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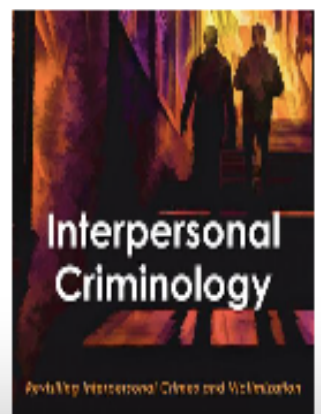
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Unprocedural Designation of the Papuan Armed Criminal Groups as Terrorist Groups

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Abstract

The designation of the Papuan Armed Criminal Groups (ACGs) as terrorist groups by the coordinating minister for Political, Legal, and Security Affairs has sparked debate in Indonesia, and other nations. This study aims to investigate whether the classification of the Papuan ACGs as terrorist groups is appropriate according to the applicable mechanism in Indonesia law. The study also examined the correlation and coherence between Papuan ACGs' acts and the elements of terrorism as defined by Indonesia's Anti-Terror Law. A doctrinal legal research methodology was employed to examine these issues using statutes approach and conceptual approach. The results show that the actions committed by the Papuan ACGs have fulfilled the elements of the crime of terrorism as stipulated in Article 6 of Indonesia's Anti-Terror Law. Following the presumption of innocence principle, this result must be proven through a fair trial by prioritizing the universal principle of presumption of

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innocence. However, regarding the Government of Indonesia's designation of the Papuan ACGs as terrorist groups on April 29, 2021, the designation is procedurally flawed due to the absence of a decision from the Central Jakarta District Court. Article 27 of Indonesia's Terrorism Financing Law stipulates that the Indonesian Government can issue a list of terrorist organizations following a decision by the Central Jakarta District Court. Consequently, if the Central Jakarta District Court (judicial power) has not determined Papuan ACGs to be terrorist groups, the government's (executive power) designation is non-binding and non-procedural.

Keywords: Armed Criminal Groups, Criminal Law, Designation of Terrorist Groups, Indonesia Anti-Terror Law, Terrorism.

Introduction

The Bali Bombing incident, which occurred on the 12th of October 2002, is considered as the most pivotal terrorist attack in Indonesia, first of its kind (Suard, 2020). The Indonesian authority issued several regulations to curb terrorism after this incident (Mardenis, 2011). However, despite all legislations on terrorism which have been created and implemented since 2002, the punishment measures do not appear to prevent potential terrorists from committing crimes. Stanislaus Riyanta (Imam Fahlevi, 2022) reported that Indonesia recorded 553 terrorist acts from 2000 to 2021. According to the Indonesian National Police Report, there were 232 suspected terrorists in 2020, which increased to 370 terrorism suspects, a 59.48% rise from the previous year (Annur, 2022).

Over the last few years, several perpetrators have been sentenced to imprisonments and groups and organizations have been labelled as terrorist groups officially, such as *Jemaah Islamiyah*, *Jemaah Anshorut Tauhid*, and *Mujahidin Indonesia Timur* (Napang, Marthen and Rohman, Syaiful, 2021). The Armed Criminal Groups (hereinafter referred to as ACGs) in Papua, commonly known as "*Kelompok Kriminal Bersenjata*" (KKB), is one of the organizations labeled as terrorist groups by the government (Matildha, 2022). The government's decision is based on the major crimes committed by the Papuan ACGs, which include the damage of public infrastructure, intimidation of the community, and murder of locals until the head of the Papuan Regional State Intelligence Agency (Kabinda) was shot dead. Following the provisions of Law Number 5 of 2018 Concerning Amendments to Law Number 15 of 2003 Concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 Concerning Eradication of Criminal Acts of Terrorism into Law (hence referred to as the Anti-Terror Law), the magnitude of various actions that generate fear and insecurity can be categorized as terrorist acts. However, despite these initiatives, the issue of terrorism has still not been resolved, which necessitates the government to adopt a stronger resolve in order to curb terrorism and provide victims with justice and security.

The designation of Papuan ACGs as a terrorist group can be examined considering Article 27, paragraph 1 of Law Number 9 of 2013 on the Prevention and Eradication of Criminal Acts of Terrorism Financing (hence referred to as Terrorism Financing Law), which regulates the mechanism of listing the identity of persons or corporations as terrorists based on the decision of the Central Jakarta District Court. The decision was based on a request submitted by the Chief of the Indonesian National Police. Apart from being regulated through Terrorism Financing Law, the

procedure for including organizations on the list of suspected terrorists in Indonesia is also regulated through a Joint Regulation between the Chief Justice of the Supreme Court, the Minister of Foreign Affairs, the Head of the National Police of the Republic of Indonesia, the Head of the National Counterterrorism Agency, and the Head of the Center for Financial Transaction Reporting and Analysis (Latifa, 2018).

A need is however felt to investigate whether the classification of the Papuan ACGs as terrorist groups was procedural under Indonesian laws. This investigation is very important since the designation of the Papuan ACGs as terrorist groups by the coordinating minister for Political, Legal, and Security Affairs has sparked debate, both in the context of Indonesia and globally. The minister stated that the designation decision was based on Article 1 point 2 of the Anti-Terror Law. Even though the minister looked confident in such a designation, the remark has attracted both pros and cons reactions from academics and practitioners. There are officials who both agree and disagree with the decision. Multiple perspectives are employed to justify the opinions. From a legal-scientific standpoint, it is unquestionably vital to clarify this contested issue. Moreover, existing studies have so far focus only on social, political, and economic problems in Papua (Setiarsih & Suharno, 2018; Wirawan, Farendra, & Lintang, 2022) while studies on violence, criminal acts, including the possibility of terrorism in Papua are lacking.

