Penal Populism in The Changing Status of Papuan Criminal Armed Group (KKB Papua) into A Terrorist Organization

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Abstract

The Indonesian government’s decision to change the status of Papuan Criminal Armed Group (KKB Papua) into a terrorist organization generated mixed responses. Over exposure on KKB Papua’s brutal acts by the media had showed a firm support for this decision and it had successfully influenced public opinion on justice and crime as well as contributed to deeper stigmatization towards the group. This status-changing decision signifies the penal populism policy, which was highly predisposed by political actors’ emotional state and ignored the legal mechanism to define a group as a terrorist organization (List of Suspected Terrorist and Terrorist Organizations). This paper analyzes government’s decision on KKB Papua’s status changing from penal populism point of view, where the construction of public’s punitive opinion had been highly dominated by the media. Employing a qualitative discourse analysis, this paper argues that the public anger, social discontent, and sentiments regarding a political event and the criminal justice system, had been justified as the "people's will” which pushed government’s decision to determine KKB Papua as a terrorist organization. In turn, penal populism policy and media’s influence in presenting virtual reality to frame people’s emotions had ultimately led to state hate crime against KKB Papua.

Keywords:
Penal populism; media; Papuan Criminal Armed Group (KKB Papua); terrorist organization

Abstrak

Penetapan KKB Papua menjadi organisasi teroris oleh Menteri Koordinator Politik, Hukum dan Keamanan Republik Indonesia (Menko Polhukam) menimbulkan reaksi sosial beragam dari semua lapisan masyarakat. Dukungan media terhadap politisi terus mencitrakan kekejaman KKB Papua sehingga mempengaruhi opini publik dalam memandang isu kejahatan dan keadilan serta memperkuat stigma KKB Papua sebagai pengganggu keamanan nasional. Kebijakan ini mengindikasikan upaya yang mengarah pada populisme penghukuman yang dipengaruhi oleh emosi dari aktor politik dan mengabaikan mekanisme prosedur penetapan organisasi teroris (Daftar Terduga Teroris dan Organisasi Teroris - DTTOT). Tulisan ini bertujuan menganalisis kebijakan penetapan KKB Papua sebagai organisasi teroris dari sudut pandang populisme penghukuman dimana konstruksi opini punitif masyarakat dominan dipengaruhi oleh media. Dengan metode qualitative discourse analysis, argumentasi yang dibangun dalam artikel ini berupaya mengisi kekosongan ruang diskusi dengan mengkritisi populisme penghukuman terkait KKB Papua sebagai organisasi teroris. Penelitian ini juga
menemukan bahwa upaya framing emosi masyarakat (kemarahan dan rasa tidak aman) terhadap KKB Papua, penyajian *hyper-reality* dan realitas virtual oleh media, *punitive crime control* telah dimanfaatkan oleh negara untuk mendukung kebijakan populisme penghukuman yang ditunjukkan dengan mengubah status KKB Papua menjadi organisasi teroris. Hingga pada kesimpulannya, potensi *state hate crime* atas KKB Papua nampak nyata.

**Kata kunci:**
Penal populism; media; Kelompok Kriminal Bersenjata Papua (KKB Papua); organisasi teroris

### 1. Introduction

The protracted conflict in Papua entered a new chapter when the Indonesian government announced that the Papuan Armed Criminal Group (Kelompok Kriminal Bersenjata/KKB) was a terrorist organization (Kompas.com, 2021). From January to June 2021, KKB Papua had been deemed as responsible for 30 attacks in Papua including shootings, killings, hostage-taking, arson, and archery. On this, Papua Task Force from the Center for Capacity Development and Cooperation, Gadjah Mada University recorded that since 2010 up to 2020, violent attacks in Papua had been mostly conducted by KKB Papua with 118 cases, compared to the TNI with 15 cases and the National Police of 13 cases. Number of deaths reached 356 people, of which civilians and personnel of TNI and Polri was accounted for 93 percent, while KKB Papua’s members were at 7 percent.

