KKB has so far been identified with the West Papua National Liberation Army \(TPNPB-OPM\), which is one of the armed separatist movements in Papua. The determination is motivated by violence and or armed violence carried out by the KKB which has political, ideological, and security motives, where these three motives are elements in criminal acts of terrorism. Meanwhile, according to the author, the policy carried out by the Government of Indonesia is a re-criminalization. By using the normative juridical method, the authors conclude that the determination of the KKB as a terrorist group/organization is the right policy of the Indonesian government. Based on the three motives above, the KKB can be categorized as an ethno/nationalist separatist terrorism.](#) [Abstrak The designation of armed criminal groups \(KKB\) in Papua as a terrorist group/organization raises pros and cons because the KKB has so far been identified with the West Papua National Liberation Army \(TPNPB-OPM\), which is one of the armed separatist movements in Papua. The determination is motivated by violence and or armed violence carried out by the KKB which has political, ideological, and security motives, where these three motives are elements in criminal acts of terrorism. Meanwhile, according to the author, the policy carried out by the Government of Indonesia is a re-criminalization. By using the normative juridical method, the authors conclude that the determination of the KKB as a terrorist group/organization is the right policy of the Indonesian government. Based on the three motives above, the KKB can be categorized as an ethno/nationalist separatist terrorism.](#) @Copyright 2021. A. PRELIMANARY Is it appropriate to categorize criminal acts committed by the Armed Criminal Group or Kelompok Kriminal Bersenjata (KKB) in Papua as a terrorism acts? This question is a hot issue that is currently triggering pros and cons in Indonesian communities, especially the academics from various fields, both

defense and security, political-social-cultural-legal, and terrorism.<sup>1</sup> To answer these hot issues, research can be carried out from various perspectives through the approach of each discipline or by integrating these disciplines. From the perspectives of criminal law, the policy of the Government of Indonesia to designate the Armed Criminal Group or Kelompok Kriminal Bersenjata (KKB) and affiliated organizations in Papua as the List of Suspected Terrorists and Terrorist Organizations or Daftar Terduga Teroris dan Organisasi Teroris (DTTOT) is a re-criminalization. According to the author, re-criminalization is a policy of categorizing a crime that was previously not part of a particular crime to be part of the particular crime in question. Previously, on April 29, 2021, the Government of the Republic of Indonesia officially categorized the [Armed Criminal Group \(KKB\) in Papua as a terrorist group/organization](#). This was conveyed by the [Coordinating Minister for Political, Legal and Security Affairs](#) (Menko Polhukam) Mahfud M.D., in a press conference. The government considers organizations and people in Papua who commit massive violence to be categorized as terrorists. The [Coordinating Minister for Political, Legal, and Security Affairs](#) stated that [the labeling of terrorist organizations against KKB is in accordance with Indonesian Law Number 5 of 2018 concerning Eradication of Criminal Acts of Terrorism](#).<sup>2</sup> Based on [this](#) statement, it can be concluded that what is meant by "appropriate" is an act or act of violence committed by the KKB that has fulfilled [the elements of a criminal act](#) of terrorism and can be categorized as an act of terrorism. According to the Institute for Criminal Justice Reform (ICJR), juridically, the government based its decision on [the provisions of Article 1 paragraph 2 of Law No. 5 of 2018 concerning Amendments to Law No. 15 of 2003 concerning Eradication of Criminal Acts of Terrorism](#). In the article, "politics" is mentioned as one of the motives that make the act of "using [violence or threats of violence](#) which creates [an atmosphere of terror or fear](#) widely, [which can cause mass casualties, and/or cause damage or destruction to vital objects](#) that are strategic, environmental, [public facilities, or international facilities](#)," can [be](#) referred to as acts of terrorism. ICJR also believes that, through the use of this article, it is clear that the government is framing the aspirations of the independence of the Papuan people, some of whom have chosen the path of armed struggle, as one of the motives for making violent acts which have also affected some civilians recently as acts of terrorism.<sup>3</sup>

1 Laboratorium Indonesia 2045 (Lab-45). 2021. "Tilk Data: Penetapan KKB sebagai Kelompok Teror", dalam <https://www.lab45.id/detail/71/tilik-data-pola-kecelakaan-13-kapal-perang-indonesia>. Diakses pada 5 Mei 2021. 2 Kompas.com. (29 April 2021). Achmad Nasrudin Yahya, "Resmi, Pemerintah Kini Mengkategorikan KKB di Papua Organisasi Teroris", dalam <https://nasional.kompas.com/read/2021/04/29/12525701/resmi-pemerintah-kini-kategorikan-kkb-di-papua-organisasi-teroris?page=all>. Diakses pada 29 April 2021. 3 ICJR.or.id. (2021). Siaran Pers Elsam dan ICJR: Penetapan KKB sebagai Teroris Tidak Tepat dan Membahayakan Keselamatan Warga Sipil di Papua" (2 Mei 2021). Dalam <https://icjr.or.id/siaran-pers-elsam-dan-icjr-penetapan-kkb-sebagai-teroris-tidak-tepat-dan-membahayakan-keselamatan-warga-sipil-di-papua/>. Diakses pada 4 Mei 2021. It should be remembered that [the KKB has been identified with the West Papua National Liberation Army](#)-Free Papua Organization ([TPNPB-OPM](#)) which has the aim [of](#) separating themselves from [the](#) Republic of Indonesia and establishing their own state. According to Indonesian criminal law, this is a criminal act of treason against [the territorial integrity of the Unitary State of the Republic of Indonesia](#). The crime [of](#) treason is a crime related to security issues for the state and state safety. The treason offenses are regulated in Book II Chapter I of the Criminal Code concerning crimes against state security.<sup>4</sup> In the context of criminal law reform, the drafters of the National Criminal Code (RKUHP) separate terrorism offenses

and treason offenses in different forms and concepts. Separately, the two are categorized as special crimes and crimes against state security. The National Criminal Code formulates terrorism offenses in Chapter XXXIV on Special Offenses, Part Two on Terrorism Offenses, Articles 600- 602. Meanwhile, the treason offenses are formulated in the Second Book of Chapter I concerning Crimes Against State Security. In particular, treason against [the territory of the Republic of Indonesia](#) is regulated in paragraph 2, treason against [the Unitary State of the Republic of Indonesia](#), Article 192. Regarding [the element of novelty](#), [the object of this research](#) focuses on acts of violence and/or armed violence committed by armed criminal groups (KKB) in Papua. Previously, there had been several studies with the object of conflict in Papua using other scientific approaches, which generally discussed the separatist movement of the Free Papua Organization (OPM) and the West Papua National Liberation Army (TPNPB). Poltak Partogi Nainggolan (2014), with the title "International Activities of the Papuan Separatist Movement", concluded that there is a tendency to increase Papuan separatism movements in international fora in recent years.<sup>5</sup> Nomensen ST. Mambraku (2015) entitled "Conflict Resolution in Papua in a Political Perspective" concludes that the conclusion of the process and outcome of conflict resolution in Papua since the Old Order regime to the Reformation regime for more than fifty years in terms of the aspect of political conflict resolution shows that The government until now still uses elements of violence that are contrary to the values upheld by Pancasila and [the 1945 Constitution of the Republic of Indonesia](#), namely: equality, peace, justice, respecting diversity and differences, protecting minorities, and [upholding law and human rights](#).<sup>6</sup> [Based on](#) the background above, there are two problem formulations. First, what are the formulations and elements of terrorism offenses and treason offenses? Second, why the government takes the criminal acts by the KKB as a terrorism offense? The purpose of reviewing the two formulations of the problem, namely: First, to find out the difference between the formulation and elements of the offense of terrorism and treason; Second, to know and understand the policy reason of re- criminalization of criminal acts by the KKB as a terrorism offense. 4 Syefri Alpat Lukman. (2016). Tindak Pidana Makar Terhadap Keutuhan Wilayah Negara Kesatuan Republik Indonesia Berdasarkan Pasal 87 KUHP (Analisis Yuridis Terhadap Gerakan Riau Merdeka Tahun 1999). Jurnal Online Mahasiswa Volume 3 Nomor 2, Tahun 2016, hlm. 1-15: 7. 5 Poltak Partogi Nainggolan. (2014). Aktivitas Internasional Gerakan Separatisme Papua. Jurnal Kajian Volume 19 Nomor 3, September 2014. Hlm: 181-199. 6 Nomensen ST. Mambraku. (2015). Penyelesaian Konflik Di Tanah Papua Dalam Perspektif Politik. Jurnal Kajian Volume 20 Nomor 2, Juni 2015. Hlm: 75-85. B. RESEARCH METHOD These two problem formulations will be studied using the juridical- normative method with a statutory and conceptual approach. The statutory approach is used to look at the regulation [of criminal acts of terrorism and treason in Indonesian criminal law](#), as well as comparisons between the two. This approach analyzes crimes committed by armed criminal groups (KKB) in Papua based on the formulation and elements of the regulation of the two offenses. Meanwhile, the conceptual approach is used by the author to analyze the background of the Indonesian government in establishing the [armed criminal group \(KKB\) in Papua as a terrorist group/organization](#). In addition, this approach is also used to see what forms or types of terrorism are armed criminal groups (KKB) in Papua. C. RESULT AND DISCUSSION 1. The Formulation and Elements of Terrorism in Law No. 5 Year 2018 Formally, the offense of terrorism is formulated in Article 6 of [Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism](#), namely: "Every person who intentionally [uses violence or threats of violence that creates an atmosphere of terror or widespread fear, which can cause mass](#)

casualties, and/or cause damage or destruction to strategic vital objects, the environment, public facilities or international facilities, shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years, life imprisonment, or the death penalty.” Article 1 paragraph (1) of Law no. 5 of 2018 provides a juridical definition of terrorism offense as all acts that meet the elements of a criminal act in accordance with the provisions of the Terrorism Law. In paragraph (2) of the law, terrorism is defined as an act that uses violence or threats of violence that create a widespread atmosphere of terror or fear, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, environment, public facilities, or international facilities with ideological, political, or security disturbance motives. From the definition of terrorism above, there are several elements of a terrorism offense, three of them are every person, violence or threats of violence, and political motives. These three will be the focus of the discussion in the following sub-chapters. Quoted from his book, Mahruz Ali divides the elements of criminal acts of terrorism into four elements. First, the act is in the form of behaviour, both active and passive which results in the emergence of a thing or condition that is prohibited by law; Second, the behaviour and consequences that arise must be against the law both in its formal and material meaning; Third, there are certain things or circumstances that accompany the occurrence of behaviors and consequences that are prohibited by law; and Fourth, with regard to the criminal aggravation as stated in Article 340 of the Criminal Code.<sup>7</sup>

1.1 Every Person The legal subject in Law Number 5 of 2018 is every person, both individuals (natuurlijk person) and corporation (recht person). Every person means an Indonesian or a foreigner, who commits a crime. People who commit criminal acts <sup>7</sup> Mahruz Ali, *Hukum Pidana Terorisme: Teori dan Praktik*, (Bekasi: Gramata Publishing, 2012), hlm. 83. of terrorism even though they are not in Indonesia can still be charged with committing a criminal act of terrorism.<sup>8</sup> Soedarto said that someone who is abroad can also commit an offense in Indonesia.<sup>9</sup> Meanwhile, Article 1 number 10 of the law formulates the definition of a corporation as an organized collection of people and/or assets, whether they are legal entities or no legal entities. The recognition of corporations as subjects of criminal law has gone global. This can be seen in the 14th International Conference with the theme Criminal Liability of Corporations in Athens which was held from July 13 to August 6, 1994. For example, Finland is one of the countries that regulate corporations as subjects of criminal law and can be accounted for. The formulation of the corporation as a subject of criminal law is motivated by different histories and experiences in each country, including Indonesia.<sup>10</sup> Pujiyono stated that the role of corporations as non- state actors, national or trans-or multinational corporations (MNC’s) in modern society in this globalization era has a strategic function not only in the economy but also has a significant effect on political and defense policies. Corporate crime is a complex crime with the characteristics of “crime by power” because it is committed by actors who are financially and politically powerful. Corporate crime is also a type of “white-collar crime.”<sup>11</sup> According to Jan Rimmelink, initially the legislators were of the view that only humans (natuurlijke persons) could be subject to criminal law, while corporations could not be subject to criminal law. Such a view can be traced from the history of the formulation of the provisions of Article 51 Sr. (Article 59 of the Criminal Code), especially from the way the formulation of a criminal act begins with the phrase “hij die” (whoever).<sup>12</sup> Jonkers said that in the Netherlands there has been a conceptual development of the corporation, where in 1976, the legislators changed Article 51 of the Dutch Criminal Code based on the Law dated June 23, 1976, State Gazette no. 337. According to this new provision, all criminal acts can be committed by individuals and corporations.<sup>13</sup> Because corporations are also recognized as subjects of

criminal law, in the sense of being able to commit acts of terrorism, the legal construction of criminal acts committed by corporations is different from criminal acts committed by people (natuurlijk persos). In the context of a criminal act of terrorism, a corporation is considered to have committed a crime if it is committed by people, either based on work or other relationships, acting within the corporate environment, either alone or together. So, those who commit acts of terrorism are not corporations directly but are carried out by people who act for and or on behalf of corporations either because of their work relationships or other relationships.

