

Legal analysis of the regulation of armed conflict in the Papua region from the perspective of Emergency Constitutional Law

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Abstract

Purpose: The conflict in Papua has been the focus of discussion by various parties in the last few decades. Such a complex problem requires cooperation and comprehensive consideration from various parties. In practice, there are times when the country is in an abnormal state and requires emergency legal provisions. Emergency Constitutional Law provides a strong legal framework when the country is in an abnormal state, this is done with the main aim of protecting citizens and maintaining state sovereignty.

Research methodology: This study uses a normative judicial method. The author's approach is a legislative approach by means of an inventory of applicable positive law and by looking at books that are the views of several experts.

Results: Emergency Constitutional Law provides a strong legal framework when the country, all or part of its territory, is in an abnormal state. The conflict that occurred in Papua has met the requirements to be declared a state of emergency, because of the armed, political, and diplomatic wings in the OPM that threaten the security of citizens and the sovereignty of the state. The choice of Emergency Constitutional Law can be a consideration for the government to overcome the armed wing of the OPM, then the government can continue to resolve the conflict in Papua with planned programs without disturbing security.

Keywords: *Papua Conflict, State of Emergency, Emergency Constitutional Law*

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1. Introduction

The conflict in Papua has been a major focus in Indonesian legal and political discussions for the past few decades. The government has made various efforts to resolve this conflict, but complex and multi-layered challenges often hinder the process of resolving the conflict in Papua. In this context, the Legal Analysis of the Regulation of Armed Conflict in the Papua region from the Perspective of Emergency Constitutional Law becomes very important. This study aims to understand and analyze the existing legal framework, as well as the urgency of implementing a state of emergency and the consequences of a situation that is in chaos (Huda, 2016).

The history of Papua's integration back into the bosom of Indonesia began when the Netherlands through the 1949 Round Table Conference (RTC) agreed to give its sovereignty to Indonesia, but Indonesia and the Netherlands were still involved in conflict. Both countries still felt entitled to the land of Papua or West Irian. On December 19, 1961, President Soekarno immediately issued the Trikora (Tri Komando Rakyat) statement which contained three points, namely: 1. Thwart the formation of the "Papua Puppet State" created by the Dutch Colonial. 2. Raise the Red and White in

West Irian, the Homeland of Indonesia. 3. Be prepared for general mobilization paying attention to the independence and unity of the Nation and Country (Herlambang, 2006).

The intensity of the conflict between Indonesia and the Dutch Colonial decreased after the signing of the New York Agreement on August 15, 1962, but after that sovereignty was not directly transferred from the Dutch colonial to Indonesia but through the intermediary of the United Nations (UN) in this case the United Nations Temporary Executive Authority (UNTEA), the return of Papua to Indonesia from UNTEA was carried out on May 1, 1963 in Numbay (Jayapura). Finally, on November 19, 1969, the Determination of the People's Opinion (Pepera) was carried out with the result of the issuance of UN resolution number 2504 which indicated that the integration of Papua into Indonesia was legal and in accordance with international law (Disjarahad, 2018).

The situation in Papua since Indonesian independence on August 17, 1945 until now tends to be unfavorable, some of the Papuan people who recognize themselves as the West Papua National Liberation Army - Free Papua Organization (TPNPB-OPM) want independence for Papua. This group often commits acts of violence against both civilians and TNI/Polri officers. The group consists of 2 (two) wings, namely the TPN (National Liberation Army) wing which is the military whose goal is to destroy the colonial occupation in this case the term for the Indonesian Government (TNI/Polri) and the political wing tasked with reaching out diplomatically to foreign countries (Indonesia & Dialogue, 2011). Disturbances to security and order and acts of terror carried out by the OPM are certainly a category of threats to the integrity of the Indonesian State, regardless of the issues that arise, the government must take a stance to overcome the disturbances to security and order that occur. A study of urgent matters that compel the government to issue a Perpu because there are 3 (three) important elements that form an emergency situation of "urgent matters that compel" namely: (1) The element of a dangerous threat; (2) The existence of a need that requires; (3) The existence of time constraints.