The mounting death tolls, especially from civilians and members of security apparatuses, had narrowed down the long-debated discourse on the status changing of the KKB Papua from a criminal organization into a terrorist organization. Ultimately, a shootout incident on 25 April 2021 between the government security forces and KKB Papua had claimed the life of the Head of the Papuan Regional State Intelligence Agency (Kabinda). This incident accelerated the final decision to change the status of the KKB Papua into a terrorist organization. On 29 April 2021, the Coordinating Minister for Political, Legal and Security Affairs on behalf of the government had announced that all organizations and individuals in Papua that had carried out massive violence were categorized as terrorists, including those who committed brutal killings (Kompas.com, 2021; CNN Indonesia, 2021). This decision was based on the escalation of violence by individuals and organizations in Papua which did not only attack law enforcement officers and government agencies, but also civilians.

The Indonesian government’s decision to change the status of Papuan Criminal Armed Group (KKB Papua) into a terrorist organization generated mixed responses. For those who opposed it, this policy was seen as failed to address the root causes of the conflict in Papua, driven by political interests and was a potential source for new conflicts. The parliament that supported this policy highlighted that the Terrorism Law (Law no 5 of 2018) is applicable to cope with KKB Papua issue because it had committed terror acts, posed public insecurity, and threatened the state security (CNN Indonesia, 2021). After the announcement, Tempo.co media conducted a reader poll of 755 people for one week and the results showed that 629 people (83.31%) of the public agreed with the government’s move to change KKB Papua as a terrorist organization, while 113 people (14.97%) disagree (Tempo.co, 2021).
In line with Tempo’s polling, BNPT also conducted an observation and noted the public positive sentiment. Data Analysis Centre in BNPT documented that there was an elevated positive sentiment on Twitter on 25 June 2021, with 3.866 supportive mentions (49.7%), while the negative sentiment was represented by 2.031 mentions (26.1%) and neutral sentiment shown by 1.881 mentions (24.2%).

Figure 1.
Timeline on the Changing Status of Papuan Criminal Armed Group into Terrorist Organisation

Source: The authors’ compilation from secondary data/open sources

Figure 2.
Social Media Monitoring on Papuan Criminal Armed Group

The changing status of the KKB Papua into a terrorist organization signifies the move to a more popular punitive policy, known as penal populism. Penal populism is a form of punitive policies designed by the politicians based on public’s opinions and trends to gain political support. As it was highly subjective and claimed to be a manifestation of a public will, penal populism neglects the values of the criminal justice system (Pratt, 2007). Punitive policy changes in penal populism are context-dependent, based on local situation and the ruling power. Consequently, such policy is highly influenced by the emotions of the political actors rather than rational considerations, valid data, and experts’ opinions. Thus, the status-changing from a criminal group into a terrorist organization which was highly subjective to public opinions demanding for severer punitive punishment reflected this penal populism policy, as it did not follow to the required mechanisms. Some of them are, among others, adherence to regulations regarding the List of Suspected Terrorists and Terrorist Organizations, the issuance of a final court decision and the legal definition on KKB Papua’s acts which are compatible with terrorist acts committed by other terrorist groups.

Government’s rush in designating the KKB Papua as a terrorist organization shows the tendency to “get back at” the KKB Papua by amplifying the already problematic security approach to address conflicts. This motivation was masked in such a way as if it was the public will which demanded justice for the victims of the attacks. In addition, it was an effort to fulfill a sense of justice for the violence committed by KKB Papua, an effort believed to be representing the public’s will. Over exposure on KKB Papua’s brutal acts by the media had showed a firm support for this decision and it had successfully influenced public opinion on justice and crime as well as contributed to deeper stigmatization towards KKB Papua. Furthermore, media reporting which tend to use “Jakarta” point of views where the national media centers are located have exacerbated this situation. In the end, the media produced a virtual reality that was arranged in such a way as to obscure the fact and strengthen the image of the KKB Papua as a national security threat.

This paper analyzes government’s decision on KKB Papua’s status changing from penal populism point of view, where the construction of public’s punitive opinion had been highly dominated by the media. Employing a qualitative discourse analysis, this paper argues that the public anger, social discontent, and sentiments regarding a political event and the criminal justice system, had been justified as the “people’s will” which pushed government’s decision to determine KKB Papua as a terrorist organization. In turn, penal populism policy and media’s influence in presenting virtual reality to frame people's emotions had ultimately led to state hate crime against KKB Papua.

