

Free Papua Organization: Belligerent, Combatant, or Separatist?

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ABSTRACT

There is a jargon “*Papua has never been and will never be a part of Indonesia.*” Such jargon would correct if Papua currently is under the colonialism of the Government of the Republic of Indonesia. The presumption that Papua was part of the Kingdom of the Netherlands has existed since 1898. It was known as the Dutch New Guinea and indicated as a territory outside Netherlands East Indies. Rebellion action has been happening in Papua after the Declaration of Independence of the Government of the Republic of Indonesia on 17 August 1945. There has been some “rebellion” action in Papua after the Government of the Republic of Indonesia has declared its independence. OPM is known as an organization that campaigns for the liberation of Papua from the Government of Indonesia. OPM also carried out acts of rebellion that threaten the security of the Papua region in particular and the security of Indonesia’s territory in general. This paper concludes that the movement carried out by the GSB OPM has not met the criteria set out in the 1949 Geneva Conventions and the 1977 Supplementary Protocol. In doing so, the OPM GSB cannot be called a combatant, insurgency, or belligerent, but purely as a separatist group.

The action taken by OPM is pure separatism, and OPM is a separatist Group. The opinion of the Free Papua Organization towards the Papua region, which is not the territory of the Unitary Republic of Indonesia (NKRI) is incorrect. The territory of the Republic of Indonesia after the proclamation of independence on 17 August 1945 is the entire territory owned by the Government of the Kingdom of the Netherlands before the proclamation of independence on 17 August 1945. It is under the principles of the *Uti Possidetis Juris*.

Keywords: *Free Papua Movement, separatism, Uti Possidetis Juris*

1. INTRODUCTION

The General Chairman of the Retired Army Association The Army (PPAD) [1] Lt. Gen. (Retired) Kiki Syahnakri, on Friday, December 7, 2018, has commented on the shooting incident of trans Papua road project workers in Yigi Aura River, Yigi District, Nduga Regency, against dozens of Istaka Karya project workers on Sunday, December 2, 2018, as reported in various media [2]. He stated that the perpetrators of that incident were part of the Armed Forces Movement of Free Papua Movement (GSB-OPM) and has a clear goal to separate themselves from the Unitary Republic of Indonesia [1]. Accordingly, Kiki Syahnakri stated that GSB – OPM can not be called as a group Armed Crimes (KKB). Kiki Syahnakri also stated that the presence and activities carried out by the GSB-OPM was as an armed uprising against the Republic of Indonesia and had fulfilled the requirements of a combatant group. Therefore, it is appropriate to exterminate GSB-OPM using military force [3].

The act of separation to liberate Papua from the Republic of Indonesia has been taken place since the Proclamation of Indonesian Independence on August 17, 1945. The act of separation done by GSB OPM is also intend to obtain international recognition. This efforts were based on the claim that since 1898, during the reign of the Kingdom of the Netherlands, Papua was referred to as the Dutch New Guinea and was a separate part from the Netherlands East

Indies, which is currently Indonesian territory [4]. This view is contrary to the political and historical facts of the establishment of Indonesia as a country.

Against this situation, academics, scholars and practitioners have expressed their opinion on OPM (GSB OPM) status based on international law principles, the history of West Irian and the Republic of Indonesia; the Papuan separatism movement in international law; and arguments about the legitimacy of the OPM GSB movement for Papuan independence [5]. The views expressed by academics on the actions of the OPM expressed in the various articles, none of which state that the OPM is a Combatant.

Accordingly, this paper is prepared to argue that the movements of OPM are separatism movement under public international law. This article will also conclude that it is not suitable to call the perpetrators of the GSB OPM movement as a combatant or belligerent under public international law. The term combatant in international humanitarian law is defined to residents in an area of a country in a war situation or in an armed conflict where the population is a resident and actively participating in battles [6]. Papua is not in a state of war, and is not occupied by the Government of the Republic of Indonesia, thus not appropriate to call the perpetrators of the GSB OPM movement as combatant. Regarding events and movements that occur in Papua, as well as the mention of “combatant groups” for the perpetrators involved in the shootings, this paper will discuss

combatants, non-combatants, and belligerent including its treatment under the international humanitarian law.