Based on the author's research, there have been several articles written about the regulation of armed conflict in Papua, both in the form of theses, dissertations and other forms of writing. Different from the previous ones, this research is the latest research in terms of perspective, method, and references used, thus the originality of this thesis can be accounted for. Departing from this background, the author will conduct a research in a thesis entitled "**Legal Analysis of the Regulation of Armed Conflict in Papua in the Perspective of Emergency State Administrative Law**".

1.1. Problem Formulation

Based on the background description above, the author presents two main problems, as follows:

1. How is the regulation of armed conflict in the Papua region currently?
2. How is the regulation of armed conflict in the Papua region from the perspective of Emergency Constitutional Law?

2. Literature Review

2.1. Theoretical Framework

2.1.1. Theory of Legal Certainty (Gustav Radbruch)

Gustav Radbruch put forward 4 (four) basic things related to the meaning of legal certainty, namely: First, that the law is positive, meaning that positive law is legislation. Second, that the law is based on facts, meaning that it is based on reality. Third, that facts must be formulated in a clear way so as to avoid errors in interpretation, in addition to being easy to implement. Fourth, positive law must not be easily changed (Shidarta, 2012).

Gustav Radbruch's opinion is based on his view that legal certainty is certainty about the law itself. Related to this research, that all actions carried out by the Papuan KKB have met the requirements to be able to determine the Papua region in a State of Emergency, because basically the determination itself is a form of legal certainty.

2.1.2. Theory of Law Enforcement (Lawrence Meir Friedman)

Law Enforcement Theory according to Lawrence Meir Friedman, who is a legal sociologist from Stanford University, states that there are three main elements of law enforcement, namely: Legal Structure; Legal Substance; and Legal Culture.

According to Lawrence Meir Friedman, the success or failure of law enforcement depends on the three elements above. Related to the laws and regulations in Indonesia, constitutionally the state of emergency has been regulated in the 1945 Constitution of the Republic of Indonesia, Lawrence Meir Friedman's theory can be used as a benchmark for enforcing existing regulations and can be used as a basis for implementing a state of emergency in the Papua region with one of the main considerations being the safety of civilians.

2.2. Operational Definition

2.2.1. Analysis

According to the Indonesian dictionary, the definition of analysis is an investigation into an event (a composition, action, etc.) to find out the actual situation (causes, facts of the case, or other things).

2.2.2. Legal

According to the Indonesian Dictionary, it comes from Greek, which means according to law, legally meaning everything related to juridical matters is considered valid and recognized by the judicial institution or other legal institutions.

2.2.3. Conflict

Based on the Indonesian Dictionary, conflict is defined as a quarrel, dispute, and opposition, conflict is defined as a situation when there are two or more views, beliefs, desires, interests, needs, and values that are different, incompatible, opposing, and inconsistent. This conflict often occurs between individuals, individuals and groups, or groups with other groups.

2.2.4. Emergency Situation

A state of emergency is defined as a state of sudden danger that threatens public order, which requires the state to act in ways that are not usual according to the legal rules that usually apply under normal circumstances.

2.2.5. Danger State

Based on Article 12 of the 1945 Constitution of the Republic of Indonesia, a state of danger focuses on the authority of the President as Head of State to save the nation and state from external disturbances.

2.3. Armed Conflict

Armed conflict according to International Humanitarian Law (IHL) consists of 2 (two) forms, namely international armed conflict and non-international armed conflict. International armed conflict can be interpreted as an armed conflict that is international in nature and applies in cases of: (1) Declared war; (2) Armed conflict even if the state of war is not recognized; (3) Occupation even if the occupation does not meet with resistance.

2.4. National Law

According to J. Van Kan and J.H. Beekhuis, law is "a collection of rules that are coercive, or in other words, a collection of social interactions that are coercive. The definition of law itself until now there is no written agreement by scholars, this is because the formulation and limitations of the law itself are different. Every legal regulation that applies essentially has principles where these principles come from society and as long as society is willing to accept them, the legal regulations are still maintained. These limitations arise because of differences in perspective from each individual. According to Hans Kelsen Law is a system of norms that regulate human behavior (Dollar & Riza, 2022; Suropati, 2019).