2. Literature Review

Penal Populism
Penal populism interconnects politics with law enforcement and aims to encourage and suppress the development of human relations as well as to create justice and order. Thus, all law enforcement institutions are the parts of the single and collective political decisions at a particular time and environment, which had already assigned some forms and characteristics of law. Prior to the popular "penal populism", Sir Anthony Bottoms (1995) coined a term "populist punitiveness" to describe the influence of contemporary criminal justice and criminal system towards the modern society. This term does not only refer to public opinion, but also politicians’ tendency to use and benefit from it for their interests, which is claimed to represent public punishment attitudes (Bottom, 1995 in Freiberg & Gelb, 2013).

Since then, numerous academics have continuously investigated the populist influence on policy and criminal justice system (Tham, 2001; Pratt & Clark, 2005; Pratt, 2007). The term
Populist punitiveness was the backbone of "penal populism" concept. Roberts et al. (2003) stated that 'penal populism' emphasizes the electoral benefits of a policy rather than its criminal effectiveness (Pratt, 2007, p. 3). Pratt (2007) then describes penal populism as a series of criminal policies aimed at winning public supports rather than reducing crime or promoting justice.

The concept of penal populism is often intertwined with political goals, especially in several situations, namely 1) the increasing crime rate and discussion on punishment as an important topics for public debates during a democratic election; 2) the increasing influence of public opinion polls and media coverage for criminal punishment; 3) the loss of "boundary" between criminal justice agencies and political actors; and 4) the introduction of 'appropriate' punishment policies by politicians aimed at gaining public supports (Pratt, 2007 in Shammas, 2016, p. 326).

According to Pratt (2007), penal populism represents a model of power in a new era that plays a significant role in the debate on punishment and who control the debate. In this policy model, the popular common sense has occupied a "special position" as the driver of decision making. Penal populism tends to use expressions of public anger and disappointment as the basis to form legal policies. In simple terms, penal populism involves the use of opinions including misinformation aims at pursuing electoral gains. This means that various manifestations of penal populism have been based on oversimplified or incomplete assessments of public opinions in some respects.

Penal populism aims to highlight three key points in the decision-making regarding national security policies: (a) the government's desires to be considered as 'sensitive' towards the popular demands and 'the will of the people' (although these demands may actually be influenced by many biases, such as fear and economic interests; and private or corporate media interests); (b) the political process as a forum for gathering public preferences regardless whether there are tangible benefits and deliberation processes; and (c) the validation of political decisions if they are supported by the majority of the population as stated in the popular opinion polls, regardless of the decision-making mechanism and who participates in the decision-making process (Barahona & Lejarraga, 2011, p. 53).

The output of penal populism is punitive crime control or the crime control efforts that rely more on 'feelings and intuition' rather than measurable indicators and mechanisms. Punitive crime control gives rise to ambiguous and biased criminal regulations, such as increasing the rate of imprisonment, the use of public shaming, and the stigmatization of certain groups/individuals, where these sanctions lead to increased suffering (Matthews, 2005). In addition, some sentencing policies at times are disproportionate and target certain racial groups and can create a vicious cycle of continuous imprisonment these groups (Young & Matthews, 2011; Simon and Caplow, 1999). Punitive crime control triggers a new form of victimization of certain groups in society. Thus, "criminals" become targets of public antagonism that will disregard human rights values in criminal eradication approaches and lead to state hate crimes (Simon and Caplow, 1999). In other words, state hate crime is an effort to maintain power through direct violence and threats of violence, both verbal and physical (Perry, 2001, in Tyner, 2016 p. 1071). In Indonesian context, the determination of KKB Papua as a terrorist organization can be analyzed further through the framework of penal populism which results in punitive crime control and leads to the state hate crime.

Therefore, political factors play a significant role in paving the ways for the development of legal policies. Windlesham (1998) defines the politics of punishment as a form of public opinion roles strengthened by the compromise of political actors through the implementation of crime
control policies. The politics of punishment in this case can be viewed in two aspects of interest. First, the public interest, where the political actors determine the direction of crime control policies based on public opinion and encouragement. Secondly, the political interest, where the political actors determine the direction of policy to achieve political gains. Thus, to understand the evolving legal policies, it is important to consider the the social and political context.