8 Mety Rahmawati. 2006. "Tindak Pidana Terorisme Dari Sudut Hukum Pidana Materil (Pengaturannya Dalam Undang-Undang No. 15 Tahun 2003)", Jurnal Hukum Prioris 1 (1) Setember 2006, hlm. 1-9, 3. 9 Soedarto, Hukum Pidana I, (Semarang: Yayasan Sudarto d/a FH Undip, 1990), Cetakan ke II, hlm. 32. 10 Achmad Ratomi. 2018. "Korporasi Sebagai Pelaku Tindak Pidana (Suatu Pembaharuan Hukum Pidana dalam Menghadapi Arus Globalisasi dan Industri)" Jurnal Al'Adl, Volume X (1), Januari 2018, hlm. 1-22, 5. 11 Pujiyono. 2016. "Corporation Criminal Responsibility Model Based on Restorative Justice Approach in Indonesia", Diponegoro Law Review, October 2016, Volume 01 (01), hlm. 127-142, hlm. 130. 12 Jan R Emmelink, Komentar atas Pasal-pasal Terpenting dari KUHP Belanda dan Padanannya dalam KUHP Indonesia, (Jakarta: Gramedia, 2003), hlm. 97. 13 Jonkers, Buku Pedoman Hukum Pidana Hindia Belanda, (Jakarta: Bina Aksara, 1987), hlm. 289-290. In the records of law enforcement on criminal acts of terrorism, several terrorist corporations (read: group/organizations/entities) have been designated by the Indonesian Government as terrorist organizations or groups. As an illustration, below are some terrorist organizations based on data processed from the List of Suspected Terrorists and Terrorist Organizations (DTTOT) belonging to the Police with Number: DTTOT/P-7a/149/II/RES.6.1./2021. List of Terrorist Organizations in Indonesia<sup>14</sup> No. Name of Organization/Group Information 1) 2) 3) 4) 5) 6) 7) 8) Jemaah Islamiyah (JI) Jemaah Anshorut Tauhid (JAT) Mujahidin Indonesia Timur (MIT) Abu Sayyaf Group (ASG) Al-Qaida (AQ) Al-Qaida in Iraq (AQI) Jemaah Anshorut Daulah (JAD) Islamis State in Iraq and the Leavant (ISIL) These eight organizations in addition have been designated as terrorist organizations by the Central Jakarta District Court Decree Number: 13/Pen/Pi- DTTOT/2020/PN.Jkt.Pst on October 14, 2020. 9) Armed Criminal Group or Kelompok Kriminal Bersenjata (KKB) Designated as a terrorist group as of April 29, 2021. \*Source: Polri, 2020. Data and materials are processed by the author, 2021. The designated of the KKB as a terrorist group is a paradigm shift in law enforcement for criminal acts of terrorism in Indonesia. Why is that, because previously law enforcement against terrorism crimes has always targeted terrorist actors and or organizations/groups with religious backgrounds. This can be seen in the list presented above. Prior to the stipulation of the KKB as a terrorist group, the eight organizations/groups mentioned above were based on religious ideology for their terrorist actions. This form of terrorism is called religious terrorism. With the stipulation of the KKB as a terrorist group, the target of law enforcement for criminal acts of terrorism is wider, in which the target is also the perpetrators of terrorist crimes affiliated with the KKB. At this point, it is difficult to deny that the KKB has no links to the military branch of the Free Papua Organization, namely the West Papua National Liberation Army (TPNPB/OPM). It is known that TPNPB/OPM has been carrying out acts of armed violence with the aim of separating several parts of Indonesia's territory (Papua) from the Republic of Indonesia. That action defined by Indonesian criminal law as a criminal act of treason (treason against the sovereignty of the State's territory). This can be proven by referring to several court decisions on cases of treason committed by members and or

people affiliated with TPNPB/OPM. Thus, the Armed Criminal Group can be referred to as the Armed Terrorist Criminal Group atau Kelompok Kriminal Teroris Bersenjata (KKTB) with a background in the struggle for independence with the ideology of ethnonationalism. 14 Kepolisian Negara Republik Indonesia, Daftar Terduga Teroris dan Organisasi Teroris Nomor: DTTOT/P-7a/149/III/RES.6.1./2021. Daftar Terduga Teroris dan Organisasi Teroris ini berlaku selama 6 (enam) bulan sejak ditetapkan berdasarkan Penetapan Pengadilan Negeri Jakarta Pusat Nomor 13/Pen.Pid- DTTOT/2020/PN.Jks.Pst tanggal 14 Oktober 2020 tentang Penetapan Perpanjangan Pencantuman Individu dan Organisasi sebagai Terduga Teroris dan Organisasi Teroris. This form of terrorism is commonly known as Ethno-Nationalism Terrorism. One example of a terrorist group/organization that can be a reference for studying this form of terrorism is the Irish Republican Army (IRA) terrorist group in England, a form of ethnonationalism terrorism that still exists today. 1.2

Violence or Threat Violence Article 6 of Law No. 5 of 2018 formulates the element of violence as one of the elements of a [criminal act of terrorism](#). Violence [is](#) a form of [an act that](#) is prohibited. Materially, [the](#) element [of](#) violence in a criminal act of terrorism is formulated as [any act of](#) abusing [physical](#) force [with or without](#) using [means](#) that is [against the law and](#) poses a [danger to the body, life, and](#) independence [of](#) people, [including making](#) [people](#) faint [or helpless](#). The crime of terrorism is a criminal act that is prohibited by the Terrorism Act. Moeljatno briefly defines a criminal act as an act that is prohibited by law and is punishable by a penalty if anyone violates the prohibition.<sup>15</sup> While the meaning of the word 'action' in the phrase 'criminal act' according to Noyon and Langemeijr that the act in question can be positive and negative. Positive actions mean doing something, while negative actions mean not doing something.<sup>16</sup> In his book, Mahruz Ali divides the elements of crime into four elements. First, the act is in the form of behavior, both active and passive which results in the emergence of a thing or condition that is prohibited by law; Second, the behavior and consequences that arise must be against the law both in its formal and material meaning; Third, there are certain things or circumstances that accompany the occurrence of behaviors and consequences that are prohibited by law; and Fourth, with regard to the criminal aggravation as stated in Article 340 of the Criminal Code.<sup>17</sup> Based on those division above, violence in the phrase 'violence and threats of violence' can be interpreted as an 'active' behavior. The consequences of this active behavior are the emergence of a widespread [atmosphere of terror or fear](#) of people, causing [mass casualties, and causing damage or destruction to](#) strategic [vital objects, the environment or public facilities or international facilities](#). This is in line with the view that the offense formulated in Article 6 of the Terrorism Law is a material offense, which emphasizes the final result of the behavior of a person and/or group of people which is against the law a criminal act.<sup>18</sup> In this context, if we look at several shootings against civilians and the officers of Indonesian National Military and Police (TNI/Polri) as well as the burning of public facilities such as schools, which were carried out by the KKB, then these actions can be categorized as an active act and/or an active behavior that is against law. Regarding the element of violating [the law, the](#) formulation [of criminal acts of terrorism](#) adheres to [the](#) nature of violating [the](#) law in general, because it is not stated explicitly or explicitly in the formulation of articles in the Terrorism Law. This <sup>15</sup> Moeljatno, *Pebuatan Pidana Dan Pertanggung Jawab Dalam Hukum Pidana*, Pidato diucapkan pada upacara peringatan Dies Natalis ke VI Universitas Gadjah Mada, di Sitihinggil Yogyakarta pada tanggal 19 Desember 1955, hlm. 17. <sup>16</sup> T.J. Noyon & G.E. Langemeijr, *Het Wetboek Van Strafrecht, Vifde Druk, Eerste Deel Inleiding Boek I, S, Gouda Quint – D. Brouwer En Zoon, Uitgevers Huis De Grabbe – Arnhem*, hlm. 53. <sup>17</sup> Mahruz Ali, *Hukum Pidana Terorisma: Teori dan Praktik*, (Bekasi: Gramata Publishing, 2012),

hlm. 83- 84. 18 Ibid, hlm. 90. means that the element of violating the law does not need to be proven because it has automatically been proven by the occurrence of prohibited acts, namely violence or threats of violence. 1.3 Political Motives The third element of this sub-chapter is political motives. Article 1 number 2 of Law No. 5 of 2018 formulates political motives as one of three motives in criminal acts of terrorism, two of which are ideology and security disturbances. In Article 5 of the Law, the crime of terrorism must be considered not a political crime. Meanwhile, political motives can be said to be related to political crimes because their actions are driven by the belief that the order of society or the state or leaders must be changed according to the ideal. Belief in something that he or she thinks is true breeds radicalism. Radicalism is understood as an inner attitude that reflects beliefs about a truth that is sometimes difficult to understand. Belief about something "right", makes adherents want to realize it in all aspects of life, where life is carried out in accordance with the "right". In the context of criminal acts of terrorism, realize these changes can be done in various ways, such as bomb attacks, kidnappings, murders, sabotage, and other forms of terrorism.<sup>19</sup> According to Black's Law Dictionary, the motive means "something, especially, willful desire, that leads one to act; also termed anterior intent."<sup>20</sup> A motive is an intentional desire, which leads a person to act; can also be called hidden intentions. In Indonesian criminal law, it is possible that only acts of terrorism formulate explicit or explicit motives in the formulation of criminal acts. Because, in general, the motive is not explicitly formulated in the formulation of a crime. However, in the application policy, the motive is used to prove the existence of a subjective element of unlawfulness, or to prove an element of intent in a criminal act. Regarding this political motive, previously in the formulation of Article 5 [of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism](#), it was stated that criminal acts of terrorism were excluded from political crimes, crimes with political motives, and crimes with political goals. The lawmakers considered that if it was not excluded, it would later hamper the extradition process. Now, when the law has been amended, the crime of terrorism is still excluded from political crimes. In the formulation of Article 5 of Law Number 5 of 2018, it is stated that [a criminal act of terrorism](#) must [be](#) considered not [a](#) political [crime](#), and can be extradited or requested for mutual assistance. It can be seen that the legislators still exclude terrorism crimes from political crimes, but now crimes with political motives can be categorized as terrorism crimes. The above is an interesting problem to be studied in the future when Indonesian Law Number 5 of 2018 excludes terrorism from political crimes. Interesting because maybe Indonesia is the only one that adheres to this principle. It is undeniable that the issue of political crime is very complicated because until now there is no universally accepted definition of political crime/offense. In 19 Agus H.S. Reskoprodjo, Pujo Widodo, & F.G. Cempaka Timur. 2018. "Pemetaan Latar Belakang Dan Motif Pelaku Tindak Kejahatan Terorisme di Indonesia", Jurnal Prodi Perang Asimetris Volume 4 Nomor 2 Agustus 2018, hlm. 1-20, 2. 20 Bryan A. Gardner, [Black's Law Dictionary – Ninth Edition, \(West: Thomson Reuters, 2009\)](#), hlm. 1110 addition to the problem of definition, extradition difficulties or barriers are one of the reasons. This is because one of the general principles in extradition is the principle of not extradite perpetrators of political crimes.<sup>21</sup> Regarding the definition of a political crime, there have been several experts who have defined it. Some of them, namely Jan Remmelink. He stated that the difference between political criminals (political crimes) and ordinary criminals (general crimes) can be seen from the motives that control their actions. Perpetrators of political crimes are controlled by altruistic motives or are concerned with other people. This motive is driven by his belief that the order of society or the state or its leaders must be changed according to their

ideals. Meanwhile, general criminals are controlled by egoistic motives.<sup>22</sup> Apart from Jan Remmelink, in addition, it can be seen from the theory in determining political offenses put forward by Hazewinkel Suringa. He mentioned that there are four theories in determining political offenses. The four theories are:<sup>23</sup> 1. Objective theory (Absolute theory), that political crimes are directed against the State and the functioning of State institutions; 2. Subjective theory (relative theory), that in principle all general crimes committed with political goals, backgrounds, and objectives constitute a political crime; 3. Predominant Theory, that theory limits the objective and subjective theory. In this case, note what is dominant from an action. If the dominant crime is a general crime, then the act is not mentioned as a political offense; or 4. Political Incidence Theory, that this theory sees actions that are considered as part of political activity. In addition, he also considers political criminals to be perpetrators based on belief. In political crimes, the perpetrator has the belief that his views on law and the state are more correct than the views of the state or what is currently in effect.

2. Formulation and Elements of Treason in the Criminal Code (KUHP) The term "treason" comes from the Dutch "aanslag", which mean in English is "attack" or "aanval" which means "an attack with bad intentions" (Misdadige Aanranding). The Indonesian Dictionary or Kamus Besar Bahasa Indonesia (KBBI) defines "treason" as a rotten mind; deception, the act (effort) to attack (kill) people, the act (effort) to overthrow the legitimate government. In the Criminal Code, there is no definition of treason. Based on Indonesian criminal law, the crime of treason is regulated in Articles 104-129 of the Criminal Code. However, the provisions of some of its articles (Articles 104, 106, 108, 139a, 139b) directly mention treason. But what is the meaning of treason, is not formulated in the Criminal Code. The Krupukulit website, as quoted by ELSAM, states that, in some Dutch dictionaries, aanslag is defined as gewelddadige aanval, which in English means "violent attack". The word aanslag has the same meaning as onslaught which in English also means "violent attack", "fierce attack", or "any attack that is strong" (vigorous).<sup>24</sup> Treason is generally understood as an evil act or evil conspiracy

