



Philosophical Analysis of Positivism Article 6 (1) ICCPR in The Construction of Armed Criminal Group Human Rights

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ARTICLE INFO	ABSTRACT
<p>Keywords : <i>Positivism, Human Rights, KKB</i></p> <p>Submitted: 2023-11-09</p> <p>Last revised: 2024-05-28</p> <p>Accepted: 2024-06-28</p> <p>DOI : 10.25077/alj.v9i1.62</p>	<p>This study aims to identify philosophically and juridically related to the Deconstruction of Article 6 (1) ICCPR in the construction of KKB Human Rights and Deconstruction of Human Rights as positive law on the principles of Positivism Philosophy. This research uses normative (doctrinal) methods with a statutory approach (statute approach), and conceptual approach by implementing primary legal principles covering regional to international law and consisting of theories of positivism philosophical traditions, legal dogma, and other relevant literature. The results of this study show that the government should be able to provide firm action against Criminal Acts of Terrorism, especially KKB in Indonesia because there is the highest principle, namely <i>Salus Populi Suprema Lex Esto</i>, and the conception of human rights as positive law that is irrelevant to the founding father of legal positivism, namely the Philosophy of Positivism.</p>

1. Introduction

Efforts made by OPM in order to separate from the Republic of Indonesia are always implemented using criminal movements and causing casualties so that the government is able to take the initiative to form a special autonomy policy with relatively high budget funds for Papua. However, the budget for the special autonomy policy granted by Indonesia cannot be allocated to the wider community. This can happen because the budgeted funds are only enjoyed by the elite. This problem is the background of the massive resistance movement implemented by the OPM, which is carried out with the steps of various crimes and causes casualties. Based on the beginning of independence, there are various kinds of organizations formed that have the potential to disrupt the stability of Indonesia as a sovereign state. This is marked by the existence of DI/TII, GAM, and KKB organizations.¹

Increased intensity of conflict and uproar in Papua occurred in 2021. This conflict resulted in the death of the Head of the Regional State Intelligence Agency (Kabinda) Papua, Maj. Gen. TNI Posthumous I Gusti Putu Danny Karya Nugraha who was shot by the KKB in Beoga, Puncak Regency, Papua on Sunday, April 25, 2021.² Through Press Release No: 72/SP/HM.01.02/POLHUKAM/2021 conducted on April 29, 2021, by the Coordinating Minister for Political, Legal and Security Affairs (MENKOPOLHUKAM) revealed that the Armed Criminal Group (KKB) in Papua can be categorized as terrorists who were originally separatists. If the status is determined, it will have problematic consequences. It can be identified based on cases of discrimination, and violence to violate human rights (HAM) that have been experienced by civil society and security forces in charge of handling the conflict.

The explanation contained in Law No. 5 of 2018 is internalized as representative, complete, and relevant to the UNSC. It requires a study and is based on applicable national security laws, whether given the status of a separatist movement, extremism, or terrorism. Kompolnas is expected to be able to ensure the police pay attention to various regulations of the Chief of Police related to human rights such as Perkap No. 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in the Implementation of Police Duties and Perkap No. 1 of 2009 concerning the Use of Force in Police Actions.³

The determination of the status of KKB / KSB / OPM in the event of armed conflict in Papua as a terrorist group is not appropriate because of the historical background of the

¹Avi Lupi Rinasti et al., 'The Settlement of Armed Criminal Groups Case in Papua: Ended with Secession?', *Indonesian Comparative Law Review* 4, no. 2 (26 September 2022): 100–114, <https://doi.org/10.18196/iclr.v4i2.15122>.

²Surya Muki Pratama Muhammad Hafiz, 'Tinjauan Hukum Penetapan Kelompok Kriminal Bersenjata Papua Sebagai Teroris Dalam Perspektif Hukum Pidana Nasional', *Jurnal Hukum Mimbar Justitia Fakultas Hukum Universitas Suryakencana* 7, no. 1 (2021): P. 88.