Media Influence
The media is highly influencing the formation of public opinion on crimes. Pratt (2007) explains that the perception of crime is strongly influenced by the mass media and the development of information technology. Therefore, the most widely read and viewed popular media today plays an important part to shape public opinions. Media take advantage on this by covering selective and non-comprehensive reports. Crime cases are portrayed in such a way that attract public attention which then gives rise to “feelings and intuitions” embedded in penal populism.

There are three main roles of the media in promoting penal populism. First, the media cover news about crimes committed by individuals or groups to form a ‘framing’ that they must be punished for these actions. Second, the media inspire politicians through the framing of crime and punishment issues. Third, the media provide a communication platform for the public to respond to certain criminal policies. It is this last role that specifically drives the emergence of the penal populism policy (Roberts, 2003, p. 76). In this context, the policy change shows an asymmetric tendency, moving towards a more punitive direction that seems to reflect the punitive view of the society (Freiberg & Gelb, 2013).

The strong influence of the media, driven by massive information and technology revolution has pushed people to live in the hyperreality. In this case, postmodern society leaves factual reality and enters the ecstasy of hyperreality through experiences they got from technology and the multimedia (Lubis, 2014). Facts and discourse simulations are mixed so that the media representation is seen as more trusted and easily believed than the “actual” facts. The volume and nature of criminal reporting in the mass media enlarge the dimensions of the crime presented. As a result, policy makers often rely on public knowledge that comes from the media, thereby shifting the validity of mechanisms and accurate data that should be considered when making a legal policy.

3. Research Methodology

This study uses a qualitative approach. Through this approach, researchers can see changes in attitudes and viewpoints caused by an unusual event (phenomenological) in a group or communal contexts (Herdiansyah, 2014). The data collection is by conducting a library study of relevant documents and literatures. In this study, researchers conducted a search for secondary data such as statements of public figures in media articles, literature, and documents. In addition, there is also non-public data that supports the determination of the KKB Papua as a terrorist organization from the National Counterterrorism Agency (BNPT). Maxfield and Babbie (2009) describe that there are three general categories of institutional data: published statistics, unpublished/nonpublic records or data collected routinely for internal use, and new data collected by institutional staff for specific research purposes (Maxfield and Babbie, 2009; Maxfield & Babbie, 2009).

The method of analysis is qualitative discourse analysis, carried out through the examination and interpretation of observations to find the meaning and pattern of relationships of the overall data collected. Qualitative discourse analysis method is intended to find meaning and things hidden behind a discourse. Baudrillard (1987) in Lubis (2014) suggested a form of an
“information society” where there is transparency of meaning and that the information displayed in the media and the internet will become global conversations and discourses. Society seems to be guided by capitalist logic that offers openness of information and novelty leading to changes by emphasizing the lifestyle, fashion, and image. According to Dobrynina (2016) discourse analysis is appropriate to understand the manifestation of penal populism in legal policies, the media, and their relationship to political factors. This approach is suitable for an interpretative examination of the ideologies and power relations involved in discourse by looking at the role of language as a form of social practice in the social and political domination of the news texts, which contributes to shaping public opinion (Dobrynina, 2014).

4. Results and Discussion

How Statements Become Policies: The Analysis of The Changing Status KKB Papua

The Papuan conflict is the longest separatist conflict (more than three decades) in the Indonesian history (Heidbuchel, 2007, p. 157 in Budiatri, 2017). Some experts mentioned that this conflict is a separatist conflict because the Papuan conflict arises due to the instrumentalization of ethnic identities to materialize political goals, including independence (Heidbuchel, 2007). For this reason, as stated in the Papua Road Map 2005 – 2009, a dialogue between the government of Indonesia and the Papua separatist organization will be conducted to resolve the conflict in Papua. However, ambiguity regarding the definition of "dialogue" persists until the present day. The lack of clarity on what dialogue means has raised a question of whether there will be constructive communication between the Government and the Papuan people or starting new negotiations while maintaining a military approach in Papua.

