

Legal analysis of the urgency of determining the free papua organization (OPM) as a perpetrator of gross human rights violations in Indonesia

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Abstract

Purpose: This study analyzes the urgency of determining the Free Papua Movement (OPM) as a perpetrator of gross human rights violations in Indonesia from a legal perspective. The main focus of the study is to understand and examine the legal consequences and social impacts of the determination in efforts to enforce justice and protect human rights in Indonesia.

Research/methodology: This study uses a normative legal research method with a descriptive-analytical approach that relies on secondary data from legal literature, laws and regulations, and the opinions of legal experts.

Results: The results of the study show that OPM has committed various acts of violence that violate human rights, including murder, torture, and kidnapping. Determining OPM as a perpetrator of gross human rights violations is considered important to uphold the principles of justice and equality before the law, in accordance with national and international legal standards. In addition, this study also found that legal action against OPM is not only aimed at imposing sanctions, but also as a preventive measure to prevent similar crimes in the future. The opinions of human rights law experts emphasize the importance of a proportional and effective response from the government in handling cases of gross human rights violations. Thus, this study makes a significant contribution to the development of legal science and efforts to protect human rights in Indonesia.

Keywords: *OPM, Serious Human Rights Violations, Urgency of Determination*

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1. Introduction

The Free Papua Movement (OPM) is a separatist movement that emerged in 1965 in Papua Province. Separatism aims to achieve autonomy or separation to stand alone or merge with another country (Effendi, 2015). The Indonesian government has also always tried to resolve the conflict by mobilizing the TNI. The deployment of TNI forces tasked with upholding state sovereignty, such as suppressing armed rebellions or armed separatists using 'military means' (combat) is categorized as OMSP (Military Operations other than War) (Kadisjarahad & Djamil, 2018).

The use of the latest nomenclature based on the TNI Commander's STR Number STR/41/2024 dated April 5, 2024 concerning the mention of nomenclature by the TNI using the term Free Papua Movement (OPM). The organization is a separatist movement which means the desire to separate from the Republic of Indonesia so that it becomes one of the TNI's responsibilities (Edon & Hidayat,

2021). The main player in the battle was the military wing of the OPM, namely the West Papua National Liberation Army (TPNPB). TPNPB was heavily involved in rebellion activities and has fulfilled its role as an armed separatist movement that has also claimed many lives. The crimes committed have violated the natural rights inherent in humans because it has been clearly stated in the International Human Rights Declaration, Article 5, that "No one shall be tortured or subjected to cruel, inhuman or degrading treatment or punishment".

The OPM movement is included in extraordinary crimes and needs to be handled and stopped by the Indonesian Government because this group is separatist and is indicated to want to break away from the Republic of Indonesia. This organization continues to launch various ways to gain support from outside parties, both by spreading fake news (hoaxes) to foreign media regarding the occurrence of gross human rights violations committed by the TNI or Polri against the Papuan people, even though it is the OPM that actually commits many very cruel human rights violations against anyone who opposes its policies. Data shows a series of alleged gross human rights violations committed by OPM.

Based on the data obtained, it is known that OPM is a very dangerous separatist movement that always twists the facts in its criminal actions. Its rebellion is marked by acts of physical resistance using weapons, hostage-taking, extrajudicial killings, rape, kidnapping or disappearances, excessive torture, forced evictions of residents, demonstrations, raising the West Papuan flag, distributing or posting pamphlets, acts of vandalism, and various other criminal acts. According to researchers, the conflict involving OPM in Papua has resulted in violations of Human Rights.

Referring to Article 1 number 6 of the Human Rights Law, the Free Papua Movement (OPM) is an organization that violates human rights because its actions have injured the human spirit of every person. OPM deliberately breaks the law to reduce, hinder, limit, and/or revoke the human rights of an individual or group of people guaranteed by law so that many victims fall, including Indigenous Papuans (OAP), immigrant civilians, TNI/Polri officers. The existence of Law Number 21 of 2001 concerning Special Autonomy for Papua, which was enacted with the intention of upholding a sense of justice for the Papuan people, in reality, gross human rights violations still occur to this day.

This organization has been included in the category of gross human rights violations because it fulfills the elements of crimes against humanity, which include:

1. The act was carried out as part of a widespread or systematic attack directed against a group of civilians.
2. The perpetrator knew that the act was part of or intended the act to be part of a widespread or systematic attack against a group of civilians (Manan 2006).

Researchers argue that the state's obligations, especially the government's, regarding gross human rights violations, especially those committed by the OPM in Papua, are actually more specific according to national law. Human rights based on the 1945 Constitution of the Republic of Indonesia concerning human rights are placed separately in Chapter XA, Article 28, letters a to j. If we look at Article 28 letter i paragraph (4) it clearly states that "protection, promotion, and fulfillment of human rights are the responsibility of the state, especially the government". Based on this, the state is burdened with the obligation to protect human rights, especially the rights regulated in Article 28 letter i of the 1945 Constitution of the Republic of Indonesia.

