

CHAPTER IV

FINDINGS AND ANALYSIS

A. Ammunition selling by personal officer of TNI and POLRI to *Organisasi Papua Merdeka (OPM)*.

In the last five years, an issue of ammunition and gun selling has been spread in the society, especially in Papua society. The issue that spread is ammunition and gun selling was committed by personal officer of Indonesian Army and Police in Papua.

Benny Gai, as the Papua Activist, stated that it was correct that ammunition and gun selling were committed by Indonesian Army and Police officer. Benny added that it has been occurred around August to November. In last year, the personal officer of Indonesian Army and Police sell the ammunitions and guns out almost every week.⁷⁷

Ex-chief of Papua Police, Tito Karnavian allegedly justifies that the cases are correct. Tito states that the suspects sell the ammunitions and guns on behalf of personal officer, not an institution. He definitely states that some personal of police officer have been arrested and even imprisoned. Tito says, the case has been processed. Those personal officer consist of some TNI officers and some POLRI officers. The Major of Indonesian Army, Fuad Basya, states that TNI personal officers neither sell the ammunitions and

⁷⁷ CNN Indonesia, "Konflik di Papua Tak Selalu Berbau Politik", <http://www.cnnindonesia.comnasional>, accessed on September 18th, 2015 at 11.11.

firearm gun in Papua. However, he states that there may be a possibility of the sale activities committed by personal officer. Moreover, he defines that ammunition and gun sales are based on demand or appliance. “There are groups who need ammunitions, beside there are groups of people who need money” as he adds.⁷⁸

Indonesia people curiosities toward the issue and news of TNI and POLRI involvements of the ammunition and gun sales for OPM in Papua have been allegedly established as one of causes of gun conflict in Papua.

At the end of year 2014, the society was shocked on the arrest of Tanggam Jikwa, a police officer. He was arrested while in transaction of bullet selling to the members of OPM in a hotel in Wamena regency in October 26, 2014. He was suspected as an ammunition supplier who sells the bullets to OPM.⁷⁹ He was arrested when he wanted to sell 29 ammunitions, a series of 7,62 mm caliber priced by 3 million rupiahs and there were found 231 bullets with 5,56mm caliber and 12 items of 38mm caliber believed to be ready-stocks to be sold in his house.⁸⁰

From the investigation process, the involvements of him and a retired of Indonesian Army and two officers of Military District Command (*Kodim*) 1702 of Wamena have been processed upon the ammunition selling.

⁷⁸ *Ibid*

⁷⁹ Liputan6, “Diduga Pasok Amunisi Kelompok Bersenjata Papua”, <http://m.liputan6.com/news/read/2125403/diduga-pasok-amunisi-kelompok-bersenjata-papua>, accessed on April 8th, 2015 at 9.50 pm.

⁸⁰ *Ibid*

Ammunition selling by TNI personal officer did not only happen in the remote areas, but also happened in the whole regencies and cities in Papua.⁸¹

It was proved by the arrest of six officers of Indonesian Police by the Special Team of Papua Local Police. They are firearm and ammunition selling networks in Manokwari region, West Papua. Moreover, five of TNI officers have been arrested after selling 500 ammunitions to *Kelompok Kriminal Bersenjata (KKB)*. The arrest of five TNI officers are ensued based on the information from three member of *KKB* who sold 500 ammunitions in a car before. The three member of *KKB* clarified that they bought the ammunitions from five TNI personnels initialed as NHS (24), S (27), RA (29), S (39), and MM (46).⁸²

B. Separatist Movement of OPM as the form of Treason Act that threaten The State integrity.

1. OPM as The Separatist Group

OPM is a separatist movement founded in 1965 aiming to constitute authority of Papua liberation, especially west territory of Papua from Indonesian Government. Before the reformation era, the provinces consist of Papua and West Papua which is now called *Irian Jaya*.⁸³

⁸¹ Liputan6, “5 TNI di Papua Jual Amunisi ke Kelompok Bersenjata”, <http://m.liputan6.com/news/read/2168408/5-tni-di-papua-jual-amunisi-ke-kelompok-bersenjata>, accessed on March 28th, 2015 at 10.15 pm.

⁸² *Ibid*

⁸³ Komnas TPNPB, “Sejarah OPM”, <http://www.komnas-tpnpb.net>, accessed on October 2nd, 2015 at 2 am.