After the fall of New Order regime, students, intellectuals, NGO activists and religious leaders sounded their demands to investigate past human rights crimes, rejection on militarism approach and demand to stop Freeport’s exploitation in Papua (Wilson, 2017). Apparently, Papuan youth are the driving actors for strategies leading to demands for independence and inclusive nationalism. The Free Papua Organization (OPM) which advocates for Papua's independence from the Republic of Indonesia has never stopped moving both domestically and internationally for decades. However, the government's response to the conflict is legal action, arrests, prohibition of activities and imprisonment. Various militaristic policies to reduce conflict cannot solve the problem in Papua, including changing the name of the Free Papua Organization to the Papuan Armed Criminal Group (KKB Papua) to reduce the level of national security threat (separatism) to a crime security threat (criminality). Unfortunately, the change in the name of OPM to KKB has increased the capacity of this group, which basically maintains its separatist movements (dpr.go.id, 2021). This is indicated by the increasing intensity of violence occurred during its status as a criminal group.

On April 29, 2021, The Indonesian Coordinating Minister for Political, Legal and Security Affairs officially declared that organizations and people in Papua that carried out massive violence were categorized as terrorists, including those who carried out brutal killings. The following is an excerpt from the Minister’s statement (Liputan6.com, 2021; Polkam.go.id, 2021):

"Pemerintah sudah menyaring pernyataan-pernyataan yang dikemukakan oleh Ketua MPR, BIN, pimpinan Polri, TNI bahwa banyak tokoh masyarakat dan tokoh adat Papua yang datang ke kantor Kemenko Polhukam, serta pimpinan resmi Papua baik itu pemerintah daerah maupun DPRD yang menyatakan dukungan terhadap pemerintah Indonesia untuk melakukan tindakan yang diperlukan guna menangani tindak kekerasan yang muncul belakangan ini di Papua. Dengan pernyataan mereka itu, maka pemerintah
menganggap bahwa organisasi dan orang-orang di Papua yang melakukan kekerasan masif dikategorikan sebagai teroris…"

("The government has filtered out the statements made by the Chairperson of the MPR, BIN, the leaderships of the National Police, the TNI that many community leaders and Papuan traditional leaders have come to the office of the Coordinating Ministry for Political, Legal and Security Affairs, as well as Papuan official leaders, both the regional government and DPRD, who have expressed support for the Indonesian government to take the necessary actions to address the recent violence in Papua. Based on these statements, the government considers that organizations and people in Papua that carry out massive violence are categorized as terrorists…")

"Pemerintah sudah keluarkan Inpres Nomor 9 Tahun 2020 yang menginstruksikan penyelesaian masalah Papua dengan penyelesaian kesejahteraan, bukan dengan penyelesaian bersenjata. Tidak ada gerakan/tindakan bersenjata terhadap rakyat Papua, tetapi ada tindakan penegakan hukum. Adapun pemberantasan terorisme itu bukan terhadap rakyat Papua tetapi terhadap segelintir orang. Karena berdasarkan hasil survey, lebih dari 92 persen mereka pro republik dan hanya ada beberapa gelintir orang yang melakukan pemberontakan secara sembunyi-sembunyi, sehingga mereka itu melakukan gerakan separatisme yang kemudian tindakan-tindakannya merupakan gerakan terorisme."

("The government has issued Presidential Instruction No. 9 of 2020 which instructs the resolution of the Papua problem by solving the welfare problem, not by using an armed solution. There are no armed movements/actions against the Papuan people, but there are law enforcement actions. The eradication of terrorism is not against the Papuan people but against a few people. Because based on the survey results, more than 92 percent of them are pro-republican and there are only a few people who carry out rebellions in secret, so they carry out a separatist movement which then acts as a terrorist movement.")

"Pemerintah sudah meminta kepada Polri, TNI, BIN dan aparat terkait untuk melakukan tindakan secara cepat, tegas, dan terukur menurut hukum. (Penanganan) akan dilakukan menurut undang- undang. Siapa itu yang melakukan? Satu, yang di depan itu polisi dengan bantuan penebalan dari TNI. Itu saja undang-undangnya."

("The government has asked the National Police, TNI, BIN and related officials to take action quickly, decisively, and measurably according to the law. (Handling) will be carried out according to the law. Who will do that? One, at the front is the police with reinforcements from the TNI. That's the law.")

With this status change, the government is re-framing the perspective of law enforcement from ordinary crimes to acts of terrorism which are threats to national security. The statement which later became the basis of this policy was disseminated to the public to create a higher perception of threat to the KKB Papua. The data that underlies this statement are not accurately referenced, so that apart from being correct, it also underscores the government's claim that this policy is the will of the people or "92 percent of the people are pro-republican". Thus, the government is trying to redefine all acts that are claimed to be acts of KKB Papua without a professional investigation process.

