

Dilemma of Hostage Diplomacy by the Papuan KKB: Perspectives on Supremacy of Law and Humanism



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ABSTRACT: The issue of separatism remains heavily debated and poses a threat to the sovereignty of the Republic of Indonesia, specifically with regards to the KKB (Armed Criminal Group) in Papua. Cases of human rights violations committed by the Papuan KKB have been increasingly brutal, leading to their designation as a terrorist group under Terrorism Law 5/2018. The demand for a referendum on Papuan independence, weapon supplies and ransom as conditions for releasing hostages, has generated mixed responses from government institutions and society. This research aims to examine the perspective on hostage diplomacy for ransom in light of the Papuan KKB's terrorist designation, considering both supremacy of law and humanism. The chosen method for this study is normative-qualitative, which involves a descriptive analytical approach. The findings indicate that redefining the actions of the Papuan KKB as terrorism has had a domino effect on law enforcement and measures taken to address the group. In practice, the enforcement of positive law often intersects with the values held in society. Based on the supremacy of law perspective, the ransom system is deemed unacceptable in terrorist hostage diplomacy and is considered contrary to the law. However, the humanistic perspective justifies the use of ransom money to save the lives of hostages. Resolving the complex and multidimensional conflict in Papua can be pursued through a collaborative approach rooted in humanism, sociology, and anthropology.

KEYWORDS: hostage diplomacy, The Papuan KKB, ransom system, supremacy of law, humanism

I. INTRODUCTION

A. Background of The Study

Conflict between law enforcement and humanism may arise in certain situations. The law must be enforced in order to function, and its purpose is to operate effectively^[1]. Law enforcement is generally carried out to protect public interests, while humanism focuses on individual dignity and freedom. In some cases, law enforcement can conflict with the principles of humanism^[2]. When law enforcement is implemented in a repressive manner, perceptions of human rights violations often arise. Examples include the application of the death penalty, exile, discrimination, or the use of violence in prosecuting extraordinary crimes.

The threat of separatism to the integrity of the Republic of Indonesia is not news^[3]. History records that separatist rebellions have occurred in various regions since independence, such as the RMS (Republic of South Maluku) in South Maluku, GAM (Free Aceh Movement) in Aceh, and OPM (Free Papua Organization) in Papua^[4]. While their backgrounds vary, their goal remains the same: independence for their territory and separation from Indonesia. They tend to employ radical methods, often resulting in casualties. Separatism in Indonesia can be seen as a complex phenomenon, involving various aspects as causes and effects. The qualifications for separatism are specifically regulated in TNI Law 34/2004 and Mass Organization Law 16/2017^[5]. The Indonesian government is taking this issue seriously, as it poses a threat to sovereignty, and is actively seeking to address it using various approaches, both non-repressive and repressive.

The seeds of the separatist movement in Papua began to grow during the Dutch colonial period. The Papuan separatists emerged as a result of the Papuan people's dissatisfaction with the outcome of the 1969 Pepera, in which the Netherlands and Indonesia agreed to a resolution that ended the Dutch colonial era in Papua and transferred it to Indonesian administration^[6]. The Netherlands broke its promise to liberate Papua, which, along with several other factors, sparked a surge of rebellion. These factors include cultural and ethnic identity, human rights, natural resources, KKN (corruption, collusion, and nepotism), and foreign intervention^[7]. Feeling that they were being treated unfairly and desiring sovereignty, some Papuans took the initiative to form a separatist group known as the OPM.

In its development, OPM has experienced social dynamics^[8]. A series of crimes has been carried out by the OPM armed group in their efforts to achieve political goals. Various attacks, including destruction, hostage taking, and murder, have been carried out brutally and on a large scale. The number of fatalities is decreasing and continuing to increase. As a result of these actions, OPM

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changed its name to KKB (Armed Criminal Group) and was officially classified as a terrorist organization, as intended by the Terrorism Law 5/2018 by the government^[9].

At the broader spectrum of violence, one of the disturbing tactics used by the Papuan KKB is hostage-taking, which has occurred in various instances. These incidents include the taking of wildlife researchers in 1999, construction workers in 2018, water supply pilots in 2022, and BTS workers in 2023^[10]. These actions are often accompanied by a number of demands. Apart from the referendum on Papua's independence, the KKB also often demands weapons and money as ransom. This raises pros and cons regarding the government's efforts to free the hostages, considering that the determination of the status of the Papuan KKB as terrorists, applies *mutatis mutandis* to its treatment.

B. Formulation of The Problem

How is the perspective on hostage diplomacy for ransom in light of The Papuan KKB's terrorist designation by the Indonesian government, according to the supremacy of law and the principles of humanism?