The urgency of determining the OPM as a perpetrator of gross human rights violations in Indonesia must be a concern for the government and law enforcement because it will be in line with effective implementation steps in the legal field to respect and uphold human rights. This determination can affect the OPM's desire to become an independent country that always spreads hoax news to the UN or foreign media regarding human rights violations by the Indonesian government even though there are many heinous crimes committed against civilians in Papua. The urgency of the determination also aims to provide bargaining power to the outside world or in the UN general assembly regarding the stigma of gross human rights violations that have so far only been labeled to the TNI or Polri, even though it is the OPM that has committed many gross human rights violations against civilians. Does

the determination have to wait for hundreds or even thousands of more victims before being declared a gross human rights violation? Of course, it is a question mark for researchers to see the existence of Komnas HAM, whether it is unwilling, unable, or does not dare to determine or recommend OPM as a perpetrator of gross human rights violations in Indonesia.

In the process of investigation and inquiry by Komnas HAM and the Attorney General's Office, if OPM's crimes have met the elements of gross human rights violations, they should be tried in a Human Rights Court, either permanent or Adhoc. If in the process of investigation or inquiry, Komnas HAM and the Attorney General's Office do not find evidence that gross human rights violations have occurred, they can be transferred to the General Court. Currently, the resolution of cases carried out by OPM only uses the general criminal law approach regulated in the Criminal Code so that the trial is also through the General Court, which according to researchers, the sanctions or criminal threats for OPM as perpetrators of heinous crimes still tend to be light and not yet burdensome. In fact, the many crimes beyond the limits of humanity committed by the OPM against civilians have fulfilled the elements of serious human rights violations or are considered international crimes and should be tried in the appropriate court, namely the Human Rights Court, because the sanctions will be more severe for perpetrators of crimes with the threat of the death penalty or a maximum of 25 years in prison.

If there is an error in the implementation in the Court that is not appropriate, it certainly causes the effectiveness of the implementation of Law Number 26 of 2000 concerning the Human Rights Court to be hampered and the sense of justice has not been fully fulfilled by the victim because "every victim of gross human rights violations and/or their heirs can receive compensation, restitution, and rehabilitation." Therefore, the researcher is interested in examining and researching the human rights violations committed and the urgency of determining the OPM as the perpetrator of gross human rights violations in Indonesia, considering the many gross human rights violations that have been found and committed by this organization. Based on this background, the researcher then raised this problem as a thesis proposal entitled **Legal Analysis Of The Urgency Of Determining The Free Papua Organization (OPM) As The Perpetrator Of Gross Human Rights Violations In Indonesia**.

1.1. Problem Formulation

Based on the description of the background above, the formulation of the problem in this case is as follows:

1. How is the urgency of determining OPM as a perpetrator of gross human rights violations in Indonesia viewed from a legal perspective?
2. What is the contribution of determining OPM as a perpetrator of gross human rights violations to efforts to enforce justice and protect human rights in Indonesia?

2. Literature Review

2.1. Human rights

Law and human rights are interrelated in national life and have become a very important discussion for society. In relation to the term Human Rights, the 1945 Constitution of the Republic of Indonesia states that: The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be reduced under any circumstances.

The definition of Human Rights according to the provisions of the law is: Human rights are a set of rights inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the state of law, government, and every person for the honor and protection of human dignity. i Human rights are rights that are protected internationally (namely the UN Declaration of Human Rights), such as the right to life, the right to freedom, the right to own, the right to express opinions.

2.2. Gross Human Rights Violations

The definition of human rights violations is clearly regulated in Law Number 39 of 1999 concerning Human Rights. Human rights violations are any act of a person or group of people including state officials, whether intentional or unintentional or negligence, limiting, and/or revoking the human rights of a person or group of people guaranteed by this Law, and not receiving, or feared not receiving, a fair and correct legal settlement, based on applicable legal mechanisms. Gross human rights violations are crimes that have the nature of the most serious crimes, so the handling required must be more serious. By the legislators, the Human Rights Court was adopted from the form of crime that is the jurisdiction of the International Criminal Court" (Abdulajid & Anshar, 1966).

OPM can be said to be a legal subject that can be held responsible for gross human rights violations. If members or leaders of the OPM commit acts that meet the criteria for gross human rights violations, they can be held accountable both at the national and international levels. Violations committed by non-state apparatus can occur almost the same as those committed by state apparatus or officials, such as the alleged Gross Human Rights Violations committed by the Free Papua Movement (OPM) against innocent civilians. To protect the implementation of human rights, the process of handling human rights violations is carried out through a human rights court through stages of investigation, inquiry, and prosecution (Ubaidillah 2006).

The following are some examples of international cases where non-state armed groups have been held criminally accountable for gross human rights violations:

Table 1. Examples of international cases where non-state armed groups have been held criminally responsible for gross human rights violations.

