



Government Tips In Severe Human Rights Conflicts In Political Legal: Case Study Of Papua

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Abstract. Indonesian government has taken various measures to strengthen the status and identity of Papua, which continues to evolve with each change in administration. After the status of Papua as a Military Operations Area was revoked in 1998, a significant number of troops continue to be deployed to Papua. Numerous human rights violations persist in Papua to this day. Over the years, the government has sought to enhance security in Papua by deploying military personnel, such as the TNI and Polri. However, instead of ensuring safety in Papua, the number of casualties, both among civilians and military personnel, continues to rise. This study aims to examine the human rights conflicts experienced by the Papuan community. The research gathers descriptive data through a qualitative case study of literature. The findings indicate that human rights violations are likely to persist in Papua in the coming years. The central government of Indonesia has been criticized for its failure to establish peace and prosperity in Papua. This has led many Papuans to express a desire to leave the NKRI. Another contributing factor is the slow and often delayed judicial process, which is attributed to poorly designed components of the legal system.

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INTRODUCTION

Human rights are rights that every human being possesses since birth. According to this definition, they are a gift from God almighty to his servants. Considered from a human rights perspective, because humans belong to God, no one can take or obstruct them. (Sutiyoso, 2010) Human rights themselves are human efforts to maintain human existence through a balance between personal interests and the interests of the general public. In the same way, the state and government (both civil and military government officials) are responsible for respecting, protecting, and upholding human rights. (Harahap & Sutardi, 2006)

Specifically, Indonesia still has many reported cases of human rights violations or crimes against humanity. Those who commit these acts remain free and cannot be punished, in other words, the

state allows them to remain free. Throughout the past century, political law has ensured that political and military leaders suspected of involvement in war crimes, crimes against humanity, and genocide remain free from trial (Arifin & Lestari, 2019)

Papua is the easternmost region of Indonesia. On November 19, 1969, Papua joined the Republic of Indonesia after a referendum conducted by the Papuan people. This led to the recognition of Papua as an Indonesian territory by the United Nations. In 1969, Law Number 12 of 1969 on the establishment of the West Irian Autonomous Region and Autonomous Districts in the West Irian Province legitimized Papua as a lawful autonomous region for Indonesia. After Papua officially became part of Indonesia, some people were dissatisfied with the government because they continued to suffer from poverty. With an area three times larger than the island of Sumatra and abundant natural resources, Papua should be able to provide prosperity to its residents. However, the reality is not as beautiful. Conflicts in Papua are often broadcasted by the media, showing that the government is unable to control the complex conflict in the Papua region. (Yusuf dkk., 2023)

The lives of most Papuans are secluded, and they lack access to government centers, social services, and the economy. This economic dissatisfaction is what drives some Papuans to seek independence for their region. The Central Government of Indonesia is perceived as unsuccessful in creating peace and prosperity in Papua, especially after the Central Government implemented a Military Operation to combat separatist rebellions in Papua, which ultimately led to more severe human rights violations committed by the military sent to Papua (Pona, 2008)

This situation has led many Papuans to want to leave the Republic of Indonesia. The Free Papua Organization (OPM) initiated the separatist movement in Papua, which later evolved into the Papua Presidium Council (PDP). This movement has emerged since 1965 with separatist actions involving military operations that involve Papuans. Hostage-taking, raising the Morning Star flag, mass demonstrations in Papua, posting demonstration pamphlets, destruction of local facilities, and cross-border violations are some examples of community resistance carried out by these organizations. (“Organisasi Papua Merdeka yang menuntut pemisahan Papua dari Indonesia, apa dan siapa mereka?,” t.t.) The forces sent by the Central Government responded to the separatist efforts of the Papuan community by suppressing them with violence. In this region of Papua, there are many reports of human rights violations, ranging from the right to life, the right to freedom of expression, oppression of citizens, and racism. United Nations Human Rights experts consider the enforcement of human rights in Papua to be increasingly concerning. Human rights violations, including abductions, torture, child killings, and mass displacement of communities, are said to worsen the situation. (“Akses bantuan ke masyarakat Papua ‘dibatasi aparat’, pegiat HAM desak penyangkalan Indonesia ‘dibuktikan lewat penyelidikan independen,’” t.t.)