2.4.1. *Constitutional Law*

Constitutional Law is a branch of law that speaks directly about the problems of constitutional law that apply at this time. Constitutional law applies because it reflects the principles that apply in society. According to Dicey and Wade (1982), Dicey Constitutional Law as a law that shows all regulations that contain directly or indirectly about the division of power and the highest implementation in a country (Dicey & Wade, 1982). Meanwhile, according to J.A. Logeman Constitutional law is the law that regulates the organization of the state. It is said that position is a legal understanding of function, while function is a sociological understanding. The state is an organization consisting of functions in relation to one another and the whole, so in the legal sense, the state is an organization of positions (Siagian, Riza, & Lubis, 2023).

2.4.2. *Emergency Constitutional Law*

A state is a condition, fact, or event that accompanies, conditions, or determines another: something that is essential or unavoidable. Emergency is 1 a difficult (difficult) situation that is unexpected danger, famine, etc. that requires immediate handling: state - The government can act quickly to overcome the situation; 2 Forced circumstances: state - The President can act according to his own policy.

The criteria for a state of emergency in each country are certainly different, but the legal instruments in a country are certainly prepared to overcome every problem that arises so that the operational power that protects the interests of the people in a country can continue to run according to its function, if it is too complex and there is no other way then the country must consider being able to apply the situation to an emergency state.

2.4.3. *Emergency Constitutional Law in Indonesia*

Emergency constitutional law is prepared to deal with situations where the state is in an abnormal state, this abnormality can be caused by various things which essentially threaten the sovereignty of the nation and state.

1) State of Emergency.

A state of emergency is also regulated in the constitution, this is stated in Article 12 and Article 22 paragraph (1) of the 1945 Constitution, which states:

- a) Article 12, "The President declares a state of emergency. The conditions and consequences of a state of emergency are determined by law."
- b) Article 22 paragraph (1), "In the event of a compelling emergency, the President has the right to stipulate government regulations in lieu of law."

2.4.4. *State of Emergency Declaration*

The President's declaration or statement regarding a state of danger or emergency is stated in Article 1 of Law Number 23 of 1959, namely:

1. Security or legal order throughout the territory or in part of the territory of the Republic of Indonesia is threatened by rebellion, riots or natural disasters so that it is feared that it cannot be overcome by ordinary equipment;
2. War or the danger of war arises or it is feared that the territory of the Republic of Indonesia will be violated by any means whatsoever;
3. The life of the state is in danger or from special circumstances it turns out that there are or it is feared that there are symptoms that can endanger the life of the state.

Looking at the elements in the article above, it can be concluded that points "a" and "c" are types of dangers that come from within the country, while point "b" is a type of danger that comes from abroad. Chaos that is only in the form of corruption in government or incompetence of leaders in government that can lead to state bankruptcy cannot be used as a reason to declare a state of emergency. The statement of the level of emergency is not explained in detail because it is indeed the authority of the President to determine depending on the intensity of the dangerous situation.

2.4.5. Termination of Emergency

After the end of the state of emergency, of course there is a removal, this has also been regulated in Law Number 23 Prp of 1959 in Article 2 paragraph (1) which states, "The decision to declare or remove a state of danger shall come into effect on the day it is announced, unless another time is specified in the decision.", while the announcement of the declaration or removal of the state of danger is regulated in Article 2 paragraph (2) carried out by the President.

Looking at the details of the article above, Law Number 23 Prp of 1959 must of course be updated to adjust the contents of the article to current conditions, the First Minister at this time is the Coordinating Minister for Political, Legal and Security Affairs, as well as others have changed when faced with current conditions.

A state of emergency that is local in nature, or only "part of the area" is in chaos, and if the conditions meet the requirements to be declared a state of emergency, then the state of emergency can only be implemented in part of that area. The definition of "part of the area" here is not limited to the administrative area of government only. Some areas in this case have a geographical meaning by looking at where the danger occurs, for example, if chaos occurs in Papua, then the determination of a state of emergency is only applied in the regions of Papua and West Papua.