Case	Background	Completion	Results
1. Sierra Leone Case: Revolutionary United Front (RUF)	The Revolutionary United Front (RUF) was a rebel group involved in the civil war in Sierra Leone from 1991 to 2002. The group was known for its brutal tactics, including mass killings, dismemberment, and the use of children as soldiers.	The Special Court for Sierra Leone (SCSL) was established to try those responsible for gross human rights violations during the conflict. Many RUF leaders, including former leader Charles Taylor, were tried and convicted of crimes against humanity and war crimes.	Charles Taylor, who was also a former President of Liberia, was convicted for his role in supporting the RUF and sentenced to 50 years in prison in 2012.
2. The Case of Rwanda: Interahamwe and FDLR	The 1994 Rwandan genocide was carried out by the Interahamwe militia and members of the Rwandan Defence Forces (RPF) who massacred ethnic Tutsis and moderate Hutus. Over 800,000 people were killed in a 100-day period.	The International Criminal Tribunal for Rwanda (ICTR) was established by the UN to prosecute those responsible for genocide and other serious violations. Many Interahamwe and FDLR leaders were tried and convicted.	Interahamwe militia leaders such as Georges Rutaganda and Jean-Paul Akayesu were convicted by the ICTR for their roles in genocide and crimes against humanity.
3. The case of Uganda: Lord's	The Lord's Resistance Army (George & Elrashid) is a rebel	The International Criminal Court (ICC) has issued arrest warrants for Joseph Kony	Several LRA commanders have been captured and

Resistance Army (George & Elrashid)	group led by Joseph Kony, which is engaged in a guerrilla war against the Ugandan government. The LRA is notorious for kidnapping children for use as soldiers and sexual slaves, as well as mass killings and mutilations.	and several other LRA commanders for war crimes and crimes against humanity.	tried, but Joseph Kony remains at large to this day.
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The above examples demonstrate that non-state armed groups or non-state actors and individuals within them can be held criminally accountable for gross human rights violations. International courts such as the ICTR, ICTY, SCSL, and ICC have played a significant role in trying and punishing the perpetrators of these crimes, confirming that there is no impunity for perpetrators of gross human rights violations, regardless of their affiliation.

3. Research Methodology

3.1. Type of Research and Nature of Research

The type of research used in this study is a normative legal research type, namely research conducted to collect and analyze secondary data (Marzuki, 2005). The nature of the research used in this thesis research is descriptive analytical, a method that functions to describe or provide an overview of the object being studied through data that has been collected as it is, without conducting analysis and making conclusions that apply to the public (Sugiyono & Sutopo, 2021). In this thesis proposal research, the researcher uses the following approaches:

- a. The Statute Approach is carried out by examining all laws and regulations related to the legal issue being handled.
- b. The Case Approach is carried out by examining cases related to the issue at hand that have become court decisions that have permanent force.

3.2. Legal Materials

- 1) The 1945 Constitution of the Republic of Indonesia, first to fourth amendments 1999-2002 (State Gazette of the Republic of Indonesia 2006 Number 11,12,13,14).
- 2) Law of the Republic of Indonesia Number 1 of 1946 concerning the Criminal Code.
- 3) Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code.
- 4) Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights.
- 5) Law of the Republic of Indonesia Number 26 of 2000 concerning the Human Rights Court.
- 6) Law Number 34 of 2004 concerning the Indonesian National Army.
- 7) Law of the Republic of Indonesia Number 3 of 2002 concerning National Defense.
- 8) Law of the Republic of Indonesia Number 21 of 2001 concerning Special Autonomy for Papua
- 9) Government Regulation in Lieu of Law Number 23 of 1959 concerning the State of Danger.
- 10) Government Regulation Number 2 of 2015 concerning the Implementing Regulations of Law Number 7 of 2012 concerning the Handling of Social Conflict.
- 11) Government Regulation Number 3 of 2002 concerning compensation, restitution, and rehabilitation for Victims of Gross Human Rights Violations.
- 12) The UN Universal Declaration of Human Rights.
- 13) The 1949 Geneva Convention.
- 14) Other Regulations relating to Gross Human Rights Violations.

3.3. Data collection and analysis

The data collection technique in this thesis proposal research was obtained through library research in the form of legal materials related to the problem and limited empirical by conducting research interviews. The research materials used and obtained by the researcher will be analyzed using the descriptive method, namely describing and describing certain conditions of the existing problem, then a conclusion is drawn as an answer to the problem to be studied.

3.4. Drawing Conclusions

The conclusion drawing in this thesis proposal research uses a deductive method, namely drawing conclusions that start from a general proposition whose truth has been known and ends in a more specific conclusion (Sunggono, 2005). The results of the analysis as a general proposition in this study are concluded using a deductive method by starting from the results of the analysis as a general proposition and then drawing specific conclusions in answering the problem.

4. Results and Discussions

4.1. *The Urgency of Determining OPM as a Perpetrator of Serious Human Rights Violations in Indonesia Viewed from a Legal Perspective*

4.1.1. Legal Perspective

a) National Legal Basis

In the context of determining the OPM as a perpetrator of gross human rights violations, this Law provides a legal basis for demanding accountability for actions that violate human rights, such as mass murder, torture, or other inhumane acts committed by members or sympathizers of the OPM. Law Number 26 of 2000 concerning the Human Rights Court strengthens the legal framework needed to try gross human rights violations in Indonesia. "The Human Rights Court, hereinafter referred to as the Human Rights Court, is a special court for gross human rights violations", such as genocide and crimes against humanity. In the case of the OPM, determination as a perpetrator of gross human rights violations must go through the mechanisms regulated by this Law, including investigation by the National Human Rights Commission and prosecution by the Attorney General.