21 Mahrus Ali, *Hukum Pidana Terorisme: Teori dan Praktik*, (Bekasi: Gramata Publishing, 2012), hlm. 31. 22 Jan Remmelink, *Hukum Pidana*, (Jakarta: Gramedia Pustaka Utama, 2003), hlm. 406. 23 Lobby Loqman, *Delik Politik di Indonesia*, IND-HILL 24 Krupukulit.com. (23 Desember 2015). Tentang 'Makar', dalam <https://krupukulit.com/2015/12/23/tentang-makar/> Diakses pada 18 April 2021. carried out in secret or in secret to harm or harm others. Thus, the act of treason is an evil act or conspiracy with the intention of killing, resistance to the president and vice president, overthrowing the legitimate government with the intention of attacking or resisting.<sup>25</sup> M. Sudradjat Bassar stated that treason is defined as an "attack". The interpretation of treason is specifically contained in Article 87 of the Criminal Code, which states that treason for an act already exists if the will of the perpetrator has appeared in the form of the beginning of implementation in the sense intended in Article 53 of the Criminal Code. Preparatory actions are not included in the meaning of treason. So what is included in the act of treason is only the act of execution. However, this understanding still does not provide an understanding of treason. In a narrow sense, the crime of treason consists of three forms, namely treason [against the President and Vice President](#), treason against [the Territory of the State](#), and treason against [the Government of Indonesia](#). This study focuses on the formulation of the crime of treason against the territory of the state. The crime of treason committed with the intention of bringing all or part of the country under foreign rule or to separate part of the country's territory, by the legislators has been regulated in Article 106 of the Criminal Code whose formulation in Dutch reads as follows: "De aanslag ondernemen met het oogmerk om het

grondgebied van den staat geheel of gedeeltelijk onder vreemde heerschappij te brengen of om een deel daarvan afscheiden, worldt gestraft met levenslange gevangennistraf of tijdelijke van ten hoogste twintig Jaren.”<sup>26</sup> Which means: "Treason committed with the intention of bringing all or part of the territory of the state under foreign power or to separate part of the territory of the state [shall be punished with](#) imprisonment for life [or](#) with [imprisonment](#) for a maximum of twenty years." Broadly speaking, the formulation of the elements of treason as regulated in Article 106 of the Criminal Code is as follows: a. Subjective: met het oogmerk or with the intention of b. Objective: (1) aanslag or treason; (2) ondernomen or which is conducted; (3) onder vreemde heerschappij te brengen or bringing under foreign rule; (4) het grondgebied van den staat or state territory; (5) geheel of gedeeltelijk or in whole or in part; (6) afscheiden or separate; and (7) een deel daarvan or part of the country's territory. From the two elements above, it can be seen that the subjective element is an element of a crime that looks at the human or person or legal subject. It contains elements of accountability and guilt (dolus or culpa). While the objective element is an element of a crime that looks at the terms of the act. It contains elements of people's actions; the visible consequences of the act; and the possibility of certain circumstances accompanying the act. Narrowly, the elements of treason in the Article 106 of the Criminal Code can be divided into three forms: 25 Lembaga Studi dan Advokasi Masyarakat (ELSAM), Parliamentary Brief: Series #7 – Tindak Pidana Makar Dalam RKUHP, (Jakarta: Aliansi Nasional Reformasi KUHP, 2016), hlm. 5. 26 Engelbrecht, De Wetboeken, hlm. 1314

2.1 Treason or aanslag The following is a further elaboration of the three crimes in question. First, aanslag or treason. According to P.F.A. Lamintang and Theo Lamintang, the word treason or aanslag should not always be interpreted as an act of violence, because what is meant by the word treason in Article 106 of the Criminal Code is actually any action taken by people to harm the legal interests of the state in the form of the intact territory of the state. Prof. Simons is of the opinion that the word treason or aanslag in the formulation of a crime in Article 106, namely: "Onder aanslag zal ook hier moeten worden verstaan elke handeling waarmee een der hiet omschreven gevolgen is beoogd en die of tot zoodaning govolg heft geleid, of als eene pogig daartoe kan worden beschouwd."<sup>27</sup> Which means: "In this case, treason must also be interpreted as any action carried out with the intention of achieving one of the consequences mentioned in the formulation of the crime; whether that leads to the emergence of such an effect, or which can be considered as a form of experimentation to cause the effect as intended above." The crime of treason against the territorial integrity of the state does not need to be completed, because according to the provisions stipulated in Article 87 of the Criminal Code, treason itself is considered to have occurred, namely after the intent of the perpetrator (to bring all or part of the territory of the state under foreign rule or to separate part of the territory of the country) becomes manifest in a form of initial implementation as referred to in Article 53 paragraph (1) of the Criminal Code. That, "Attempting to commit a crime is punishable if the intention to commit it has been proven from the beginning of the execution, and the non- completion of the execution, is not solely due to one's own will." 2.2 Which is conducted or ondernomen Second, ondernomen or which is conducted (deeds). The start of the implementation as referred to above is realized by (actions) being carried out or ondernomen. Prof. Noyon and Prof. Langemeijer stated that the ondernomen element or what was carried out in the formulation of the criminal act of treason, Article 106 shows that the person who commits treason must intend to carry out an action that can be qualified as an act to bring all or part of the territory of the country under foreign rule or as an act to separate part of the country. Thus, the object of the treason in Article 106

of the Criminal Code is [the territorial integrity of the state](#). According to [the legislators](#), [the territorial integrity of the country](#) can be jeopardized in two ways, namely: a. By bringing all or part of the territory of the country under foreign rule, and b. By separating parts of the country. The territory of the state as referred to is [the territory of the State of Indonesia](#) which is regulated in Law No. 43 of 2008 concerning the Territory [of the State. Article 1 paragraph \(1\) of the Law states that, "The Territory of the Unitary State of the Republic of Indonesia](#), hereinafter [referred to as](#) the State Territory, is one of the elements of the state which constitutes a unitary area of land, inland waters, archipelagic waters, and territorial sea along with the basic the sea and the land below it, as well as the air space above it, including all the sources of wealth 27 Engelbrecht, Op.cit, hlm. 388. contained therein." Furthermore, Article 7 states that "The State of Indonesia has sovereign rights and other rights in the Jurisdiction Area whose implementation is in accordance with statutory regulations and international law." In the end, Prof. Noyon and Prof. Langemeijer argue that the act of turning a part of the territory of a state into an independent state must be interpreted as bringing part of the territory of the state under foreign rule. Likewise with the act of separating part of the country's territory.

2.3 With intention of or met het oogmerk By the third, with the intention of or met het oogmerk. The word "with intention of" or met het oogmerk in the formulation of a crime regulated in Article 106 of the Criminal Code is defined as the personal intention or subjective intention of the perpetrator, or it can also be said, the element with intent must be interpreted in a limited way, namely solely as "opzet als oogmerk" or "intent as purpose." If the two elements mentioned above are objective elements of the treason, then "with intention of" is a subjective element, namely an element that is inherent in the mind of the perpetrator of treason. If it is related to the context of criminal responsibility, then the element of "with intention of" can be categorized as a type of "intentional as intent". This is in line with what was previously described above that, met het oogmerk must be interpreted in a limited way, namely solely as opzet als oogmerk or intentional as intent. Intentional as intent or opzet als oogmerk is intention to reach the purposes. According to Prof. Eddy Hiariej, the means of intentional as the intent is between a person's motivation to do an act, the action and its consequences actually materialize. He added that a person's motivation greatly influences his actions (*affecctio tua nomen imponit operi tuo*).<sup>28</sup> Regarding the "intention", some scholars argue that the intention in relation to the attempt is nothing but the same as intentionality (either intentionality as an intention or purpose; intentionality as a certainty; or intentionality as a possibility).<sup>29</sup> From the discussion above, it can be seen that there is a difference between the crime of terrorism and the crime of treason against the territory of the State. Briefly, the comparison of the two crimes can be seen in Table 2. below.

Comparison Terrorism	Treason (against sovereignty of States territory)
1. Legal arrangement - UU RI No. 9 Tahun 2013 tentang Pencegahan dan Pemberantasan Pendanaan Tindak Pidana Terorisme; - UU RI No. 5 Tahun 2018 tentang - UU RI No. 1 Tahun 1946 tentang Kitab Undang-Undang Hukum Pidana	28 Eddy Hiariej, Prinsip-Prinsip Hukum Pidana, Ed. Revisi, (Yogyakarta: Cahaya Atma Pustaka, 2016), hlm. 172-123. 29 Felicia Setyawati Suwarsono. (2017). Perbuatan Makar Menurut Pasal 107 Kitab Undang-Undang Hukum Pidana. Jurnal Lex Privatum, Volume V, Nomor 9, November 2017. Hlm: 162-170, 162. Pemberantasan Tindak Pidana Terorisme.
2. Element of crimes - Every person - Violence or threat violence - Has three motives: political, ideology, and security disturbance.	- Treason (against sovereignty of States territory) - Which is conducted - With intention of
3. Criminal law reform - Stated in Chapter XXXIV on Special Crimes, Part	

Two on Terrorism Crimes, Articles 600-602. - Stated in Second Book of Chapter I concerning Crimes Against State Security. In particular, treason against [the territory of the Republic of Indonesia](#) is regulated in paragraph 2, treason against [the Unitary State of the Republic of Indonesia](#), Article 192. \*Source: Data and materials are processed by the author, 2021.

3. Re-criminalization of criminal acts by KKB as a terrorism offenses Beginning this last sub-chapter, it is important to first find out why the government uses the term Armed Criminal Group or Kelompok Kriminal Bersenjata (KKB) for a group of people who commit violence or armed violence in Papua. Fahmi Alfansi P. Pane in his article stated that the term KKB reflects the public communication strategy of the government and the police, as well as defines security problems in Papua due to the existence of organizations that violate criminal law (criminal acts) by possessing and using weapons illegally.<sup>30</sup> Meanwhile, according to the ICJR and ELSAM institutions in their press release, they stated that, although the identification of the intended KKB is unclear and has the potential to sacrifice civilians, what is seen as a KKB group is [the West Papua National Liberation Army](#) or Tentara Pembebasan Nasional Papua Barat (TPNPB) and [the Free Papua Organization](#) or [Organisasi Papua Merdeka \(OPM\)](#).<sup>31</sup> In this subchapter, the author uses the term re-criminalization. If criminalization is the process of turning an act that was not previously a criminal act into a criminal act, then re-criminalization is the process of redefining and recategorizing a criminal act into a form of a certain criminal act. In the case 30 [Republika.co.id](#). Fahmi Alfansi P. Pane, "Mendefinisikan OPM dan KKB" (6 Desember 2018). Lihat dalam <https://www.republika.co.id/berita/pjad4n440/mendefinisikan-opm-dan-kkb>. Diakses pada 4 Mei 2021. <sup>31</sup> ICJR.or.id. 2021. [Siaran Pers] "ICJR dan ELSAM: Secara Pidana, Penggunaan UU Terorisme untuk KKB di Papua Akan Menimbulkan Banyak Masalah" (2 Mei 2021). Lihat dalam <https://icjr.or.id/icjr-dan-elsam-secara-pidana-penggunaan-uu-terorisme-untuk-kkb-di-papua-akan-menimbulkan-banyak-masalah/>. Diakses pada 4 Mei 2021. Lihat juga [Siaran Pers] "Elsam dan ICJR: Penetapan KKB sebagai Teroris Tidak Tepat dan Membahayakan Keselamatan Warga Sipil di Papua" (2 Mei 2021), dalam <https://icjr.or.id/siaran-pers-elsam-dan-icjr-penetapan-kkb-sebagai-teroris-tidak-tepat-dan-membahayakan-keselamatan-warga-sipil-di-papua/>. Diakses pada 4 Mei 2021. mentioned above, the acts of violence that have been carried out by the KKB as a form of ordinary crime were later redefined and categorized as a form of terrorism offenses. Referring to the statement of Komjen Pol. Boy Rafli Amar, Chief of the National Counter-Terrorism Agency, there are two reasons underlying [the determination of the KKB as a terrorist group/organization](#), namely: a. Based on UN Security Council Resolution No. 1373 (2001). b. The fulfillment of political motives, ideology, and security disturbances. First, internationally, every country has the right to classify a group into a terrorist list. The determination of an organization/group into the List of Suspected Terrorists and Terrorist Organizations is based on UN Security Council Resolution no. 1373 (2001) and refers to the Listing Procedures and Guidelines of the United Nations Committee on the implementation of United Nations Security Council Resolutions No. 1267 (1999), 1989 (2011), and 2253 (2015).<sup>32</sup> Second, nationally, this provision is part of the implementation of [Law Number 9 of 2013 concerning Prevention and Eradication of the Financing of Terrorism Crimes](#), which is the implementation of the international recommendations of The Financial Action Task Force (FATF) 40 Recommendations.<sup>33</sup> In addition, it has been mentioned above that political motives, ideology, and security disturbances are also the basis for determining organizations/groups as terrorists. The three motives are motives for committing criminal acts of terrorism as stated in the [Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism](#). By referring to [the](#) second reason mentioned

above, briefly, it can be said that acts of violence and or armed violence carried out by the KKB with political motives are based on the ideology of ethnonationalism which has created a security disturbance for both the community and the territorial sovereignty of the Republic of Indonesia. Therefore, below is an analysis of the relationship between violence and/or armed violence with political motives, ideologies, and security disturbances carried out by the KKB so that the Indonesian Government designated the group as a terrorist group. First, political motives. The chief of the Indonesian National Counter- Terrorism Agency (BNPT) claimed that the armed criminal group was the West Papua National Liberation Army (TPNPB-OPM), which has now joined the United Liberation Movement for West Papua (ULMWP) led by Benny Wenda. It was also stated that currently there are five KKB groups targeted by law enforcement, namely the Lekagak Telenggen Group, the Murib Military Group, the Egianus Kogoya Group, the Goliath Taboni Group, and the Sabinus Waker Group. All of these are in the mountains.<sup>34</sup> In political terminology, the actions carried out by the TPNPB-OPM are referred to as separatism, namely attempts to separate themselves from a country <sup>32</sup> Pusat Pelaporan Analisis Transaksi Keuangan. [www.ppatk.go.id](http://www.ppatk.go.id) (5 Mei 217). Prosedur Listing & Delisting. Lihat <https://www.ppatk.go.id/link/read/559/prosedur-listing-delisting.html>. Diakses pada 15 Juni 2021. <sup>33</sup> Financial Action Task Force, The FATF revised the 40 and the IX Recommendations. The revision of the FATF Recommendation was adopted and published in February 2012. See [www.fatf-gafi.org/recommendations](http://www.fatf-gafi.org/recommendations) for the 2012 FATF Recommendations. <sup>34</sup> Egy Adyatama. (27 Mei 2021). BNPT Sebut 5 KKB di Papua Masuk Daftar Terduga Teroris, Siapa Saja Mereka?. Lihat [Tempo.co](http://tempo.co). <https://nasional.tempo.co/read/1466281/bnpt-sebut-5-kkb-di-papua-masuk-daftar-terduga-teroris-siapa-saja-mereka>. Diakses pada 15 Juni 2021. or state. The act of separatism intends to separate themselves from and/or merge with other countries.<sup>35</sup> Based on the statement above, it can be said that the political motive of the violent acts and or armed violence carried out by the armed criminal group was to separate themselves or liberate Papua from the Unitary State of the Republic of Indonesia. This can be said as part of a political act. If referring to the Political Incidence theory put forward by Hazewinkel Suringa, by looking at the actions that are considered as part of political activity, then what the KKB does is part of political activities. In addition to violence and or armed violence, political motives are manifested in various forms of propaganda covering four non-traditional issues, namely human rights, democracy, environmental damage, and racial equality and background. The four issues were carried out through three channels, namely online media, political discussions and campaigns, and personal approaches to strategic figures in the Melanesian Spearhead Group (MSG).<sup>36</sup> MSG is a South Pacific sub- regional organization synonymous with the Melanesian race-based in Port Vila, Vanuatu.<sup>37</sup> Second, ideological motives. Refer to Oxford Advanced Learner's Dictionary, ideology is a set of ideas or beliefs that form the basis of an economic or political theory or that are held by a particular groups or person.<sup>38</sup> According to the Merriam- Webster Dictionary, ideology is (a) a manner of the content of thinking characteristic of an individual, group, or culture; (b) the integrated assertions, theories and aims that constitute a sociopolitical program; and (c) a systematic body of concepts especially about human life or culture.<sup>39</sup> In addition, there are also some experts who define ideology, such as Martin Sileger who considers ideology as a belief system; Alvin Gouldner who called it a national project; and Paul Hirst who assesses ideology as a social relation.<sup>40</sup> However, from the definitions of ideology mentioned above, it seems that they are still less relevant to the context of the discussion of ideological motives by armed criminal groups. Therefore, it seems appropriate if the definition of ideology