Discussing on the status of GSB OPM, whether as a combatant, belligerent, or separatist, is important. It is not only on the basis of public international law but also on the basis of historical facts of the territory of the Republic of Indonesia, since the rule of the Dutch Royal government until the period of Indonesian independence. This paper will also explain the basis for granting combatant or belligerent status to certain group under international humanitarian law, in this case is status for GSB OPM. Furthermore, this paper will elaborate a solid basis for a country to defend its territory from actions that lead to secession or separatism, from a legitimate and sovereign state government. Besides, arguments on this issues will be based on applicable public international law regarding the legitimacy of belligerent status and justification of secession from the legitimate and sovereign state.

Legal research is a problem-solving activity carried out by researchers through the identification and qualification of facts and looking for applicable legal norms and then drawing conclusions based on the facts and legal norms [7]. This research was conducted using normative legal studies to understand the application of legal norms to the facts [8], in this case, international legal norms that give combatant or non-combatant or belligerent status to GSB OPM.

Methodology in this paper is a juridical normative research methodology [9], by gathering secondary legal [10] material through an inventory of provisions and legislation relating to the control and granting of the Papuan autonomous region by the Government of Indonesia and other relevant national regulations; international provisions regarding intelligence status; as well as other relevant international rules or regulations.

Information collected in arguing and explaining OPM issues is information that covers OPM's goals to "liberating" Papua from Indonesia; history of the founding of Indonesia; efforts that have been carried out by the Government of the Republic of Indonesia dealing with OPM's issue, and to maintain the Unitary Republic of Indonesia. This research was conducted by collecting data and conducting document studies. Documents, in this case, are written materials containing information about the phenomena to be examined, namely the history of the Republic of Indonesia since the proclamation of independence in 1945, territorial control by the Government of the Republic of Indonesia over Irian Jaya (Papua). Documents are distinguished between primary and secondary documents. Primary documents are results written by people who were not present at the scene but got the information needed and then compiled the documents by interviewing eyewitnesses or reading primary documents [11].

The understanding of the legal system in this research is the understanding put forward by L.M. Friedman, namely that the legal system consists of a substance component [12], a structural component [12], and a legal culture component [13]. Friedman interpreted *legal substance* as "...the actual rules, norms, and behavior patterns of people inside the system. This is, first of all, 'the law' in the widespread sense of the term..."

Outline of this paper are the first part, an introduction that describes the background of the OPM movement that threatens the Republic of Indonesia. The second part, a discussion that contains the history of the Unitary Republic of Indonesia and the principles of the *Utī Possidetis Juris*; Papua Region as part of the Unitary State of the Republic of Indonesia; and the Free Papua Organization are separatist groups. The conclusion part, will be conveyed at the end of this paper.

2. TERRITORY OF THE REPUBLIC OF INDONESIA AND THEORY OF *UTI POSSIDETIS JURIS*

Rosandry, said that there is a jargon that reads, "*Papua has never been and will never be a part of Indonesia*" [4]. The jargon stated the rejection that Papua was never part of the process of the formation of the Republic of Indonesia so that it became true if Papuans demanded the right to self-determination (right to self-determination) and considered that the current conditions were conditions under the colonialism of the Government of Indonesia. Such jargon would correct if Papua currently is under the colonialism of the Government of the Republic of Indonesia. The presumption that Papua was part of the Kingdom of the Netherlands has existed since 1898 and was known as the Dutch New Guinea and indicated as a territory outside Netherlands East Indies. Rebellion action has been happening in Papua after the Declaration of Independence of the Government of the Republic of Indonesia on 17 August 1945.

As mentioned in the Netherlands Constitutions before the proclamation of Indonesian independence, Papua was a separate part of the Netherlands East Indies. Papua has never been a part of the Netherlands East Indies. Papua, then known as West New Guinea, was part of the Netherlands East Indies territory in the Dutch Constitution of 1938 (the Netherlands Constitutions 1938). Then, in the Dutch Constitution of 1948, it was mentioned that the mention of the Netherlands East Indies was replaced with Indonesia [14]. In the early 1880s, the United Kingdom recognizes West New Guinea as part of the territory of the Netherlands Government based on an agreement between the United Kingdom and the Kingdom of the Netherlands on 16 May 1895. The agreement is an agreement fixing the boundary between West New Guinea and East New Guinea [14].

In the early of 1885, the Boundary Agreement between the British Empire and the Kingdom of the Netherlands confirmed the authority of the Kingdom of the Netherlands over West New Guinea. The Boundary Agreement has concluded the separation of the territory of South East New Guinea, the territory of the British Empire, from the North East New Guinea, which was German territory. Under the Boundary Agreement, the United Kingdom and the German Government respect and recognize the control of the Kingdom of the Netherlands over West New Guinea [15].