The National Human Rights Commission has an important role in investigating allegations of gross human rights violations. The initial mandate of the establishment of the National Human Rights Commission was to provide education on Human Rights, study international human rights instruments, and investigate cases of Human Rights violations (Setiawan, 2016). After the investigation is complete, the results are submitted to the Attorney General for further processing in court. This procedure ensures that every step in the law enforcement process against gross human rights violations complies with national and international legal standards, and provides justice for victims.

b) International Instruments

The Universal Declaration of Human Rights (UDHR) is a fundamental international instrument that sets standards for human rights, affirming that all individuals are entitled to basic rights without discrimination. This declaration aims to protect individuals from threats, achieve freedom, justice, prosperity, peace, equality and truth a standard of common good for all nations and countries (Jamal & Kusuma, 2023).

In the context of determining the OPM as a perpetrator of gross human rights violations, Indonesia must ensure that the legal process applied is in accordance with the principles stated in the UDHR. This includes the right to a fair trial, the right to an impartial trial, and protection against arbitrary detention. The Rome Statute of the International Criminal Court (ICC), although not yet ratified by Indonesia, provides important guidance in handling gross human rights violations. This means that there has been no harmonization of international legal instruments in its national legal system related to the ICC, although it is recognized in the law that its material content is partly based on the Rome Statute (Winarti, 2021).

c) The Urgency of Determining OPM as a Perpetrator of Serious Human Rights Violations from the Perspective of the Principle of Equality Before the Law

The principle of equality before the law is a fundamental principle in modern legal systems that ensures that every individual is treated equally before the law without discrimination. The principle of

equality before the law is fundamental to modern legal systems, ensuring fair treatment regardless of social, economic, or political background.

The application of the principle of equality before the law is essential in ensuring substantive and procedural justice. Substantive justice emphasizes that the law must be fair in its content, providing equal protection for all individuals. Procedural justice, on the other hand, emphasizes that the legal process must be fair and impartial, ensuring that all individuals have equal access to the judicial process. In the case of the OPM, the application of this principle means that victims of gross human rights violations must receive the same justice as other victims of violations, and perpetrators must be tried in accordance with applicable laws regardless of their political background.

The application of the principle of equality before the law also serves as a tool to prevent impunity. Impunity is a state in which violators of the law go unpunished, often for political or power reasons. In the context of the OPM, it is important to ensure that gross human rights violators cannot escape punishment simply because of their political status as members of a separatist movement. By ensuring that all lawbreakers are tried equally, the legal system can function more effectively in upholding justice and preventing future violations.

In addition, the application of this principle is also important to build public trust in the legal system. If the public sees that the law is applied consistently and fairly regardless of who violates it, then trust in the legal system will increase. This is especially important in the context of conflict such as in Papua, where distrust of the government and the legal system can exacerbate tensions. By demonstrating a commitment to the principle of equality before the law, the government can reduce tensions and build better relationships with the Papuan community.

The principle of equality before the law also has important implications for the protection of human rights by ensuring that all individuals are treated equally before the law, the legal system can be more effective in protecting the basic rights of everyone. In the context of gross human rights violations by the OPM, this means that the rights of victims must be recognized and protected, and violators must be tried and punished in accordance with applicable laws. This is not only a matter of justice for individuals, but is also important for promoting respect for human rights throughout society.

d) Implementation of the Principle of Equality Before the Law in the OPM Case

Implementation of the principle of equality before the law in the OPM case requires concrete steps to ensure that the legal process is fair and impartial. First, investigations into gross human rights violations by the OPM must be carried out thoroughly and professionally. This means that every report of violations must be thoroughly investigated, and evidence must be carefully collected and analyzed. A professional and impartial investigation will ensure that every act of violation can be revealed and the perpetrators can be clearly identified.

Second, the prosecution process against OPM members involved in gross human rights violations must be carried out in accordance with applicable legal standards. Law Number 26 of 2000 concerning the Human Rights Court provides a clear legal framework for trying gross human rights violations, and this framework must be strictly followed. The prosecution process must be transparent and fair, providing equal opportunity for all parties to present their evidence and arguments. By following strict legal procedures, the court can ensure that justice is upheld and that no individual or group is above the law.

Third, it is important to ensure that victims of gross human rights violations by the OPM receive proper redress. This includes financial compensation, psychological support, and social rehabilitation. The legal process must be designed to provide just redress for victims, which is an essential part of implementing the principle of equality before the law. By providing adequate redress, the legal system can help reduce the suffering of victims and provide a sense of justice that is needed. This is also important for promoting reconciliation and peace in conflict-affected communities.