refers to the definition according to Mubyarto. According to him, ideology is a number of doctrines, beliefs, and symbols of a group of people or nations that serve as guidelines and guidelines for work (or struggle) to achieve the goals of that society or nation.<sup>41</sup> 35 Erdianto Effendi. (2013). Tindak Pidana Makar Terhadap Keamanan dan Keutuhan Wilayah Negara Dihubungkan dengan Perlindungan Hak Asasi Manusia Pelaku. (Disertasi). Universitas Padjajaran, Bandung. Hlm. 9. 36 Gia Noor Syah Putra, Tri Legionosuko, & Adnan Madjid. (2019). Strategi Pemerintah Indonesia Terhadap Negara-Negara Anggota Melanesian Spearhead Group (MSG) dalam Menghadapi Propaganda Organisasi Papua Merdeka (OPM): Studi Kasus Negara Republik Vanuatu. Jurnal Peperangan Asimetris, Volume 5 (2) Agustus 2019. Hlm: 31-44, 31. 37 Ibid, hlm. 37-38. 38 Oxford Advanced Learner's Dictionary, New Edition, (Oxford University Press, 1995), hlm. 589. 39 Merriam-Webster. Ideology. Lihat dalam <https://www.merriam-webster.com/dictionary/ideology#other-words>. Diakses pada 19 Juni 2021. 40 Nurul Fadilah. (2019). Tantangan dan Penguatan Ideologi Pancasila Dalam Menghadapi Era Revolusi Industri 4.0. Journal of Digital Education, Communication, and Arts, Volume 2 (2), September 2019. Hlm: 66-78, 68. 41 Mubyarto (1991) dalam Gayatri Dyah Suprobowati. (2020). Penguatan Pancasila Melalui Civic Literacy Sebagai Ideologi Pemersatu Bangsa di Era Pandemi Covid-19. Jurnal Majelis Edisi 04, Agustus 2020. Hlm: 211-229, 217. Previously, it should be borne in mind that the laws and regulations in general and Indonesian criminal law, in particular, have regulated the subject of forbidden ideologies. Arrangements for this matter began to be regulated in the Provisional People's Consultative Assembly Decree (TAP-MPRS) Number XXX/MRS/1966 concerning the Dissolution of the Indonesian Communist Party, to Law of the Republic of Indonesia Number 27 of 1999 concerning Amendments to the Criminal Code Related to Crimes. Against National Security. These ideologies are the ideology of Communism, Marxism, Leninism, or the like. However, in the context of the crimes committed by the KKB, the three forbidden ideologies or the like were not their ideological motives in carrying out the struggle to separate themselves from Indonesia. In the case of this armed criminal group, the doctrine that underlies their struggle is ethnonationalism. An ideological construction that emerged when elements of nationalism (Indonesian-ness) began to fade on the one hand and the increase of regional essential-primordialism elements (Papuan-ness) on the other. In general, Papuan ethnonationalism arises due to several factors. According to Margaretha Hanita, there are five root causes (factors), namely: Melanesian roots; the roots of local religions; root of blood ties; the roots of the formation of the governmental and political elite in the Dutch East Indies era; and the root feeling of being deprived/uprooted from their own land/economic exploitation. He also said that Papuan ethnonationalism was transformed into Papuan Nationalism which was formed by the Dutch East Indies Government which was intended so that West Papua would not become part of the Republic of Indonesia and become an independent country in the decolonization process carried out by the Dutch in West Papua. However, after Indonesia succeeded in taking over West Papua, Papuan Nationalism has transformed again into Ethnonationalism whose symptoms have strengthened in the last two decades. This symptom of ethnonationalism strengthens the resilience of the Papuan independence movement on the one hand and weakens Indonesia's national security on the other.<sup>42</sup> In addition, in a study conducted over five years (2010-2015)<sup>43</sup> on the construction of nationalism by Papuan students in Surabaya corroborates several previous studies and provides justification for issues of separatism in Papua. The study found four important things that made Papuan ethnonationalism stronger. First, the essential-primordial elements as Papuan identity where the change of the name Irian Jaya to Papua is considered as an appreciation of the authenticity

of Papua; second, the construction of the factors that encourage the development of Papuan nationalism, where there are views about the colonization of the Javanese against Papua through the transmigration program which gave birth to the dichotomy of indigenous and non-native Papuans; third, the process of forming Papuan nationalism can be seen in the development of Papuan student organizations fighting for the Papuan people, in which the process has developed into a radical rejection of development from the central government; and fourth, 42 Margaretha Hanita. (2019). *Evolusi dan Adaptasi Gerakan Kebebasan Orang Papua: Dari Nasionalisme ke Etnonasionalisme*. Jurnal Keamanan Nasional Volume V, Nomor 2, November 2019. Hlm: 111-139, 111-112. 43 Darsono. (2015). *Konstruksi Nasionalisme pada Mahasiswa Papua di Surabaya dalam Perspektif Multikulturalisme*. (Disertasi). Ilmu Sosial FISIP Uiversitas Airlangga. Papuan nationalism in relation to Indonesian nationalism is defined as three demands for the Earth of Cendrawasih, namely (1) cultural and political reorientation; (2) recognition of Papua's history and identity; and (3) development by and for the Papuan people for the sake of economic prosperity and the development of a modern Papuan sociocultural atmosphere. Thus, the struggle of armed criminal groups carried out in the form of violence and or armed violence is based on the ideological motive of ethnonationalism which grows from five roots (factors), namely: Melanesian roots; the roots of local religions; root of blood ties; the roots of the formation of the governmental and political elite in the Dutch East Indies era; and the root feeling of being deprived/uprooted from their own land/economic exploitation. These five roots were then strengthened due to four important factors, namely: the essential- primordial elements as Papuan identity, the construction of the factors that encourage the development of Papuan nationalism, the process of forming Papuan nationalism as seen in the development of Papuan student organizations fighting for the Papuan people, and Papuan nationalism in relation to Indonesian nationalism is interpreted as three demands for the Earth of Cendrawasih. Third, the motive for security disturbances. The existence of political motives and or ideological motives makes the struggle by the KKB carried out in various ways. One of them is through the use of violence and/or armed violence. This causes security disturbances and creates an atmosphere of terror in society. This security disturbance can be seen from several attacks or shootings, both against security forces (TNI and Polri) and civilians. The Papuan Regional Police noted that from January 2021 to April, KKB had committed sixteen times of violence and/or armed violence. The victims were recorded as civilians, teachers, and motorcycle taxi drivers, as well as security forces (TNI and Polri).<sup>44</sup> Two examples that can be used as references are the shooting of a civilian in June 2021, and the death of an Army General and a member of the Brimob-Polri in a shootout that took place in April 2021. Papua is one of the areas that are a priority for development by the Government of Indonesia. However, efforts to realize it is not easy. This is because the Indonesian government is faced with security disturbances triggered by various conflicts that occur between security officers (TNI and Polri) with the community and armed criminal groups (KKB). The existence of these security disturbances can hinder development in Papua which will have an impact on various aspects of growth in Papua, ranging from the economic, education, health aspects, to the provision of facilities and infrastructure for the social mobility of the Papuan people. In 2019, there were twenty-one shootouts between security forces (TNI and Polri) and armed criminal groups (KKB), which killed nine TNI soldiers and two Polri personnel, as well as ten civilians. This level of violence continued until 2020, where there were one hundred incidents of violence against civilians, with the death toll 44 Kompas.com. Dhias Suwandi. (28 April 2021). *Catatan Kekerasan Bersenjata KKB, Penembakan Bharatu I Koman Hingga Kepala BIN Papua*. Lihat dalam

<https://regional.kompas.com/read/2021/04/28/175209778/catatan-kekerasan-bersenjata-kkb-penembakan-bharatu-i-komang-hingga-kepala?page=all>. Diakses pada 21 Juni 2021. reaching fifty-seven people. Below is a comparative note of conflict events in Papua and West Papua throughout 2019 and 2020.<sup>45</sup> Table 1.3. Number of Conflict Events in Papua and West Papua, 2019 dan 2020

Year	Conflict Events	Battles	Riots	Violence against civilian	Fatalities
2019	96	27	19	50	145
2020	100	40	22	38	57

\*Source: ACLED, 2020. Data processed by Tangguh Chairil and Wendsney A. Sadi. The data above shows that violence against civilians is one of the conflict events with the highest number (50 times) in 2019, although then it has decreased to 38 times in 2020. This has not been added to the records held by the Papuan Police in the period January 2021 until April with the number of violence perpetrated by armed criminal groups as many as sixteen times. With these records, as well as considering the smoothness and security in the development process of the Papua region, the government has taken firm steps by establishing an armed criminal group as a terrorist group/organization.

D. SIMPULAN Berdasarkan Based on the formulation of the problem that has been discussed and analyzed above, the authors conclude that crimes committed by armed criminal groups (KKB) in Papua can be regarded as terrorism offenses. Therefore, the policy of the Indonesian government to designate them as a terrorist group is the right policy. Acts of violence and or armed violence carried out by armed criminal groups have political motives, ideological motives, and security disturbance motives. Meanwhile, according to the author, the policy taken by the Government of Indonesia is a re-criminalization, which mean the process of redefining and recategorizing a criminal act into a form of a certain criminal act. In its regulation in Indonesia, Indonesian criminal law distinguishes the terrorism offenses and treason offenses with different formulations and elements. The treason offenses against the territory of the State of Indonesia is regulated in Article 106 of the Criminal Code, while the terrorism offenses is regulated in Indonesian Law Number 5 of 2018. In the concept of reforming the Indonesian criminal law (National Criminal Code), the two are also distinguished in a separate chapter. The terrorism offenses is regulated in Chapter XXXIV on Special Crimes, while the treason offenses against the territory of the State is regulated in Chapter I concerning Crimes Against State Security.

<sup>45</sup> Armed Conflict Location and Event Data Project. Lihat dalam <https://acleddata.com/>. Dakses pada 21 Juni 2021. Lihat juga dalam Tangguh Chairil dan Wendsney A. Sadi. (Oktober 2020). Konflik Papua: Pemerintah Perlu Mengubah Pendekatan Keamanan dengan Pendekatan Humanis. Center for Business and Diplomatic Studies (CBDS) Commentaries, Departemen of Internasional Relations, Bina Nusantara University, Oktober 2020. Hlm: 1-5, 2-3. Regarding the form or type of terrorism group, this group can be categorized as an ethnonationalism separatist terrorism group or ethno/national separatist terrorism (ENS). Armed criminal groups with an Ethno-nationalist ideology with political motives separate themselves/as sovereign territory of the Republic of Indonesia through the use of violence and or armed violence, which causes security disturbances, both for the community and for the territorial sovereignty of the Unitary State of the Republic of Indonesia With the determination of armed criminal groups (KKB) as terrorist groups/organizations, law enforcement officers can easily carry out countermeasures against crimes committed by these groups. Countermeasures can be carried out through two approaches, namely: a soft approach and or a hard approach. These two approaches will later be coordinated by the Indonesian National Counterterrorism Agency (BNPT RI). Through this research, several problems were found which can then be used as problem formulations in further research with the object of studying

terrorism, treason, and or armed criminal groups. Some of these problems are: First, regarding the comparison of law enforcement against the crime of treason in Indonesia with other countries. Second, the issue of whether the ideology of ethnonationalism can be used as a forbidden ideology in the concept of nationalism [of the Unitary State of the Republic of Indonesia](#). Third, regarding [the](#) paradigm shift in law enforcement against [criminal acts of terrorism in Indonesia](#). Fourth, the category [of](#) separatist groups which can be categorized as ethno/national separatist terrorism groups. Fifth, how the Indonesian criminal law regulates the policy of re-criminalizing a crime.

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# The Criminal Acts by Armed Criminal Group in Papua, “Treason” or “Terrorism”?

*by Marthsian Yeksi Anakotta*

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## The Criminal Acts by Armed Criminal Group in Papua, "Treason" or "Terrorism"?