The name of Free Papua Organization or OPM is assigned by Indonesian Government for every organization or every faction either in Papua or foreign country led by Papuan who actively moves on subversively under political system to construct their force to fight against Indonesian Government, political or armed movements to liberate Papua from *Negara Kesatuan Republik Indonesia* (NKRI).⁸⁴

OPM claims that they have no history relation with Indonesia countries or other Asian countries. Unification of this territory into NKRI since year 1969 is the result of the agreement between Netherland and Indonesia, and Netherland gave that territory (Papua) to Indonesia. In OPM's perspective, the agreement is another resignation from old colonizer to new colonizer.⁸⁵

In July 1st, 1971, Nicholas Jouwe and two commanders of OPM, Seth Jafeth Raemkorem and Jacob Hendrik Prai rose *Bintang Fajar* flag up and proclaimed the revolt of West Papua Republic. However, this republic had no longer survived because they were crushed by Indonesian military under regime of Soeharto (new orde regime). In 1982, A Revolutionist Council of OPM was founded which aimed to sustain international advocacy for supporting the region, West Papua. They intensified their alliances to United Nations, Non-Aligned Movement, South Pacific Forum and ASEAN supports.⁸⁶

⁸⁴ Fathoni Hakim, "Perjanjian Keamanan", <http://lib.ui.ac.id>, accessed on August 1st, 2015 at 10 pm.

⁸⁵ Komnas TPNPB, "Sejarah OPM", <http://www.komnas-tpnpb.net>, *Loc. Cit.*

⁸⁶ *Ibid*

In their development, OPM develop to be an organization that wants separation from NKRI. OPM changes into a separatist movement that is more organized, even though in the fact, OPM tends to be more sporadic in their movement, and it has been a characteristic in their movement. To achieve their goals (the Papua's liberation), OPM's activities are divided into political and military activity.

Political activities are done in Indonesia and also abroad, but compared to another separatist movements, the OPM's political activity in Indonesia was not as effective as those in abroad. It is caused by the intelligence and military continuous supervisions which render OPM's activity in Indonesia. In military activities, OPM works in the commands of *Tentara Pembebasan Nasional Papua Barat (TPNPB)* assisted by Papua Intelligence Service (PIS), which supervise the immigrants, Indonesian Army activity and local apparatus.⁸⁷

Social discrepancy between migrants and local society and also Papua's land exploitation allegedly flushes out their reasons for their movement. Indonesian government must handle this problem seriously, not only by deploying military approach, but also attending to social prosperity and welfare of Papuan for progressive development in Papua. In the other side, we can see their daily activities in the forest and Papua

⁸⁷ Fathoni Hakim, "Perjanjian Keamanan", <http://lib.ui.ac.id>, *Loc.Cit.*

remote areas in order to guerilla to achieve their wants to build their own state separated from Indonesia.⁸⁸

The ways of OPM's insurgence are divided into two; armed and non-armed insurgences. Armed insurgence is the revolt of gun-firearm uses to fight against Indonesian Government, beside non-armed insurgence is like declaring the statements.⁸⁹

OPM's insurgent movements transparently commit the armed resistance or military act sporadically, committing hostages or abduction, mass demonstration, spreading pamphlets, flapping their flag, arranging political conferences and forming local defense organization, trespassing the border operation to Papua New Guinea, and conducting violence and vandalism.⁹⁰

Furthermore, there are numbers of pressures of OPM to indicate them as separatist movement. Nowadays, one of them was spreading terrors for TNI and POLRI and Non-Papua groups. The leader of Puron Wenda and Enden Wanimbo had bravely organized open wars to TNI and POLRI and Non-Papua groups in the last May. The open-war intimidated their firmness to death cohesively to withdraw Papua's authority. They resisted every dialog which relates to their propaganda. In urging the open war, according to Enden Wanimbo, his group now collects more guns and ammunitions. He urged the Indonesian

⁸⁸ Komnas TPNPB, "Sejarah OPM", <http://www.komnas-tpnpb.net>, *Loc. Cit.*

⁸⁹ Sebelas Maret Institutional Repository, "Organisasi Papua Merdeka", <http://core.ac.uk>, accessed on Oktober 2nd, 2015 at 8 pm.

⁹⁰ Fathoni Hakim, "Perjanjian Keamanan", <http://lib.ui.ac.id>, *Loc. Cit.*

government to go out from Papua's region because they would never have surrendered for regional authority of Papua liberation. Puron claimed that the conductions are political arms for Papua's authority. He and his group refused explicitly for being called as criminal group, intruder group, small group, or any identical name related to those terms.⁹¹

2. Separatist movement as a form of Criminal Act of Treason.

State is a huge organization and has a duty for implementing nation's purposes nationally in order to defend and develop preservation of nation and state lives. Maintaining and preserving the existence of state in keeping everlasting (survive) is not the easy thing to commit. State everlastingly deals with any terrors and intimidations of endangering its existence, whether it comes from internal and external of its state. One of terror and intimidation forms is an assault. The punitive measure of assault policy is formulated and ruled in Indonesian Penal Code.⁹²

In separatist movement context, an assault law is ruled in Indonesian Penal Code, section 106 which states that:⁹³

“A Treason (aanslag) acted by conquering a state area overalls or partials undercover of foreign government or separating regional area of the state, will be sentenced or punished to life permanently in

⁹¹ Viva News, “OPM Tebar Ancaman Perang Terbuka dengan TNI dan Polri”, <http://nasional.news.viva.co.id>, accessed on October 3rd, 2015 at 10.36 pm.