Fourth, the implementation of the principle of equality before the law also requires transparency in the entire legal process. Every stage from investigation to trial must be carried out openly, with wide access for the media and the public to monitor the process. This transparency is important to ensure that the legal process is fair and impartial, and to build public trust in the legal system. In the context of OPM, transparency is also important to show that the government is committed to upholding human rights and does not tolerate any violations of the law.

Finally, the government and legal authorities must provide education and socialization regarding the importance of the principle of equality before the law to the public. Increasing awareness of this principle will result in the public being able to better understand their rights and the role of the law in protecting those rights. Legal education is also important to encourage public participation in the legal process, which in turn can strengthen law enforcement and promote justice. In the long term, consistent and fair implementation of the principle of equality before the law will help create a more just and harmonious society.

e) Challenges in Implementing the Principle of Equality Before the Law

The main challenge is the existence of political pressure and power that can influence the legal process. In the case of OPM, there is a possibility that political pressure can interfere with the investigation and prosecution, especially considering the political sensitivity associated with the separatist movement in Papua. Therefore, it is important to ensure that the legal process is carried out independently and is not influenced by political pressure. Judges are expected to uphold the law and justice independently, without interference from external influences, including from the executive and legislative powers, as well as pressure from the community (Suherman, 2019).

Another challenge is the lack of resources and capacity in law enforcement agencies to handle cases of gross human rights violations effectively. Investigation and prosecution of cases of gross human rights violations require significant resources, including experts, technology, and funds. In many cases, law enforcement agencies may not have sufficient resources to carry out their duties effectively. Therefore, there needs to be greater support from the government and the international community to strengthen the capacity of law enforcement agencies in handling these cases.

The lack of awareness and understanding of human rights and the principle of equality before the law among the community is also a challenge. Many people may not be aware of their rights or understand the importance of this principle in upholding justice. Therefore, education and socialization regarding human rights and the principle of equality before the law are very important to increase public awareness and participation in the legal process. This will help create a society that is more legally aware and more committed to upholding justice.

In addition, the culture of impunity that may exist among serious human rights violators is also a major challenge. If violators feel that they can get away with it, they are more likely to repeat their violations in the future. Therefore, it is important to apply the law firmly and consistently to ensure that serious human rights violators are punished in accordance with the applicable law. By punishing violators fairly, the legal system can send a clear message that human rights violations will not be tolerated.

Finally, challenges in implementing the principle of equality before the law also come from the lack of coordination between law enforcement agencies and other agencies involved in handling human rights violations. Poor coordination can hinder the legal process and cause delays or even failures in upholding justice. Therefore, there needs to be greater effort to improve coordination and cooperation between the various agencies involved, including the police, prosecutors, courts, and human rights institutions.

f) Solutions to Overcome Implementation Challenges

To overcome the challenges in implementing the principle of equality before the law in the OPM case, there are several solutions that can be applied. First, it is important to strengthen the independence of

law enforcement agencies. This can be done by ensuring that these agencies have sufficient autonomy to carry out their duties without political interference. Laws and regulations that support the independence of law enforcement agencies also need to be strengthened to protect them from political pressure.

Second, increasing the capacity of law enforcement agencies is very important. The government needs to provide sufficient resources, including funds, technology, and training for experts, to ensure that law enforcement agencies can carry out their duties effectively. Cooperation with the international community can also help strengthen this capacity, through technical and financial assistance and the exchange of knowledge and experience.

Third, education and socialization regarding human rights and the principle of equality before the law must be improved. Educational programs that cover human rights and basic legal principles must be included in school and university curricula. In addition, public awareness campaigns through mass media and community activities are also important to increase public understanding and awareness of the importance of human rights and justice.

Fourth, to address the culture of impunity, it is important to ensure that the law is applied firmly and consistently. This includes effective prosecution of serious human rights violators and the application of appropriate penalties. By demonstrating that violators will not go unpunished, the legal system can reduce incentives for future violations and strengthen public confidence in justice.

Finally, increased coordination between law enforcement agencies and other institutions involved in addressing human rights violations is essential. This can be done through the establishment of effective coordination mechanisms, including forums for cooperation and information exchange. By improving coordination, the legal process can be more efficient and effective, ensuring that justice is served and human rights are protected.

4.2. Urgency of Determining OPM as Perpetrator of Serious Human Rights Violations

4.2.1. Enforcement of the Supremacy of Law

Enforcing the rule of law is one of the main reasons why it is important to designate OPM as a perpetrator of gross human rights violations. By enforcing the law firmly, Indonesia can show that no individual or group is above the law. This is important to prevent a culture of impunity, where human rights violators feel that they can act without consequences. Law enforcement, legal certainty and protection are the main targets through firm, straightforward and consistent efforts also strengthen public trust in the legal system and show that the state is committed to protecting human rights (Sutrisno, 2020).

Enforcing the rule of law also means that the legal process must be transparent and fair. In this context, investigations by Komnas HAM and prosecutions by the Attorney General must be carried out professionally and without political interference. The court must provide justice for all parties involved, both victims and perpetrators, and ensure that the decisions taken are based on strong evidence and applicable laws. This process not only provides justice for victims but also strengthens public trust in the legal system.