2.5. Research Assumptions

2.5.1. Current Armed Conflict Regulation in Papua Region

The first assumption is that the current regulation of armed conflict in the Papua region has not been fully effective in overcoming acts of violence carried out by armed groups. Basically, there are various policies and regulations enforced by the central and regional governments, but implementation in the field often faces obstacles, one of which is violence by armed groups that causes many victims from civilians and also the TNI/Polri. The ineffective regulation of armed conflict is also influenced by differences in perspective between the Government, Police, and TNI regarding the armed groups, this of course has an impact on the strategies and methods of action implemented in the field.

The Indonesian government designated the Armed Criminal Group (KKB) in Papua as a terrorist organization on April 29, 2021. This decision was announced by the Coordinating Minister for Political, Legal, and Security Affairs (Menko Polhukam), Mahfud MD, who stated that the KKB's actions had met the criteria as a terrorist organization based on Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism. The legal consequences use a stricter terrorism crime law than ordinary criminal law.

The Indonesian National Police, which in this case is a state apparatus that should represent the government, only considers armed groups in Papua as ordinary criminal groups and considers the crimes committed by armed groups to be in the category of general crimes with legal consequences using the Criminal Code, even though it is clear that what the armed groups are doing has political elements and threatens the sovereignty of the state.

The TNI, which is also a state apparatus, has a different view, based on the TNI Commander's Telegram Letter Number STR/41/2024 dated April 5, 2024, the TNI returned the original designation of KKB/KST to OPM, what the OPM did consisted of a political wing, an armed wing, a diplomatic wing abroad, so if it was only referred to as KKB it would not cover all the efforts they had made. Determining Papua at the level of a military emergency will provide a legal umbrella for the TNI to act to overcome the OPM armed wing with the hope that if the OPM armed wing has been resolved, the government can freely carry out the Papua development acceleration program without security disturbances.

2.5.2. Regulation of Armed Conflict in the Papua Region in the Perspective of Emergency Constitutional Law

The second assumption is that the regulation of armed conflict in the Papua region from the perspective of emergency constitutional law, emergency constitutional law provides a clear and firm framework when the state or part of its territory is in an abnormal state. Emergency Constitutional Law, which is regulated in Law Number 23 of 1959 concerning Dangerous Conditions, allows the government to take special actions in emergency situations that threaten state sovereignty and public security. In the context of Papua, the implementation of military emergency or civil emergency can provide a legal basis for the government and TNI to carry out more coordinated and structured military operations, which include not only taking action against armed groups but also protecting civilians.

The application of Emergency Constitutional Law can strengthen the legitimacy of government and security apparatus actions in the eyes of national and international law. The actions taken by the government and TNI against armed groups in Papua can be seen as part of a constitutional effort to maintain the security and integrity of the country's territory. This also allows for stricter supervision and accountability in the implementation of military operations, as well as the application of human rights protection mechanisms in accordance with international standards. In the long term, the regulation of armed conflict in Papua through Emergency Constitutional Law is expected to create more stable and secure conditions, which in turn will pave the way for a process of reconciliation and sustainable development in the region (Tenripadang, 2016).

3. Research Methodology

3.1. Type of Research

This study uses a normative legal research type, where certain systematic methods and thoughts are the basis for studying one or several specific legal phenomena followed by conducting an analysis based on applicable statutory provisions (Soekanto & Mamudji, 2009).

3.2. Data Collection

The method of data collection when using a legislative approach is by looking for laws and regulations regarding provisions for implementing a state of emergency or those related to the legal analysis of the regulation of armed conflict in the Papua region from the perspective of Emergency State Administrative Law.

3.3. Drawing Conclusions

Deductive reasoning is one of the methods used to draw conclusions, namely from general statements specific conclusions can be drawn. The conclusion is the answer to the problem presented based on the results of a literature study and a convincing discussion as far as the research that has been done.

4. Results and Discussions

4.1 Legal Analysis of Current Armed Conflict Regulations in the Papua Region

4.1.1 Background of the Armed Conflict in Papua

Based on the history of the conflict in Papua, which began before Indonesian independence, the conflict escalated when Papua officially joined the Unitary State of the Republic of Indonesia. Since being integrated with Indonesia, the unrest and conflict in Papua have become more frequent and even gave birth to a physical rebellion using weapons through the Free Papua Organization (OPM) (Pekey, 2018). The petition that was issued on May 20, 1959 by Johan Ariks, Marcus Kaisepo, and Nicolaas Youwe in Hollandia stated the wishes of the Papuan people, as follows:

"We as Melanesian people will not allow our fate to be determined by Indonesians who are ethnically and geographically different from us. We Papuan people do not need political party education, since we as Melanesian people do not carry out national struggles like Indonesians do. We do not recognize the PIDRIS political party which was formed by a group of former prisoners who want to disrupt peace in the country and among Papuans".