II. METHOD

The author completed this article using normative research methods. The writing is based on secondary data, which consists of primary legal materials such as the Terrorism Law, the TNI Law, the Police Law, and other related regulations, as well as secondary legal materials such as scientific articles that have been published in relation to the discussed issues, books, and so on. Data collection, processing, and analysis techniques are carried out qualitatively through hermeneutic interpretation, which is correlated with the raised issues. This approach aims to produce a descriptive narrative that leads to an explanatory nature.

III. RESULT AND DISCUSSION

A. Diplomacy as An Alternative to Release The Hostage

Diplomacy is the art and practice through which a country employs a series of non-coercive policies to secure its interests while maintaining peaceful relations with other countries. Its role is of great importance in international politics and is frequently utilized as the primary method for resolving disputes, fostering cooperation, and advancing global interests. Throughout the years, diplomacy has evolved and adapted to the ever-changing dynamics of the world, becoming increasingly intricate and multidimensionally versatile^[11].

Hostage diplomacy can be considered one of the most complex forms of diplomatic efforts due to its coercive nature^[12]. This kind of diplomacy is carried out by certain countries or groups to free hostages who have been held by unknown parties or terrorist groups, while at the same time anticipating ongoing conflict that risks increasing the number of victims. It is carried out without physical violence, requiring careful strategy, foresight, and strong cooperation between various related parties. Basically, the goal of hostage diplomacy is to secure the safety of the hostages and bring them back to their country or to a place considered safe. This diplomacy involves various aspects and dimensions in order to achieve success.

Some of the key elements involved in hostage diplomacy include negotiations with the party holding the hostages, making offers, meeting specific demands, international diplomacy, and special operations conducted by the country's security forces. During negotiations, each party aims to accommodate their respective interests. In this situation, the hostage takers will defend their interests and demands, while the party releasing the hostages will strive to ensure their safety and fulfill the conditions for their release. This negotiation process typically takes place in secret and requires a well-trained team with strong communication skills, an understanding of the hostage takers' demands, and the ability to build trust between the two parties. Each step in hostage diplomacy plays a crucial role in determining the final outcome.

Hostage diplomacy has become a transnational polemic. This act of hostage-taking, carried out under the guise of law and politics, has now transformed into a mission to manipulate foreign policy. The victims of hostage-taking are often innocent individuals who are not involved in the conflict^[13]. This phenomenon is common in Iran, China, and other authoritarian countries. Creative negotiation strategies spearhead the safe return of hostages, and there is some explicit evidence showing how hostage-taking is used as a game of chess by major powers. Hostage-taking concessions not only exist but also have a mastermind behind them^[14].

Like other hostage-taking actions in general, the Papuan KKB has also submitted a number of demands as conditions for the release of the hostages. Currently, there are three main demands that dominate their list, namely a referendum on an independent Papua, ransom money, and weapons supplies. The police have firmly stated that they will not fulfill the demands for freedom and weapons, as it goes against Indonesian sovereignty. However, they are willing to accept the ransom demand^[15]. Fulfilling the ransom money is accompanied by the condition that the money will not be used to support acts of terror. This context has sparked debate among various parties. Some parties approve of the ransom method initiated by the government for the safety of the hostages, while others tend to disagree with the decision. The contradiction arises from the assessment that ransom money is not a solution, but

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rather a precursor to new problems. If this continues, it is not impossible for the separatist rebellion to become more rampant. It should also be emphasized that the quality of Indonesian diplomats in the defense sector is still far from ideal levels, and significant improvement is needed in terms of bargaining skills^[16].

If examined more deeply, it must be admitted that negotiations over ransom demands put forward by the hostage takers are relatively more controllable in their consequences compared to demands for a referendum on independence and weapons. However, the ransom demands need to be negotiated with a high level of technique so that the amount of currency requested by the hostage taker can be met, without disrupting the finances of the relevant institutions. Furthermore, if possible, the use of these funds should be monitored so that various possibilities can be anticipated.

B. Legal Consequences of Determining the Papuan KKB as Terrorists

The real source of national threats is injustice. Concrete examples, such as the never-ending Papua conflict, show that injustice has been ignored. The Papuan people who are fighting back feel that their rights have been denied. Papua's natural wealth, which should belong to its citizens, is being drained for the sake of the egos of the elite and capitalists. Not only that, regional oligarchs are also taking over Papua's development budget. The quantity and quality of education that are not in harmony are considered discrimination. The profile of the Papuan people has not been separated from backwardness and poverty and still remains as "The People That Time Forgot". This has become the pioneer of the radical separatist movement in Papua^[17].