In addition, enforcing the rule of law in cases of gross human rights violations by OPM is also important to send a strong message to the international community. By enforcing the law according to international standards, Indonesia can show that the country is committed to respecting and protecting human rights. This is important to improve Indonesia's image in the eyes of the world and show that the country is ready to work with the international community in enforcing human rights.

4.2.2. Protection and Restoration of Victims' Rights

Protection and restoration of victims' rights are important aspects in determining OPM as perpetrators of gross human rights violations. It can be interpreted as protection to obtain legal guarantees or compensation for the suffering or losses of people who have become victims of criminal acts. The

form of compensation can be in the form of restoring a good name (rehabilitation), restoring inner balance (forgiveness), providing compensation (restitution, compensation, guarantees or social welfare benefits) and so on (Audina, 2020).

4.3. Analysis Based on National Laws and Regulations Regarding National Gross Human Rights Violations

a) Law Number 39 of 1999 concerning Human Rights

Article 4 of Law Number 39 of 1999 affirms that several human rights are rights that cannot be reduced under any circumstances. These include the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted on the basis of retroactive laws. In the context of gross human rights violations, this article establishes a strong legal basis for protecting these fundamental rights, where violations of these rights are considered serious crimes that must be handled seriously by the state.

The application of Article 4 is important in determining the Free Papua Movement (OPM) as the perpetrator of gross human rights violations. If the OPM is proven to have committed actions that violate these rights, then law enforcement must be carried out in accordance with these provisions. This article also serves as a guideline for law enforcement and judicial institutions to ensure that violations committed by the OPM are thoroughly investigated and tried with appropriate justice, without discrimination and with full regard for the rights of victims.

b) Law Number 26 of 2000 concerning the Human Rights Court

Article 7 of Law Number 26 of 2000 states that the Human Rights Court has the authority to examine and decide cases of gross human rights violations, including genocide and crimes against humanity. This provides a legal basis for the prosecution of acts committed by the OPM if they meet these criteria. Crimes against humanity include acts such as murder, extermination, enslavement, and forced deportation or transfer of population.

Articles 8-10 of this law provide the definition and elements of crimes against humanity, which include a range of acts internationally recognized as gross violations. In the context of the OPM, if evidence shows that their actions meet this definition, then they must be tried as gross human rights violations. This means that the legal process must be carried out in accordance with the standards set out in this law, including fair and transparent prosecution and protection of victims' rights.

4.4. Analysis Based on International Regulations Regarding Gross Human Rights Violations

a) Universal Declaration of Human Rights (UDHR) 1948

Article 3 of the UDHR states that everyone has the right to life, liberty and security of person. These are fundamental rights that must be protected by every state. In the context of gross human rights violations by the OPM, acts that deprive individuals of their life or liberty, or endanger their safety, constitute serious violations of this article. Therefore, any act committed by the OPM that violates these rights must be investigated and prosecuted in accordance with international standards.

Article 5 of the UDHR states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. This provides additional protection against acts of torture and other cruel treatment. If the OPM is found to have committed acts that violate this article, then prosecution must be carried out in accordance with international provisions prohibiting torture and inhuman treatment. The State of Indonesia is obliged to ensure that these violations are taken seriously and the perpetrators are prosecuted in accordance with international law.

b) Geneva Conventions 1949 and Additional Protocols

The 1949 Geneva Conventions and their additional protocols provide protection for victims of international and non-international armed conflicts, and set minimum standards of humane treatment. In the context of human rights violations by the OPM, these standards are particularly relevant, especially when these acts occur in the context of armed conflict. The Conventions require all parties

to the conflict to treat prisoners of war and civilians with humanity and prohibit acts such as torture, cruel treatment, and forced displacement.

In implementing the provisions of the Geneva Conventions, Indonesia must ensure that any violations by the OPM of these standards of humane treatment are thoroughly investigated and fairly prosecuted. This includes protecting the rights of victims and ensuring that they receive adequate reparations. Implementation of these international standards is also important to demonstrate Indonesia's commitment to international humanitarian law and to enhance the legitimacy of the law enforcement process in the eyes of the international community.

c) Rome Statute of the International Criminal Court (ICC)

Article 7 of the Rome Statute deals with crimes against humanity, including murder, extermination, enslavement, deportation or forcible transfer of population, and other inhumane acts causing great suffering or serious injury to body or to mental or physical health. The Rome Statute provides a clear legal framework for prosecuting crimes against humanity, which is relevant in the context of gross human rights violations by the OPM.

Indonesia, although it has not ratified the Rome Statute, can still refer to the principles set out in this Statute as international standards in addressing gross human rights violations. By adopting these principles in national law, Indonesia can ensure that the handling of human rights violations by the OPM is in accordance with international standards. This will also help build public and international confidence in Indonesia's commitment to upholding human rights.