This Government’s statement is reinforced media’s role in influencing public opinion and presenting an image that seems to represent public approval and support or claiming to be the representative of the public. There is a claim on the approval and representation of public
support (through traditional leaders) in the media which is insufficient to justify the introduction of a new policy, especially in the context of terrorism crimes. This claim presented in the media represents a simulacra or duplication that in fact has never existed (Baudrillard (1983) in Lubis, 2014). This means that the imagine had covered the real reality because those claims did not represent the public and the wider community.

Through the media, the government and non-governmental organizations claimed that their statements represent the wider community, these claims include statements that are both pro and contra against the policy of establishing the KKB as a terrorist organization. Ferrell, Hayward and Young (2008, 126-129) refers this phenomenon the loop and spiral effect of the media. The representation in the media plays an important role in which crime and image interconnect and shape the reality of crime conducted by the perpetrators and perceived by the public.

To hold a status a terrorist organisation, one must meet following elements:

- The element of acts using violence and threats of violence.
- The element of creating an atmosphere of widespread terror and fear.
- The element of causing mass casualties.
- The element of causing damage or destruction to strategic vital objects, the environment, public facilities, or international facilities driven by ideological, political, or security disturbance motives.
- The elements of ideological, political, or security disturbances.

### Table 1.
**Analysis on Terrorist Organisation Indicators for Papua Armed Group**

<table>
<thead>
<tr>
<th>No.</th>
<th>Indicator</th>
<th>Evidence</th>
<th>Analysis</th>
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<tbody>
<tr>
<td>1.</td>
<td>The element of acts using violence and threats of violence</td>
<td>From 2010 to 2020, there were 118 cases of violence, the death toll reached 356 people</td>
<td>Activities carried out by the KKB Papua can indeed be said to have fulfilled the elements of the act of causing violent events and threats of violence such as shootings, killings, taking hostages, arson, and archery. However, crimes against state security have previously been regulated in the Criminal Code and lex specialis the actions of the KKB Papua that use violent means have been included in the regulation.</td>
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<tr>
<td>2.</td>
<td>The element of creating an atmosphere of widespread terror and fear.</td>
<td>On February 15, 2021, around 1,000 residents from four villages in Sugapa District, Intan Jaya Regency, Papua, fled for fear at the St. Mikael Bilogai Catholic Church Rectory Complex.</td>
<td>A crime contains subjective and objective elements based on circumstances. If the subjective element is attached to the subject, it includes everything related to the intentions and will of the perpetrator. To see</td>
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whether the element of creating an atmosphere of widespread terror and fear, it must be proven with an objective element which also includes the circumstances and the situation on the ground. Thus, it is necessary to pay attention to whether the acts of violence committed by KKP Papua have become the main source of "widespread fear" in the community.

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<th>3.</th>
<th>The element of causing mass casualties.</th>
<th>From 2010 to 2020, there were 118 cases of violence, the death toll reached 356 people</th>
<th>A series violence acts carried out by KKB Papua have caused massive casualties. Referring to the number of victims from civilians to the police, the element of causing mass casualties is fulfilled.</th>
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<tr>
<td>4.</td>
<td>The element of causing damage or destruction to strategic vital objects, the environment, public facilities, or international facilities driven by ideological, political, or security disturbance motives.</td>
<td>KKB Papua committed several crimes such as arson of schools, shot planes, and damaged other public facilities, Examples are among others, the burning of Intan Jaya village head's office, heavy equipment and kiosks (February 6, 2020); the burning of one excavator unit to the ground in Intan Jaya (On August 18, 2020); shooting down a helicopter belonging to PT Arsa Air burned at Aminggaru Airport, Ilaga (April 11, 2021). It also destroyed road facilities, namely Jalan Kimak, Jalan Tagaloa and Jalan Wuloni Pintu Angin, burning the tower at Aminggaru Ilaga Airport, Puncak Regency, Papua, causing the airport's operations to be temporarily closed.</td>
<td>The activities of the Papuan KKB in burning village offices, schools, planes, and other public facilities to cause destruction/damage and disrupt the functions and operations of these vital objects or public facilities can be said to be acts that meet this indicator. This element is also an alternative element to the element of the previous act (causing mass victims) against vital objects...&quot;. The use of the diction “and/or” in the article explains that an act is said to be an act of terrorism if it fulfills both or one of the elements.</td>
</tr>
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| 5. | The elements of ideological, political, or security disturbance motives. | Papua is included as Indonesian territory after the Determination of Popular | As it is known that political crimes also include separatism. However, the
| security disturbances | Opinion (PẸPERA) in 1969. Because of this, the desire to separate Indonesia by using violent methods and attacks on civil society and state apparatus in achieving the KKB Papua’s objectives have fulfilled the elements of ideological, political, or security disturbances. | KKB Papua with the ideology separatist movement cannot use the Terrorism Law. |

