

Treason as a Crime against State Security: A Legal Review in Indonesian Criminal Law



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ABSTRACT: Treason is a form of political crime that threatens state security which is synonymous with efforts to collapse or overthrow government power that has legitimate legitimacy. In its countermeasures, the Crime of Treason can use penal efforts in the form of regulations or laws and regulations. This article can be a reference for readers to know about the crime of treason in the juridical fist of Indonesian criminal law. This paper uses a method of 3 normative approaches, namely the legal approach, the conceptual approach and the case approach. The result of this study is that treason is said to be dangerous because from a legal point of view, treason attacks the "state" or "state security" which in essence includes "interests/legal objects". Treason is regulated in the Criminal Code, Law Number 1 of 1970 concerning Extradition and once applied the Subversion Law which is no longer valid.

KEYWORDS: State Security, Political Crime, Treason

I. INTRODUCTION

Indonesia is a democratic country as stated in the Preamble to the 1945 Constitution, paragraph four, which reads "Indonesian National Independence is then formulated in a Constitution of the Republic of Indonesia, which is in the form of a Republic of Indonesia State structure with people's sovereignty...". In addition, the mandate as a democratic country is stated in Article 1 paragraph 2 of the 1945 Constitution which reads "Sovereignty is in the hands of the people and is implemented according to the Constitution". The form of sovereignty in the hands of the people is what is called democracy. In its implementation, democracy has many forms, one of which is as regulated in Article 28 which reads "Freedom of association and assembly, expressing thoughts verbally and in writing and so on is determined by law."

Expressing opinions, opinions, or criticisms of the Government is a concrete example of the application of democracy. However, this form of criticism can lead to negative things that even become a criminal act, one of which is the crime of treason. Treason is a criminal act that threatens state security that is directly related to legal order in the process of nation and state, sociologically called a political crime.¹ The word treason (*aanslag*) in Dutch means attack, then the Criminal Code provides a special understanding of treason, namely in Article 87 of the Criminal Code which states that treason for an act already exists if the perpetrator's will is already apparent in the form of the beginning of implementation (*begin van uitvoering*) in the sense intended in Article 53 of the Criminal Code.

The crime of treason is identical to an attempt to destroy or overthrow the power of a legitimate government, so that the crime of treason is conditioned by the tendencies of the ruling government, of course with such conditions making the crime of treason an extraordinary crime that cannot be equated with other crimes in the Criminal Code, the crime of treason may be committed by political opponents of the ruling government, who are dissatisfied with the government or are at odds with the political course.² Crimes Against State Security are almost always motivated by and/or with political goals and each government of a country has its understanding and limitations regarding actions that are categorized as having a political background and goals, and there are even differences in interpretation of the meaning of 'politics' among scholars, judges, and the rulers of a country.

In theory, treason can be divided into three parts, namely treason against the safety of the President and Vice President, against the territory of the country and the government. These three acts are regulated in Chapter I Book II of the Criminal Code on Crimes against State Security, namely Article 104, Article 106 and 107. (insert the level of treason in Indonesia).

¹ Jeremia, G., & Nyoman, S., & Pujiyono. (2019). Criminal Policy in Dealing with Treason Crimes in Indonesia, *Diponegoro Law Journal*, 8(3), pp.2077-2078.

² Wijanarko, G., & Pratiwi, S., & Sinaga, P. (2024). The Crime of Treason Committed Jointly From the Perspective. *Journal Indonesian Law and Policy Review*, 5(3), pp. 544-552. <https://doi.org/10.56371/jirpl.v5i3.279>

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The increasing number of treason crimes in Indonesia has caused the criminal law in Indonesia to adjust to the crime of treason. This paper will explain the legal review of the crime of treason as a crime against state security in HP Indonesia.

Based on the background of the problem, the formula of the problem in this research is as follows; 1. How can an act become a crime of treason and why can it threaten state security? 2. How is the crime of treason regulated in Indonesia?