Hence, the Government of the United Kingdom and the Government of Germany recognized the authority of the Kingdom of the Netherlands over West New Guinea without boundary agreements between the three countries in the region. Such conditions indicate that international law fully recognizes the territory of the Kingdom of the

Netherlands at that time as outlined in the Netherlands Constitution on the Netherlands East Indies and then in the Constitution of 1938 was changed to "Indonesian territory" [16]. The 1938 Dutch Constitution applied to the Government of the Kingdom of the Netherlands' colony, including Indonesia, at that time.

The relation between the Proclamation of Indonesian Independence on 17 August 1945 with the *Uti Possidetis Juris* theory, clearly emphasizes the territory of the Republic of Indonesia since its independence, namely that West New Guinea and the Netherlands East Indies are a unified Indonesian territory since the proclamation of independence. Previously, the Proclamation of Indonesian Independence in 1945 was inseparable from the surrender of the Government of the Kingdom of the Netherlands to Japan on March 2, 1942, which made Japan control Indonesia; and the event of Japan's surrender to the Allies on August 14, 1945. Before the Second World War, the Government of the Kingdom of the Netherlands had colonial powers in Southeast Asia as the Netherlands East Indies, which included Kalimantan (Borneo), Java, Sumatra, and part of large islands called the Great East [17].

Indonesia's Independence Proclamation August 17, 1945, became the highest political expression of the Indonesian people to visit colonialism and international political discrimination at that time because independence for the colony could only occur if given by the authorities of the colony. The proclamation of Indonesia's independence becomes a legal event that independence is a "right," not a "gift." This system was then accepted by the United Nations and set forth in the UN Charter with the words "self-determination" and "non-self-governing territories," which means that independence was born from a "negotiated settlement." Through the proclamation of Indonesia's independence, the territory of the Kingdom of the Netherlands before August 17, 1945, in the Netherlands East Indie, including West New Guinea, became Indonesian territory [18]. It is in line with the principle of *Uti Possidetis Juris*.

In the Netherlands Constitution before the proclamation of Indonesian independence, Papua was never excluded from the Netherlands East Indies. Papua, at that time, was called West New Guinea and was part of the Netherlands East Indies territory, as mentioned in the Dutch Constitution of 1938 (the Netherlands Constitutions 1938). In the 1880s, the United Kingdom recognized West New Guinea as part of the territory of the Government of the Kingdom of the Netherlands based on an agreement between the United Kingdom and the Kingdom of the Netherlands on May 16, 1895. The agreement was an agreement to determine the boundary line between West New Guinea and East New Guinea. Then, in the Dutch Constitution of 1948, it was mentioned that the mention of the Netherlands East Indies was replaced with Indonesia [19].

After the Proclamation of Independence on August 17, 1945, the Government of the Republic of Indonesia ruled over all areas that previously occupied by the government of the Kingdom of the Netherlands, in line with the principle of *Uti Possidetis Juris* [20]. Principle of *Uti Possidetis Juris* is a principle to determine the boundary of a country based on the previous colony area. In the

context of Indonesia, the borders after the Proclamation of Independence followed the boundaries of the Netherlands East Indie, which was part of the Dutch Empire [21]. Principle of *Uti Possidetis Juris* also asserted that the territorial boundaries of an independent state are determined based on the territorial borders owned by the previous colonial state. This principle refers to the concept that a new state that emerges from the decolonization condition will inherit the territorial boundaries and administrative power possessed by its invaders at the time the country declares independence [22].

3. BACKGROUND

3.1. Papua Region as Part of the Unitary State of the Republic of Indonesia

The legal discussion on Papua's region as part of the territory of the Unitary State of the Republic of Indonesia is in line with the principles of *Juris Possidetis*. That based on the principle of *Uti Possidetis Juris*, Papua, formerly called West New Guinea, is an entity with the territory of the Netherlands East Indies as the territory of the Republic of Indonesia since the proclamation of independence on August 17, 1945. towards the West Irian region after the proclamation of Indonesian independence on 17 August 1945, various bilateral settlement efforts had been carried out with the Government of the Kingdom of the Netherlands.