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### Abstract

The designation of armed criminal groups (KKB) in Papua as a terrorist group/organization raises pros and cons because the KKB has so far been identified with the West Papua National Liberation Army (TPNPP-OPM), which is one of the armed separatist movements in Papua. The determination is motivated by violence and or armed violence carried out by the KKB which has political, ideological, and security motives, where these three motives are elements in criminal acts of terrorism. Meanwhile, according to the author, the policy carried out by the Government of Indonesia is a re-criminalization. By using the normative juridical method, the authors conclude that the determination of the KKB as a terrorist group/organization is the right policy of the Indonesian government. Based on the three motives above, the KKB can be categorized as an ethno/nationalist separatist terrorism.

### Abstrak

The designation of armed criminal groups (KKB) in Papua as a terrorist group/organization raises pros and cons because the KKB has so far been identified with the West Papua National Liberation Army (TPNPP-OPM), which is one of the armed separatist movements in Papua. The determination is motivated by violence and or armed violence carried out by the KKB which has political, ideological, and security motives, where these three motives are elements in criminal acts of terrorism. Meanwhile, according to the author, the policy carried out by the Government of Indonesia is a re-criminalization. By using the normative juridical method, the authors conclude that the determination of the KKB as a terrorist group/organization is the right policy of the Indonesian government. Based on the three motives above, the KKB can be categorized as an ethno/nationalist separatist terrorism.

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## A. PRELIMINARY

Is it appropriate to categorize criminal acts committed by the Armed Criminal Group or *Kelompok Kriminal Bersenjata* (KKB) in Papua as a terrorism acts? This question is a hot issue that is currently triggering pros and cons in Indonesian communities, especially the academics from various fields, both defense and security, political-social-cultural-legal, and terrorism.<sup>1</sup> To answer these hot issues, research can be carried out from various perspectives through the approach of each discipline or by integrating these disciplines. From the perspectives of criminal law, the policy of the Government of Indonesia to designate the Armed Criminal Group or *Kelompok Kriminal Bersenjata* (KKB) and affiliated organizations in Papua as the List of Suspected Terrorists and Terrorist Organizations or *Daftar Terduga Teroris dan Organisasi Teroris* (DTTOT) is a re-criminalization. According to the author, re-criminalization is a policy of categorizing a crime that was previously not part of a particular crime to be part of the particular crime in question.

Previously, on April 29, 2021, the Government of the Republic of Indonesia officially categorized the Armed Criminal Group (KKB) in Papua as a terrorist group/organization. This was conveyed by the Coordinating Minister for Political, Legal and Security Affairs (*Menko Polhukam*) Mahfud M.D., in a press conference. The government considers organizations and people in Papua who commit massive violence to be categorized as terrorists. The Coordinating Minister for Political, Legal, and Security Affairs stated that the labeling of terrorist organizations against KKB is in accordance with Indonesian Law Number 5 of 2018 concerning Eradication of Criminal Acts of Terrorism.<sup>2</sup> Based on this statement, it can be concluded that what is meant by "appropriate" is an act or act of violence committed by the KKB that has fulfilled the elements of a criminal act of terrorism and can be categorized as an act of terrorism.

According to the Institute for Criminal Justice Reform (ICJR), juridically, the government based its decision on the provisions of Article 1 paragraph 2 of Law No. 5 of 2018 concerning Amendments to Law No. 15 of 2003 concerning Eradication of Criminal Acts of Terrorism. In the article, "politics" is mentioned as one of the motives that make the act of "using violence or threats of violence which creates an atmosphere of terror or fear widely, which can cause mass casualties, and/or cause damage or destruction to vital objects that are strategic, environmental, public facilities, or international facilities," can be referred to as acts of terrorism. ICJR also believes that, through the use of this article, it is clear that the government is framing the aspirations of the independence of the Papuan people, some of whom have chosen the path of armed struggle, as one of the motives for making violent acts which have also affected some civilians recently as acts of terrorism.<sup>3</sup>

<sup>1</sup> Laboratorium Indonesia 2045 (Lab-45). 2021. "Tilik Data: Penetapan KKB sebagai Kelompok Teror", dalam <https://www.lab45.id/detail/71/tilik-data-pola-kecelakaan-13-kapal-perang-indonesia>. Diakses pada 5 Mei 2021.

<sup>2</sup> Kompas.com. (29 April 2021). Achmad Asrudin Yahya, "Resmi, Pemerintah Kini Mengkategorikan KKB di Papua Organisasi Teroris", dalam <https://nasional.kompas.com/read/2021/04/29/12525701/resmi-pemerintah-kini-kategorikan-kkb-di-papua-organisasi-teroris?page=all>. Diakses pada 29 April 2021.

<sup>3</sup> ICJR.or.id. (2021). Siaran Pers *Elsam dan ICJR: Penetapan KKB sebagai Teroris Tidak Tepat dan Membahayakan Keselamatan Warga Sipil di Papua* (2 Mei 2021). Dalam <https://icjr.or.id/siaran-pers-elsam-dan-icjr-penetapan-kkb-sebagai-teroris-tidak-tepat-dan-membahayakan-keselamatan-warga-sipil-di-papua/>. Diakses pada 4 Mei 2021.

It should be remembered that the KKB has been identified with the West Papua National Liberation Army-Free Papua Organization (TPNPB-OPM) which has the aim of separating themselves from the Republic of Indonesia and establishing their own state.<sup>2</sup> According to Indonesian criminal law, this is a criminal act of treason against the territorial integrity of the Unitary State of the Republic of Indonesia. The crime of treason is a crime related to security issues for the state and state safety. The treason offenses are regulated in Book II Chapter I of the Criminal Code concerning crimes against state security.<sup>4</sup>

In the context of criminal law reform, the drafters of the National Criminal Code (RKUHP) separate terrorism offenses and treason offenses in different forms and concepts. Separately, the two are categorized as special crimes and crimes against state security. The National Criminal Code formulates terrorism offenses in Chapter XXXIV on Special Offenses, Part Two on Terrorism Offenses, Articles 600-602. Meanwhile, the treason offenses are formulated in the Second Book of Chapter I concerning Crimes Against State Security. In particular, treason against the territory of the Republic of Indonesia is regulated in paragraph 2, treason against the Unitary State of the Republic of Indonesia, Article 192.

Regarding the element of novelty, the object of this research focuses on acts of violence and/or armed violence committed by armed criminal groups (KKB) in Papua. Previously, there had been several studies with the object of conflict in Papua using other scientific approaches, which generally discussed the separatist movement of the Free Papua Organization (OPM) and the West Papua National Liberation Army (TPNPB). Poltak Partogi Nainggolan (2014), with the title "International Activities of the Papuan Separatist Movement", concluded that there is a tendency to increase Papuan separatism movements in international fora in recent years.<sup>5</sup> Nomensen ST. Mambra (2015) entitled "Conflict Resolution in Papua in a Political Perspective" concludes that the conclusion of the process and outcome of conflict resolution in Papua since the Old Order regime to the Reformation regime for more than fifty years in terms of the aspect of political conflict resolution shows that The government until now still uses elements of violence that are contrary to the values upheld by Pancasila and the 1945 Constitution of the Republic of Indonesia, namely: equal, peace, justice, respecting diversity and differences, protecting minorities, and upholding law and human rights.<sup>6</sup>

Based on the background above, there are two problem formulations. *First*, what are the formulations and elements of terrorism offenses and treason offenses? *Second*, why the government takes the criminal acts by the KKB as a terrorism offense? The purpose of reviewing the two formulations of the problem, namely: *First*, to find out the difference between the formulation and elements of the offense of terrorism and treason; *Second*, to know and understand the policy reason of re-criminalization of criminal acts by the KKB as a terrorism offense.

<sup>4</sup> Syefri Alpat Lukman. (2016). Tindak Pidana Makar Terhadap Keutuhan Wilayah Negara Kesatuan Republik Indonesia Berdasarkan Pasal 87 KUHP (Analisis Yuridis Terhadap Gerakan Rian Merdeka Tahun 1999). *Jurnal Online Mahasiswa Volume 3 Nomor 2, Tahun 2016*, hlm. 1-15: 7.

<sup>5</sup> Poltak Partogi Nainggolan. (2014). Aktivitas Internasional Gerakan Separatisme Papua. *Jurnal Kajian Volume 19 Nomor 3, September 2014*. Hlm: 181-199.

<sup>6</sup> Nomensen ST. Mambra. (2015). Penyelesaian Konflik Di Tanah Papua Dalam Perspektif Politik. *Jurnal Kajian Volume 20 Nomor 2, Juni 2015*. Hlm: 75-85.

## B. RESEARCH METHOD

These two problem formulations will be studied using the juridical-normative method with a statutory and conceptual approach. The statutory approach is used to look at the regulation of criminal acts of terrorism and treason in Indonesian criminal law, as well as comparisons between the two. This approach analyzes crimes committed by armed criminal groups (KKB) in Papua based on the formulation and elements of the regulation of the two offenses. Meanwhile, the conceptual approach is used by the author to analyze the background of the Indonesian government in establishing the armed criminal group (KKB) in Papua as a terrorist group/organization. In addition, this approach is also used to see what forms or types of terrorism are armed criminal groups (KKB) in Papua.

## C. RESULT AND DISCUSSION

### 1. The Formulation and Elements of Terrorism in Law No. 5 Year 2018

Formally, the offense of terrorism is formulated in Article 6 of Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism, namely:

*"Every person who intentionally uses violence or threats of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, the environment, public facilities or international facilities, shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years, life imprisonment, or the death penalty."*

Article 1 paragraph (1) of Law No. 5 of 2018 provides a juridical definition of terrorism offense as all acts that meet the elements of a criminal act in accordance with the provisions of the Terrorism Law. In paragraph (2) of the law, terrorism is defined as an act that uses violence or threats of violence that create a widespread atmosphere of terror or fear, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, environment, public facilities, or international facilities with ideological, political, or security disturbance motives.

From the definition of terrorism above, there are several elements of a terrorism offense, three of them are every person, violence or threats of violence, and political motives. These three will be the focus of the discussion in the following sub-chapters. Quoted from his book, Mahruz Ali divides the elements of criminal acts of terrorism into four elements. *First*, the act is in the form of behaviour, both active and passive which results in the emergence of a thing or condition that is prohibited by law; *Second*, the behaviour and consequences that arise must be against the law both in its formal and material meaning; *Third*, there are certain things or circumstances that accompany the occurrence of behaviors and consequences that are prohibited by law; and *Fourth*, with regard to the criminal aggravation as stated in Article 340 of the Criminal Code.<sup>7</sup>

#### 1.1 Every Person

The legal subject in Law Number 5 of 2018 is every person, both individuals (*natuurlijk person*) and corporation (*recht person*). Every person means an Indonesian or a foreigner, who commits a crime. People who commit criminal acts

<sup>7</sup> Mahruz Ali, *Hukum Pidana Terorisme: Teori dan Praktik*, (Bekasi: Gramata Publishing, 2012), hlm. 83.

of terrorism even though they are not in Indonesia can still be charged with committing a criminal act of terrorism.<sup>8</sup> Soedarto said that someone who is abroad can also commit an offense in Indonesia.<sup>9</sup> Meanwhile, Article 1 number 10 of the law formulates the definition of a corporation as an organized collection of people and/or assets, whether they are legal entities or no legal entities.

The recognition of corporations as subjects of criminal law has gone global. This can be seen in the 14<sup>th</sup> International Conference with the theme Criminal Liability of Corporations in Athens which was held from July 13 to August 6, 1994. For example, Finland is one of the countries that regulate corporations as subjects of criminal law and can be accounted for. The formulation of the corporation as a subject of criminal law is motivated by different histories and experiences in each country, including Indonesia.<sup>10</sup> Pujiyono stated that the role of corporations as non-state actors, national or trans-or multinational corporations (MNC's) in modern society in this globalization era has a strategic function not only in the economy but also has a significant effect on political and defense policies. Corporate crime is a complex crime with the characteristics of "crime by power" because it is committed by actors who are financially and politically powerful. Corporate crime is also a type of "white-collar crime."<sup>11</sup>

According to Jan Remmelink, initially the legislators were of the view that only humans (*natuurlijke persons*) could be subject to criminal law, while corporations could not be subject to criminal law. Such a view can be traced from the history of the formulation of the provisions of Article 51 Sr. (Article 59 of the Criminal Code), especially from the way the formulation of a criminal act begins with the phrase "*hij die*" (whoever).<sup>12</sup> Jonkers said that in the Netherlands there has been a conceptual development of the corporation, where in 1976, the legislators changed Article 51 of the Dutch Criminal Code based on the Law dated June 23, 1976, State Gazette no. 337. According to this new provision, all criminal acts can be committed by individuals and corporations.<sup>13</sup>

Because corporations are also recognized as subjects of criminal law, in the sense of being able to commit acts of terrorism, the legal construction of criminal acts committed by corporations is different from criminal acts committed by people (*natuurlijk persos*). In the context of a criminal act of terrorism, a corporation is considered to have committed a crime if it is committed by people, either based on work or other relationships, acting within the corporate environment, either alone or together. So, those who commit acts of terrorism are not corporations directly but are carried out by people who act for and or on behalf of corporations either because of their work relationships or other relationships.

<sup>8</sup> Mety Rahmawati, 2006, "Tindak Pidana Terorisme Dari Sudut Hukum Pidana Materil (Pengaturannya Dalam Undang-Undang No. 15 Tahun 2003)", *Jurnal Hukum Prioritas 1 (1) Setember 2006*, hlm. 1-9, 3.

<sup>9</sup> Soedarto, *Hukum Pidana I*, (Semarang: Yayasan Sudarto d/a FH Undip, 1990), Cetakan ke II, hlm. 32.

<sup>10</sup> Achmad Ratomi, 2018, "Korporasi Sebagai Pelaku Tindak Pidana (Suatu Pembaharuan Hukum Pidana dalam Menghadapi Arus Globalisasi dan Industri)" *Jurnal Al'Adl, Volume X (1), Januari 2018*, hlm. 1-22, 5.

<sup>11</sup> Pujiyono, 2016, "Corporation Criminal Responsibility Model Based on Restorative Justice Approach in Indonesia", *Diponegoro Law Review, October 2016, Volume 01 (01)*, hlm. 127-142, hlm. 130.