II. RESEARCH METHOD

The Type of research is normative research. This type of research is library research, in the sense that all data sources come from written materials in the form of books, documents, magazine, and manuscripts that are related to the topic of discussion on through a review of various literature related to research which includes primary, secondary, and tertiary data.

III. FINDING AND ANALYSIS

1. The Crime of Treason and Its Dangers to State Security

Before going any further, we must see to what extent this crime of treason is interpreted. Treason (*aanslag*) translated from Dutch was born when the Dutch government was trying to get around social stability where in European countries at that time it became familiar with the act of Makar or what was known at that time as the act of separating oneself from a nation, overthrowing the government, and/or crimes against the state due to the euphoria of the cold war. In the Big Indonesian Dictionary (KBBI) the definition of treason is: (1) evil tricks; trickery; (2) actions (attempts) to attack (killing) people or so on; (3) actions (attempts) to overthrow the legitimate government. The Indonesian-Dutch dictionary compiled by A. Teuw defines makar in Indonesian as (1) streek, misleading (2) (*daad van*) agressie, aanslag; (3) subversieve actie, *samenzwering tegen de staat*.

It should be underlined that the Crime of Treason is a form of Political Crime or what is commonly called Political Crime.³ Brody defines that: “*a political offense is an offense against the government it-self or one that is incidental to political uprisings, and in order to be considered as such, the crime must be in the furtherance of one side or another of a bonafide struggle for political power.*”

There are 2 important things from Brody's view on the definition of political crime, namely (1) political crime is a crime against one's government, and (2) the struggle is considered an honest and proper struggle. This definition also provides special characteristics of political crime perpetrators that differentiate them from ordinary criminals.

Stephen Schafer put forward his view on political crime in a broad sense. Schafer stated that all crimes are political crimes because all prohibitions that are threatened with criminal sanctions are aimed at maintaining a system of values or morality, and in this case, are believed to have social power. Acts such as bank robbery, shoplifting, or rape are political crimes. This view is broad because all criminal acts determined by the state through the power to make laws are political crimes.

In general, political crimes are categorized into 2 groups, namely:

- (a) Crimes by those in power;
- (b) Crimes against the power system.

The first category is carried out by officials/rulers/politicians, while the second category is carried out by members of the public.

As has been stated, the crime of treason is a form of political crime. Based on the categories above, treason is what is meant in the second category, namely crimes against the system of power. Treason can include various types of crimes, including crimes against state security, crimes against the head of state, against state officials and institutions or institutions of people's sovereignty, against the constitution and state symbols, against constitutional/state obligations and rights, against public order, against the justice system, and so on.⁴

The scope of protection for state security (state interests/security) in the current Indonesian Criminal Code (Articles 104 to 129) includes, among others:

- a. Treason against the President and Vice President;
- b. Treason against the territory of the state;
- c. Treason to overthrow the government;
- d. Rebellion;
- e. Evil conspiracy to carry out numbers 1 to 4;
- f. Contact with foreign countries for hostility/war;
- g. Contact with people/agencies outside Indonesia to overthrow the government;
- h. Announcing/surrendering state secrets;

³ Fajrin, A., Y. (2021). REFORMULATION OF THE CRIMINAL OFFENCE OF TREASON IN THE DRAFT KI AM DRAFT BOOK NATIONAL CRIMINAL LAW LAW OF 2019 (A LEXICAL REVIEW OF THE LEXICAL OF THE TERMINOLOGY AANSLAG). *Journal of Law and Development*, 51(1), pp. 74-49.

⁴ Barda Nawawi Arief. 2001. *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*, Bandung : Citra Aditya Bakti. Pp. 189

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- i. Entering prohibited military buildings/areas;
- j. Making/collecting and so on pictures or instructions related to military interests;
- k. Endangering the neutrality of the state;
- l. Helping the enemy (becoming a foreign soldier; becoming a spy, inciting desertion/riot/rebellion among the military).

From the scope above, it can be seen that according to the current Criminal Code, protection of the state is manifested in the form of protection of "legal interests/objects" in the form of:

- a) President/Vice President
- b) Integrity of the state territory;
- c) Government;
- d) State/military secrets;
- e) State neutrality; and
- f) National security.