The Government of the Kingdom of the Netherlands did not recognize the independence and the birth of the Republic of Indonesia after August 17, 1945, and as an effort to bridge this, the Linggarjati Negotiations held on November 11-15, 1946 [23]. The Linggarjati Agreement was agreed and signed on March 25, 1947, with the following points of agreement [24]:

1. De facto Dutch recognition of the Republic of Indonesia with territorial powers including Sumatra, Java, and Madura. The Government of the Kingdom of the Netherlands must leave the de facto territory by January 1, 1949.
2. The Republic of Indonesia and the Netherlands will work together to form the United States of Indonesia with the name Republik Indonesia Serikat (RIS), one of which is the Republic of Indonesia.
3. The Republic of the United States of America and the Netherlands will form the Indonesia-Netherlands Union, with the Queen of the Netherlands as its chairman. The aim was to manage the common interests. In this case, the Netherlands also includes Suriname and Curacao, while what is meant by Indonesia is the United States of Indonesia.
4. The Government of the Netherlands and the Republic of Indonesia will endeavor to form a United States of Indonesia complete before January 1, 1949.
5. The Government of the Republic of Indonesia recognizes, restores, and protects foreigners' property.
6. The Government of the Netherlands and the Government of the Republic of Indonesia agreed to reduce the number of troops carrying out cooperation in military matters.

7. In the event of a dispute between the Government of the Netherlands and the Government of the Republic of Indonesia concerning the implementation of this agreement, both parties will submit the settlement of the matter through an arbitration commission.

Towards this agreement, the Government of the Kingdom of the Netherlands denies it by carrying out Dutch Military Aggression I, on July 21, 1947, where the day before, July 20, 1947, Governor-General Van Mook stated that the Kingdom of the Netherlands was no longer subject to the Linggarjati Agreement [25].

The Dutch Military Aggression I, which reneged on the Linggarjati Agreement, prompted the United Nations Security Council to issue Resolution No. 27 on 1 August 1947 which ordered that the Government of the Kingdom of the Netherlands stop armed conflict and be accepted by the Government of the Kingdom of the Netherlands on 15 August 1947.

Under this situation, the United Nations recognizes the Republic of Indonesia as a sovereign and independent country. It is a *de facto* recognition as evidenced in the United Nations Resolution since 1947, has used the name Indonesia, not the Netherlands Indies, and the United Nations Security Council mentioned the conflict between the Republic of Indonesia and The Government of the Kingdom of the Netherlands as The Indonesian Question [25]. The United Nations stated the Republic of Indonesia in the UN Resolution No. 27, 1 August 1947; Resolution No. 30 and No. 31, 25 August 1947; Resolution No. 36, 1 November 1947; and Resolution No.67, 28 January 1949. After the adoption of the UN Security Council Resolution on 17 August 1947, both parties agreed to a ceasefire on 25 August 1947. The United Nations Security Council formed a committee called the Committee of Good Offices, known as the Three Nations Commission (KTN) [26]. This Committee consists of three (3) countries, namely Australia (Richard C. Kirby), chosen by Indonesia; Belgium (Paul van Zeeland), chosen by the Dutch; and the United States (Dr. Frank Graham), as a neutral party. Through KTN facilitation, negotiations between the Republic of Indonesia and the Government of the Kingdom of the Netherlands was on December 8, 1947 on the United States Navy Ship Renville sailing on the Jakarta Bay [26]. The negotiation has been done in the neutral place, The US Battleship Renville. The Renville Agreement was signed on December 17, 1948, and the agreed matters [27]:

1. The territory of the Republic of Indonesia which is recognized by the Government of the Kingdom of the Netherlands, is only Central Java, , and Sumatra.
2. The border between the Republic of Indonesia and the Dutch occupation was agreed.
3. The Republic of Indonesia will be part of Republik Indonesia Serikat (RIS).
4. The Netherlands will remain sovereign until the formation of Republik Indonesia Serikat.
5. Republik Indonesia Serikat has an equal position with the Indonesian-Dutch Union.
6. The Netherlands will transfer its power to the interim Federal Government, before the formation of the Republic of Indonesia.

7. Within a period of 6 (six) months to 1 (one) year, a General Election in the formation of the Constituent Assembly of the Republik Indonesia Serikat.
8. Republic of Indonesia army troops in the occupied territories of the Netherlands must move to the territory of the Republic of Indonesia.