<sup>12</sup> Jan Remmelink, *Komentor atas Pasal-pasal Terpenting dari KUHP Belanda dan Padonannya dalam KUHP Indonesia*, (Jakarta: Gramedia, 2003), hlm. 97.

<sup>13</sup> Jonkers, *Buku Pedoman Hukum Pidana Hindia Belanda*, (Jakarta: Bina Aksara, 1987), hlm. 289-290.

In the records of law enforcement on criminal acts of terrorism, several terrorist corporations (read: group/organizations/entities) have been designated by the Indonesian Government as terrorist organizations or groups. As an illustration, below are some terrorist organizations based on data processed from the List of Suspected Terrorists and Terrorist Organizations (DTTOT) belonging to the Police with Number: DTTOT/P-7a/149/II/RES.6.1./2021.

**List of Terrorist Organizations in Indonesia<sup>14</sup>**

No.	Name of Organization/Group	Information
1)	Jemaah Islamiyah (JI)	These eight organizations in addition have been designated as terrorist organizations by the Central Jakarta District Court Decree Number: 13/Pen/Pi-DTTOT/2020/PN.Jkt.Pst on October 14, 2020.
2)	Jemaah Anshorut Tauhid (JAT)	
3)	Mujahidin Indonesia Timur (MIT)	
4)	Abu Sayyaf Group (ASG)	
5)	Al-Qaida (AQ)	
6)	Al-Qaida in Iraq (AQI)	
7)	Jemaah Anshorut Daulah (JAD)	
8)	Islamist State in Iraq and the Levant (ISIL)	
9)	Armed Criminal Group or <i>Kelompok Kriminal Bersenjata</i> (KKB)	

<sup>14</sup>Source: Polri, 2020. Data and materials are processed by the author, 2021.

The designation of the KKB as a terrorist group is a paradigm shift in law enforcement for criminal acts of terrorism in Indonesia. Why is that, because previously law enforcement against terrorism crimes has always targeted terrorist actors and or organizations/groups with religious backgrounds. This can be seen in the list presented above. Prior to the stipulation of the KKB as a terrorist group, the eight organizations/groups mentioned above were based on religious ideology for their terrorist actions. This form of terrorism is called religious terrorism.

With the stipulation of the KKB as a terrorist group, the target of law enforcement for criminal acts of terrorism is wider, in which the target is also the perpetrators of terrorist crimes affiliated with the KKB. At this point, it is difficult to deny that the KKB has no links to the military branch of the Free Papua Organization, namely the West Papua National Liberation Army (TPNPB/OPM). It is known that TPNPB/OPM has been carrying out acts of armed violence with the aim of separating several parts of Indonesia's territory (Papua) from the Republic of Indonesia. That action defined by Indonesian criminal law as a criminal act of treason (*treason* against the sovereignty of the State's territory). This can be proven by referring to several court decisions on cases of *treason* committed by members and or people affiliated with TPNPB/OPM.

Thus, the Armed Criminal Group can be referred to as the Armed Terrorist Criminal Group atau *Kelompok Kriminal Teroris Bersenjata* (KKTB) with a background in the struggle for independence with the ideology of ethnonationalism.

<sup>14</sup> Kepolisian Negara Republik Indonesia, Daftar Terduga Teroris dan Organisasi Teroris Nomor: DTTOT/P-7a/149/III/RES.6.1./2021. Daftar Terduga Teroris dan Organisasi Teroris ini berlaku selama 6 (enam) bulan sejak ditetapkan berdasarkan Penetapan Pengadilan Negeri Jakarta Pusat Nomor 13/Pen.Pid-DTTOT/2020/PN.Jks. Pst tanggal 14 Oktober 2020 tentang Penetapan Perpanjangan Pencantuman Individu dan Organisasi sebagai Terduga Teroris dan Organisasi Teroris.

This form of terrorism is commonly known as Ethno-Nationalism Terrorism. One example of a terrorist group/organization that can be a reference for studying this form of terrorism is the Irish Republican Army (IRA) terrorist group in England, a form of ethnonationalism terrorism that still exists today.

### 1.2 Violence or Threat Violence

Article 6 of Law No. 5 of 2018 formulates the element of violence as one of the elements of a criminal act of terrorism. Violence is a form of an act that is prohibited. Meritally, the element of violence in a criminal act of terrorism is formulated as any act of abusing physical force with or without using means that is against the law and poses a danger to the body, life, and independence of people, including making people faint or helpless. The crime of terrorism is a criminal act that is prohibited by the Terrorism Act. Moeljatno briefly defines a criminal act as an act that is prohibited by law and is punishable by a penalty if anyone violates the prohibition.<sup>15</sup> While the meaning of the word 'action' in the phrase 'criminal act' according to Noyon and Langemeijr that the act in question can be positive and negative. Positive actions mean doing something, while negative actions mean not doing something.<sup>16</sup>

In his book, Mahruz Ali divides the elements of crime into four elements. *First*, the act is in the form of behavior, both active and passive which results in the emergence of a thing or condition that is prohibited by law; *Second*, the behavior and consequences that arise must be against the law both in its formal and material meaning; *Third*, there are certain things or circumstances that accompany the occurrence of behaviors and consequences that are prohibited by law; and *Fourth*, with regard to the criminal aggravation as stated in Article 340 of the Criminal Code.<sup>17</sup>

Based on those division above, violence in the phrase 'violence and threats of violence' can be interpreted as an 'active' behavior. The consequences of this active behavior are the emergence of a widespread atmosphere of terror or fear of people, causing mass casualties, and causing damage or destruction to strategic vital objects, the environment or public facilities or international facilities. This is in line with the view that the offense formulated in Article 6 of the Terrorism Law is a material offense, which emphasizes the final result of the behavior of a person and/or group of people which is against the law a criminal act.<sup>18</sup>

In this context, if we look at several shootings against civilians and the officers of Indonesian National Military and Police (TNI/Polri) as well as the burning of public facilities such as schools, which were carried out by the KKB, then these actions can be categorized as an active act and/or an active behavior that is against law. Regarding the element of violating the law, the formulation of criminal acts of terrorism adheres to the nature of violating the law in general, because it is not stated explicitly or explicitly in the formulation of articles in the Terrorism Law. This

<sup>15</sup> Moeljatno, *Pebuatan Pidana Dan Pertanggung Jawab Dalam Hukum Pidana*, Pidato diucapkan pada upacara peringatan Dies Natalis ke VI Universitas Gadjah Mada, di Sitinggil Yogyakarta pada tanggal 19 Desember 1955, hlm. 17.

<sup>16</sup> T.J. Noyon & G.E. Langemeijr, *Het Wetboek Van Strafrecht*, Vijfde Druk, Eerste Deel Inleiding Boek I, S. Gouda Quint - D. Brouwer En Zoon, Uitgevers Huis De Grabbe - Arnhem, hlm. 53.

<sup>17</sup> Mahruz Ali, *Hukum Pidana Terorisma: Teori dan Praktik*, (Bekasi: Gramata Publishing, 2012), hlm. 83-84.

<sup>18</sup> *Ibid*, hlm. 90.

means that the element of violating the law does not need to be proven because it has automatically been proven by the occurrence of prohibited acts, namely violence or threats of violence.

### 1.3 Political Motives

The third element of this sub-chapter is political motives. Article 1 number 2 of Law No. 5 of 2018 formulates political motives as one of three motives in criminal acts of terrorism, two of which are ideology and security disturbances. In Article 5 of the Law, the crime of terrorism must be considered not a political crime. Meanwhile, political motives can be said to be related to political crimes because their actions are driven by the belief that the order of society or the state or leaders must be changed according to the ideal.

Belief in something that he or she thinks is true breeds radicalism. Radicalism is understood as an inner attitude that reflects beliefs about a truth that is sometimes difficult to understand. Belief about something "right", makes adherents want to realize it in all aspects of life, where life is carried out in accordance with the "right". In the context of criminal acts of terrorism, realize these changes can be done in various ways, such as bomb attacks, kidnappings, murders, sabotage, and other forms of terrorism<sup>19</sup>

According to Black's Law Dictionary, the motive means "something, especially, willful desire, that leads one to act; also termed anterior intent."<sup>20</sup> A motive is an intentional desire, which leads a person to act; can also be called hidden intentions. In Indonesian criminal law, it is possible that only acts of terrorism formulate explicit or explicit motives in the formulation of criminal acts. Because, in general, the motive is not explicitly formulated in the formulation of a crime. However, in the application policy, the motive is used to prove the existence of a subjective element of unlawfulness, or to prove an element of intent in a criminal act.

Regarding this political motive, previously in the formulation of Article 5 of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, it was stated that criminal acts of terrorism were excluded from political crimes, crimes with political motives, and crimes with political goals. The lawmakers considered that if it was not excluded, it would later hamper the extradition process. Now, when the law has been amended, the crime of terrorism is still excluded from political crimes. In the formulation of Article 5 of Law Number 5 of 2018, it is stated that a criminal act of terrorism must be considered not a political crime, and can be extradited or requested for mutual assistance. It can be seen that the legislators still exclude terrorism crimes from political crimes, but now crimes with political motives can be categorized as terrorism crimes.

The above is an interesting problem to be studied in the future when Indonesian Law Number 5 of 2018 excludes terrorism from political crimes. Interesting because maybe Indonesia is the only one that adheres to this principle. It is undeniable that the issue of political crime is very complicated because until now there is no universally accepted definition of political crime/offense. In

<sup>19</sup> Agus H.S. Reskoprodjo, Pujo Widodo, & F.G. Cempaka Timur. 2018. "Pemetaan Latar Belakang Dan Motif Pelaku Tindak Kejahatan Terorisme di Indonesia", *Jurnal Prodi Perang Asimetris Volume 4 Nomor 2 Agustus 2018*, hlm. 20, 2.

<sup>20</sup> Bryan A. Gardner, *Black's Law Dictionary – Ninth Edition*. (West: Thomson Reuters, 2009), hlm. 1110

addition to the problem of definition, extradition difficulties or barriers are one of the reasons. This is because one of the general principles in extradition is the principle of not extradite perpetrators of political crimes.<sup>21</sup>

Regarding the definition of a political crime, there have been several experts who have defined it. Some of them, namely Jan Rummelink. He stated that the difference between political criminals (political crimes) and ordinary criminals (general crimes) can be seen from the motives that control their actions. Perpetrators of political crimes are controlled by altruistic motives or are concerned with other people. This motive is driven by his belief that the order of society or the state or its leaders must be changed according to their ideals. Meanwhile, general criminals are controlled by egoistic motives.<sup>22</sup>

Apart from Jan Rummelink, in addition, it can be seen from the theory in determining political offenses put forward by Hazewinkel Suringa. He mentioned that there are four theories in determining political offenses. The four theories are:<sup>23</sup>

1. Objective theory (Absolute theory), that political crimes are directed against the State and the functioning of State institutions;
2. Subjective theory (relative theory), that in principle all general crimes committed with political goals, backgrounds, and objectives constitute a political crime;
3. Predominant Theory, that theory limits the objective and subjective theory. In this case, note what is dominant from an action. If the dominant crime is a general crime, then the act is not mentioned as a political offense; or
4. Political Incidence Theory, that this theory sees actions that are considered as part of political activity.

In addition, he also considers political criminals to be perpetrators based on belief. In political crimes, the perpetrator has the belief that his views on law and the state are more correct than the views of the state or what is currently in effect.

## 2. Formulation and Elements of Treason in the Criminal Code (KUHP)

The term "treason" comes from the Dutch "*aanslag*", which mean in English is "attack" or "*aanval*" which means "an attack with bad intentions" (*Misdadige Aanranding*). The Indonesian Dictionary or *Kamus Besar Bahasa Indonesia* (KBBI) defines "treason" as a rotten mind; deception, the act (effort) to attack (kill) people, the act (effort) to overthrow the legitimate government. In the Criminal Code, there is no definition of treason. Based on Indonesian criminal law, the crime of treason is regulated in Articles 104-129 of the Criminal Code. However, the provisions of some of its articles (Articles 104, 106, 108, 139a, 139b) directly mention treason. But what is the meaning of treason, is not formulated in the Criminal Code.

The Krupukulit website, as quoted by ELSAM, states that, in some Dutch dictionaries, *aanslag* is defined as *gewelddadige aanval*, which in English means "violent attack". The word *aanslag* has the same meaning as *onslaught* which in English also means "violent attack", "fierce attack", or "any attack that is strong" (vigorous).<sup>24</sup> Treason is generally understood as an evil act or evil conspiracy

<sup>21</sup> Mahrus Ali, *Hukum Pidana Terorisme: Teori dan Praktik*. (Bekasi: Gramata Publishing, 2012), hlm. 31.

<sup>22</sup> Jan Rummelink, *Hukum Pidana*, (Jakarta: Gramedia Pustaka Utama, 2003), hlm. 406.

<sup>23</sup> Lobby Loqman, *Delik Politik di Indonesia*, IND-HILL.

<sup>24</sup> Krupukulit.com, (23 Desember 2015). *Tentang 'Makar'*, dalam <https://krupukulit.com/2015/12/23/tentang-makar/> Diakses pada 18 April 2021.

carried out in secret or in secret to harm or harm others. Thus, the act of treason is an evil act or conspiracy with the intention of killing, resistance to the president and vice president, overthrowing the legitimate government with the intention of attacking or resisting.<sup>25</sup>

M. Sudradjat Bassar stated that treason is defined as an "attack". The interpretation of treason is specifically contained in Article 87 of the Criminal Code, which states that *treason* for an act already exists if the will of the perpetrator has appeared in the form of the beginning of implementation in the sense intended in Article 53 of the Criminal Code. Preparatory actions are not included in the meaning of treason. So what is included in the act of treason is only the act of execution. However, this understanding still does not provide an understanding of treason.