Viewed from a legal perspective, "state" or "state security" is essentially a "legal interest/object" which is also an object of legal protection. The same is true for other legal interests/objects which can be individual interests such as life, body, honor, morality, property, and so on. Or public/common interests such as public order and so on.

If this treason is an act, then of course the study of treason must also look at the causes of treason. Here we can see from a criminological perspective considering that treason is a crime that is usually classified as a political crime. In general, the factors causing treason are not much different from the factors causing crime, because treason is part of a crime and it is emphasized in Chapter I of Book Two of the Criminal Code that treason is a crime against state security. There are several theories or schools of thought about the causes of crime, including:

- a. Anthropological theory/school

This theory states that the reasons why people commit crimes depend on the person or individual, meaning that the person seems to have certain types of bad people. So people who commit crimes already exist from within their personalities as bad people.

- b. Sociological theory/school

This theory states that the reason people commit crimes is because they are influenced or determined by their surrounding environment, both the natural environment and the community environment.

- c. Bio-Sociological Theory/school

This theory is a combination of anthropological theory and sociological theory. This theory states that the reasons people commit crimes are due to individual factors of the person concerned plus the influence of the social environment.

Judging from the causes of the occurrence of the above criminal acts, two symptoms cause the occurrence of criminal acts of treason:

- 1) Dissatisfaction with the government in power

According to sociological theory, the cause of treason is the environment. Social stratification gives birth to a hierarchy (level) of prosperity, power, and prestige (influence). R. Owen stated in his book "The Book of The New Moral World" in 1844 as quoted by B. Simanjuntak that a bad environment makes a person's behavior evil, and a good environment vice versa. This kind of action is usually a mass movement. This movement generally intends to change what is not under itself or the situation by mobilizing many people. Lebon argues that mass movements are always negative and destructive.

The kind of treason crime has occurred in Indonesia, including that carried out by the "RMS". This rebellion was a continuation of the conflict between the Republic Nationalist group and the extreme Federalist group that had developed since 1946. Another example after the KMB, there was a rebellion in Ambon, Maluku which was caused by a conflict in Ambon between the pro-RI camp and the pro-Dutch camp.

- 2) Ambition to take over power

The articles explaining this crime are Article 107 and Article 108 which are clarified by Article 88, namely by overthrowing the government, it is intended to eliminate or change the form of government according to the constitution. This kind of crime is treason against the state. They are ambitious to replace the legitimate government with the government they have raised. Sometimes this overthrow of the government is carried out by civilians who are self-interested and do not prioritize the interests of the nation. They have mobilized or coordinated the masses for their interests. This kind of action can also be carried out by the military who betray by coordinating with other military who then carry out a rebellion, this is what is called a coup.

This kind of rebellion once happened in Indonesia, namely by the Indonesian Communist Party (PKI). The PKI at that time tried to seize state power with a rebellion in Madiun on September 18, 1948. The attempt failed and the PKI went underground for several years. Then there was the murder of the Generals by the Cakrabirawa Troops on October 1, 1965, which we now know as the "Lubang Buaya" tragedy.

2. The Regulations regarding the Crime of Treason in Indonesia

Talking about regulation/legal products, of course, this is one form of crime prevention through criminal policy/policy. As stated by Prof. Sudarto in the brief definition criminal policy is a rational effort from society in overcoming crime. The prevention efforts themselves can be done in 2 forms, namely Penal and Non-Penal efforts.

The overcoming of criminal acts is inseparable from the policy of overcoming crime in the form of penal efforts.⁵ But it should be stated when viewed from the perspective of criminal policy, that efforts to overcome political crimes by using "penal" means are not strategic policies. Social condemnation/hatred of a particular act (including political crimes) is manifested/formulated in the form of a formulation of a crime. So, as seen from the criminal law policy, efforts to overcome political crimes begin with a formulation policy on what actions will be "criminalized" as criminal acts/political crimes.