The current study observes these contested issues, particularly from Indonesia criminal law perspective. The next section of this study provides literature review and theoretical framework consisting of (1) Overview of the Designation of the Papuan ACGs as Terrorist Groups; (2) a short comparison of the acts between the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka, the Irish Republican Army (the IRA) in Northern Ireland, and the Papuan ACG in Indonesia; (3) The Crime of Terrorism under Article 6 and 7 of the Anti-Terror Law; and (4) The Mechanism of Listing a Group as a Terrorist Group in Indonesia. The following sections present the methodology, findings, discussion, conclusion, recommendations, and limitations of the study.

Literature Review and Theoretical Framework

Overview of the Designation of the Papuan ACGs as Terrorist Groups

There are studies which conclude that the Papuan ACGs committed terror and violence, and hence it is justified to list them as a terrorist group (Heriyanto, 2021; Napang & Rohman, 2021; Pratama & Hafiz, 2021). On the other hand, other studies argue that ACGs should not be listed as a terrorist group because their acts do not amount to terrorism (Effendi & Panjaitan, 2021; Fakihudin, 2021; Taskarina & Veronika, 2021). Napang and Rohman (2021), for example, consider Papuan ACGs as terrorist groups because of their political, ideological, and security motives related to state and citizen disturbances. Pratama and Hafiz (2021) and Heriyanto (2021), too, are argue that the crimes committed by ACGs in Papua, such as the murder of civilians and the destruction of properties, are classified as terrorist acts. In addition, Putri et al. (2022) concluded that the Indonesian Government's labelling Papuan ACGs as terrorist organization is justified since they have committed violations of human rights.

On the other hand, a study conducted by the Commission for the Disappeared and Victims of Violence (Indonesian: *Komisi Untuk Orang Hilang dan Korban*

TindakKekerasan or Kontras) found that “the State cannot classify the ACG and organizations like Free Papua Movement (FPM)/ or *Organisasi Papua Merdeka* (OPM) as terrorist groups” (Commission for Missing Persons and Victims of Violence, 2021). The study argued that the elements of the crime of terrorism outlined in the Anti-Terror Law were not fully met. Effendi and Panjaitan (2021) agree with the findings and investigation of the Commission, and concluded that the designation of the ACGs in Papua as a terrorist group was inappropriate because it was not fulfilling the elements contained in the Anti-Terror Law in addition to the historical background (Effendi & Panjaitan, 2021). This is also consistent with the findings of Taskarina and Veronika (2021), who concluded that the embedding of terrorist groups within the Papuan ACGs is primarily political in nature due to the complexity and the prolonged conflict.

The economic and political dynamics underlying the actions of the authorities regarding the labelling of the Papuan ACGs as terrorist groups have impeded the route to conflict resolution and escalated new tensions. Fakihudin (2021) revealed that the state could not label the Papuan ACGs as a terrorist group because the activities carried out with the normative definition elements did not entirely correspond to terrorism. He noted that the definition of “KKB” (*Kelompok Kriminal Bersenjata*) and who are included in the “KKB” are unclear. Therefore, the designation of the Papuan ACG’s as a terrorist group has institutionalized racism and perpetuated discrimination against the Papuan people in general (Fakihudin, 2021).

These divergent views about the legal status of the designation of the Papuan ACGs as a terrorist group show that the issue is highly contested and debatable in the existing literature. Therefore, further investigation is required. The current study focusses to discuss such legal issue based on Indonesia’s laws, specifically from Indonesia Anti-Terror Law and Indonesia Terrorism Financing Law.

Comparison between the Papuan ACGs with the LTTE and the IRA

The Papuan ACGs are often compared with the LTTE and IRA which have also been labelled as terrorist groups in their respective countries, as acts of violence committed by the Papuan ACGs is quite similar to the “dissident terrorism” demonstrated by the other two organizations. The Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka and the Irish Republican Army (IRA) in the United Kingdom have been labeled as separatist or terrorist groups (Nadarajah & Sriskandarajah, 2013). In a policy paper published recently by the Home Office of the United Kingdom, the Irish Republican Army was listed as one of the proscribed groups linked to Northern Ireland related terrorism (UK Govt Home Office, 2023). The international community has also acknowledged that these two groups are terrorist organizations and that their activities qualify terrorism (Dnes & Brownlow, 2017; Nadarajah & Sriskandarajah, 2013).

The LTTE are an ethnically motivated insurgency organization demanding an independent Tamil state in southeast Sri Lanka. Velupillai Prabhakaran founded the LTTE in 1976 and conducted a guerilla ceasefire against the Sri Lankan government. The Black Tigers, a suicide bomber section under the LTTE, founded in 1987, carried out hundreds of suicide bombings, and was rated as the most well-known division within the group. The LTTE also conducted de facto governance by assembling police forces, building schools, and even creating courts. The LTTE committed suicide terrorism, and even became involved in a battle with the Sri Lankan armed forces (Lutz

& Lutz, 2011). According to an expert from the Institute for Counter-Terrorism in Israel in 2000, the LTTE was the most effective suicide terrorist organization (Forest, 2007). Based on this realization, the LTTE were designated as a terrorist organization and based on the Judgment of the General Court (Sixth Chamber, Extended Composition), 16 October 2014 LTTE v Council of the European Union. The LTTE carried out acts of violence through suicide bombings. Thenmuli Rajiratnam, a member of the LTTE, carried out the suicide bombing that killed Indian Prime Minister Rajiv Gandhi. In 2009, to finish the war, the Sri Lankan government mounted an all-out offensive by assassinating Velupilai Prabhakaran, the leader of the LTTE, which marked the Sri Lankan government's victory (Gayatri, Priadarsini, & Nugraha, 2018).