The Free Papua Movement (OPM) first appeared in Manokwari in 1964, initially this organization was called the "Organization of the Struggle for the Independence of the State of West Papua" led by Terianus Aronggear. This organization is neatly structured with a management structure, Terianus Aronggear is the general chairman of the organization who drafted a struggle document that was planned to be smuggled to the United Nations (UN) with the intention of asking the UN to review the New York agreement of August 15, 1962 because they felt the agreement was unfair, in addition the document also contained a request for the UN to immediately reopen the Irian Jaya problem and agree and support independence for the Papuan nation as a sovereign nation (Andrianto, 2001).

The history of Papua's integration into Indonesia in its implementation according to some Papuan people is considered illegitimate and full of engineering, political violence and human rights violations (HAM) because the resolution of problems during the New Order often used repressive methods, then the failure of Papua's development which is inseparable from the policies of the New Order government which made the Papuan people feel marginalized, this is related to the exploitation of natural resources in Papua, then the Indonesian government is inconsistent regarding the implementation of special autonomy (Otsus) for Papua, especially after the reformation, finally the strategy in overcoming security disturbances is less effective, this is proven until now the escalation of security disturbances in Papua is still high.

Based on the above aspects, OPM is trying to make Papua a country that stands alone and has sovereignty like other countries in the world, this is inseparable from the incitement of the Dutch colonial state because basically the Netherlands is eyeing the abundant natural resources of Papua. This phenomenon that occurs is the responsibility of all elements of the nation including policy makers in this case the Indonesian government. These aspects, when viewed from a political perspective, are work that must be completed by the Indonesian government, because the Papuan people are also Indonesian people like other people besides Papua.

4.1.2 Current Armed Conflict Regulation in the Papua Region

The armed conflict that has occurred in Papua until now has become a serious concern for various parties, this is because the intensity of violence committed by the OPM is increasing. Victims of violence are not only from the TNI/Polri apparatus, but also from various groups including medical personnel, educators, economic actors (motorcycle taxi drivers, traders in the market) and even indigenous Papuans have become victims, be it acts of intimidation, abuse, rape and murder by the OPM. The Indonesian government has taken several actions to overcome the armed conflict that has occurred in Papua, including law enforcement and a persuasive approach.

4.1.3 Results of the Legal Analysis of the Current Regulation of Armed Conflict in the Papua Region

All efforts that have been made by the Government to equalize Papua with other islands will not succeed if it is still followed by the high intensity of armed violence that occurs in Papua, infrastructure development, improving the economic sector, improving the quality of education will not be achieved if in its implementation there are still frequent security disturbances from the Papuan KKB. The solution that can be considered is to overcome armed groups first, then the government can continue to implement programs that have been planned for the progress of Papua.

4.1.4 Analysis of current regulatory provisions

Legally, the author is of the opinion that the current armed conflict regulation in the Papua region contains a mismatch in the application of law in enforcing the law against captured OPM. The theory of legal certainty requires that the law must be based on facts, while the facts in the field show a mismatch in legal action against suspects (OPM).

4.1.5 Analysis of Other Regulatory Provisions related to the Armed Conflict in Papua

Issues in Papua have become a major concern for the Indonesian government. As an integral part of the country, Papua faces unique challenges that require a special approach. The government has taken various strategic steps to resolve these issues, including political, economic, and socio-cultural

approaches. This discussion will further explore these approaches, evaluate their effectiveness, and how they have contributed to efforts to resolve issues in Papua.

4.2 Legal Analysis of the Regulation of Armed Conflict in the Papua Region from the Perspective of Emergency Constitutional Law

The disturbance of security and order carried out by the Free Papua Movement (OPM) has been going on for a long time since the beginning of Papua's integration into Indonesia in 1964, various approaches and developments have been carried out for a long time by the government in an effort to deal with the conflict in Papua, but have not yet produced results that are in accordance with expectations.