³Chandra Muliawan, 'Label Terorisme Bagi Staparatis Telaah Undang-Undang No. 5 Tahun 2018 Tentang Pemberantasan Tindak Pidana Terorisme', *Empati Kadarkum* 1, no. 1 (2022): P. 6.

emergence of acts of violence committed by KKB / KSB / OPM, and the fulfillment of aspects contained in the Eradication Law on Terrorism is inappropriate. Although the indications implemented by the KKB / KSB / OPM are political motives, the orientation of violent acts or threats of violence is not as a means of an atmosphere of terror or fear, but rather to separate from the Republic of Indonesia. Therefore, it is more appropriate if KKB / KSB / OPM is a perpetrator of political crimes as stipulated in Chapter I of the Second Book of the Criminal Code.⁴

The TNI is able to play a role in explicit and independent enforcement based on Law No. 34 of 2004 concerning the TNI, the Law on Combating Terrorism, and the Presidential Decree on the TNI's Task to Overcome Acts of Terrorism. The benefits of explicit and independent enforcement are still in the realm of OMSP, but not as a duty of assistance to the police. The benefits of explicit and independent enforcement by the TNI are "imitative" limited to 7 things as stipulated in Article 9 paragraph (1) letter A of the TNI Presidential Decree on the Task of the TNI to Overcome Acts of Terrorism. Until implicitly accommodating the threat of terrorism which must be ascertained at the level of escalation of the threat through the output of coordination with the Police and related agencies as stipulated in Article 9 paragraph (1) letter H.⁵

In general, the main problem in this study is related to the analysis of government attitudes in handling the eradication of criminal acts of terrorism which have been listed in the UN Charter, UNSC Resolution No. 1373 and UNSC Resolution No. 1624, International Convention for the Suppression the Financing of Terrorism, ASEAN Convention on Counter-Terrorism (ACCT), and Law No. 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism. However, one thing that underlies the problem in alleviating criminal acts of terrorism is the existence of human rights as stated in Article 6 (1) of the ICCPR, the 1945 Constitution, and Law No. 39 of 1999 concerning Human Rights always hinder the process of law enforcement.

While the main purpose of this study is to deconstruct Article 6 (1) ICCPR (International Covenant on Civil and Political Rights) in the Construction of Human Rights KKB in Indonesia and identify the dichotomy between the Philosophy of Positivism and the principles of human rights as positive law. Based on the background above, the formulation of the problem taken in this study is related to; How is the Deconstruction of Article 6 (1) of the ICCPR (International Covenant on Civil and Political Rights) in the Construction of Human Rights of CLAs in Indonesia?; How is the Deconstruction of Human Rights as Positive Law on the Philosophical Principles of Positivism?.

⁴Tolib Effendi and Ananda Chrisna Dewi Panjaitan, 'Konsekuensi Penetapan Status Kelompok Kriminal Bersenjata (Kkb) Dalam Konflik Papua Sebagai Gerakan Teroris Menurut Hukum Pidana', *Rechtidee* 16, no. 2 (2021): 223–45, <https://doi.org/10.21107/ri.v16i2.11823>.

⁵Dedek Efri Wibowo, Rizkan Zulyadi, and M. Citra Ramadhan, 'Peran Tentara Nasional Indonesia Dalam Mengatasi Aksi Terorisme Di Indonesia', *Journal of Education, Humaniora and Social Sciences (JEHSS)* 5, no. 4 (2023): 3075–88, <https://doi.org/10.34007/jehss.v5i4.1744>.

2. Method

This research uses juridical normative methods with a statutory approach, and conceptual approach by implementing primary legal principles covering regional to international law and consisting of theories of positivism philosophical traditions, legal dogma, and other literature. This study uses critical thinking as an effort to seek the gap between relevance written rules or norms with social reality that occurs in society. Researchers use deduction pattern analysis which is a concept related to the alteration of behavior, norms, or principles of international law that are formed comprehensively, logically, radically, and holistically.⁶

In addition, secondary legal data include various relevant literature, either journals or research results. The primary legal sources in this study are the UN Charter, UNSC Resolution No. 1373 and UNSC Resolution No. 1624, the International Covenant on Civil and Political Rights (ICCPR), the International Convention for the Suppression of the Financing of Terrorism, ASEAN Convention on Counter-Terrorism (ACCT), UUD NRI 1945, Law Number 39 of 1999 concerning Human Rights, Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law, Law Number 34 of 2004 concerning the Tentara Nasional Indonesia (Indonesian National Army), and PERPRES (President Decree) Number 7 of 2021. Secondary data in this study are based on books, journals, and literature relevant to the topic discussed. In normative (doctrinal) research, the data generated, through primary and secondary data collection, will be carried out through content analysis and then packaged into general premises about general norms in a more specific public policy system until conclusions can be drawn.