<sup>2</sup> a narrow sense, the crime of treason consists of three forms, namely treason against the President and Vice President, treason against the Territory of the State, and treason against the Government of Indonesia. This study focuses on the formulation of the crime of treason against the territory of the state. The crime of treason committed with the intention of bringing all or part of the country under foreign rule or to separate part of the country's territory, by the legislators has been regulated in Article 106 of the Criminal Code whose formulation in Dutch reads as follows:

*"De aanslag ondernemen met het oogmerk om het grondgebied van den staat geheel of gedeeltelijk onder vreemde heerschappij te brengen of om een deel daarvan afscheiden, wordt gestraft met levenslange gevangennistrif of tijdelijke van ten hoogste twintig jaren."*<sup>26</sup>

Which means: "Treason committed with the intention of bringing all or part of the territory of the state under foreign power or to separate part of the territory of the state shall be punished with imprisonment for life or with imprisonment for a maximum of twenty years."

Broadly speaking, the formulation of the elements of treason as regulated in Article 106 of the Criminal Code is as follows:

- a. Subjective: *met het oogmerk* or with the intention of
- b. Objective: (1) *aanslag* or *treason*; (2) *ondernomen* or which is conducted; (3) *onder vreemde heerschappij te brengen* or bringing under foreign rule; (4) *het grondgebied van den staat* or state territory; (5) *geheel of gedeeltelijk* or in whole or in part; (6) *afschieden* or separate; and (7) *een deel daarvan* or part of the country's territory.

From the two elements above, it can be seen that the subjective element is an element of a crime that looks at the human or person or legal subject. It contains elements of accountability and guilt (*dolus* or *culpa*). While the objective element is an element of a crime that looks at the terms of the act. It contains elements of people's actions; the visible consequences of the act; and the possibility of certain circumstances accompanying the act.

Narrowly, the elements of *treason* in the Article 106 of the Criminal Code can be divided into three forms:

<sup>25</sup> Lembaga Studi dan Advokasi Masyarakat (ELSAM), *Parliamentary Brief: Series #7 – Tindak Pidana Makar Dalam RKUHP*, (Jakarta: Aliansi Nasional Reformasi KUHP, 2016), hlm. 5.

<sup>26</sup> Engelbrecht, *De Wetboeken*, hlm. 1314

## 2.1 Treason or *aanslag*

The following is a further elaboration of the three crimes in question. *First*, *aanslag* or treason. According to P.F.A. Lamintang and Theo Lamintang, the word treason or *aanslag* should not always be interpreted as an act of violence, because what is meant by the word treason in Article 106 of the Criminal Code is actually any action taken by people to harm the legal interests of the state in the form of the intact territory of the state. Prof. Simons is of the opinion that the word treason or *aanslag* in the formulation of a crime in Article 106, namely:

*"Onder aanslag zal ook hier moeten worden verstaan elke handeling waarmee een der hiet omschreven gevolgen is beoogd en die of tot zoodanig gevolg heeft geleid, of als eene poging daartoe kan worden beschouwd."*<sup>27</sup>

Which means: "In this case, treason must also be interpreted as any action carried out with the intention of achieving one of the consequences mentioned in the formulation of the crime; whether that leads to the emergence of such an effect, or which can be considered as a form of experimentation to cause the effect as intended above."

The crime of treason against the territorial integrity of the state does not need to be completed, because according to the provisions stipulated in Article 87 of the Criminal Code, treason itself is considered to have occurred, namely after the intent of the perpetrator (to bring all or part of the territory of the state under foreign rule or to separate part of the territory of the country) becomes manifest in a form of initial implementation as referred to in Article 53 paragraph (1) of the Criminal Code. That, "Attempting to commit a crime is punishable if the intention to commit it has been proven from the beginning of the execution, and the non-completion of the execution, is not solely due to one's own will."

## 2.2 Which is conducted or *ondernomen*

*Second*, *ondernomen* or which is conducted (deeds). The start of the implementation as referred to above is realized by (actions) being carried out or *ondernomen*. Prof. Noyon and Prof. Langemeijer stated that the *ondernomen* element or what was carried out in the formulation of the criminal act of treason, Article 106 shows that the person who commits treason must intend to carry out an action that can be qualified as an act to bring all or part of the territory of the country under foreign rule or as an act to separate part of the country.

Thus, the object of the treason in Article 106 of the Criminal Code is the territorial integrity of the state. According to the legislators, the territorial integrity of the country can be jeopardized in two ways, namely:

- a. By bringing all or part of the territory of the country under foreign rule, and
- b. By separating parts of the country.

The territory of the state as referred to is the territory of the State of Indonesia which is regulated in Law No. 43 of 2008 concerning the Territory of the State. Article 1 paragraph (1) of the Law states that, "The Territory of the Unitary State of the Republic of Indonesia, hereinafter referred to as the State Territory, is one of the elements of the state which constitutes a unitary area of land, inland waters, archipelagic waters, and territorial sea along with the basic the sea and the land below it, as well as the air space above it, including all the sources of wealth

<sup>27</sup> Engelbrecht, *Op.cit.* hlm. 388.

contained therein." Furthermore, Article 7 states that "The State of Indonesia has sovereign rights and other rights in the Jurisdiction Area whose implementation is in accordance with statutory regulations and international law." In the end, Prof. Noyon and Prof. Langemeijer argue that the act of turning a part of the territory of a state into an independent state must be interpreted as bringing part of the territory of the state under foreign rule. Likewise with the act of separating part of the country's territory.

### 2.3 With intention of or *met het oogmerk*

By the *third*, with the intention of or *met het oogmerk*. The word "with intention of" or *met het oogmerk* in the formulation of a crime regulated in Article 106 of the Criminal Code is defined as the personal intention or subjective intention of the perpetrator, or it can also be said, the element with intent must be interpreted in a limited way, namely solely as "*opzet als oogmerk*" or "intent as purpose." If the two elements mentioned above are objective elements of the treason, then "with intention of" is a subjective element, namely an element that is inherent in the mind of the perpetrator of treason.

If it is related to the context of criminal responsibility, then the element of "with intention of" can be categorized as a type of "intentional as intent". This is in line with what was previously described above that, *met het oogmerk* must be interpreted in a limited way, namely solely as *opzet als oogmerk* or intentional as intent. Intentional as intent or *opzet als oogmerk* is intention to reach the purposes. According to Prof. Eddy Hiariej, the means of intentional as the intent is between a person's motivation to do an act, the action and its consequences actually materialize. He added that a person's motivation greatly influences his actions (*affectio tua nomen imponit operi tuo*).<sup>28</sup>

Regarding the "intention", some scholars argue that the intention in relation to the attempt is nothing but the same as intentionality (either intentionality as an intention or purpose; intentionality as a certainty; or intentionality as a possibility).<sup>29</sup>

From the discussion above, it can be seen that there is a difference between the crime of terrorism and the crime of treason against the territory of the State. Briefly, the comparison of the two crimes can be seen in Table 2. below.

**Table 2. Comparison of Terrorism and Treason in Indonesian Criminal Law**

No.	Point of Comparison	Terrorism	Treason (against sovereignty of States territory)
1.	Legal arrangement	- UU RI No. 9 Tahun 2013 tentang Pencegahan dan Pemberantasan Pendanaan Tindak Pidana Terorisme; - UU RI No. 5 Tahun 2018 tentang	- UU RI No. 1 Tahun 1946 tentang Kitab Undang-Undang Hukum Pidana

<sup>28</sup> Eddy Hiariej, *Prinsip-Prinsip Hukum Pidana*, Ed. Revisi, (Yogyakarta: Cahaya Atma Pustaka, 2016), hlm. 172-123.

<sup>29</sup> Felicia Setyawati Suwarsono. (2017). Perbuatan Makar Menurut Pasal 107 Kitab Undang-Undang Hukum Pidana. *Jurnal Lex Privatum, Volume V, Nomor 9, November 2017*. Hlm: 162-170, 162.

		Pemberantasan Tindak Pidana Terorisme.	
2.	Element of crimes	- Every person - Violence or threat violence - Has three motives: political, ideology, and security disturbance.	- Treason (against sovereignty of States territory) - Which is conducted - With intention of
3.	Criminal law reform	- Stated in Chapter XXXIV on Special Crimes, Part Two on Terrorism Crimes, Articles 600-602.	- Stated in Second Book of Chapter I concerning Crimes Against State Security. In particular, treason against the territory of the Republic of Indonesia is regulated in paragraph 2, treason against the Unitary State of the Republic of Indonesia, Article 192.

\*Source: Data and materials are processed by the author, 2021.

### 3. Re-criminalization of criminal acts by KKB as a terrorism offenses

Beginning this last sub-chapter, it is important to first find out why the government uses the term Armed Criminal Group or *Kelompok Kriminal Bersenjata* (KKB) for a group of people who commit violence or armed violence in Papua. Fahmi Alfansi P. Pane in his article stated that the term KKB reflects the public communication strategy of the government and the police, as well as defines security problems in Papua due to the existence of organizations that violate criminal law (criminal acts) by possessing and using weapons illegally.<sup>30</sup> Meanwhile, according to the ICJR and ELSAM institutions in their press release, they stated that, although the identification of the intended KKB is unclear and has the potential to sacrifice civilians, what is seen as a KKB group is the West Papua National Liberation Army or *Tentara Pembebasan Nasional Papua Barat* (TPNPB) and the Free Papua Organization or *Organisasi Papua Merdeka* (OPM).<sup>31</sup>

In this subchapter, the author uses the term re-criminalization. If criminalization is the process of turning an act that was not previously a criminal act into a criminal act, then re-criminalization is the process of redefining and recategorizing a criminal act into a form of a certain criminal act. In the case

<sup>30</sup> Republika.co.id. Fahmi Alfansi P. Pane, "Mendefinisikan OPM dan KKB" (6 Desember 2018). Lihat dalam <https://www.republika.co.id/berita/pjad4n440/mendefinisikan-opm-dan-kkb>. Diakses pada 4 Mei 2021.

<sup>31</sup> ICJR.or.id. 2021. [Siaran Pers] "ICJR dan ELSAM: Secara Pidana, Penggunaan UU Terorisme untuk KKB di Papua Akan Menimbulkan Banyak Masalah" (2 Mei 2021). Lihat dalam <https://icjr.or.id/icjr-dan-elsam-secara-pidana-penggunaan-uu-terorisme-untuk-kkb-di-papua-akan-menimbulkan-banyak-masalah/>. Diakses pada 4 Mei 2021. Lihat juga [Siaran Pers] "Elsam dan ICJR: Penetapan KKB sebagai Teroris Tidak Tepat dan Membahayakan Keselamatan Warga Sipil di Papua" (2 Mei 2021), dalam <https://icjr.or.id/siaran-pers-elsam-dan-icjr-penetapan-kkb-sebagai-teroris-tidak-tepat-dan-membahayakan-keselamatan-warga-sipil-di-papua/>. Diakses pada 4 Mei 2021.

mentioned above, the acts of violence that have been carried out by the KKB as a form of ordinary crime were later redefined and categorized as a form of terrorism offenses.

Referring to the statement of Komjen Pol. Boy Rafli Amar, Chief of the National Counter-Terrorism Agency, there are two reasons underlying the determination of the KKB as a terrorist group/organization, namely:

- a. Based on UN Security Council Resolution No. 1373 (2001).
- b. The fulfillment of political motives, ideology, and security disturbances.

First, internationally, every country has the right to classify a group into a terrorist list. The determination of an organization/group into the List of Suspected Terrorists and Terrorist Organizations is based on UN Security Council Resolution no. 1373 (2001) and refers to the Listing Procedures and Guidelines of the United Nations Committee on the implementation of United Nations Security Council Resolutions No. 1267 (1999), 1989 (2011), and 2253 (2015).<sup>32</sup> Second, nationally, this provision is part of the implementation of Law Number 9 of 2013 concerning Prevention and Eradication of the Financing of Terrorism Crimes, which is the implementation of the international recommendations of The Financial Action Task Force (FATF) 40 Recommendations.<sup>33</sup> In addition, it has been mentioned above that political motives, ideology, and security disturbances are also the basis for determining organizations/groups as terrorists. The three motives are motives for committing criminal acts of terrorism as stated in the Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism.

By referring to the second reason mentioned above, briefly, it can be said that acts of violence and or armed violence carried out by the KKB with political motives are based on the ideology of ethnonationalism which has created a security disturbance for both the community and the territorial sovereignty of the Republic of Indonesia. Therefore, below is an analysis of the relationship between violence and/or armed violence with political motives, ideologies, and security disturbances carried out by the KKB so that the Indonesian Government designated the group as a terrorist group.

First, political motives. The chief of the Indonesian National Counter-Terrorism Agency (BNPT) claimed that the armed criminal group was the West Papua National Liberation Army (TPNPB-OPM), which has now joined the United Liberation Movement for West Papua (ULMWP) led by Benny Wenda. It was also stated that currently there are five KKB groups targeted by law enforcement, namely the Lekagak Telenggen Group, the Murib Military Group, the Egianus Kogoya Group, the Goliath Taboni Group, and the Sabinus Waker Group. All of these are in the mountains.<sup>34</sup> In political terminology, the actions carried out by the TPNPB-OPM are referred to as separatism, namely attempts to separate themselves from a country

<sup>32</sup> Pusat Pelaporan Analisis Transaksi Keuangan. [www.pptk.go.id](http://www.pptk.go.id) (5 Mei 2021). Prosedur Listing & Delisting. Lihat <https://www.pptk.go.id/link/read/559/prosedur-listing-delisting.html>. Diakses pada 15 Juni 2021.

<sup>33</sup> Financial Action Task Force, The FATF revised the 40 and the IX Recommendations. The revision of the FATF Recommendation was adopted and published in February 2012. See [www.fatf-gafi.org/recommendations](http://www.fatf-gafi.org/recommendations) for the 2012 FATF Recommendations.