In 2021, there were about 30 cases of human rights violations in Papua according to Catahu. This includes two threats of terrorism, and four cases of violence in the field of business and investment, and the rest are individual human rights violations, including oppression, murder, and torture. The data on human rights violations in Papua each year from 2017-2022 is as follows Table 1.

Table 1. of Number of Complaints in Indonesia

Years	Number Of Cases
2017	89
2018	68
2019	154
2020	218
2021	205

Several cases of human rights violations in Papua include the Wamena Tragedy in October 2000, the Wasior Case in June 2001, and the Cendrawasih University Tragedy, among others. To this day, there are still cases of human rights violations occurring in Papua. On September 3, 2022, four Papuan residents were killed by a group of people in Timika, six out of ten perpetrators were members of the Indonesian Army (TNI AD). (Meteray, 2023)

The purpose of this research is to provide a more comprehensive understanding of the violations that have long occurred in the Papua region every year. In addition, it reviews the legal violations that occur in Papua based on legal politics as a step in handling human rights violations that occur in Indonesia.

METHOD

The processing of this scientific work uses a normative research method with a type of descriptive research and a normative juridical approach by applicable laws and regulations. The author conducts research using a descriptive analysis method, which is a form of library research. The data used comes from various references, books, and journals that discuss the formation of Human Rights Laws and the history of human rights violations in Indonesia, especially those that occur in the Papua region.

RESULTS AND DISCUSSION

Definition and Scope of Serious Human Rights Violations in Indonesia

The term Human Rights in Indonesia, according to Law No. 39 of 1999 on Human Rights and Law No. 26 of 2000 on Human Rights Courts, distinguishes human rights violations using the term “gross human rights violations”. Unfortunately, Law No. 39 of 1999 on Human Rights uses the term “gross human rights violations”, but Law No. 26 of 2000 on Human Rights Courts uses the term “serious human rights violations”.

In essence, Law No. 39 of 1999 and Law No. 26 of 2000 are not definitively the same. They only explain the types of gross human rights violations, for example. According to Article 1 point 6 of Law No. 39 of 1999 on Human Rights, gross human rights violations are defined as the actions of an individual or group, whether intentional or unintentional, under the pretext of violating the law and revoking the rights that are inherent in humans and guaranteed by law with the fear of not being able to resolve it fairly according to the procedures and legal mechanisms in Indonesia.

As stated in Article 1 point 6 of Law No. 39 of 1999 on Human Rights, human rights violations can only be committed if there are elements of actions carried out by individuals or groups, including state apparatus. Secondly, if the violation is indicated as intentional or unintentional, it will be determined as negligence against the law. Thirdly, the existence of these violations aims to provide legal guarantees under the pretext of the rights written in Law No. 39 of 2000 on Human Rights. Fourthly, the victims of human rights violations are individuals or groups of state apparatus who do not get justice and truth according to the applicable legal mechanisms.

Meanwhile, human rights violations as explained in Article 104 paragraph (1) of Law No. 39 of 1999 on Human Rights, which is based on Serious human rights violations include acts of genocide or mass murder, murder committed without a fair judicial process or arbitrarily, acts of torture, kidnapping or forced disappearance of individuals, practices of slavery, and discrimination carried out in a structured and systematic manner. (Siswadi, 2012)

Gross human rights violations also include violations of international humanitarian law (IHL). Crimes against humanity, which are a category of gross human rights violations, can occur both in conditions of armed conflict and in peacetime. Therefore, some argue that gross human rights violations and serious IHL violations are interchangeable terms. The sources of these serious IHL violations include the Geneva Conventions, Additional Protocols, and the Hague Conventions.