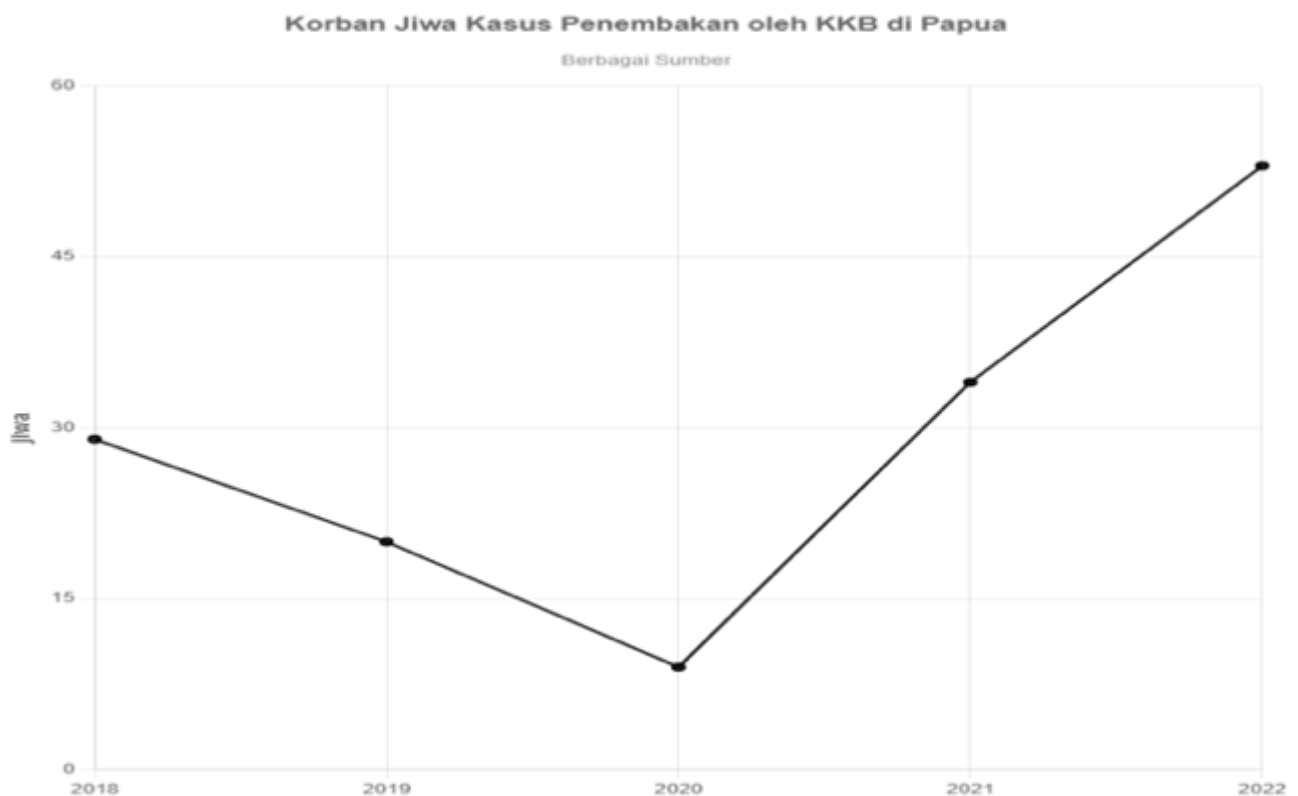
3. Deconstruction of Article 6 (1) International Covenant on Civil and Political Rights (ICCPR) in the Construction of KKB Human Rights

The Free Papua Organization (OPM) was the initial identity now known as the Armed Criminal Group (KKB) which wanted to detach Papua from Indonesian territory. Various sadistic methods have been carried out, including the killing of local residents and officials, and the destruction of state infrastructure. Some 58 years of KKB turmoil with civil society and TNI officials have not been resolved since July 26, 1965. Data over a period of 5 years from 2018 to 2020 showed a declining development in cases of attacks by KKB. In 2018 alone there were 29 people, in 2019 there were 20 people, and in 2020 there were 9 people. The increase in victims who died became victims after 2020, in

⁶S. H. Djulaeka, S. H., & Devi Rahayu, *Buku Ajar: Metode Penelitian Hukum* (Scopindo Media Pustaka, 2020).