The Renville Agreement harmed Indonesia because it was a more considerable territory of Indonesia that was controlled by the Dutch. Also, in order to divide the Republic of Indonesia, the Netherlands formed several *puppet states*, namely the West Borneo country, the Madura country, the East Sumatra country, and the East Java country [28]. Regarding the Renville Agreement, the Government of the Kingdom of the Netherlands also reneged it by carrying out the Dutch Military Aggression II on 19 December 1949 by attacking the Capital of Indonesia, Yogyakarta, and arresting Sukarno, M. Hatta, Sjahrir, and several other figures. With the fall of the Capital, the Emergency Government of the Republic of Indonesia in West Sumatra led by Sjafruddin Prawiranegara was formed [29].

A Dutch military aggression II received world condemnation. Then the United Nations Security Council changed the KTN to the United Nations Commission for Indonesia (UNCI) through Resolution 67 [30] United Nations Security Council on January 28, 1949 [30] headed by the United States (Merle Cochran), Australia (Critchley), and Belgium (Harremans) [31]. UNCI began to mediate negotiations between the Republic of Indonesia and the Netherlands on March 23, 1949. On April 17, 1949, the Roem - Royen negotiations [31] Roem-Royen was the name of both Indonesia's and the Netherlands' head of the delegation, Mohammad Roem (the Republic of Indonesia) and Herman van Royen (the Netherlands). On May 7, 1949, at the Des Indes Hotel, Jakarta [32], UNCI as the mediator of the negotiations has produced the Roem - Roijen Statement [33], namely [34]:

1. Stop the guerrilla warfare and the return of Indonesian leaders to Yogyakarta;
2. Cooperation in restoring peace and maintaining order - security;
3. Approved the existence of the Republic of Indonesia as part of Negara Indonesia Serikat; and
4. Participate in the Round Table Conference in The Hague to accelerate the unconditional surrender of sovereignty.

The Round Table Conference took place on August 23, 1949 to November 2, 1949 [35] and an effort for Indonesia to gain recognition of sovereignty from the Government of the Kingdom of the Netherlands. The representative of the Republic of Indonesia were Drs. Mohammad Hatta (head of the delegation), Mohammad Roem, Prof. Dr. Supomo, Dr. J. Leimena, Mr. Ali Sastroamijoyo, Ir. Juanda, Dr. Sukiman, Mr. Suyono Hadinoto, Dr. Sumitro Joyohadikusumo, Mr. Abdul Karim Pringgodigdo, Kol. TB. Simatupang, Mr. Muwardi [36], The representative of the Netherlands were Mr. Johannes Henricus Van Marseveen. [36] and *Bijeenkomst voor Federal Overleg*, Thomas Kingston Critchley [36] (BFO – the representative of the country created by the Dutch in Indonesia). The results of the Round Table Conference was signed on October 29, 1949. The Netherlands officially surrendered its sovereignty to the

Republic of Indonesia on December 27, 1949, by signing the Deed of Transfer of Sovereignty [37]. The Round Table Conference has concluded as follows [38]:

1. Recognition of sovereignty of Republik Indonesia Serikat (RIS) as an independent country by the Netherlands.
2. Recognition of sovereignty from the Netherlands was carried out at the latest on 30 December 1949.
3. The status of the Province of West Irian will be completed no later than one (1) year after the recognition of sovereignty from the Netherlands.
4. Formation of the Indonesia-Netherlands Union as a collaboration between RIS and the Netherlands headed by the Queen of the Netherlands.
5. Republik Indonesia Serikat obliged to pay the entire debt of the Government of the Kingdom of the Netherlands since 1942.
6. Republik Indonesia Serikat will return the ownership rights of the Government of the Kingdom of the Netherlands and grant concessions and new permits for companies owned by the Kingdom of the Netherlands.
7. Withdrawal of Dutch warships in Indonesia with some notes will be submitted to Republik Indonesia Serikat.
8. Withdrawal of the Royal Dutch Army based in Indonesia, and the Royal Dutch East Indies Army (KNIL) will be disbanded.

On December 27, 1949, the Government of the Kingdom of the Netherlands formally surrendered Indonesian sovereignty as Republik Indonesia Serikat (RIS) but did not include West Irian (Papua) [39]. Within one year after the transfer of the sovereignty of the Republic of Indonesia by the Netherlands, the West Irian issue will be discussed again in the Indonesian-Dutch Union negotiations [40]. The Netherlands, in this case, has the goal of making West Irian its colonial territory, which is a continuation of Dutch colonialism in the Pacific Coast [40]. At the same time, Indonesia demanded that the Dutch government surrender West Irian based on its status as part of the territory of the Republic of Indonesia as a result of Indonesia's independence struggle freeing itself from Dutch colonialism [40].