In the Geneva Conventions, these violations are regulated in Article 50 of Geneva Convention I, Article 51 of Geneva Convention II, Article 130 of Geneva Convention III, and Article 147 of Geneva Convention IV of 1949 as part of the common provisions as follows: First, intentional murder, cruel treatment including biological experiments, and actions that intentionally cause excessive physical or health suffering (by Geneva Conventions I, II, III, and IV). Second, the destruction and seizure of property not justified by military necessity, carried out extensively, unlawfully, and arbitrarily (by Geneva Conventions I, II, and III). Third, a prisoner of war or an individual protected by the Geneva Conventions to serve in the enemy's military; deliberately deprives prisoners of war or individuals protected by the Geneva Conventions of their right to a fair and just trial (by Geneva Conventions III and IV). Fourth, unlawful deportation and punishment; unlawful detention (by Geneva Convention IV) (Setiaji & Ibrahim, 2018)

Gross human rights violations (HRV) as regulated in the 1998 Rome Statute include genocide, crimes against humanity, war crimes, and crimes of aggression. Law No. 26 of 2000 on Human Rights Courts, which is an adoption of the 1998 Rome Statute, defines gross HRV to include crimes against humanity and genocide. Therefore, Law No. 26 of 2000 has similarities with the 1994 ICTR Statute, which only classifies genocide and crimes against humanity as gross human rights (Turnip, 2020)

Cases of Serious Human Rights Violations in Papua

There are numerous reports discussing severe human rights violations in Papua as if the conflict that has occurred is never-ending. The government has implemented various security measures and deployed several forces such as the Indonesian National Armed Forces (TNI) and the Indonesian National Police (Polri). The deployment of security forces has not made Papua safe, but rather, the number of victims in Papua, both civilians and security personnel, has increased (Chandra dkk., 2022)

In Papua, there are several separatist movement groups, including the Armed Criminal Group (KKB). The KKB currently uses weapons they obtained from smuggling or seizures. This group has three important components: first, a domestic political campaign, where they strive to gain support from the TNI/Polri. Second, an international political campaign, where the KKB voices independence to foreign embassies. Third, a demonstration of armed strength, where the KKB shows their power through the weapons they possess. In addition to the KKB, there is also the Free Papua Organization (OPM), which has a nationalist ideology and aims to separate from Indonesia. The OPM was established on July 26, 1965, in Manokwari by Permenas Ferry Awon, a former member of the Papua Volunteer Battalion formed by the Dutch. Organizations like these often cause conflicts in Papua. These conflicts lead to human rights violations, with the following as examples of such conflicts. (Nainggolan, 2022) Konflik tersebut berujung kepada tindakan pelanggaran hak asasi manusia, adapun contoh konfliknya sebagai berikut.

First, the Wamena Tragedy in October 2000. This tragic event occurred in Wamena on October 6, 2000, and resulted in 31 Papuans and migrants losing their lives. This conflict stemmed from horizontal tension between the native Papuan tribe and migrants, which led to a mass slaughter. In addition to the loss of life, material losses also occurred, including houses that were burned by the mob. This incident left deep trauma and feelings of revenge for the victims. The government and security forces, including the TNI-Polri, have taken steps to address this situation. They have urged the public to stop violent actions and combat the spread of fake news and provocations through the internet. Internet connections in Wamena, Papua, were even temporarily cut off to control the situation. Conflicts like this highlight the complexity and sensitivity of the situation in Papua, which requires a wise and ongoing approach to achieve peace and justice for all parties involved.