2021 there were 34 deaths with 106 cases. Increased by 19 people from 2021 to 2022 to 53 people with some attack areas that have decreased.⁷

Figure 1. Data Graph of Violence by KKB



Source data.googstats.id

The problem of terrorism is all the efforts of the state that has control over the public. The problem of terrorism poses aspects that make it difficult to control sovereignty like never before so as to isolate the actions of the state as the main driver in the framework of providing public security, law, and order within its territorial boundaries. The difficulty of sovereign state control over the terrorist threat has also led the Government in particular to establish boundaries i.e. as an output of public policy and private life has made it fear-bound. Thus, society today is governed in a neoliberal state based on the cultivation and manipulation of the fear of terrorism in a neurotic society.⁸

The government is expected to provide stability in its efforts to selectively choose to use methods that contribute to tackling acts of terrorism, preventing cross-border activities of all kinds of terrorist groups, and escalating discrimination against disaffected groups within the country. It can be identified that countries that appear stable, cannot be

⁷Adel Andila Putri, "Korban Jiwa Aksi Penyerangan Oleh KKB Di Papua", <https://Data.Goodstats.id/Statistic/Adelandilaa/Korban-Jiwa-Aksi-Penyerangan-Oleh-Kkb-Di-Papua-1123F> (Diakses Pada 3 November 2023, Pukul 22.42)', n.d.

⁸Tianyang Liu and Tianru Guan, 'Globalized Fears, Localized Securities: "Terrorism" in Political Polarization in a One-Party State', *Communist and Post-Communist Studies*, 2019, 4.

separated from social problems such as prosecution for disenfranchisement and authoritarian nature towards certain groups.⁹ Society in the life of the nation and state is unable to evaluate policies and processes. That's because it can provide two perspectives on how evaluating actions will eliminate policy or undermine the process. However, the strain on the central function of secrecy on policymaking. Secrecy has a role to protect and stabilize the country, therefore, confidentiality is a prerequisite for the functioning of the law.¹⁰

PART III Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) *"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life"*.¹¹ Based on this rule, what has happened in Indonesia towards KKB generates prolonged consequences. Remembering on Article 4 (1) ICCPR *"In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin"*.¹² Article 4 (2) ICCPR *"No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision"*.¹³ This is identified as a form of legal vagueness, this issue is related to the priority of the government that maintains human rights in this case is terrorists or human rights civil society and the apparatus as a whole in areas where arms contact occurs.

Legitimacy is the exclusivity of a state in carrying out repressive actions as a verifiative decision as a structural effort and practical element of power in overcoming human nature and the needs of public order and security, It is verified in the rule of law that is anti-chaos. The implication is that the State will justify the use of exclusivity as legitimate physical violence. According to Max Weber, "The state is the only human Gemeinschaft that emphasizes and claims dominance over the verified implementation of physical force. The modern phase of society establishes a single organization so that people have the right to physical force only to the extent that the state legitimizes it."¹⁴ On the other hand, many agencies have acquired and spent considerable funds in preparing for a synthesis of the potential problem of terrorism. Thus, some efforts have been capitalized as coordination in achieving expenditure efficiency. If terrorists can settle

⁹Barbara Kelemen and Alessandro Fergnani, 'The Futures of Terrorism against China in the Greater Middle East', *Futures* 124 (2020).

¹⁰M.K.D. Cross, 'Counter-Terrorism & the Intelligence Network in Europe', *International Journal of Law, Crime and Justice*, 2019.

¹¹Pasal 6 (1) 'International Covenant on Civil and Political Rights Adopted' (n.d.).

¹²International Covenant on Civil and Political Rights Adopted.

¹³International Covenant on Civil and Political Rights Adopted.

¹⁴Pilar Rodríguez Martínez, 'Justification of Terrorism According to World Values Survey (2017–2020)', *Research in Globalization* 5 (2022).

safely and operate within a community. Therefore, the fundamental actions of the state must be able to take firm steps as a representation of the responsibility of efforts to prevent terrorism.¹⁵

Article 1 of the UN Charter states that "Maintain international peace and security and to that end carry out effective joint measures to prevent and eliminate threats to violations of peace, and shall settle international disputes or circumstances which may interfere with the order".¹⁶ Additionally, Chapter VII Article 52 Paragraph (1) mentions "Nothing in this charter precludes any regional arrangements or bodies for dealing with matters relating to maintenance and security being handled in a manner appropriate to the Region concerned, provided that such arrangements or agencies and their actions are in accordance with the principles and purposes of the United Nations".¹⁷ Furthermore, *UNSC Resolution* No. 1373 and *UNSC Resolution* No. 1624 which give the form of firm state measures by not providing protection and support to terrorism, as well as funding against terrorism in accordance with the International Convention for the Suppression of the Financing of Terrorism which states that "Indonesia Declares that the provisions of an article of the convention for the suppression of the financing of the terrorism will have to be implemented in strict compliance with the principles of the sovereignty and territorial integrity of states".