The Papuan separatist movement is a pro-independence movement initiated by local and educated nationalist figures^[18]. Their understanding of the concepts of independence and autonomy arises from the colonial government's training during preparations for an independent Papua. It is possible that foreign parties have infiltrated and mobilized troops using local desertions as a cover. This allegation gains support from the escalating and widespread attacks by the KKB. According to Connie Bakrie, the prolonged series of Papuan KKB rebellion actions could only be accomplished with the assistance of supporters^[19]. It is the same as other political activities, where the masses are the main base. It is impossible to run without fundraisers or donors because the budget is too large. The series of crimes and brutal human rights violations by KKB soldiers cannot be tolerated any longer. According to Kompas TV reports, as of June 2023, there were at least 75 cases, and 17 people died as a result of KKB attacks in various regions of Papua^[20]. This problem continues to pose a significant challenge for the central and regional governments, as well as security and law enforcement officials. The methods employed thus far have proven ineffective, necessitating the search for a suitable and optimal conflict resolution concept.

The authority of state officials to handle the Papua KKB is guided by applicable positive law. The responsibility for dealing with separatists rests with the military, while the police can only take action if a criminal act has occurred that meets the elements of the articles in the Criminal Code. This refers to the legal regulation of separatism, which is contained in the TNI Law but not in the Polri Law. The government's declaration of the redefinition of the Papuan KKB as a terrorist group is not merely a justification for repressive actions. This is because the actions of the Papuan KKB and all its affiliates are no longer just acts of radical separatism that threaten state sovereignty. They are now included in the category of "extraordinary crime" which fulfills the elements of acts of terrorism as stated in the Terrorism Law.

The implementation of the Terrorism Law as *lex specialis*, applies *mutatis mutandis* to every aspect of handling the KKB in Papua. Cooperation between government institutions and legal synchronization is essential in the process of handling terrorism cases. Officials must coordinate with each other because the task of law enforcement no longer rests on one party but is a shared responsibility. The terrorist label is only aimed at KKB perpetrators with *mens rea*, as defined in the Terrorism Law. In practice, it is very possible to carry out repressive actions from the police and military with violence, limited to certain situations that are deemed necessary and still based on human rights principles. The redefinition of KKB actions as acts of terrorism automatically leads to the implementation of other laws and regulations pertaining to the Terrorism Law, including the Terrorism Financing Law and its corresponding regulations, among others. To effectively combat terrorism, repressive measures alone are insufficient. The government must also focus on preventive measures as mandated by the Terrorism Law. These measures include fostering counter-radicalism and deradicalization to address the issue at its core, right down to the grassroots level.

C. The Supremacy of Law Perspective on Hostage Diplomacy Using a Money Ransom System

"*Fiat justitia, et pereat mundus*", is one of the appropriate creeds to analogize the supremacy of law. Laws are formed by their creators to achieve the desired social conditions by limiting everyone's basic rights and obligations. In a rule of law state, the law exists to be positioned at the highest hierarchy, and the law is enforced if there are discrepancies or deviations from the law itself^[21]. Law without law enforcement will be useless. The Republic of Indonesia as a legal state adheres to the positivism paradigm, upholds every written norm and uses law enforcement instruments for the sake of laws that are just and beneficial.

The redefinition of the KKB's actions as terrorism automatically repositions the enforceability of the law in dealing with this group. All criminal acts committed can no longer be merely considered as ordinary national political crimes, but rather transnational crimes at an exceptional level. In the case of hostage-taking by the KKB, several demands were made as conditions for release.

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Hostage diplomacy must be executed with strategic calculations and guided by applicable regulations, taking into account the group's status as a terrorist organization. The use of ransom as a negotiating tool can no longer be tolerated. This prohibition is in line with Law 9/2013 and UNSC Resolution 2462. In other words, according to the SOP, providing ransom money is deemed 'haram' when engaging in diplomacy with terrorists, even if the goal is to free hostages. Choosing to provide ransom money will only enhance the KKB's bargaining position and make it susceptible to being used as a propaganda tool. There is a high likelihood that the funds will be used to cover operational costs for KKB Papua activities, which, in reality, violate the law and pose a threat to the true aim of the law — ensuring public order and peace.

D. The Humanism Perspective on Hostage Diplomacy Using a Money Ransom System

A dictum from ancient Greek philosophers regarding law states that the enforcement process is not yet like "pantha rei". There are various obstacles and challenges that prevent it from flowing smoothly^[22]. One of the problems of legal conflicts is the principles of humanism, an element contained in the Pancasila ideology, but which often intersects with the law like two sides of a coin. Humanism places the true essence on human dignity. This view prioritizes human values, especially during conflicts, in order to minimize destructive actions between humans. Humanism is manifested by the state's treatment towards its people, including providing legal protection.