The Irish Republican Army (IRA) is another terrorist group in Northern Ireland, whose political ideologies opposed the British Empire in an endeavor to achieve Irish independence from the United Kingdom. The IRA carried out this opposition through various attacks, including ceasefires and bombs (Lutz & Lutz, 2011). The IRA was therefore designated as a terrorist group under the Prevention of Terrorism (Temporary Provisions) Act of 1974. Like the LTTE, besides assassinations, the IRA carried out a number of bomb assaults (Cowell-Meyers, 2023). The first tragedy occurred on March 4, 2001, when a cab bomb exploded in front of the entrance to the BBC broadcasting headquarters. The action lasted until a bomb exploded in Ealing on August 2, 2001, injuring eleven people (Tyson, 2021).

The Papuan ACGs' actions, however, did not take the form of suicide bombings, but demonstrated a distinct attack pattern. All the three organizations have displayed attacks on state apparatuses (military and police) and civilians. Initially, the Papuan ACGs targeted troops and police officers. However, recent activities have demonstrated that civilians have also become victims of this group attacks. Papua and West Papua Local Police recorded that there were 23 incidents in 2019 alone using weapons. It caused death of 11 civilians, 10 military and police officers (Ramandey, 2019). Major General Posthumous I Gusti Putu Danny Karya Nugraha, Head of the Papua Regional State Intelligence Agency (Kabinda), was shot by the Papuan ACGs on April 25, 2021, in Beoga, Puncak Regency, Papua (Pratama & Hafiz, 2021).

Despite their differences in strategies and tactical techniques, all three organizations seek to establish an independent and sovereign state. They are motivated by a struggle for separation. The IRA's objective is the separation of Ireland from Great Britain (Aly, 2011) and the LTTE's objective is pushing for independence from Sri Lanka (Lutz & Lutz, 2011). Similarly, the Papuan ACGs' goal is the separation of Papua from Indonesia (Kusuma et al., 2022). Another similarity in the three organizations is that the acts of violence committed by three groups can be said to be part of dissident terrorism, or terrorism from below, in contrast to state terrorism or terrorism from above. According to Aly (2011) dissident terrorism is "an act of violence by people against their government". He argued that "any kind of terrorism that is perpetrated by non-state actors is dissident terrorism" (Aly, 2011).

The Crime of Terrorism Under Article 6 And 7 Of the Anti-Terror Law

In line with the context of this study, investigation focuses on acts that constitute terrorism under the Anti-Terror Law. There are some acts categorised as terrorism under the Anti-Terror Law, but this law does not define what terrorism is. Yet, Article

1 (1) states that the crime of terrorism is any act that fulfils the elements of a crime under the Anti-Terror Law. It is stated in Chapter III of the Anti-Terror Law on the “Criminal Act of Terrorism” that covers articles 6 to 19. Nonetheless, the acts of terrorism are set out from Articles 6 to 16, while Articles 17 and 18 cover the application of the Anti-Terror Law to corporations, and Article 19 covers sentencing guidance for the juvenile perpetrators.

Consequently, if someone’s acts fulfil the elements of crime as formulated in articles 6 to 16 of the Anti-Terror Law, they can be prosecuted as terrorists. The same holds true for corporations and juveniles; they can be also prosecuted as terrorists if they are found committing crime as formulated in articles 6 to 16 of the Anti-Terror Law. However, the application of the criminal responsibility and criminal sanctions for a corporation suspect are based on Articles 17 and 18. Meanwhile, the application of the criminal responsibility and criminal sanctions for a juvenile suspect are based on Article 19, which stipulates that suspects of terrorism acts who are under 18 years old cannot be subject to the death penalty, life imprisonment, or the stipulated minimum imprisonment.

From the provisions of Articles 6 to 16, core crime of terrorism is specified specifically in Articles 6 and 7 of the Anti-Terror Law, which is later adopted into Article 600 and 601 of Law Number 1 of 2023 concerning the Indonesian Criminal Code. Article 6 and 7 of the Anti-Terror Law state that (Butt, 2008):

Article 6

“Any person who by intentionally using violence or threats of violence, creates a widespread atmosphere of terror/fear or causes mass casualties, by taking the liberty or lives and property of other people, or causing damage or destruction to strategic vital objects, the environment, public facilities or international facilities, faces the death penalty, or life imprisonment, or between four- and 20-years’ imprisonment”.

Article 7

“Any person who by intentionally using violence or threats of violence, intends to create a widespread atmosphere of terror/fear or causes mass casualties, by taking the liberty or lives and property of other people, or causing damage or destruction to strategic vital objects, the environment, public facilities or international facilities, faces imprisonment for a maximum of life imprisonment.”

Therefore, a perpetrator can be charged under Article 6 of the Anti-Terror Law if the acts resulted in taking lives, or property, or causing damage or destruction (Atmasasmita, 2013). In contrast, the results in taking lives, or property, or causing damage or destruction are not needed if the perpetrator is charged under Article 7 of the Anti-Terror Law. If someone intends to perform acts that use violence where such actions may create an atmosphere of terror in the society, they can be charged under Article 7 (Atmasasmita, 2013).

Due to this differentiation, Atmasasmita (2013) has noted that Article 6 and Article 7 have different qualifications. Article 6 is categorised as *delikmateriil* while Article 7 is qualified as *delikformil*. These qualifications (*delikmateriilor delikformil*) are based on the focus of the provision on whether a result is stipulated as an element of the crime or not. From criminal law theory, *delikmateriil* means that the focus is on the results of the prohibited acts; on the other hand, *delikformil* means that the focus is on the acts that are

prohibited, regardless of their results (Hamzah, 1991; Moeljatno, 2015).