Article 2 paragraph (1) of Law No. 6 of 2006 concerning the Ratification of the International Convention for the Suppression of the Financing of Terrorism, 1999 "regulates acts designated as a criminal offense. The Convention provides that any person shall be deemed to have committed a criminal offense if that person directly or indirectly, unlawfully and knowingly provides or raises funds with the intention to be used or with the knowledge to be used, in whole or in part, to carry out an act which may give rise to an effect covered and formulated in any of the Conventions set out in the Annex. The Convention also provides for other measures aimed at causing death or serious injury to civilians or others who are not actively participating in armed conflict. It intends, deliberately, to intimidate a number of people, to coerce a government, or an international organization to do or not to act. Against this Article, Indonesia submits a Statement on the Annex relating to any convention that Indonesia has not ratified".¹⁸

In overcoming cases of Criminal Acts of Terrorism, it is necessary to refer to Article IX (1) of General Provisions ACCT (*Asean Convention on Counter Terrorism*) "The Parties shall adopt such measures as may be necessary, including, where appropriate, national legislation, to ensure that offences covered in Article II of this Convention, especially

¹⁵Pelfrey William, 'Local Law Enforcement Terrorism Prevention Efforts: A State Level Case Study', *Journal of Criminal Justice* 35 (2007): 1.

¹⁶United Nation, 'UN Charter Pasal 1' (1945).

¹⁷United Nation.

¹⁸Article 2 (1) 'Undang-Undang Nomor 6 Tahun 2006 Tentang Pengesahan International Convention for the Suppression of The Financing Of Terrorism, 1999 (Konvensi Internasional Pemberantasan Pendanaan Terorisme, 1999)' (n.d.).

*when it is intended to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.*¹⁹

Based on Article 1 Paragraph (1) of Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law “Terrorism is an act that uses violence or the threat of violence that creates an atmosphere of widespread terror or fear, which can cause mass casualties, and/or cause damage or destruction to strategically vital objects, living environments, public facilities, or international facilities with ideological, political, or security disturbance motives”.²⁰ And Article 6 states that "Any Person who knowingly uses Violence or Threats of Violence that creates an atmosphere of terror or fear against people widespread, inflicts mass casualties by depriving others of their liberty or loss of life and property, or cause damage or destruction to Strategic Vital Objects, the environment or Public Facilities or international facilities shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years, life imprisonment, or death penalty”.²¹

The role of legal activity is essential in continuing the development of progress based on justice. Equal position and sovereignty between states in the lens of international law must be respected by the application of the principle of non-intervention, meaning that other states are not allowed to interfere in the affairs of their own independent states unless there is such agreement to be an adviser in the affairs of that state. The realm of international criminal law refers to the principles of international criminal law itself by considering the principles of national law. One of them is by using the principle of complementarity. The Complementary Principle, this principle is included in the tenth paragraph of the 1998 Rome Statute which became the forerunner of the existence of the International Criminal Court or International Criminal Court hereinafter abbreviated as ICC.

At the time of deliberation within its authority as an independent international criminal court to deal with events of gross human rights violations that can be correlated with the consideration of national courts. The background to the establishment of the ICC in 1954 was the breakthrough of the International Law Commission (ILC) to draft the Rome Statute with the concept of complementary principles that had long existed. Disagreements of objective programs during the discussion of complementary principles

¹⁹Article IX (1) ‘Asean Convention on Counter Terrorism’ (n.d.).

²⁰Article 1 (1) ‘Undang-Undang Republik Indonesia Nomor 5 Tahun 2018 Tentang Perubahan Atas Undang-Undang Nomor 15 Tahun 2003 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2002 Tentang Pemberantasan Tindak Pidana Terorisme Menjadi Undang-Un’ (n.d.).