Diplomacy of KKB Hostages, which is carried out using a ransom system, is actually prohibited by applicable law. However, consideration of the humanitarian values of the hostages is a benchmark that cannot be ignored. The state carries out its functions by being responsible for protecting the human rights of all citizens without exception. The issue of hostage diplomacy puts human lives at stake, including diplomatic hostages who are actually innocent. This highlights the contradictory nature of law enforcement and protection. The government must explore alternative approaches to deal with the worst-case scenario, learning from past similar cases. This could involve seeking the assistance of Papuan community leaders who can address the demands of the KKB while still considering regional and national interests. The diplomatic strategy towards the KKB must prioritize a sociological-anthropological approach in order to minimize the number of victims.

CONCLUSIONS AND SUGGESTION

Based on the explanation above, the following conclusions and suggestions can be made. From the perspective of the rule of law, hostage diplomacy, involving the use of ransom money to fulfill the demands of hostage takers who are confirmed to have terrorist status, cannot be tolerated as it clearly violates Law 9/2013 and UNSC Resolution 2462. This practice can also threaten the achievement of legal objectives. From a humanist perspective, resorting to hostage diplomacy should only be considered as a last resort for the state to save its citizens. If such a situation arises, it must be approached with meticulous planning, precision, adherence to legal protocols, and a cohesive team to anticipate potential negative outcomes.

In light of the escalating Papua KKB case, the priority in securing the release of hostages should be on maintaining stability, curtailing the maneuverability of the KKB, and weakening their bargaining position. This would facilitate negotiations without conditions, and potentially even lead to their disarmament and rehabilitation. To tackle sympathizers in different regions, particularly those pursuing higher education, a persuasive and humanistic approach is necessary to suppress separatist and terrorist ideologies while fostering patriotism. Furthermore, considering progressive laws with a human-centric approach as the focal point for legal enforcement can help resolve the dilemma often faced between supremacy of law and humanism.

REFERENCES

- 1) Isnantiana, N. I. (2019, April). Hukum dan Sistem Hukum Sebagai Pilar Negara. *Jurnal Hukum Ekonomi Syariah*, 2(1), 19-35. <http://dx.doi.org/10.30595/jhes.v2i1.4470>
- 2) Raharjo, D. B., & Nirmala Sari, R. R. (2021, July 19). *Represif Aparat Saat PPKM Darurat Disebut Hanya Timbulkan Masalah Baru untuk Masyarakat*. Imparsial. Retrieved October 6, 2023, from <https://imparsial.org/represif-aparat-saat-ppkm-darurat-disebut-hanya-timbulkan-masalah-baru-untuk-masyarakat/>
- 3) Nugroho, K. A., Deksono, G. R., Nugroho, A. D., & Kamarani, S. (2023, Juni). Analisis Sejarah dan Kontemporer Gerakan Separatisme di Indonesia. *Jurnal Kewarganegaraan*, 7(1), 95-100. <https://doi.org/10.31316/jk.v7i1.4699>
- 4) Darnela, L. (2022, Januari). Eksistensi Republik Maluku Selatan Sebagai Subjek Hukum Internasional: Antara Legitimasi dan Legalitas. *Jurnal Kosmik Hukum*, 22(1), 73-88. <http://dx.doi.org/10.30595/kosmikhukum.v22i1.9662>
- 5) Irawan, M. N., & Kencono, P. S. (2020, October 2). *TINJAUAN YURIDIS PENANGANAN SEPARATISME DI INDONESIA (STUDI KASUS PENANGANAN SEPARATISME DI PAPUA) - Repository UM Jember*. Repository Universitas Muhammadiyah Jember. Retrieved October 6, 2023, from <http://repository.unmuhjember.ac.id/6028/>
- 6) Tempo, P.D.d.A. (2020). *Papua dan Gerakan Separatis Yang Belum Pudar*. Tempo Publishing.
- 7) Suropati, U. (2020, Juli). Solusi Komprehensif Menuju Papua Baru: Penyelesaian Konflik Papua Secara Damai, Adil dan Bermartabat. *Jurnal Lemhanas RI*, 7(1), 73-89. <https://doi.org/10.55960/jlri.v7i1.52>