Second, the Wasior Case in June 2001. This tragic event began with the murder of five members of the Mobile Brigade (Brimob) and one civilian at the base camp of the company CV. Vatika Papua Perkasa in Wondiboi Village, Wasior District, on June 13, 2001. At that time, several

members of Brimob were deployed to search for the perpetrators, but this pursuit was accompanied by violence against innocent civilians. Arbitrary actions, torture of more than 30 people, murder, forced disappearances, and even rape occurred. This incident is a gross human rights violation in Papua. Although many legal actions have been taken to process this case, there is still no clarity about its resolution. This kind of situation highlights the complexity of the conflict in Papua and the need for a wise approach to achieve peace and justice for all parties involved ([Hastanti & Hutapea, 2020](#))

Third, the Cendrawasih University Tragedy. The event known as “Bloody Uncen” occurred on March 16, 2006, in front of the Cenderawasih University campus, Abepura, Jayapura. It started when hundreds of Cenderawasih University students demonstrated against the presence of PT Freeport Indonesia in Papua. The demonstration, which was initially peaceful, ended with riots and casualties. From the reports available, 4 police officers and 1 intelligence officer from the Indonesian Air Force died. Meanwhile, from the civilian side, 3 people were shot, 105 people were injured, 3 people died, 70 people were arrested, 10 were made suspects and 7 of them were known to have died while in custody of the Papua Regional Police ([Suryono, 2022](#)) The Wasior case is still unresolved, this has an impact on the absence of follow-up to provide justice to the Papuan community, therefore the need for figures who play a role in resolving human rights violation cases in Papua.

Causes of Conflict in Papua

Konflik yang terjadi di Papua menurut kajian dari tim LIPI penyebab yang menjadikan konflik di Papua tidak kunjung selesai dan menyebabkan pelanggaran atas Hak Asasi Manusia ([Chandra dkk., 2022](#)) yaitu pertama, Sejarah Papua ke Indonesia menunjukkan kecurangan yang dilakukan pemerintah Indonesia karena tidak sesuai dengan perjanjian New York. pada tanggal 23 Maret 1962 di Virginia, Amerika Serikat. Sampai saat itu, Irian Barat masih menjadi masalah antara Belanda dan Indonesia, dan itulah topik utama perjanjian tersebut. Amerika juga berfungsi sebagai mediator dalam penyelesaian konflik di Irian Barat. Perserikatan Bangsa-Bangsa (PBB) membentuk badan pelaksanaan sementara untuk menyelesaikan masalah ini, mulai dari Konferensi Meja Bundar hingga PBB akhirnya membentuk UNTEA. Melalui mediasi UNTEA, Irian Barat akhirnya diserahkan resmi kepada Indonesia pada tanggal 1 Mei 1963. Beberapa orang Papua tidak setuju dengan keputusan tersebut karena beberapa orang tidak terlibat dalam prosesnya sehingga dibentuk Penentuan Pendapat Rakyat (PEPERA) yang menghasilkan integrasi Irian Barat ke dalam NKRI.

Kedua, Pemerintah dan aparat keamanan negara terus melakukan pelanggaran HAM. Ada beberapa kasus atau peristiwa yang disebabkan oleh tindakan aparat yang tidak mengamankan, tetapi situasi tersebut semakin memburuk dan bahkan menghilangkan rasa aman masyarakat Papua. Berdasarkan pemantauan KontraS, dari Januari hingga Desember 2020, telah terjadi empat puluh peristiwa kekerasan yang dilakukan oleh TNI dan Polri, yang didominasi oleh penembakan, penganiayaan, dan penangkapan sewenang-wenang. ([al-Rahab, 2015](#))

Third, discrimination against Papuans. Papuans are still involved in frequent and increasing racial discrimination. Papuan researcher Veronika Kusumaryati from Georgetown University in the United States said cases of racism against Papuans often occur repeatedly. Veronika stated that racism is not an individual problem; it is rooted in society's everyday attitudes, beliefs, and practices that consider other races inferior. ([Kusumaryati, 2024](#))