²¹Undang-Undang Republik Indonesia Nomor 5 Tahun 2018 Tentang Perubahan Atas Undang-Undang Nomor 15 Tahun 2003 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2002 Tentang Pemberantasan Tindak Pidana Terorisme Menjadi Undang-Un.

that affect the national court system. The subject matter in the complementary principle is as follows:

1. Relate to authority not just to norms. Intend the authority of different powers regarding international crimes, whether national or international institutions;
2. contained substantively, meaning the existence of a charge to prosecute and prosecute when a legal vacuum occurs;
3. *Civitas maxima*, the state has the obligation to use and extradite as state transparency in fulfilling compliance with applicable regulations;

Gross human rights violations such as crimes of genocide, war crimes, crimes against humanity, and crimes of aggression are the responsibility of the International Criminal Court which adheres to the subject matter of the complementary principle. The ICC's consideration for including the complementary principle in its proxy is (*Mutual Interest*), (*National sovereignty*), (*Humanistic-humanitarian values*), and *the needs of world order*). The parameters of success in handling gross human rights violations begin with the state that ratifies the ICC, whether in carrying out the agenda of arrest, investigation, or prosecution and trial processes that have been described in Article 98 of the Rome Statute or ICC.

The complementary principle became the forerunner of the Rome Statute, but there are several principles listed in Section 3 of the "General Principles of Criminal Law" including *Nullum Crimen sine Lege*, *Nulla Poena sine Lege*, and *Ratione Personae Non-retroactive* with the following description. All three principles have the same meaning, namely that a person may be subject to criminal liability and found guilty if the criminal provisions are in accordance with this statute and a person is not criminally liable when the statute has not been enacted.

In addition to these three principles, there is the application of the principle of non-intervention, meaning that other countries are not allowed to interfere in the affairs of their own independent state unless there is such agreement to be an adviser in the affairs of the country. Reflecting on these four principles, Indonesia has the opportunity to be prosecuted for serious human rights crimes by KKB, but Indonesia did not ratify with the International Criminal Court (ICC) which ultimately harmed the principle of people's safety is the highest law (*Salus Populi Suprema Lex Esto*). *Salus Populi Suprema Lex Esto* is an adagium that has theoretical properties or principles. *Salus Populi Suprema Lex Esto* can be used as a basis for law enforcement, especially to fight constitutional provisions when there is a compelling emergency or crisis.²² *Salus Populi Suprema Lex Esto* This means that in taking policies, the government must pay attention to the safety of the community in terms of protecting people's lives and conditions that are considered in a sustainable manner along with the principles mentioned above.

²²Ro'is Alfauzi Orien Effendi, 'Dynamics of Application of *Salus Populi Suprema Lex Esto* in Law Enforcement in Indonesia', *UNTAG Law Review (ULREV)* 5, no. 2 (2021): 47.

Seeing the condition of the KKB that began to be sadistic, some of the principles that have been explained should be the government's umbrella to act with the ratification of the International Criminal Court (ICC).

4. Main Heading of the Second Analysis or Discussion etc.

The term of HAM (*hak asasi manusia*) to which refers human rights is not a native Indonesian designation, the translation comes from a foreign language, namely "human rights" or "*les droits de l'homme*" or "*diritti dell'uomo*". In modern European languages, the term consists of two syllables: human and rights. The words human and rights in Indonesian conception are inserted with the word "*asasi*" which is not actually found in the original language. Based on one authoritative understanding emerging from the United Nations which has authority related to human rights. The Office of the High Commissioner for Human Rights defines "Human rights are generally understood as inherent human rights."²³ Natural rights and human rights have a related substance. The view of human rights is motivated by the concept of natural rights, "Historically, perspectives related to human rights have been created from natural rights".

According to John Locke, natural rights are equal rights for every human being. It includes both men and women. All human beings are equal in nature, have equal rights, and cannot be restricted by the will of someone else's authority.²⁴ As a follower of the doctrine of positivism, the conception of human rights is contained in the material content of ICCPR, the 1945 Constitution, Law Number 39 of 1999. More specifically, PART III Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) states that "*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life*".²⁵

Article 28A of the 1945 NRI Constitution "Everyone has the right to live and has the right to defend his life and life". Article 1 (1) of Law Number 39 of 1999 states "Human Rights are a set of rights inherent in the essence and existence of man as a creature of God Almighty and is His gift that must be respected, upheld and protected by the state, law, government, and everyone for the honor and protection of human dignity and dignity".²⁶ And Article 4 states that "The right to life, the right not to be tortured, the right to personal freedom, mind, and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be diminished under any circumstances and by anyone".²⁷ However, this is actually

²³Carolus Boromeus Kusmaryanto, 'Hak Asasi Manusia Atau Hak Manusiawi?', *Jurnal HAM* 12, no. 3 (2021): 524–27, <https://doi.org/10.30641/ham.2021.12.521-532>.