4.5. Contribution of Determining OPM as a Perpetrator of Serious Human Rights Violations to Efforts to Uphold Justice and Protect Human Rights in Indonesia

4.5.1. Contribution of Determining OPM as a Perpetrator of Serious Human Rights Violations in the Context of the Principle of Equality Before the Law

The principle of equality before the law is a fundamental principle that ensures that no individual or group is exempted from the legal consequences of gross human rights violations. "Everyone has the right to recognition, guarantees, protection, and certainty of fair law and equal treatment before the law."

In implementing this principle, the determination of OPM as a perpetrator of gross human rights violations confirms that no entity is beyond the reach of the law in cases of serious human rights violations. This is an important step in building public trust in a just and equitable legal system. By enforcing the principle of equality before the law, the Indonesian state confirms that every individual and organization must be held accountable for their actions, in accordance with the principles of fair and non-discriminatory law.

The application of the principle of equality before the law also involves an important aspect of accountability. By enforcing the law against OPM, the Indonesian government not only demonstrates its commitment to protecting human rights as a whole, but also ensures that every perpetrator of gross human rights crimes must face consequences commensurate with their actions. This provides assurance to victims that justice will be upheld and that no one is exempted from the legal consequences of serious human rights violations. In this context, determining OPM as a perpetrator of serious human rights violations is not only to uphold the law, but also to ensure that the principle of equality before the law is consistently upheld.

The principle of equality before the law is also relevant in responding to complex legal challenges. In the case of OPM, where gross human rights violations have occurred, this principle underlines the importance of equal treatment in handling all cases of serious human rights violations. Justice must be positioned neutrally, meaning that everyone has the same legal standing and treatment without exception (Candra & Sinaga, 2021). By maintaining consistency in implementing the principle of equality before the law, the Indonesian state builds a strong foundation for fair and transparent law enforcement.

This is important to ensure that justice is not only upheld in words, but also in real actions against every serious violation of human rights. Thus, the contribution of determining OPM as a perpetrator of gross human rights violations in the context of the principle of equality before the law is to ensure that all individuals, without exception, are subject to the legal consequences of their actions.

4.5.2. Contribution to the Determination of OPM as a Perpetrator of Serious Human Rights Violations in the Context of National and International Laws and Regulations

Legally, the determination of OPM as a perpetrator of gross human rights violations is based on a strong foundation of laws and regulations at both the national and international levels. At the national level, Law Number 39 of 1999 concerning Human Rights in Indonesia affirms the state's commitment to protecting and fulfilling human rights in accordance with international standards. By enforcing the law against OPM, the Indonesian government is not only complying with its legal obligations, but also setting an example in treating serious violations of human rights seriously.

At the international level, human rights declarations and conventions, such as the UN Universal Declaration of Human Rights, provide the legal basis for state action to respond to serious violations of human rights such as those committed by OPM. Taking these international standards into account, the determination of OPM as a perpetrator of gross human rights violations is not only to fulfill national legal obligations, but also to support universal norms on the protection of human rights. This is important in the context of globalization where challenges to human rights often cross national borders. Alignment with international laws and regulations also provides additional legitimacy for legal action against OPM. By referring to widely recognized international standards, the Indonesian state strengthens its argument in treating cases of gross human rights violations seriously.

This also sends a message to the international community that Indonesia is committed to complying with universal human rights standards and to working together in responding to global challenges to human rights. The development of human rights law in Indonesia will be effective if supported by laws and officials who have a foundation of values and norms that are sourced from the values and outlook of the nation, namely Pancasila (Kaelan, 2002). Thus, the contribution of determining the OPM as a perpetrator of gross human rights violations in the context of national and international laws and regulations is to ensure that legal actions taken are in accordance with universally recognized standards and to provide an example of just law enforcement.

5. Conclusion

5.1. Conclusion

Based on the discussion in the previous chapter and the research results obtained by the author, the following conclusions can be drawn:

1. The Urgency of Determining OPM as a Perpetrator of Gross Human Rights Violations from a Legal Perspective.

The Free Papua Movement (OPM) has committed various acts of violence that violate human rights, including murder, torture, and kidnapping. These actions not only result in profound physical and psychological harm to the victims, but also create instability in the Papua region. Based on Article 1 number 6 of Law Number 39 of 1999 concerning Human Rights, OPM's actions meet the criteria for gross human rights violations because their actions are systematic and widespread against civilians. This is in accordance with the provisions stating that gross human rights violations include actions that are planned and carried out systematically or widely, and target civilians whose perpetrators can be individuals, groups of people, or state officials according to Article 1 paragraph 6 of Law Number 39 of 1999. This is an important point that we must be able to change the mindset or basic thinking related to the legal subject of human rights violations, namely not only the state but anyone can, including individuals and non-state actors such as the OPM.

The determination of OPM as a perpetrator of gross human rights violations is very important to stop their heinous actions and to fulfill the government's obligation to protect human rights. This determination is also needed to send a strong signal that the state does not tolerate acts of violence that violate international law and norms, and to ensure that perpetrators of violence can be tried fairly

in accordance with applicable laws, even if tried in a Human Rights Court, the criminal sanctions will be more burdensome for the perpetrators of the crime because the threat can be 25 years, life, or death. This is in line with the mandate of the 1945 Constitution Article 28I paragraph (4) and Article 72 of Law Number 39 of 1999 concerning Human Rights, which emphasizes that the state has an obligation to protect and guarantee human rights for all its citizens.