The Indonesian government has made various efforts starting from the determination of Special Autonomy for the province of Papua which gives authority to the region to be able to manage its own budget provided by the central government with the intention that the budget allocation can be distributed appropriately. Territorial operations carried out by the TNI/Polri apparatus in order to reduce community trauma due to militarization, dialogue with Papuan nationalist figures including traditional and religious figures but have not reduced the escalation of armed violence carried out by the OPM against civilians and the TNI/Polri and have not stopped the intention and actions of the Free Papua Movement (OPM) to declare independence and separate from Indonesia. The Indonesian government must immediately take firm action and make a decision, because if conditions like this are allowed to continue, it will only disrupt public order and security, hamper the economy of the region, the government's planned acceleration program for Papua development cannot run smoothly and it can also potentially disrupt the stability of security and the integrity of the nation, which in the end will only prolong the suffering felt by civilians in general.

4.2.1 Urgency of Regulating Armed Conflict in the Papua Region from the Perspective of Emergency Constitutional Law

Herman Sihombing defines emergency constitutional law as a series of extraordinary state authorities in abnormal circumstances when all state institutions and authorities work together in the shortest possible time to eliminate all dangerous conditions that threaten daily life according to general and regular laws and regulations (Sihombing, 1996). The situation that occurs in Papua is certainly an extraordinary situation where the situation causes terror and trauma in society and threatens state sovereignty, therefore the determination of the Papua provincial region into a state of danger with a level of military emergency can be considered by the government with the aim of protecting citizens and maintaining state sovereignty.

The declaration of a state of danger is the absolute authority of the President but of course it must be with political considerations where all policy makers sit together to deliberate with one goal, namely to maintain the sovereignty of the Unitary State of the Republic of Indonesia. The statement of the state of emergency must be declared by the President/Commander-in-Chief of the Armed Forces as stated in Article 1 paragraph (1) of Law Number 23 Prp of 1959, this is done with several procedures that must be carried out beforehand including joint approval from the People's Representative Council (DPR) in this case the Regional Representative Council (DPD) must also know, the Constitutional Court (MK) and the Supreme Court (MA) especially to the DPD in the region where the state of emergency will be implemented. At the time of the implementation of the state of emergency, the DPD or local People's Representative Council acts as a supervisor who oversees the government during the implementation of the state of emergency.

The conflict that occurred in the Papua region certainly requires special and different treatment because of the political intentions of some Papuan people who want a referendum or to separate from the Unitary State of the Republic of Indonesia. All efforts have been made by the government, including joint dialogue, but this action did not produce an agreement, the OPM remains adamant about separating from the Unitary State of the Republic of Indonesia. The increasing escalation of violence in Papua has created its own trauma in society, because some of the victims are from the Papuan community itself plus a small part of the immigrant community from outside Papua including

the TNI/Polri, this has caused disturbances in security and order because the actions taken are accompanied by the use of firearms the same as the weapons used by the military in general. The actions taken by the OPM have a political intention that they want to achieve, namely the desire to separate from the Unitary State of the Republic of Indonesia.

Based on this, the government can consider extraordinary legal action, namely the determination of a state of danger at the level of a military emergency, because of the use of firearms equivalent to weapons used by the military and to immediately realize the government's Papuan development acceleration program which has been hampered by its implementation due to interference from the OPM.

4.2.2 Legal Analysis of the Regulation of Armed Conflict in the Papua Region from the Perspective of Emergency Constitutional Law

The involvement of military forces in a democratic country is generally based on or begins with a political decision, which in its preparation will also include the form of objectives to be achieved. The military will follow up on the political decision by studying the forces to be faced as a basis for planning needs, strengths, capabilities and operations to achieve the desired objectives. Viewed from a legal perspective, of course, the applicable laws in the involvement of the military forces must also be studied, as well as what competencies and provisions may and may not be carried out according to law in order to achieve the main task (Permanasari, 2003 p. 32).