In addition to Articles 6 and 7, a range of specific acts of terrorism is also defined under the Anti-Terror Law stated from Article 8 to 16. However, the core crimes of terrorism under the Anti-Terror Law are stated in Article 6 and 7. In particular, Article 6 is used to analyse the acts of the Papuan ACGs whether it could be classified as terrorist acts or not. It is used because the acts of the Papuan ACGs have caused victims and damage in Papua including killing innocence people as officially reported by the authority (Ramandey, 2019) and published by reputable medias (BBC Indonesia, 2019). The coherence between the acts committed by the Papuan ACGs and the crimes element of terrorism under Article 6 of the Anti-Terror Law is discussed further in the discussion section.

The Mechanism of Listing a Group as a Terrorist Group in Indonesia

In the context of Indonesia, Article 27 of the Terrorism Financing Law regulates the mechanism in classifying whether a group is a terrorist organization. Part One of Chapter VII of the Terrorism Financing Law governs the “*Procedure for Inclusion of the Identity of Persons or Corporations on the Government-Issued List of Suspected Terrorists and Terrorist Organizations*”. Clearly, this demonstrates the formal rules (procedures) that the authority must follow when labelling an organization as a terrorist group. Regarding the designation of terrorist groups, Article 27, paragraphs 1 through 7 of the Terrorism Financing Law provide the following explanation:

- (1) The Chief of the Indonesian National Police shall file a petition with the Central Jakarta District Court to designate the inclusion of a person or corporation’s identification on the list of suspected terrorists and terrorist organizations.
- (2) In filing the petition referred to in paragraph (1), the Chief of the Indonesian National Police shall include the following:
 - a. the identity of the person or corporation to be included in the list of suspected terrorists and terrorist organizations;
 - b. the reason for the application is based on information obtained by the Chief of the Indonesian National Police from relevant government agencies;
 - c. documents showing that the person or corporation is suspected of having committed or attempted to commit, or participated in, and/or facilitated a criminal act of terrorism; and
 - d. recommendation from the ministry that carries out government affairs in foreign affairs in the event that the documents originate from another country, international organization, and/or international legal subject.
- (3) The Central Jakarta District Court shall examine and rule on the application within a maximum period of 30 (thirty) working days after receiving the application, as referred to in paragraph (1).
- (4) If in the examination, as referred to in paragraph (3), the reasons, documents, and/or recommendations submitted can be used as the basis to include the identity of the person or corporation in the list of suspected terrorists and terrorist organizations, the Central Jakarta District Court shall immediately designate the identity of the person or corporation as a suspected terrorist and terrorist organization.
- (5) After obtaining the Central Jakarta District Court stipulation as referred to in paragraph (4), the Chief of the Indonesian National Police shall immediately

include the identity of the person or corporation in the list of suspected terrorists and terrorist organizations.

- (6) The list of suspected terrorists and terrorist organizations, as referred to in paragraph (1), shall be issued by the Chief of the Indonesian National Police based on the stipulation of the Central Jakarta District Court.
- (7) The Chief of the Indonesian National Police shall notify the list of suspected terrorists and terrorist organizations as referred to in paragraph (6) in writing to the person or corporation within no later than 10 (ten) working days.

On the basis of a request from the National Police Chief, the Central Jakarta District Court has the authority to decide whether or not a group is a terrorist organization. It is possible for the Central Jakarta District Court to label a group as a terrorist organization if solid evidence and grounds are found. In accordance with the ruling of the Central Jakarta District Court, the National Police Chief will immediately compile and publish a list of suspected terrorist groups.

The question is whether the Chief of Police of the Republic of Indonesia can submit an application without other institutions' input. Referring to Article 27 paragraph (2) letter [b] of the Terrorism Financing Law, the Chief of Police of the Republic of Indonesia must gather information or information from relevant government agencies, which information serves as the foundation for the court application. Regarding the other agencies in question, one can refer to the Terrorism Financing Law's explanation of Article 27 paragraph (2) letter [b], which states that "relevant government agencies" includes the Ministry of Foreign Affairs, the National Counterterrorism Agency, and the State Intelligence Agency, so it is not limited to these three. Other government agencies, such as the Financial Transaction Reports and Analysis Center (Indonesian: *Pusat Pelaporan dan Analisis Transaksi Keuangan* or PPATK) and the Financial Services Authority (Indonesian: *Otoritas Jasa Keuangan* or OJK), can provide information on terrorist organizations. Therefore, the definition of "relevant government agencies" in this context is extremely broad.

Besides mentioning concerns from relevant government agencies, the Chief of Police of the Republic of Indonesia must include supporting documents demonstrating that the group is suspected of committing, attempting to commit, participating in, and/or enabling a terrorist attack. A simple example would be including electronic evidence in the form of social media conversations regarding a planned suicide bombing that ultimately occurred as planned. In addition, it can include evidence of funds transferred from the parties to purchase weapons or bomb equipment. This conforms to Article 27 paragraph (2) letter [c] of the Law on the Financing of Terrorism.

Methodology

This study adopted the doctrinal legal research method to examine the issues related to terrorism related laws. In terms of doctrinal legal research, legal resources used were primary and secondary legal materials. Primary legal materials, according to Iosipescu and Whitehead (2004) are "the records of rules laid down by those bodies vested with the authority to declare the law". Further, secondary legal materials are "preliminary research tools that assist the student in finding, evaluating, and understanding primary materials" (Iosipescu & Whitehead, 2004). Primary legal materials clearly denote laws

issued by the states. Legislation includes not only statutes but also subordinate legislation that “is made under powers conferred by a statute” (Iosipescu & Whitehead, 2004), such as government regulations and presidential regulations within the context of the Indonesian legal system (Marzuki, 2011).