²⁴John Locke, *Two Treatise of Government* (Cambridge: Cambridge University Press, 2003).

²⁵Pasal 6 (1) International Covenant on Civil and Political Rights Adopted.

²⁶'Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia', n.d.

²⁷'Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia'.

inversely proportional to the conception of the Philosophy of Positivism which is the root of the prevailing legal positivism thinking.

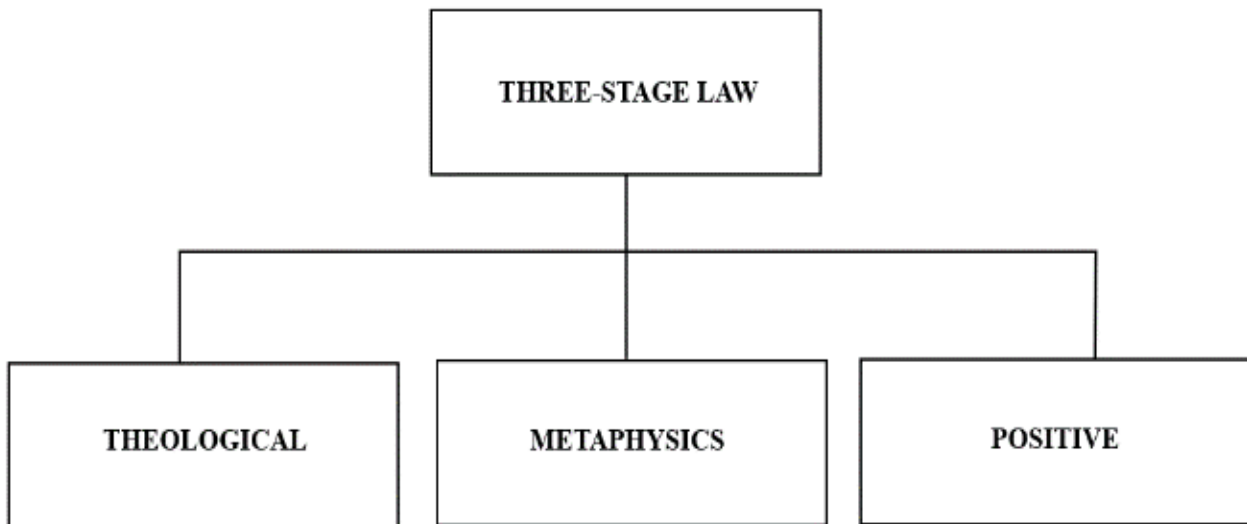
Legal positivism has its roots in the philosophy of positivism, the philosophy of positivism is the initial foundation of Auguste Comte's thought based on the "*Course of Positive Philosophy*". In this case, positivism has a view regarding the law of causal (cause and effect) The orientation of a value Justice according to positivism can be achieved through a concrete or definite form of order and the order cannot be changed. The highest system of human development for positivism is characterized by the release of transcendental values, thus emphasizing the principle of scientific and definite methodology. The main purpose of positivism is to form it as a reference for the formation of laws in humans or man-made laws (Authorized Institutions). This is contrary to natural law which is always oriented towards a divine entity or something rational derived from God. The doctrine of positivism forms the conception that the existence of law is very central and is held by state authorities who need to provide explicitly and have probability values. This is contrary to natural law which upholds and delegates the obligation of law formation to metaphysical doctrines.²⁸

The reality of positivism is everything that can be verified by the five senses. So human knowledge is based on the view of empiricism or direct evidence. The evolutionary philosophy of positivism builds empirical understanding by explaining that the highest level of human knowledge is empirical science, the justification of science based on verifying measurable facts. A fundamental aspect of verification is the "Protocol Statement" statement. The alteration between the doctrine of positivism and natural law lies at the highest limit of the legal hierarchy. Legal positivism reflects the supreme law and the source of the highest law lies in the positive law itself. Positivism states that there is no room for non-man-made laws (Authorized Institutions) as a reference for the regulation of society. While the flow of natural law (Natural Law), the legal hierarchy is open to the top, so that "*Closed Logical System*".²⁹ In general, positivism rejects all phenomena that are beyond the limits of human observability and verification. Thus, what can be called an object is factual.³⁰ Figure 2 and table 1 below provide explanation about three stage law.