Political decisions regarding conflict management in the Papua region require comprehensive consideration and are carried out through communication with various parties, in this case central and regional policy makers. This is done with a common goal, namely to maintain the sovereignty of the Unitary State of the Republic of Indonesia, because a region that wants to separate itself certainly threatens the sovereignty of the state, especially if it is carried out with armed violence where the victims are civilians.

The government's policy to develop Papua through an accelerated development program has not gone according to plan to date. This has occurred due to armed security disturbances from the OPM which were deliberately carried out to show their existence to the Indonesian government.

4.2.3 Regulation of Armed Conflict in the Papua Region from the Perspective of Emergency Constitutional Law

From the perspective of emergency constitutional law, the regulation of armed conflict requires a comprehensive and multi-dimensional approach to create stability that allows the implementation of accelerated development programs without security disruptions. Separatist groups such as the Free Papua Movement (OPM) are often involved in violent actions to fight for independence from Indonesia. This conflict is exacerbated by issues of economic injustice, human rights violations, and marginalization of Papuan culture.

Emergency constitutional law provides a legal framework for dealing with extraordinary situations that threaten the security and order of the state. In the context of Papua, the implementation of emergency law can involve the determination of a military emergency or civil emergency status in accordance with Law Number 23 of 1959 concerning the State of Danger. This status gives the government the authority to take extraordinary steps to control the situation, including the involvement of the TNI and Polri in intensive security operations.

The implementation of emergency law in Papua must be carried out with careful consideration and based on human rights principles. The first step is to determine an emergency status that is in accordance with the conditions on the ground. If the security situation is very unstable, martial law may be necessary, but this must be done with strict supervision to prevent human rights violations. Handling armed conflict in Papua must include measured and intelligence-based military operations to suppress active armed groups. These operations must be carried out with an approach that prioritizes the safety of civilians and minimizes losses. Other steps besides military operations, it is

also important to involve a diplomatic approach and dialogue with separatist groups to find a sustainable peaceful solution.

The resolution of the armed conflict in Papua will not be effective without addressing the underlying political aspects. The government needs to open up space for dialogue with various stakeholders in Papua, including separatist groups, traditional leaders, and civil society organizations. This dialogue must be directed towards finding a just and inclusive solution, which recognizes the political and cultural rights of the Papuan people. One option that can be considered is the granting of broader and more meaningful special autonomy, which includes the right to regulate internal affairs more independently.

When the security and political situation is relatively stable, the government can focus on implementing the accelerated development program. Infrastructure development, improving health and education services, and developing the local economy must be a priority. The accelerated development program in Papua needs to be designed with a participatory and inclusive approach, involving local communities in every stage of planning and implementation. Not limited to internal efforts, it is also important to seek support from the international community in dealing with the conflict in Papua. This support can be in the form of technical assistance, capacity building, and diplomatic support to facilitate dialogue between the government and separatist groups. Collaboration with international organizations can also help ensure that conflict management is carried out in accordance with international human rights standards (Putri, Respationo, Erniyanti, & Parameshwara, 2022).

The regulation of armed conflict in Papua from the perspective of emergency constitutional law requires an integrated approach between law enforcement, political dialogue, and economic development. Security and political stability must be achieved first to allow the implementation of the accelerated development program without disruption. With a comprehensive approach and based on the principles of justice and human rights, it is hoped that the conflict in Papua can be resolved and the Papuan people can enjoy sustainable peace and prosperity (Manalu, Shafira, Fardiansyah, Firganefi, & Cemerlang, 2022; Rizal, Fanggidae, & Neno, 2023).

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:

The current regulation of armed conflict in the Papua region has not been fully effective in overcoming the various acts of violence that have occurred. This is caused by several factors, including:

a. The existence of different points of view on the designation of armed groups in Papua by various government agencies has led to different perspectives and approaches in dealing with the conflict in the region.

The Indonesian government officially calls the armed groups in Papua a terrorist organization, which emphasizes a serious threat to national security and state sovereignty, because the actions of the armed groups are considered an organized effort that threatens the integrity of the state, so that it requires handling with more assertive and structured policies and operations, including the use of strict legal and military instruments.