In line with the focus of this article, the primary legal materials used in this study were the Anti-Terrorism Law and the Terrorism Financing Law, which were collected through literature and library methods. Secondary legal materials were used in this study included articles from law journals, textbooks, conference papers or proceedings, official reports, media reports, and websites. Those of material were first collected through the literature and library method, and through the internet. It was used for understanding primary legal materials (Iosipescu & Whitehead, 2004). To discuss the legal issues raised in this study, statute approach and conceptual approach were applied (Marzuki, 2016). Furthermore, this study examined the criminal offense of terrorism associated with the Papuan ACGs’ actions in Papua, as well as examines the validity of the procedures in determining the Papuan ACGs as terrorist organization.

From the perspective of the substance of the offense, the current study was carried out by analyzing the correlation between the actions committed by the Papuan ACGs and the elements of criminal acts of terrorism as regulated in the Anti-Terror Law. From a legal procedural perspective, the study was carried out by analyzing the suitability between the procedures for determining an organization or group as a terrorist organization, as stipulated in the Terrorism Financing Law, and the mechanism that has been applied by the Indonesian government in designating the Papuan ACGs as terrorist groups.

Findings

The Coherence Between the Papuan ACG's Actions and Terrorism Crime Elements

Since its integration into the Republic of Indonesia fifty years ago, Papua has been plagued with interminable problems (Nasution & Wiranto, 2020). The pace of development and attention continues to be poured into various sectors of people’s lives. Armed contact and violence often occur between Indonesian soldiers and separatist groups. As a result, casualties occurred between both parties. Civilians working in Papua have also become targets of violence. Nonetheless, the conflict in Papua persists to this day (Yumitro et al., 2022). Security concerns are the most important aspect to be investigated. The ACGs presence in Papua has resulted in numerous acts of violence and brutality (Putri et al., 2022). The cause of conflict is rooted in political, economic, and resource concerns. In Papua, not only has the community been afflicted by ACGs violence but also a number of police officers (Effendi & Panjaitan, 2021). However, it is crucial to recognize that subjective perspectives must be put aside. Therefore, what is needed is inclusive cross-sectoral attention.

The shooting of civilians, the shooting of security forces, and the killings that happened breached the legal basis of human rights based on the 1945 Constitution of the Republic of Indonesia, which stipulates in Article 28A that every person has the right to life and the right to defend it. This matter is further governed by Article 9 of Law No. 39 of 1999 pertaining to Human Rights, which is found in paragraph (2). These regulations might imply that the country is obligated to provide protection for implementing and realizing

human rights as the fundamental rights of every human or citizen. The statement explains the government's decision to take decisive action against the ACGs in Papua to protect and supervise a conducive environment in the territory of Papua.

Based on research conducted by the Indonesian Institute of Sciences (Indonesian: *Lembaga Ilmu Pengetahuan Indonesia*, or LIPI), four fundamental problems have been identified: the marginalization of indigenous Papuans, development failures, human rights violations and military violence, and the complex process of Papua's integration into Indonesia (Pratama & Hafiz, 2021). Mahfud MD, the coordinating minister for Political, Legal, and Security Affairs declared the government's designation that the ACG was a terrorist group in response to the ACG's violence in Papua, which resulted in the deaths of civilians. With the designation of this terrorist group, Napang and Rohman (2021) stated that the ACG groups can be subjected to the Anti-Terror Law's legal mechanisms and procedures. Furthermore, the designation of the ACGs as a terrorist organization is supported by several crimes committed by the ACGs, including crimes that cause victims from civil society (Adhikara, 2021). The terrorist labeling of the Papuan ACGs by the authority seems to be based on the assessment that it is not enough to place the organization as an Armed Criminal Group alone.

The results of this study shows that one of the core crimes of terrorism is stated in Article 6 of the Anti-Terror Law. The substance of the Article 6 of the Anti-Terror Law consists of subjective elements and objective elements. According to Lamintang (1997), the elements of a criminal offense consisting of the following elements:

1. Subjective elements are those associated with or related to the perpetrator and include everything in their minds. These elements include intentionality (*dollus*) or unintentionality (*culpa*), having intent (*vornemen*) in an attempt (*poging*), intent (*oogmerk*), planning in advance (*voorhedachteraad*), and feelings of fear (*stress*).
2. Objective elements relate to the conditions in which the act and the perpetrator must be committed. These elements include the unlawful nature, the perpetrator's character, causality, or the relationship between an act as a cause and a resultant fact.

The description of the subjective and objective elements in Article 6 of the Anti-Terror Law (as adopted in Article 600 of the Indonesian Criminal Code) is as follows:

A. Subjective elements include:

1. Anyone; and
2. Who commit intentionally

B. Objective elements include:

1. using violence or threat of violence;
2. creating an atmosphere of terror or fear people on a widespread basis (among a large number of people);
3. causing mass casualties;
4. depriving the freedom or loss of life and property of others; and
5. causing damage or destruction to vital strategic objects, the environment, public facilities, or international facilities.