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- 8) Yambeyapdi, E. (2019, April). Papua: Sejarah Integrasi yang Diingat dan Ingatan Kolektif. *Indonesian Historical Studies*, 2(2), 89-95. <https://ejournal2.undip.ac.id/index.php/ihis/article/download/3749/2291>
- 9) Sahbani, A. (2021, April 30). *KKB Dilabeli Teroris, Begini Pandangan Pakar Hukum Internasional*. Hukumonline. Retrieved October 6, 2023, from <https://www.hukumonline.com/berita/a/kkb-dilabeli-teroris--begini-pandangan-pakar-hukum-internasional-lt608db1ce734bb/>
- 10) MPI, T. L. (2023, April 10). 4 Peristiwa Penyanderaan KKB Teroris di Papua, Peneliti hingga Pilot Susi Air : Okezone Nasional. *nasional.okezone.com*. Retrieved October 6, 2023, from <https://nasional.okezone.com/read/2023/04/09/337/2795753/4-peristiwa-penyanderaan-kkb-teroris-di-papua-peneliti-hingga-pilot-susi-air>
- 11) Ashari, K. (2020). *Kamus Hubungan Internasional Dan Diplomasi*. Gramedia Pustaka Utama.
- 12) Joshua, R., & Sidik, H. (2021, Januari). Diplomasi Yayasan Sukma dalam Negosiasi Pembebasan Sandera Warga Negara Indonesia di Filipina Selatan. *Padjadjaran Journal of International Relations*, 3(1), 1-18. 10.24198/padjjir.v3i1.29254
- 13) Sanderson, J., & Morgan, S. (2021, November 26). *Hostage Diplomacy: Is Travel to Some Countries Simply Not Worth the Risk? - Australian Institute of International Affairs*. Australian Institute of International Affairs. Retrieved October 6, 2023, from <https://www.internationalaffairs.org.au/australianoutlook/hostage-diplomacy-is-travel-to-some-countries-simply-not-worth-the-risk/>
- 14) Gilbert, D., & Piche, G. R. (2021, Winter). Caught Between Giants: Hostage Diplomacy and Negotiation Strategy for Middle Powers. *Texas National Security Review*, 5(1), 11-32. <https://doi.org/10.15781/4n39-ja85>
- 15) CNN, T. (2023, June 30). Tolak Beri Senjata-Kemerdekaan, Polisi Pilih Beri Tebusan ke KKB. *CNN Indonesia*. Retrieved October 6, 2023, from <https://www.cnnindonesia.com/nasional/20230630080408-12-967975/tolak-beri-senjata-kemerdekaan-polisi-pilih-beri-tebusan-ke-kkb/amp>
- 16) Ferisetiadi, P., Bainus, A., & Herdiansyah, A. G. (2022, April). PENGUATAN DIPLOMASI PERTAHANAN INDONESIA MELALUI LATIHAN BERSAMA TNI ANGKATAN UDARA. *Jurnal Politik, Keamanan dan Hubungan Internasional*, 1(1), 56-62. 10.24198/aliansi.v1i1.38867
- 17) Batubara, H. (2014). *Papua, kemiskinan, pembiaran, dan separatisme*. www.wilayahperbatasan.com.
- 18) Mukhtadi, M. (2021, April). Strategi Pemerintah Dalam Penanganan Gerakan Separatisme Papua dan Implikasinya Terhadap Diplomasi Pertahanan Indonesia. *Jurnal Diplomasi Pertahanan*, 7(2), 85-93. <https://doi.org/10.33172/jdp.v7i2.729>
- 19) Ratumakin, R. (2023, May 30). Connie Bakrie: Ada Tentara Bayaran di Belakang KKB Papua - *Tribun-papua.com*. *Tribun-papua.com*. Retrieved October 6, 2023, from <https://papua.tribunnews.com/amp/2023/05/30/connie-bakrie-ada-tentara-bayaran-di-belakang-kkb-papua>
- 20) Rahmawati, F. (2023, July 2). Hingga Juni 2023, 17 Orang Tewas Akibat Serangan KKB di Papua, Bagaimana Nasib Pilot Susi Air? *KOMPAS.tv*. Retrieved October 6, 2023, from <https://www.kompas.tv/amp/regional/421787/hingga-juni-2023-17-orang-tewas-akibat-serangan-kkb-di-papua-bagaimana-nasib-pilot-susi-air>
- 21) Munawaroh, N. (2023, September 8). *Pengertian, Tujuan, dan Ciri Penegakan Supremasi Hukum*. Hukumonline. Retrieved October 6, 2023, from <https://www.hukumonline.com/klinik/a/supremasi-hukum-lt62b18957b41e1/>
- 22) Nuryadi, D. (2016, September). Teori Hukum Progresif dan Penerapannya di Indonesia. *Jurnal Ilmiah Hukum De'Jure*, 1(2), 395-408. <https://doi.org/10.35706/dejure.v1i2.515>



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