The Indonesian National Police (Polri) calls the armed groups in Papua the Armed Criminal Group (KKB), so that the result of this designation places the actions of the group within the framework of criminal law, where their activities are considered criminal acts that violate the provisions of criminal law.

The Indonesian National Army (TNI) calls them the Free Papua Movement (OPM), because the actions they take are seen as separatism and threaten the integrity and sovereignty of the state. The

TNI sees the need for special regulations to be able to handle the situation effectively and in accordance with applicable laws. Currently, existing regulations may not be fully adequate to address the complexity of armed conflict in Papua, especially considering the various dimensions such as human rights, political aspects, and socio-economics.

b. Less than optimal utilization of Papua's special autonomy

The granting of special autonomy to Papua through Law Number 21 of 2001 which aims to improve welfare, law enforcement, and respect for human rights in Papua faces various challenges. In practice, Papua's special autonomy faces several obstacles, including: Lack of understanding and socialization, Challenges in policy implementation, Security and stability issues, Limited infrastructure.

c. Corruption and misuse of funds

There are Papuan regional government officials who misappropriate Papua's special autonomy funds not in accordance with their intended use

d. The slow pace of the Papuan development acceleration program due to security disturbances. Security issues need to be resolved first so that development acceleration can run effectively and smoothly.

e. Territorial operations by the TNI/Polri are less effective because territorial operations are often used by armed groups to carry out attacks. Evaluating the effectiveness of the current arrangements by looking at the high level of violence in Papua in recent years, it is clear that the current arrangements have not been effective in resolving the armed conflict in the region.

Arrangement of armed conflict in the Papua region from the perspective of emergency constitutional law can be considered as a new effective approach, because all efforts made by the government have not achieved the expected results. Faced with the complexity of the conflict in Papua, the involvement of military forces requires special regulations to overcome the security disturbances that occur. In the involvement of military forces and the limitations regulated by law and political decisions related to the regulation of the conflict in Papua, comprehensive consideration and communication from various parties are needed to maintain the country's sovereignty. Emergency constitutional law views the provisions in Law Number 23 of 1959 concerning the State of Danger as the second legal basis after Article 12 of the 1945 Constitution of the Republic of Indonesia. Handling the conflict must include measured and intelligence-based military operations to suppress armed groups. The implementation of a state of military emergency involves full authority for the TNI to carry out intensive military operations but still uphold human rights.

5.2 Suggestion

Based on the conclusions outlined above and by considering the formulation of the problem used as a reference in making this thesis, the author will provide several suggestions, namely as follows:

1. So that stakeholders can first agree on the armed conflict that occurred in Papua as an initial step to be able to determine further arrangements, because this greatly influences the determination of regulations, policy making and determination of strategies to be implemented. This also affects the applicable legal provisions and the legal consequences that will occur, if the perspectives on the Papua conflict between stakeholders are the same, then the applicable legal provisions must be the same, this will create legal certainty for the accused, and of course it is also a manifestation of respect for human rights. Seeing the escalation of violence that occurred and several comprehensive considerations, the government should not use ordinary provisions but use special provisions because they relate to the protection of civilians and state sovereignty.
2. So that the government, in this case the President, can declare Papua in a state of danger with a level of military emergency. Determining a state of military emergency in Papua can be a strategic step to overcome the threat of OPM. The purpose of this determination is as a legal umbrella for the TNI in acting in the field, the impact of which is that military operations can be carried out in a more coordinated and effective manner, reducing casualties and the threat of attacks from armed groups such as the Free Papua Movement (OPM). On the other hand, the

determination of a state of military emergency can create a more conducive environment for the implementation of infrastructure, health, education, and economic development programs in Papua.

The application of the Emergency Constitutional Law can strengthen the legitimacy of government and security apparatus actions in the eyes of national and international law. The actions taken by the government and the TNI against armed groups in Papua can be seen as part of a constitutional effort to maintain the security and integrity of the country's territory. This also allows for stricter supervision and accountability in the implementation of military operations, as well as the application of human rights protection mechanisms that comply with international standards. In the long term, the regulation of armed conflict in Papua through the Emergency Constitutional Law is expected to create more stable and secure conditions, which in turn pave the way for a process of reconciliation and sustainable development in the region.

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