From these subjective elements, the Papuan ACGs has fulfilled the subjective element of every person, as the Papuan ACGs consists of persons and organizations who commit violent, destructive, and other criminal acts. For the second subjective element, namely intentionality, the purpose of this element is to establish that the

terrorists, in this case, the Papuan ACGs, who committed all of these unlawful acts, did so on purpose. According to Moeljatno (2015), this element of intentionality is omitted from the Indonesian Criminal Code, in contrast to Switzerland, where Article 18 of the Swiss Criminal Code defines intentionality as “whoever does an act knowing and intending it, commits the act purposely”. This element of intentionality includes the following aspects:

1. Intentionality as an objective (*opzetalsoogmerk*). The form of intentionality as an objective is identical to intending (*willens*) to realize an action (active criminal offense), intending not to act/neglect a legal obligation (passive criminal offense), and knowing and intending the consequences of the action (material criminal offense) (Adami Chazawi, 2008).
2. Intentionality as certainty (*opzetbijzekerheidsbewustzijn*). A person’s awareness of an effect that, according to common sense, must occur when a certain act is committed. If a certain act that the perpetrator realizes must cause an unintended result is also carried out, then there is intent as certainty (Adami Chazawi, 2008).
3. Intentionality as a possibility. Intentionality as a possibility (*opzetbijmogelijkheidsbewustzijn*) is also known as *doluseventualis* (Adami Chazawi, 2008).

The element of intentionality committed by the Papuan ACGs is included in intentionality as intent, which is the same as wanting (*willens*), in order to realize something and know the consequences of the action. The Papuan ACGs committed crimes in the form of violence to influence government policies and the world community over the situation in Papua through its operations (Aryeno, Suratman, & Nurita, 2022). In relation to the objective elements which relate to the acts committed by the perpetrator, in this case, the Papuan ACGs, there are five objective elements as stated previously: (1) using violence or threat of violence; (2) creating an atmosphere of terror or fear among a large number of people on a widespread basis; (3) causing mass casualties; (4) depriving the freedom or the loss of life and property of others; and (5) causing damage or destruction to vital strategic objects, the environment, public facilities, or international facilities.

The first element is the use of violence, specifically the Papuan ACG’s actions. Santoso (2002) defines violence as assault, a legal category that refers to illegal acts that involve the threat and actual application of physical force against another person. The effects of the Papuan ACG’s acts produce a sense of terror and fear as noted in the preceding description, which means the second element is fulfilled. Kusuma et al. (2022) stated that the Papuan ACGs using violence and assault which resulted in casualties from both civilians and Indonesia government security forces. According to such study (Kusuma et al., 2022), the first and the second elements are coherence with the acts of the Papuan ACGs.

Similarly, the third element of mass casualties is also fulfilled. Dozens of individuals died due to the actions of the Papuan ACGs, attracting the attention of the Indonesian government and the international community (Rinasti et al., 2022). Furthermore, the fourth element that is the element of deprivation of liberty or freedom, is also fulfilled in the conflict zone, where the Papuan ACGs keeps numerous Papuans, teachers, health care personnel, and even priests. The last element of causing damage or destruction to vital strategic objects, the environment, public facilities, or

international facilities has been fulfilled. Due to Papuan ACGs attacks in Papua, vital objects such as churches, schools, homes, and offices that perform public services have been physically destroyed.

The Papuan ACG's acts concerning the concept of a criminal act, according to Moeljatno's opinion, stipulate that a criminal act designates which actions should not be carried out, accompanied by threats or sanctions in the form of various crimes for anyone who violates the restriction (Moeljatno, 2015). For a criminal act to occur, certain elements must be fulfilled, such as Tongat (2013):

- a. the existence of an act (human)
- b. fulfilling the formulation in the law
- c. against the law

According to Simons as referred by Tongat (2013), a criminal offense is an unlawful act committed intentionally or unintentionally by a person whose actions can be held accountable and that the law has deemed punishable. Meanwhile, according to Pompe, in the positive law of *strafbaarfeit*, a criminal offense is an act, an action which is punishable in the provisions of the law (Tongat, 2013).

The first element, human action, has been executed by the Papuan ACGs in the form of threatening, killing, and destroying public facilities such as churches, houses, and schools in Papua. Even members of the Indonesian National Army and Indonesian National Police on patrol or at guard stations in the Papua province have been publicly attacked by the Papuan ACGs (Anakotta, 2021). The next element is whether the violence and crimes committed by Papuan ACGs fulfils the formulation of the enacted law. The actions committed by the ACG have fulfilled the elements in Article 6 of the Anti-Terror Law, both subjective and objective elements. While the third element is against the law. The Papuan ACGs has committed acts against the law. Furthermore, committing unlawful acts means doing acts against the law that are contrary to the rights of others, and acts that result in the loss of other parties. The party who commits the unlawful act must compensate the injured party indeed (Sari, 2021).

Designation of the Papuan ACGs as Terrorist Groups: Is the Mechanism Applied?

Article 27, paragraphs 1 through 7 of the Terrorism Financing Law outline the parameters for designating whether a group is such a terrorist organization. The analysis of the existing facts regarding the designation of the Papuan ACGs as a terrorist organization demonstrates that the designation is not in accordance with the process that must be carried out following the requirements of Article 27 paragraphs 1 to 7 of the Terrorism Financing Law. If the government wishes to proclaim a group as a terrorist organization, the Chief of Police of the Republic of Indonesia is the authorized official to inquire about it (representing the government). The list of terrorist organization by the Chief of Police of the Republic of Indonesia must be based on a judgement by the Central Jakarta District Court. The absence of a court decision in deciding a group as a terrorist group is unprocedural. It is an ignoring of the procedure.

The Chief of Police of the Republic of Indonesia has not issued an official statement regarding the Papuan ACGs' status as a terrorist group prior to the publication of this article. According to the recent data, the Chief of Police of the Republic of Indonesia has not yet filed an application with the Central Jakarta District Court on the Papua ACGs' status as a terrorist group. Thus, the coordinating minister for Political, Legal, and Security Affairs'

declaration identifying the status of the Papuan ACGs as a terrorist group raises problems that must be explained, as well as the justification for the statement.