As a follow up to the struggle of the Republic of Indonesia for the Netherlands to surrender sovereignty over West Irian to Indonesia, various efforts have been made by the Government of the Republic of Indonesia. The efforts included the Ministerial Conference in the framework of the Indonesian – Dutch Union in Jakarta, March 24, 1950. This effort failed to resolve the issue on the West Irian from the Netherlands to the Republic of Indonesia. The Asia-Africa Conference in Bandung, 18 – 24 April 1955 also became a vehicle for the Indonesia to seek support in the efforts to liberate West Irian from the Netherlands [41]. On 3 May 1956, the Government of the Republic of Indonesia unilaterally canceled relations with the Netherlands based on the results of the KMB. The annulment by issuing Law Number 13 of 1956. The Act stipulates that the relationship between the Government of the Republic of Indonesia and the Government of the Kingdom of the Netherlands is the relationship between two sovereign states based on international law. With Law

No. 13/1956, Indonesia unilaterally dissolved the Indonesia-Netherlands Union [41].

On August 15, 1962, Indonesia and the Netherlands signed the New York Agreement [42]. This agreement contains that administratively, West Papua and Papua New Guinea will be transferred to the United Nations Temporary Executive Authority (UNTEA), where then on May 1, 1963, West Papua administration will be transferred to Indonesia [43]. This agreement also regulates the detailed provisions on the agenda of self-determination or better known as the Determination of People's Opinion (Pepera), to determine whether West Irian will be under Indonesia or become an independent state. The implementation of this Act was carried out under arrangements made by Indonesia with advice, assistance, and participation from UN representatives. Regulations on self-determination (Pepera) include:

1. Consultations with the councils of nine districts regarding procedures and methods that must be followed to ensure that decisions are freely disclosed from the people;
2. A clear formula on the question of whether Indonesia will continue to be in control or not;
3. Guaranteed eligibility of all indigenous people to participate in the Act which will be carried out in accordance with international practice;
4. Formation through an Indonesia-Dutch consultation on the exact time of the Act of Free Choice which would take place before 1969 [44].

West Irian is fully part of the territory of the Republic of Indonesia based on the results of the Determination of the Opinion of the People (Pepera) held on July 14, 1969 - August 2, 1969 [45]. The results of the Act were stated by the General Assembly of the United Nations through Resolution of the General Assembly of the United Nations Number 2504 in a hearing on 19 November 1969.

4. THE FREE PAPUA MOVEMENT (OPM) IS A SEPARATISM MOVEMENT

In its development, although the Indonesian Government has declared its independence from the Government of the Kingdom of the Netherlands and also included asserting the territory of the Republic of Indonesia, there are still problems of "rebellion" in the country, with the existence of the Free Papua Movement and the formation of the Free Papua Organization (OPM). The Free Papua Organization seeks to influence the views of the world community on conditions in Papua to encourage the support of efforts to "liberate" Papua from the Government of the Unitary State of the Republic of Indonesia (NKRI). This view is based on the claim that since 1898, Papua, which during the reign of the Kingdom of the Netherlands was called the Dutch New Guinea, is part of a separate region from the Netherlands East Indies, which is now the territory of Indonesia [4].

The OPM was the first to carry out weapons resistance on July 26, 1965 [46], led by Sergeant Major Permanes Ferry Awom, a former member of the Papuan volunteer battalion formed by the Dutch [47]. The Free Papua Organization is given by the Government of Indonesia to

every organization both domestically and abroad, led by Papuan sons and daughters, who carry out activities that lead to resistance efforts to the Government of the Republic of Indonesia and efforts to secede from the Unitary State of the Republic of Indonesia [48]. The start of the OPM movement, as conveyed by Aditjondro, was the attack of a group of Arfak tribesmen in the Battalion 751 (Brawijaya) barracks in Manokwari, on July 28, 1965 [49].