<sup>34</sup> Egy Adyatama. (27 Mei 2021). *BNPT Sebut 5 KKB di Papua Masuk Daftar Terduga Teroris, Siapa Saja Mereka?*. Lihat Tempo.co. <https://nasional.tempo.co/read/1466281/bnpt-sebut-5-kkb-di-papua-masuk-daftar-terduga-teroris-siapa-saja-mereka>. Diakses pada 15 Juni 2021.

or state. The act of separatism intends to separate themselves from and/or merge with other countries.<sup>35</sup>

Based on the statement above, it can be said that the political motive of the violent acts and or armed violence carried out by the armed criminal group was to separate themselves or liberate Papua from the Unitary State of the Republic of Indonesia. This can be said as part of a political act. If referring to the Political Incidence theory put forward by Hazewinkel Suringa, by looking at the actions that are considered as part of political activity, then what the KKB does is part of political activities. In addition to violence and or armed violence, political motives are manifested in various forms of propaganda covering four non-traditional issues, namely human rights, democracy, environmental damage, and racial equality and background. The four issues were carried out through three channels, namely online media, political discussions and campaigns, and personal approaches to strategic figures in the Melanesian Spearhead Group (MSG).<sup>36</sup> MSG is a South Pacific sub-regional organization synonymous with the Melanesian race-based in Port Vila, Vanuatu.<sup>37</sup>

Second, ideological motives. Refer to Oxford Advanced Learner's Dictionary, ideology is a set of ideas or beliefs that form the basis of an economic or political theory or that are held by a particular groups or person.<sup>38</sup> According to the Merriam-Webster Dictionary, ideology is (a) a manner of the content of thinking characteristic of an individual, group, or culture; (b) the integrated assertions, theories and aims that constitute a sociopolitical program; and (c) a systematic body of concepts especially about human life or culture.<sup>39</sup> In addition, there are also some experts who define ideology, such as Martin Sileger who considers ideology as a belief system; Alvin Gouldner who called it a national project; and Paul Hirst who assesses ideology as a social relation.<sup>40</sup> However, from the definitions of ideology mentioned above, it seems that they are still less relevant to the context of the discussion of ideological motives by armed criminal groups. Therefore, it seems appropriate if the definition of ideology refers to the definition according to Mubyarto. According to him, ideology is a number of doctrines, beliefs, and symbols of a group of people or nations that serve as guidelines and guidelines for work (or struggle) to achieve the goals of that society or nation.<sup>41</sup>

<sup>35</sup> Erdianto Effendi. (2013). Tindak Pidana Makar Terhadap Keamanan dan Keutuhan Wilayah Negara Dihubungkan dengan Perlindungan Hak Asasi Manusia Pelaku. (Disertasi). Universitas Padjajaran, Bandung. Hlm. 9.

<sup>36</sup> Gia Noor Syah Putra, Tri Legionosuko, & Adnan Madjid. (2019). Strategi Pemerintah Indonesia Terhadap Negara-Negara Anggota Melanesian Spearhead Group (MSG) dalam Menghadapi Propaganda Organisasi Papua Merdeka (OPM): Studi Kasus Negara Republik Vanuatu. *Jurnal Peperangan Asimetris*, Volume 5 (2) Agustus 2019. Hlm: 31-44, 31.

<sup>37</sup> *Ibid*, hlm. 37-38.

<sup>38</sup> Oxford Advanced Learner's Dictionary, New Edition, (Oxford University Press, 1995), hlm. 589.

<sup>39</sup> Merriam-Webster. *Ideology*. Lihat dalam <https://www.merriam-webster.com/dictionary/ideology#other-words>. Diakses pada 19 Juni 2021.

<sup>40</sup> Nurul Fadilah. (2019). Tantangan dan Penguatan Ideologi Pancasila Dalam Menghadapi Era Revolusi Industri 4.0. *Journal of Digital Education, Communication, and Arts*, Volume 2 (2), September 2019. Hlm: 66-78, 68.

<sup>41</sup> Mubyarto (1991) dalam Gayatri Dyah Suprobawati. (2020). Penguatan Pancasila Melalui Civic Literacy Sebagai Ideologi Pemersatu Bangsa di Era Pandemi Covid-19. *Jurnal Majelis Edisi 04, Agustus 2020*. Hlm: 211-229, 217.

Previously, it should be borne in mind that the laws and regulations in general and Indonesian criminal law, in particular, have regulated the subject of forbidden ideologies. Arrangements for this matter began to be regulated in the Provisional People's Consultative Assembly Decree (TAP-MPRS) Number XXX/2/RS/1966 concerning the Dissolution of the Indonesian Communist Party, to Law of the Republic of Indonesia Number 27 of 1999 concerning Amendments to the Criminal Code Related to Crimes. Against National Security. These ideologies are the ideology of Communism, Marxism, Leninism, or the like. However, in the context of the crimes committed by the KKB, the three forbidden ideologies or the like were not their ideological motives in carrying out the struggle to separate themselves from Indonesia.

In the case of this armed criminal group, the doctrine that underlies their struggle is ethnonationalism. An ideological construction that emerged when elements of nationalism (Indonesian-ness) began to fade on the one hand and the increase of regional essential-primordialism elements (Papuan-ness) on the other. In general, Papuan ethnonationalism arises due to several factors. According to Margaretha Hanita, there are five root causes (factors), namely: Melanesian roots; the roots of local religions; root of blood ties; the roots of the formation of the governmental and political elite in the Dutch East Indies era; and the root feeling of being deprived/uprooted from their own land/economic exploitation. He also said that Papuan ethnonationalism was transformed into Papuan Nationalism which was formed by the Dutch East Indies Government which was intended so that West Papua would not become part of the Republic of Indonesia and become an independent country in the decolonization process carried out by the Dutch in West Papua. However, after Indonesia succeeded in taking over West Papua, Papuan Nationalism has transformed again into Ethnonationalism whose symptoms have strengthened in the last two decades. This symptom of ethnonationalism strengthens the resilience of the Papuan independence movement on the one hand and weakens Indonesia's national security on the other.<sup>42</sup>

In addition, in a study conducted over five years (2010-2015)<sup>43</sup> on the construction of nationalism by Papuan students in Surabaya corroborates several previous studies and provides justification for issues of separatism in Papua. The study found four important things that made Papuan ethnonationalism stronger. *First*, the essential-primordial elements as Papuan identity where the change of the name Irian Jaya to Papua is considered as an appreciation of the authenticity of Papua; *second*, the construction of the factors that encourage the development of Papuan nationalism, where there are views about the colonization of the Javanese against Papua through the transmigration program which gave birth to the dichotomy of indigenous and non-native Papuans; *third*, the process of forming Papuan nationalism can be seen in the development of Papuan student organizations fighting for the Papuan people, in which the process has developed into a radical rejection of development from the central government; and *fourth*,

<sup>42</sup> Margaretha Hanita. (2019). Evolusi dan Adaptasi Gerakan Kebebasan Orang Papua: Dari Nasionalisme ke Etnonasionalisme. *Jurnal Keamanan Nasional Volume V, Nomor 2, November 2019*. Hlm: 111-139, 111-112.

<sup>43</sup> Darsono. (2015). Konstruksi Nasionalisme pada Mahasiswa Papua di Surabaya dalam Perspektif Multikulturalisme. (Disertasi). Ilmu Sosial FISIP Universitas Airlangga.

Papuan nationalism in relation to Indonesian nationalism is defined as three demands for the Earth of Cendrawasih, namely (1) cultural and political reorientation; (2) recognition of Papua's history and identity; and (3) development by and for the Papuan people for the sake of economic prosperity and the development of a modern Papuan sociocultural atmosphere.

Thus, the struggle of armed criminal groups carried out in the form of violence and or armed violence is based on the ideological motive of ethnonationalism which grows from five roots (factors), namely: Melanesian roots; the roots of local religions; root of blood ties; the roots of the formation of the governmental and political elite in the Dutch East Indies era; and the root feeling of being deprived/uprooted from their own land/economic exploitation. These five roots were then strengthened due to four important factors, namely: the essential-primordial elements as Papuan identity, the construction of the factors that encourage the development of Papuan nationalism, the process of forming Papuan nationalism as seen in the development of Papuan student organizations fighting for the Papuan people, and Papuan nationalism in relation to Indonesian nationalism is interpreted as three demands for the Earth of Cendrawasih.

*Third*, the motive for security disturbances. The existence of political motives and or ideological motives makes the struggle by the KKB carried out in various ways. One of them is through the use of violence and/or armed violence. This causes security disturbances and creates an atmosphere of terror in society. This security disturbance can be seen from several attacks or shootings, both against security forces (TNI and Polri) and civilians. The Papuan Regional Police noted that from January 2021 to April, KKB had committed sixteen times of violence and/or armed violence. The victims were recorded as civilians, teachers, and motorcycle taxi drivers, as well as security forces (TNI and Polri).<sup>44</sup> Two examples that can be used as references are the shooting of a civilian in June 2021, and the death of an Army General and a member of the Brimob-Polri in a shootout that took place in April 2021.

Papua is one of the areas that are a priority for development by the Government of Indonesia. However, efforts to realize it is not easy. This is because the Indonesian government is faced with security disturbances triggered by various conflicts that occur between security officers (TNI and Polri) with the community and armed criminal groups (KKB). The existence of these security disturbances can hinder development in Papua which will have an impact on various aspects of growth in Papua, ranging from the economic, education, health aspects, to the provision of facilities and infrastructure for the social mobility of the Papuan people. In 2019, there were twenty-one shootouts between security forces (TNI and Polri) and armed criminal groups (KKB), which killed nine TNI soldiers and two Polri personnel, as well as ten civilians. This level of violence continued until 2020, where there were one hundred incidents of violence against civilians, with the death toll

<sup>44</sup> Kompas.com. Dhias Suwandi. (28 April 2021). Catatan Kekerasan Bersenjata KKB, Penembakan Bharatu I Komand Hingga Kepala BIN Papua. Lihat dalam <https://regional.kompas.com/read/2021/04/28/175209778/catatan-kekerasan-bersenjata-kkb-penembakan-bharatu-i-komang-hingga-kepala?page=all>. Diakses pada 21 Juni 2021.

reaching fifty-seven people. Below is a comparative note of conflict events in Papua and West Papua throughout 2019 and 2020.<sup>45</sup>

**Table 1.3. Number of Conflict Events in Papua and West Papua, 2019 dan 2020**

Papuan Conflict	January 1 <sup>st</sup> - December 31 <sup>st</sup> 2019	January 1 <sup>st</sup> - Desember 26 <sup>th</sup> 2020
Conflict events	96	100
- Battles	27	40
- Riots	19	22
- Violence against civilian	50	38
Fatalities	145	57

*\*Source: ACLED, 2020. Data processed by Tangguh Chairil and Wendsney A. Sadi.*

The data above shows that violence against civilians is one of the conflict events with the highest number (50 times) in 2019, although then it has decreased to 38 times in 2020. This has not been added to the records held by the Papuan Police in the period January 2021 until April with the number of violence perpetrated by armed criminal groups as many as sixteen times. With these records, as well as considering the smoothness and security in the development process of the Papua region, the government has taken firm steps by establishing an armed criminal group as a terrorist group/organization.

#### D. SIMPULAN

Berdasarkan Based on the formulation of the problem that has been discussed and analyzed above, the authors conclude that crimes committed by armed criminal groups (KKB) in Papua can be regarded as terrorism offenses. Therefore, the policy of the Indonesian government to designate them as a terrorist group is the right policy. Acts of violence and or armed violence carried out by armed criminal groups have political motives, ideological motives, and security disturbance motives. Meanwhile, according to the author, the policy taken by the Government of Indonesia is a re-criminalization, which mean the process of redefining and recategorizing a criminal act into a form of a certain criminal act.

In its regulation in Indonesia, Indonesian criminal law distinguishes the terrorism offenses and treason offenses with different formulations and elements. The treason offenses against the territory of the State of Indonesia is regulated in Article 106 of the Criminal Code, while the terrorism offenses is regulated in Indonesian Law Number 5 of 2018. In the concept of reforming the Indonesian criminal law (National Criminal Code), the two are also distinguished in a separate chapter. The terrorism offenses is regulated in Chapter XXXIV on Special Crimes, while the treason offenses against the territory of the State is regulated in Chapter I concerning Crimes Against State Security.

<sup>45</sup> Armed Conflict Location and Event Data Project. Lihat dalam <https://acleddata.com/>. Dakses pada 21 Juni 2021. Lihat juga dalam Tangguh Chairil dan Wendsney A. Sadi. (Oktober 2020). Konflik Papua: Pemerintah Perlu Mengubah Pendekatan Keamanan dengan Pendekatan Humanis. *Center for Business and Diplomatic Studies (CBDS) Commentaries, Departemen of Internasional Relations, Bina Nusantara University, Oktober 2020*. Hlm: 1-5, 2-3.

Regarding the form or type of terrorism group, this group can be categorized as an ethnonationalism separatist terrorism group or ethno/national separatist terrorism (ENS). Armed criminal groups with an Ethno-nationalist ideology with political motives separate themselves/as sovereign territory of the Republic of Indonesia through the use of violence and or armed violence, which causes security disturbances, both for the community and for the territorial sovereignty of the Unitary State of the Republic of Indonesia. With the determination of armed criminal groups (KKB) as terrorist groups/organizations, law enforcement officers can easily carry out countermeasures against crimes committed by these groups. Countermeasures can be carried out through two approaches, namely: a soft approach and or a hard approach. These two approaches will later be coordinated by the Indonesian National Counterterrorism Agency (BNPT RI).

Through this research, several problems were found which can then be used as problem formulations in further research with the object of studying terrorism, treason, and or armed criminal groups. Some of these problems are: First, regarding the comparison of law enforcement against the crime of treason in Indonesia with other countries. Second, the issue of whether the ideology of ethnonationalism can be used as a forbidden ideology in the concept of nationalism of the Unitary State of the Republic of Indonesia. Third, regarding the paradigm shift in law enforcement against criminal acts of terrorism in Indonesia. Fourth, the category of separatist groups which can be categorized as ethno/national separatist terrorism groups. Fifth, how the Indonesian criminal law regulates the policy of re-criminalizing a crime.

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