In a legal context, this determination provides a strong legal basis for the authorities to take firm legal steps against OPM. This will also strengthen the law enforcement mechanism in Indonesia, especially in handling cases of gross human rights violations that often involve political and military forces. Thus, the urgency of this determination is not only aimed at providing justice for the victims, but also to strengthen the legal and governance system in Indonesia in facing the challenges of gross human rights violations.

2. Contribution of Determining OPM as a Perpetrator of Serious Human Rights Violations to Efforts to Uphold Justice and Protect Human Rights in Indonesia

Determining OPM as a perpetrator of serious human rights violations will make a significant contribution to efforts to uphold justice and protect human rights in Indonesia. This step will ensure that crimes against humanity committed by OPM are tried in the Human Rights Court, which has the jurisdiction and authority to handle cases of serious human rights violations with stricter procedures and heavier sanctions compared to general courts. This Human Rights Court was established in accordance with Law Number 26 of 2000 concerning the Human Rights Court, which gives authority to a special court to try cases of serious human rights violations such as genocide and crimes against humanity.

By bringing this case to the Human Rights Court, the Indonesian government is demonstrating its commitment to upholding the supremacy of law and justice for the victims. This will also strengthen Indonesia's position in international forums such as the United Nations (UN), showing that Indonesia is serious about carrying out its responsibility to respect, protect, and fulfill human rights in accordance with international standards. This step can also be a preventive measure against further acts of violence by other separatist groups, because it sends a clear message that all forms of human rights violations will be dealt with firmly and tried according to law.

In addition, this determination also provides a sense of justice for the victims and their families, who have been waiting for justice for the suffering they have experienced. A transparent and fair trial process will give them the opportunity to voice their suffering and gain recognition for their rights that have been violated. Thus, the determination of the OPM as a perpetrator of serious human rights violations not only contributes to law enforcement, but also to restoring public trust in the legal system and government in protecting human rights.

5.2. *Suggestions*

Based on the conclusions above, the author can provide suggestions including the following:

1. Strengthening the Legal Process against OPM

The government and related institutions must increase capacity and coordination in the process of determining OPM as a perpetrator of gross human rights violations. The initial step that must be taken is to increase the capacity of investigation and prosecution by strengthening the capabilities of the National Human Rights Commission, the Police, and the Attorney General's Office. Special training must be provided to legal officers to collect, analyze, and present evidence of gross human rights violations in a professional and credible manner. This also includes the development of standard procedures for systematic, coordinated, and transparent investigations, as well as the use of sophisticated technology in investigations to ensure that all evidence collected is accountable and valid in the eyes of the law.

In addition, the government needs to prepare a clear and detailed action plan and legal framework for determining OPM as a perpetrator of gross human rights violations. This includes establishing specific criteria and systematic procedures in determining whether OPM's actions meet the elements

of gross human rights violations in accordance with Article 1 number 6 of Law Number 39 of 1999 concerning Human Rights. The preparation of this plan must involve various stakeholders, including civil society organizations and legal experts, to ensure that the legal mechanisms adopted are in accordance with the principles of justice, transparency, and accountability. This step will provide a strong legal basis for the authorities to take firm and fair legal action against the OPM, as well as strengthen the law enforcement mechanism in Indonesia.

The government is also expected not to hesitate to determine the OPM as a legal subject of gross human rights violations in Indonesia, because it has fulfilled the elements of crimes against humanity so that sanctions or criminal threats can be increased to the death penalty. There are many examples of international jurisprudence related to the resolution of gross human rights violations committed by legal subjects of 'rebel groups' in the international world.

2. International Support and Restoring Public Trust

To ensure the effectiveness of law enforcement and human rights protection, the government must demonstrate a strong commitment through international support. The government needs to build a coalition of international support by strengthening relations with international organizations, such as the UN and other global human rights institutions, to obtain technical, financial, and political support in handling cases of gross human rights violations. Submitting regular reports on the progress of the legal process against the OPM to the international community will not only strengthen Indonesia's position in international forums, but also show that Indonesia is serious about carrying out its responsibility to respect, protect, and fulfill human rights in accordance with international standards.

In addition, increasing public awareness and education is an important step to strengthen domestic support for law enforcement against gross human rights violations. The government must conduct a broad public awareness campaign to increase public understanding of the importance of law enforcement against gross human rights violations and the legal process involved. Educating the public about their rights and how the government handles human rights violations will strengthen public support for the legal process and increase transparency. This campaign can be carried out through various media, including social media, television, and public events, and involve community leaders and legal experts to spread messages about the importance of protecting human rights and justice for all citizens. With these steps, it is hoped that the government and related institutions can facilitate the law enforcement process against OPM more effectively, ensure that serious human rights violations are handled fairly, and strengthen public trust in the legal system in Indonesia.

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