Fourth, lack of investment in social infrastructure such as education and health. Compared with the western region of Indonesia, infrastructure development in Papua is a bit late. based on findings from the National Socio-Economic Survey (Susenas) conducted by the Central Statistics Agency (BPS) in 2019. Among the 3.7 million Papuans, as many as 657 thousand experienced the problem of illiteracy, with Papua Province occupying the highest rank at 21.9 percent. This is due to the lack of educational facilities and infrastructure in Papua, which is still far behind health facilities in other provinces. According to data collected by the Central Statistics Agency

from the West Papua Provincial Health Service in 2017, the number of health facilities in Papua, both hospitals and health centers, only reached 168 that year. (Bustang dkk., 2018)

Review of Legal Politics in the Tragedy of Human Rights Violations in Papua

The fall of Soeharto initiated a political and legal transformation in Indonesia. Several legal and political policies, including massacres, changes, and the creation of various laws and regulations aimed at protecting, promoting, and fulfilling human rights, including the establishment of institutions to protect and resolve gross human rights violations. During the period of political and legal reform carried out by Habibie, Gus Dur, and Megawati, they were quite responsive to the process and substance of the reform. To realize the necessary transitional rule of law and democracy, these three governments have committed and been given strong authority to do so. This became a prerequisite for the emergence of responsive human rights legal products. (Mahmodin, 2007)

In Habibie's government, human rights legal politics showed significant progress in terms of respect, fulfillment, and protection of human rights. However, this is still in the early stages that are more impressive as a response to strong pressure from civil society and the international world. Human rights are threatened in this situation. Records of attacks and violence occurred in the community regarding religious issues and freedom to practice professions, such as attacks on media employees, both print and electronic. (Abidin, 2005)

According to Mahfud MD, legal politics, defined as the legal policy implemented by the government, also includes an understanding of how politics influences law by considering the power structure behind the creation and enforcement of law. (Anggoro, 2019) *Philippe Nonet and Philip Selznick*, in their book "Law and Society in Transition: Toward Responsive Law", inspire this approach to political configuration and legal products. The social science approach to the law sees law as something that varies depending on the socio-political background to which it is applied. (Nonet & Selznick, 2007) Therefore, Mahfud MD states that the study of legal politics should prioritize the historical interpretation of how the law was made. According to Mahfud MD, the meaning of legal politics is the goal or desire intended by the constitution/lawmaker when the content of the constitution/law was created through disputes in the institution and then formulated in the form of legal words. Once established in the constitution/law, the legal politics in this context can be excavated through historical interpretation of the origin of the legal content. (Mahfud, 1998)

Mahfud MD discusses three frameworks or patterns related to the relationship between politics and law. First, the prevailing political and legal pattern. This pattern departs from the idea that politics determines law. This pattern places law (*ius constitutum*) as the basis for how politics should be run. In other words, law is more important than politics. Many positivists adhere to the *das-sollen* view because they believe that the law should regulate political reality. (Lev, 1990) Second, the pattern that applies legally and politically. The idea that politics determines law is the basis of this pattern, which places law or is constituted, as the basis for how politics should be run. In other words, law supersedes politics. Many positivists believe in *das-sollen* because they believe that the law should regulate politics. Third, the *das Sollen sein* perspective. This view recognizes that politics and law do not dominate each other; they do not influence each other.

In addition, Mahfud MD distinguishes between political configurations and the nature of legal products, providing a scheme of legal politics. Political configuration shows political ideology, political system, and state structure, regardless of whether the state adopts an authoritarian or democratic political system. Conversely, if the political structure is authoritarian, characterized by a fascist-conservative political attitude, being top-down and limiting people's freedom, then the legal product it produces will be conservative and orthodox. This is because in a democratic structure, there is the rule of law, civil liberties, and high public participation. This scheme offers an alternative perspective on how law, both formally and materially, will impact society;

however, this is not always true because a democratic political configuration produces an orthodox legal character.(Anggoro, 2019)