For this reason, the Government claimed KKB Papua has fulfilled the elements of criminal terrorism as stated in Article 1 paragraph (2) of Law Number 5 of 2018 concerning the Eradication of Terrorism. However, the explanation of legal rationality that ignores the order of legislation had certainly raised public reactions and perceptions of politicization.

**Analysis of Penal Populism and the Role of the Media**

The enactment of a legal policy depends on the socio-cultural situation and the political forces currently in power. In such a situation, a legal policy process has often been influenced by the emotions of political actors rather than rational considerations. The Papuan political phenomenon is undeniably a tension between the elite and the grassroots (Papuan society), this will have an impact on any repression imposed by the state (power) to maintain order (penal populism), including severing any punishments (Shills, 1956 in Pratt, 2007). In this context, severity of punishment is equated to terrorism crime which includes the maximum penalty i.e. the death penalty. As a democratic country, public opinion plays a major role in the involvement of political discourse regarding crime control or the rule of law that can be established. Nevertheless, public opinion had been used as political game by politicians to justify the imposition of more severe criminal sanctions (punitive crime control), in this case, towards the KKB Papua. Accordingly, public opinion is often used by politicians to justify social control methods through heavier criminal sanctions (Pratt, 2007, p. 33). In the end, the policies issued by the politicians were based solely on feelings, intuition, and political sentiments.

The representation of the KKB Papua in the mass media is dominated by the framing of violent acts and state losses resulting from the conflict without comprehensively explaining the background of the conflict (Windlesham, 1998). The framing triggers public anger and community demands for social and political responses. In addition, it encourages the formation of public support for the formulation of tougher punishment policies, regardless of the ability and effectiveness of these policies to reduce crime. In this case, penal populism is a manifestation of politicians’ ideas who take advantage of a condition and use it for their own interests based on what they believe is a punishment attitude desired by the public (Bottoms, 1995 in Freiberg & Gelb, 2013, p. 3).

This sense of insecurity and anxiety caused by the media framing had encouraged the imposition of restrictions on people's lives, especially the Papuans. Therefore, KKB Papua’s changing status as a terrorist organization was the only option available to address the matter in an extraordinary way. Evidently, that legal policies inclined towards a penal populism is inseparable from the role of the media in shaping public knowledge and opinion. Media representation does not only shape communities’ sense of collective anger, but also satisfies politicians’ moral affirmations (Jewkes, 2004, p. 72). As a result, the media shows that there
is a limit to how much diversity can be tolerated in society and leads to societal confirmation on politicians' authority to make judgments on every criminal incident.

**Changing a Crime into a Terrorist Act is not The Solution**

The changing status of KKB Papua should not be based on mere political statements that claim to represent the community. This also applies to the national media which seems to support the policy since the press conference on the change in the status of the KKB Papua. Positive sentiments, research without accountability and disproportionate opinion polls cannot be used as reference in supporting a decision. Policy construction solely based on numbers is a form of justification for the government to establish the punitive response claimed as based on the public will.

The militaristic approach for Papua's security problem had only fulfilled the community's sense of security and national security in general. Furthermore, the statement by the Coordinating Minister for Political, Legal and Security Affairs on the 92% pro-republican statistic did not cite accountable and valid statistical data. Thus, subjective interpretation, prediction and common knowledge held by the state had replaced accountable data. Consequently, "voicing public's will" had continuously been put as the background to support political decisions managed by political actors (Pratt, 2007). This indicates that there was a politicization of punishment in changing the status of KKB Papua into a terrorist group.