⁹² Naga Samudra, “Kejahatan Separatis”, <http://patriotgaruda.com>, accessed on October 2nd, 2015 at 11.10 pm.

⁹³ *Ibid*

prison or long-term punishment temporarily twenty years in the prison”

If we see accurately the content of Indonesian Penal Code, section 106, the object of this aggression is the independence of state areas. The independence of a state can be destructed by two ways. First thing is conquering and overalls or partials extraditing of the state to foreign states. The second is destructing the partials of the state to constitute its own territory and its own authorities to constitute liberate region and nation.⁹⁴

In this case, separatist movement as it is said on point two above is the motivation to separate the partial territories of state to find a liberal state or region's authority. Referring to Indonesian Penal Code, section 106, the separatist movement transparently can be categorized as an assault act because the elements of punitive measure of assault have been transparently appointed based on its purpose and its motivation.⁹⁵

OPM is generally well-known as separatist movement because their separatist movement aims to separate the partial regions of states of Indonesian Republic, liberate nation separated from Indonesia. OPM intensifies their movement to reach out their purposes by forming structural organization into cabinet ministers or president and armed-forces so that the risks urge physical battle which ensue many victims such as the agencies of government ranks and their separatist ranks. They

⁹⁴ *Ibid*

⁹⁵ *Ibid*

have risked civilians for they fight for the authority withdraw and judge it as their region to defend.⁹⁶

C. The relation between “Ammunition selling Act by TNI-POLRI personal officer to the separatist group (*Organisasi Papua Merdeka*)” with “The concept of complicity in a criminal offense” according to Indonesian Penal Code.

It is a violation if the weapons equipment owned by the state was trading illegally, especially if it is done by the state apparatus that were given a mandate to carry out the duty in order to maintain the sovereignty, security, and integrity of the state. Moreover, if those state’s equipment was sold to the parties who are clearly opposed NKRI. But finally it has been proven that there is an act of ammunition selling to the separatist group (OPM) done by some personal officers of TNI and POLRI. It is proven by the arrest of those agencies who did transactions directly with the separatist group (OPM), even there is also transactions done in the urban areas. That ammunition selling act was even caught in a few months only, since October 2014 up to early 2015.

If we look at this case, there are two points that can be concluded, there is an element of violation done by personal officer of TNI-POLRI, because they sell the ammunition (bullets) as a part of the tool or facility which was given by the state for TNI-POLRI to run their function and duties such as maintaining, securing, and also protecting the security, sovereignty, and

⁹⁶ *Ibid*

integrity of the state. And also there is an element of crime which was done, because those TNI-POLRI officers sell the ammunition to the OPM (*Organisasi Papua Merdeka*) which is a separatist group that opposes the state and threaten the state's integrity, which is also can be categorized as treason act.

Generally, Indonesia society knew the goals of OPM, as well as their (OPM) activities has dare to openly oppose NKRI, whether physically such as committing an attack to the TNI or POLRI officers who were on duty, even they also commit an attack to the government apparatus and civil society in Papua who are considered stood for Indonesian government.

So, if there are still some state apparatus agencies who are trading the weapons or ammunition to OPM, all forms of attack incident in the form of shootings will not stop and will always disturb the people activity and governance too. Of course, this matter will make everyone worried, especially they are who live in Papua, thus it will be "a homework" for the law enforcers in Indonesia.

The law enforcer has to verify further about the effect of ammunition selling act done by personal officers of TNI-POLRI to OPM with their activities which is intensively doing resistance to the government such as the attacks to the TNI-POLRI officers, civil servants, as well as civil society. If we see logically, because of that ammunition selling, they (ammunition

seller) have indirectly assist and ease attack actions committed by OPM as separatist group.

Therefore, the act of ammunition selling which was done by personal officers of TNI-POLRI to OPM can be connected with Chapter of “*Complicity in the Criminal Act*” within Indonesian Penal Code, but it needs to be verified further about forms of *deelneming* written on Indonesian Penal Code, as well as the connection with the articles within the formulation of “*Complicity in The Criminal Act*” according to Indonesian Penal Code.