The question arises as to whether the coordinating minister for Political, Legal, and Security Affairs' declaration that the ACG in Papua is a terrorist group constitutes an official statement from the Indonesian government. There are two possible conclusions that might be drawn from this. First, if it is not an official government announcement, the Papuan ACGs can disregard it as it will have no impact on law enforcement. Second, suppose it is an official government statement. In that case, it is procedurally faulty (formal flaw) because the statement should have been given by the Chief of Police of the Republic of Indonesia though the coordinating minister for Human Rights might also have delivered it. In addition, the method of assessing its status does not adhere to the required procedures.

The government's designation of an organization as a terrorist group must be based on the Central Jakarta District Court's decision. It is in line with Article 27, paragraph 1 of the Terrorism Financing Law, which emphasizes that the inclusion of the identity of a person or corporation is accomplished by the Chief of Police of the Republic of Indonesia submitting a request for a District Court decision (Fakihudin, 2021). Thus, the key term is the Central Jakarta District Court's decision of whether or not a group is a terrorist organization. Suppose a claim that an organization is a terrorist group is not supported by a ruling from the Central Jakarta District Court, the claim is procedurally flawed and is likely to be challenged in court. In brief, it could be concluded that the procedural legal mechanism in designating the Papuan ACGs as terrorist groups was not applied correctly.

Discussion

On April 29, 2021, the government formally designated the ACGs as terrorist groups. The Coordinating Minister for Political, Legal and Security Affairs, Mahfud MD stated that "The government considers that organizations and people in Papua who commit massive violence are categorized as terrorists" in a press conference quoted from the *YouTube* channel of the Coordinating Ministry for Political, Legal and Security Affairs (Lamb, 2021). He said that the government in giving the Papuan ACGs the "status" of a terrorist organization is based on the Indonesia Anti-Terror Law. Mahfud MD declared the Papuan ACGs group as a terrorist group by referencing the Law of Anti-Terror's definition of terrorism. Still referring to Anti-Terror Law, he stated that terrorists include all those involved in planning, mobilizing, and organizing terrorist acts. Terrorism is any act that involves violence or threatens to create a widespread atmosphere of terror that can result in mass casualties and the destruction of vital strategic objects to the environment, public facilities, or international facilities for ideological, political or security reasons. According to the Anti-Terror Law's definition of terrorism, Mahfud MD remarked that "what is done by the Papuan ACGs and all the names of its organizations and people affiliated with it is a terrorist act" (Hakim, 2021).

The first findings of this study shows that the Papuan ACGs' actions are indicated to meet the elements of terrorism criminal act because the actions carried out by the group have created an atmosphere of widespread terror against civilians in Papua. Regardless the actions are driven by political motives to separate from the Republic of Indonesia (Pradityo, 2016), this current finding of the coherence between the

Papuan ACG's actions and terrorism crime elements shows that the actions committed by the ACGs have fulfilled the elements in Article 6 of the Anti-Terror Law. This finding agrees with other studies (Heriyanto, 2021; Napang & Rohman, 2021; Pratama & Hafiz, 2021), which concluded that crimes committed by ACGs in Papua are classified as terrorist acts.

However, this conclusion cannot be generalized. It cannot be concluded that all the Papuan ACGs member actions constitute terrorist acts of terrorism. Even though the activities have met the elements of terrorism, whether the acts are indeed terror acts or not must still be established in a formal or public trial. This aligns with the universal principle of presumption of innocence in criminal justice process, likewise codified in Indonesian criminal procedure law. In this matter, we must rely on the court decision where the fact is investigated in the fair trial process.

Next findings relate to the designation of the Papuan ACGs as terrorist groups. Designating a group as a terrorist group in Indonesia is not a new phenomenon. Some groups were listed as terrorist groups by the Indonesian authority because they committed terror attacks and killed civilians, as seen in Table 1. Based on Letter Number DTTOT/P7a/149/II/RES.6.1./2021, the National Police has labelled nine groups as terrorist organizations (Napang & Rohman, 2021). Table 1 lists these organizations and the source of their designation.

Table 1: List of Terrorist Groups in Indonesia.

No	Terrorist Groups	Source
1	Jemaah Islamiyah (JI)	The Central Jakarta District Court issued the 13/Pen/Pi- DTTOT/2020/PN.Jkt.Pst decision on October 14, 2020, labelled these groups as terrorist organizations.
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	The Armed Criminal Group (Indonesian: <i>Kelompok Kriminal Bersenjata</i> or KKB)	
		Designated as terrorist group on April 29, 2021

Source: Napang and Rohman (2021)

According to Napang and Rohman (2021), “the eight terrorist organizations other than KKB (the Papuan ACGs) are organizations based on religious ideology for their terrorist acts, which are also called religious terrorism”. The designation of the Papuan ACGs as a terrorist organization could make a discussion on a new type of terrorism in Indonesia, “namely acts of terrorism based on the ideology of ethnonationalism”, as resonated by Anakotta (2021). This is a fruitful research topic that is highly recommended within the context of Indonesia.

Except for the designation of the Papuan ACGs, all previous designations of groups as terrorist organizations in Indonesia were based on the decision of the Central Jakarta District Court as can be seen in Table 1. The District Court of Central Jakarta rendered its verdict in response to a request from the National Police Chief. This designation is procedural as the law requires. Meanwhile, the Papuan ACGs was not designated as a terrorist group based on a court ruling from the Central Jakarta District Court. In this case,

a designation that is not based on a court decision is not in conformity with the law as stipulated in the Article 27 of the Terrorism Financing Law. Therefore, the result of this study shows that designation of the Papuan ACGs as a terrorist group is unprocedural because such designation was not based on the Central Jakarta District Court's decision.