The indication that the current criminal justice system has predominantly been influenced by political power is imminent. Therefore, it is a trend that legal policies produced based on a penal populism tend to be punitive. The impact of punitive populism is not only increasing the use of punishments such as detention and intermediate sanctions, but also decreasing the provisions for rehabilitation and reintegration (Wood, 2014, p. 3). In a sense, punitive construction as a response will not only increase the use of punishment to the community, but also reduce the basic role of the criminal justice system, especially in relation to the functions of rehabilitation and social reintegration. Lack of objective consideration in the policy formulation process led to the production of policies believed to be able to create a safer community (Matthews, 2005).

On the other hand, the Terrorism Law has the power to detain longer than crimes in general, which is up to 21 days until initial evidence is obtained and it is determined as a crime, longer than general crimes (1 x 24 hours). The embedding of a terrorist “label” on KKB Papua which only refers to the fulfillment of the elements of a criminal act of terrorism seems to simplify the process of defining a crime of terrorism stated in the law. Failure to adhere to this regulation will potentially create a new form of violence conducted by the state (state hate crime). This stigmatization could legitimize the violent representation of the KKB Papua and places them as legitimate targets for public antagonism. In this context, hate crime committed will create bias against people or groups with certain characteristics determined by law (Jennes & Grattet, 2001).

Punitive legal policies as the output of penal populism tend to target “others” and not “ordinary people” (Pratt, 2007; Matthews, 2011). Populist beliefs in responding to crime can certainly influence policy when they determine who can be considered as the ‘enemy’. In the name of national security, it seems as if all political actors believe and construct the Papuans (majority) as the source of security disturbance thus creating a sense of common enemy. The national media exacerbates this stigma by shaping public opinion and attracting public scrutiny towards the ruler's desire to be safe. Penal populism provides punishment as a public spectacle rather than a bureaucratic achievement (Pratt, 2007, p. 35). Therefore, penal populism does nor
only provide imprisonment for offenders but also an opportunity to turn the offender's sentence into a symbolic spectacle of retaliation for the public who see it, and become a form of humiliation for the perpetrators.

The overall analysis suggests that an “intuitive and emotional” policy to address the KKB Papua issue should be refrained from further implementation before the issuance of a court’s final decision. This is because it can create backlash due to some strategic issues. Those, are, among others, the history of integration Papua to the Indonesian territory and the political identity of the Papuan people; political violence and human rights violations; the failure of development in Papua and the government’s inconsistency in the implementation of Special Autonomy (Otsus); and the marginalization of Papuans (Widjojo, 2009:6-7 in Budiatri , 2017). Thus, changing KKB Papua status should consider all these factors. Furthermore, the changing status embodies an act of state hate crime, fails to address the root causes of the conflict, and provides a new paradox in the dimension of terrorism crimes. Valid evidence-based data and accountable research findings are needed as the basis for the security policy-making process. The four strategic issues regarding on Papua problem should be used as a basis to create a holistic solution. Additionally, it is imperative to avoid the construction of a terrorist organisation through generating public opinions for some politician’s interests because it can hinder the possibility of seeking sound and reasonable solutions to end the conflicts.

5. Conclusion

KKB Papua’s status changing as a terrorist organization is predominantly political in nature. It is also evident that the politicization of punishment in the name of national security adds to the prolonged conflict’s complexities in Papua. The government policies regarding the determination of the KKB, the economic and political dynamics underlying this policy have hindered the road towards conflict resolution and weighted the new tensions between Jakarta and the Papuan people. In addition, the formation of legal basis and punitive policies to address national security issues should be proportional and based on legal provisions, including valid evidence-based data and avoid assumptions. The media framing that is shaping public opinions has also exacerbated the sense of hostility between the public and the Papuans. Thus, policy formulation should consider the implications whether it can lead to a massive call for Papuan independence or support for nationalism in Papua.

Thus, the basis for punishment needs to put a consideration on the root causes of the problem. To determine an individual or group as a terrorist entity requires in-depth study than simply following the intuition or feelings represented by the policy-making elites. Importantly, the local-based public opinion, i.e. the Papuan people’s opinion, should also be listened to. In this process, authorities need to conduct review before decided to put KKB Papua on the List of terrorism organizations. This is important to avoid bias and heavy reliance on opinion construction which make all the security issues in Papua become more and more problematic.

References

Books, Journal, Institutional documents


**Websites**


**Regulations**