The rebellion was carried out with physical resistance using weapons, hostage-taking, demonstrations, raising the flag of West Papua, and various acts of vandalism [50]. OPM identifies itself through the flag (Bintang Kejora), the national anthem "Hai Tanahku Papua" and the national symbol. OPM also has factions that fight using weapons, carrying out terror, and attacking the public sectors and foreigners/migrants in Papua. They are local militants who are coordinated hierarchically [51]. In its development, Djopari assumed that OPM was increasingly developing into an organization that wanted to separate from the Homeland and become a separatist movement [50]. In this case, the Government of the Republic of Indonesia considers the actions carried out by the OPM as an attempt to rebel against the legitimate government and calls the OPM an armed separatist movement that threatens the sovereignty of the Republic of Indonesia [50].

As of this writing, there are still efforts by the OPM movement to separate from the Republic of Indonesia and carry out acts of armed conflict [52].

Retired Army General Chairman (PPAD) Lt. Gen. (Retired) Kiki Syahnakri on Friday, December 7, 2018, stated that the perpetrators of the shooting were part of the Armed Forces of the Free Papua Organization (GSB-OPM) [53]. Thus, it is not suitable to call GSB OPM as the Armed Criminal Group (KKB), because of its purpose to separate themselves from the Unitary Republic of Indonesia [53]. The term GSB OPM is also under the purpose of the perpetrators' actions as actions with a distinct purpose to separate themselves from the Unitary Republic of Indonesia. Furthermore, Kiki Syahnakri stated that the presence and activities carried out by the GSB OPM could already be categorized as an armed uprising against the Republic of Indonesia and had fulfilled the requirements of a combatant group that should have been crushed militarily [54]. The emergence of the GSB OPM movement from a legal perspective can also be referred to as treason as regulated in Articles 106 and 108 of the Indonesian Criminal Code (KUHP) [55]. The treason was carried out by a group that opposes the legitimate government and is opposed to the general legal rules in force in Indonesia.

In order to emphasize that the movement carried out by the GSB OPM as a separatist movement, in which there was an armed conflict between the GSB OPM and the TNI, it is necessary to look at the provisions stipulated in the 1949 Geneva Conventions and the Additional Protocols of the 1977 Geneva Conventions. Based on the two instruments of international law, distinct types of armed conflict, namely international armed conflict and armed conflict that is not an international conflict. International armed conflict consists of armed conflict between states and war of national liberation [56]. It is as

stipulated under The Geneva Convention I – IV, 1949, with the exception in the Article 3 of Common Article as well as stipulated in the Additional Protocol of the Geneva Convention I, 1977 [57]. While pseudo international armed conflict is an armed conflict between a state and non-state (non-state entity). This conflict is referred to as an international non-armed conflict, which in Article 1 Paragraph 4 of Additional Protocol I states that the armed conflict is equated with an international armed conflict [58]. The movement carried out by the GSB OPM has not met the criteria set out in the 1949 Geneva Conventions and the 1977 Supplementary Protocol so that the OPM GSB cannot be called a combatant, insurgency, or belligerent, but purely as a separatist group.

5. CONCLUSION

Based on the background of the problem and the description that has been presented in the previous sections, this paper concludes that The Free Papua Organization called the Armed Criminal Group in accordance with the criteria specified in the 1949 Geneva Convention, and the 1977 Geneva Convention Protocol is neither a Belligerent nor a Combatant, but a Separatism group. The opinion of the Free Papua Organization towards the Papua region, which is not the territory of the Unitary Republic of Indonesia (NKRI) is incorrect. The territory of the Republic of Indonesia after the proclamation of independence on 17 August 1945 is the entire territory owned by the Government of the Kingdom of the Netherlands before the proclamation of independence on 17 August 1945. It is under the principles of the *Uti Possidetis Juris*.

In line with the conclusions above, as well as the facts that occurred where the OPM movement carried out propaganda to various countries and international organizations stating that Papua was not the territory of the Republic of Indonesia and freeing itself, the Government of the Republic of Indonesia had made various efforts including, namely:

1. Countermeasures by utilizing social media and writing in various print media about the historical facts of the Republic of Indonesia since the proclamation of independence on August 17, 1945, based on the principle of the *Uti Possidetis Juris*.
2. Diplomacy, both bilaterally, regionally, and multilaterally on the status of Papua. Diplomacy is undergo based on historical facts and the principles of the Jurisdiction Juris.
3. Give the status of cultural representation of the Papuan people by issuing Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua and Presidential Regulation Number 54 of 2004 concerning the Papuan People's Assembly.
4. Accelerate development in the Papua region and seek to improve the local economy as outlined in the Papua provincial development plan.

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