Even though providing different reasons, this finding is consistent with those of Taskarina and Veronika (2021), who argued that the embedding of terrorist groups within the Papuan ACGs is primarily political in nature. This finding is also consistent with studies by Effendi and Panjaitan (2021) and Commission for the Disappeared and Victims of Violence (Commission for Missing Persons and Victims of Violence, 2021). They also provide different reason by arguing that the elements of the crime of terrorism outlined in the Anti-Terror Law are not fully met so that the Papuan ACGs could not be classified as terrorist groups. They all concluded that the designation of the Papuan ACGs as terrorist groups is incorrect either stated implicitly or explicitly in their studies (Commission for Missing Persons and Victims of Violence, 2021; Effendi & Panjaitan, 2021; Taskarina & Veronika, 2021). In connection with the results of this research and existing studies, it shows that there is a gap in future research related to the legal consequences of designating a person or group as a terrorist organization, both from a national and international perspective. Apart from that, the topic of terrorism and the Papuan ACGs also remains an interesting topic to study from various scientific approaches.

Conclusion

In line with the purpose of the recent article, there are two things that need to be stated in this conclusion. *Firstly*, based on the criminal acts committed by the Papuan ACGs member, it indicates that the acts have fulfilled the elements of terrorism as outlined by the Anti-Terror Law and the Criminal Code. Article 6 of the Anti-Terror Law (adopted as Article 600 of the Criminal Code) contains subjective and objective elements and the actions of the Papuan ACGs have satisfied both elements. With the fulfilment of the elements of the crime of terrorism, the acts committed by the Papuan ACGs can be described as acts that include acts of terror or as criminal acts of terrorism. This finding, however, needs to be clarified further since it was based solely on the legal documents, existing studies, and published reports by reputable media. Although the acts have met the elements of terrorism, it must be proven through a fair trial by prioritizing the universal principle of presumption of innocence within criminal justice process.

Secondly, regarding the Government of Indonesia's designation of the Papuan ACGs as terrorist groups on April 29, 2021, the designation is procedurally flawed due to the absence of a decision from the Central Jakarta District Court. Article 27 of Indonesia's Terrorism Financing Law stipulates that the Indonesian government can issue a list of terrorist organizations following a decision by the Central Jakarta District Court. Consequently, if the Central Jakarta District Court (judicial power) has not determined the Papuan ACGs to be terrorist groups, the government's (executive power) designation is non-binding and non-procedural. In conclusion, such designation is not correct. This conclusion seems to be in line with the results of several previous studies. Although for different reasons, the results of those previous studies stated that the designation of the Papuan KKB as a terrorist organization is incorrect.

Recommendations

In terms of national policy, the Indonesia government needs to immediately ensure that the process of determining the Papuan ACGs as a terrorist organization has been carried out in accordance with existing regulations, namely Terrorism Financing Law and Joint Regulation between the Chief Justice of the Supreme Court, the Minister of Foreign Affairs, the Head of the National Police of the Republic of Indonesia, the Head of the National Counterterrorism Agency, and the Head of the Center for Financial Transaction Reporting and Analysis. The mechanisms stipulated in the law must be implemented so that there is no presumption of abuse of power in its determination.

Apart from that, the approach that needs to be prioritized in resolving violence in Papua is a soft approach, and vice versa to avoid using a hard approach. According to Aly, soft approach to countering terrorism consists of “strategic measures that target the root causes of terrorism and the motivations of terrorists” (Aly, 2011), while hard approach use “coercive tactics to force terrorists to stop their activities or deter terrorists from carrying out operations” (Aly, 2011). Within the framework of the soft approach, steps that can be taken are to prioritize communication and conciliation with Papuans and especially to supporters and leaders of the Papuan ACGs. Certainly, violent methods must be stopped both by the Indonesian government and the Papuan ACGs, which means hard approach should never be applied in resolving the Papuan conflict.

Limitations of the Study

This study has potential limitations since it is focused on the legal-procedural approach within the context of Indonesian law for the classification of a group as the terrorist group. The conclusions proposed in this study do not yet examine the validity of the mechanisms for determining an organization as a terrorist organization as regulated in Indonesian law. This study only focuses on examining the coherence between the steps taken by the Indonesian government and the mechanisms in the existing regulations. This is common since the research method employed is a doctrinal research method so that empirical research methods were not carried out. Therefore, empirical study on the extent of violence committed by the Papuan ACGs would be useful. Although methodologically challenging, it would be very useful to conduct empirical studies which seek the extent of violence committed by the Papuan ACGs using long-term study either quantitative or qualitative approaches.

Obviously, research from various scientific disciplines is needed to obtain a holistic picture of the violence that occurs in Papua so that could provide holistic understanding of the Papuan ACGs. *First*, the topic of determining an organization as a terrorist organization studied from a human rights and comparative study perspective would be very helpful. Further research might compare the established mechanisms which are stipulated in the laws between Indonesia and other selected countries. Research could explore human rights principles on how the designation of an organization as a terrorist group might violate basic human rights. *Second*, research with a study focus from perspective of extremism and political violence, as well as from historical perspective related to issue of designating the Papuan ACGs as a terrorist organization would be beneficial. The impact of authority’s designation of the Papuan ACGs as terrorist groups on extremism and political violence would be suggested to evaluate current policy in Papua. The adoption of historical approach on

a study would be helpful to further explore the situation or circumstances that might cause such violence in Papua.

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