²⁸ Adji Samekto, *Pergeseran Pemikiran Hukum Dari Era Yunani Menuju Post-Modernisme* (Bandung: PT. Citra Aditya Bakti, 2020).

²⁹ Shidarta, *Hukum Penalaran Dan Penalaran Hukum: Buku 1 Akar Filosofis* (Yogyakarta: Genta Publishing, 2013).

³⁰ F Budi Hardiman, *Filsafat Modern: Dari Machiavelli Sampai Nietzsche* (Jakarta: Gramedia Pustaka, 2004).

Figure 2. Three-stage law theory framework

Source: Author's source

Table 1. Analysis of three-stage law

No	Three-Stage Law	
1	Theological	Based on the theological level, man legitimizes the power of God that lies behind natural phenomena. The theological stage is correlated with absolutism.
2	Metaphysics	Metaphysical stage. At the metaphysical stage theological ideas are reoriented and transformed with abstract and metaphysical ideas.
3	Positive	Natural phenomena are no longer explained through abstract ideas. Positivism correlates these mental stages into social organization. In the positive stage, the organization of industrial society takes center stage. The economy became the orientation and power of the intellectual elite.

Source: author's source.

Positivism criticizes the flow of natural law (Natural Law) which makes morality a reference or measuring tool, therefore legal positivism provides a dichotomous line

between morals and law. The drafting of the "*Declaration of the Rights of Man and of the Citizen*" in the French Revolution makes for a frightening description of the justification of human equality. This declaration is a false passage, these thoughts are a vain hope for man destined to experience an obscure life. Right is a noun as the antithesis of an adjective, starting based on the law of rill will give birth to real rights.

In this case, natural law is something manipulative, natural rights that cannot be limited are rhetorical and dangerous.³¹ As a representation of social order, law is a science that can apply sanctions in its implementation. In general, laws can organize people through two things. That is in the positive aspect (*Commanding*) and in the negative aspect (*Forbidding*).³² The essence of law and rights can be said to be identical. Starting from various legal roles so that it can bring up the value of rights. Natural rights are rights that have no reference.³³ Thus, the nature of Metaphysics in natural rights is something wrong (*False*), (*Uncertain*), and metaphysical problems (*Transcendent*) beyond the limits of human knowledge.³⁴

5. Conclusion

Based on the explanation above, terrorism activities carried out by KKB in Indonesia are increasingly massive. This is evidenced by data showing violations committed by KKB against the community within five years from 2018-2022. Violent activities carried out by KKB need to be reduced by the government through preventive and repressive strategies. This is because PERPRES No. 7 of 2021 concerning RAN-PE tends to only use preventive methods, so it is not effective. Although repressive methods are always contrary to human rights, the State in carrying out the function of Performance needs to protect all citizens as stated in the principle of *Salus Popula Suprema Lex Esto* and carry out the mission of criminal acts of terrorism. In taking policies, the government must pay attention to public safety in terms of protecting people's lives and conditions. It is also strengthened by the contrast of the principle of Human Rights as a positive law with the principles of Positivism Philosophy as the founding father, as the criterion of the nature of Metaphysics in natural rights is something wrong (*False*), (*Uncertain*), and metaphysical problems are (*Transcendent*) beyond the limits of human knowledge and are not relevant to the stage of Positivism.

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³¹H.L.A. Hart, *Essays on Bentham* (London: Oxford University Press, 1982).

³²Hans Kelsen, *Teori Hukum Murni Dasar-Dasar Ilmu Hukum Normatif* (Bandung: Nusa Media, 2013).

³³H.L.A. Hart, *Bentham, Supply without Burden or Escheat Vice Taxation. Dikutip Dari Hart, Essays on Bentham* (London: Oxford University Press, 1982).

³⁴John Cottingham, *Western Philosophy, An Anthology* (London: Oxford Blackwell Publisher. Ltd., 1996).

through the analysis of positivism philosophy. So it is expected to improve law enforcement in Indonesia, especially in overcoming KKB terrorism crimes.

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