The analysis of human rights violation conflicts in Papua can be concluded to violate the Regulation of the Law of the Republic of Indonesia Number 40 of 2008 where in the regulation it mentions the elimination of discrimination based on race, ethnicity, in Indonesia.(Chandra dkk., 2022) The existence of a policy taken by the Government to form regional regulations, namely OTSUS, which is basically a promising and comprehensive policy for the resolution of conflicts in Papua. In the Constitutional Court (MK) hearing, Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Papua Province (Papua Otsus Law) was discussed. E. Ramos Petege and Yanuaris Mote submitted application Number 43/PUUXX/2022.(Anugerah, 2019)

With the issuance of Law No. 21 of 2001, the government and all the people of Indonesia are committed to using a new perspective in resolving various problems that color the life of Papua Province. This changes the security approach to resolving Papua's problems into a social welfare approach. The Special Autonomy Regional (Otsus) policy is intended to implement the necessary development programs in the fields of education, health, and people's economy. The Papua provincial government has four main objectives. They are first, education prioritized for inland and coastal communities. Second, health, where the government provides a special medicine package with special autonomy. Third, an economy based on the people. Fourth, a national resilience strategy that is expected to prioritize the welfare of the Papuan people, maintain the Unitary State of the Republic of Indonesia, and guard the border with other countries.(Edyanto dkk., 2021)

The Indonesian government will use "territorial operations" rather than "combat operations" to resolve security issues in Papua, said Coordinating Minister for Political, Legal, and Security Affairs Mahfud MD. This was conveyed by Mahfud MD after meeting with newly inaugurated Indonesian National Armed Forces (TNI) Commander General Andika Perkasa. In front of reporters, Mahfud MD stated that he had discussed new ideas to handle the armed conflict in Papua with General Andika Perkasa, but he did not explain the details. It is hoped that the civil and military conflict in Papua will cease with this new method. This method was born from a study institution in Papua.(al-Rahab, 2015)

At the state institution level, the TNI and the Indonesian National Police (Polri) differ in legal politics. The regulation of these institutions is both legal and political. In other words, the Indonesian Polri operates as a law enforcement institution with a civil character since its establishment, not as part of the armed forces (combatant) responsible for maintaining order and security of the state. Although there have been advanced changes or regulations, this judicial institution reform is still very difficult to implement practically due to strong resistance from the institutions affected by the reform, which delays the process. On the other hand, the National Human Rights Commission (Komnas HAM), which is regulated in a separate chapter of Law No. 39 of 1999, seems to lack the necessary legal power to handle significant human rights violations. If parties do not respond to compulsory summons, the authority to summon them is not accompanied by sanctions. On the other hand, Law Number 15 of 2004 concerning the Republic of Indonesia's Attorney General's Office was not made to change the independence of the Attorney General's Office and the centralized bureaucratic structure. For example, the prosecutor's office is a government institution according to Article 2 Paragraph 1. The Attorney General's Office, as a government institution, is institutionally not an independent institution because, although it carries out judicial functions, it is an executive institution. This is very important in handling human rights involving civilians or the state.(Saputra & Surajiman, 2021)

CONCLUSION

The ongoing human rights violation conflict in Papua indicates that the government's strategy is increasingly adding victims, and several recorded cases of human rights violations seem to be just records that do not get justice for the actions committed. According to LIPI, the causes of the ongoing human rights violation conflict are first, the history of Papua's integration into Indonesia shows fraud committed by the Indonesian government because it does not comply with the New York Agreement. Second, the prevailing legal and political pattern. Third, discrimination against Papuans. Fourth, a lack of investment in social infrastructure such as education and health.

The ongoing conflict urges the government to immediately resolve major human rights violations in Papua, recorded until now, severe human rights violation cases always exist, so the government issued OTSUS, which is basically a promising and comprehensive policy for the resolution of conflicts in Papua. However, after seeing various cases that sometimes do not get justice, and the weakness in the position of handling severe human rights cases in Indonesia often does not provide a definite solution and there is no definite follow-up on the severe human rights violation cases.

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