Indonesian Criminal Law recognized four form of complicity (*deelneming*), namely:

1. Told to commit (*doenplegen*);
2. Participate to commit (*medeplegen*);
3. Advise others to commit (*uitlokking*);
4. Assist to commit (*medeplichtigheid*).

The brief discussion about forms of complicity (*deelneming*) and its relation with act of ammunition sales by personal officers of TNI-POLRI to the separatist group (*Organisasi Papua Merdeka*), as follows:

1. *Doenplegen*

In *doenplegen*, there should clearly be people who command or instruct others to commit a criminal act, and there should be people who are instructed to commit that criminal act.

Analysis:

It can be concluded that ammunition sales act was made by personal officers of TNI-POLRI can't be categorized as a form of *doenplegen*, because it is well known that OPM is the separatist group with goals and activities that are openly against the state. It means that OPM's activities itself can be categorized as a criminal act, even without any command from anyone.

2. *Medeplegen*

Generally, *medeplegen* means that there are people who directly participate to commit a criminal act done by others.

Analysis:

This form of *deelneming* is not appropriate with the cases occurred, because they (those personal officers of TNI-POLRI) did not directly involved within the aggression committed by OPM.

3. *Uitlokking*

Uitlokking means there are persons who persuade or advise others to commit a crime, and there should be persons who are persuaded to commits a criminal act.

Analysis:

This form of "*deelneming*" is also not appropriate with the case, because in the real case, the personal officers of TNI-POLRI did not persuade or even advise the separatist group (OPM) to commit those crimes, because from the previous discussion, it is described that even without the advice

or suggestion from others, they (OPM) have goals to be against the state with the wrong ways as they have done so far.

4. *Medeplichtigheid*

Medeplichtigheid briefly means that there are persons who assist/help others in a matter of facilitate others to commit a crime, of course in order to ease others to commit its crime. “Facilitate” here means giving assist such as providing opportunities, facilitating such as weapons or tools to the offenders, and also giving the information which is essential to facilitate and ease others to commit a crime.

Analysis:

Based on the explanation about this last form of *deelneming*, it can be concluded that there is a correlation between elements within *Medeplichtigheid* with the case in this research.

The “keyword” in *Medeplichtigheid* is “*There are persons who help or facilitate others intentionally to commit a crime*”. If we see the case, there are personal officers of TNI-POLRI who sell ammunition (bullets) to the separatist group (OPM). Ammunition is considered as the “facility or tool”, and it was given to OPM. As we knew, OPM is one of separatist group in Indonesia, and they still exist in matter of running their vision for free out from NKRI by carrying out attacks to everyone who is in contradiction with them. The action of separatist group clearly is a criminal act, and can be categorize as the treason act.

D. The suspect's position as the State Apparatus with “*The threat of Aggravating Sentence*” according to Indonesian Criminal Law.

Based on the previous elaborations about ammunition selling act, it was explained that the suspects/actor who sells ammunition to the separatist group are the personal officers of TNI-POLRI that even as the State Apparatus who were mandated directly by the Constitution as the main power in order to hold the defense and security of the state.

Is it true that TNI and POLRI as a part of State Apparatus?

As explained in *Undang-Undang No.43 Tahun 1999* that Personnel of *Tentara Nasional Indonesia dan Kepolisian Negara Indonesia* is a part of State Apparatus.

The suspect's position as the state apparatus of course would be threatened with aggravating sentence articles as written in Indonesian Penal Code. The aggravating because of suspect's position was determined in section 52 Indonesian Penal Code that formulated as follows:

“Bilamana seorang pejabat karena melakukan perbuatan pidana melanggar suatu kewajiban khusus dari jabatannya , atau pada waktu melakukan perbuatan pidana memakai kekuasaan, kesempatan atau sarana yang diberikan kepadanya karena jabatannya, pidananya dapat ditambah sepertiga.”⁹⁷

⁹⁷ Indonesian Penal Code, Section 52.

The basic of aggravating sentence in this article is sited on position status from the suspect as a state apparatus about 4 matters, are commit a criminal act with:⁹⁸

1. Violate a particular obligation of his position;
2. Use his position power;
3. Use an opportunity because of his position;
4. Use the tools or facilities provided for his position.

The subject of law who aggravated his sentence/punishment with one-three additional punishment is for a state apparatus whose do criminal acts by violating or using four conditions were mentioned above.

A state apparatus, in order to running his obligations and positions duties, were provided certain tools or facilities, and those tools/facilities even can be used for doing a crime. It means that, there is possibility for the State Apparatus to abusing the tools/facilities from his position to commit a criminal act.⁹⁹

⁹⁸ Adami Chazawi, 2014, *Pelajaran Hukum Pidana*, Jakarta, Rajawali Pers, page. 74.

⁹⁹ *Ibid*, page. 79.