In Indonesia, the crime of treason is regulated in the Criminal Code Articles 104 to 129 with the scope of the offense as explained in the previous discussion. (comments related to the formulation of treason in the Criminal Code). Political crimes in Chapter I Book II are referred to by Kans Kleden and Imam Waluyo as "Crimes against the Preservation of State Life" (DKN) because what is protected in these articles is the continuation of "state life or state administrative crimes". This is relevant to the understanding of state defense and security as regulated in Law Number 20 of 1982 concerning the Basic Provisions of State Defense and Security (UUPKN).

Adnan Buyung Nasution tends to argue that political crimes in the Criminal Code include acts referred to in Articles 154, 155, 156, and 157 of the Criminal Code. The Education and Strategic Studies Division of the Indonesian Legal Aid Foundation (YLBHI) points to Articles 106-108, Articles 134, 155, and 154 of the Criminal Code as articles that regulate political crimes.

The regulation of political crimes including treason crimes in the Criminal Code which aims to protect the interests or security of the state as a legal object (*rechtsgoed*), then viewed from the systematic regulation according to Oemar Seno Adji, the Criminal Code does not make "*onderscheiding*" or separation between internal security and external security.⁶ Furthermore, Adji argues that although legislation does not make a separation between the two types of security, in discussing the systematics of legal science, the types of *hochverrat* and *landsverrat* crimes concerned are respectively *innere* and *aussere sicherheit*.

In addition to the Criminal Code, Indonesia once had a special regulation governing political crimes, namely Law Number 11 Pnps of 1963 concerning the Eradication of Subversive Activities hereinafter referred to as the PKS Law.⁷ Unfortunately, this law has no longer been in effect since May 19, 1999, based on Law No. 26 of 1999 concerning the Revocation of Law Number 11 Pnps of 1963 concerning the Eradication of Subversive Activities. Even so, as a record of the history of Indonesian criminal law, there is nothing wrong if the PKS Law is used as material in this article.

The term subversion is interpreted as an act (activity) of destruction, overthrow, or coup. The interpretation of word subversion can also be interpreted as a movement that takes part in an effort or plan to overthrow legitimate power by using means outside the law. The regulation of political crimes in the form of subversion in the PKS Law is motivated by efforts to support the revolutionary regime of President Soekarno in facing various domestic situations. The situations in question are such as the emergence of various rebellions, separatism, security disturbances, infiltration, and also sabotage of the people's economy. In this PKS Law, the form of subversion is divided into 3 (three) classifications. The first group of subversion crimes is regulated in Article 1 paragraph (1) number 1 sub a, b, c, d. The first group is referred to as pure subversion crimes.

The second group, as regulated in Article 1 paragraph (1) numbers 2 and 3. Number 2 states that anyone who commits an act or activity that expresses sympathy with the enemy of the state or a country that is not friendly with Indonesia. Then in number 3 it states, anyone who commits damage or destruction of a building that has a function for the public interest or individual or corporate owners that is carried out widely. The third group of subversion crimes is in the form of espionage activities or spy activities and sabotage activities as regulated in Article 1 paragraph (1) numbers 4 and 5. With the revocation of the PKS Law through Law No. 26 of 1999, the Criminal Code is placed back as the "*lex generalis*" of the regulation of political crimes in Indonesia.

Furthermore, the law that contains provisions on political crimes including treason is Law Number 1 of 1979 concerning Extradition.⁸ This law does not explicitly regulate political crimes but tends to regulate those related to extradition issues for perpetrators of political crimes. Article 5 paragraph (1) of the Extradition Law states that "Extradition cannot be carried out for political crimes", while Article 5 paragraph (2) states that "crimes that are essentially more ordinary crimes than political crimes are not considered political crimes". The explanation of Article 5 paragraph (4) states: "The non-expression of a perpetrator of a crime is related to the state's right to provide political asylum to political refugees. Because the definition of political crimes is too broad,

⁵ Asphianto, A. (2023). Criminal Law Study on the Effectiveness of Prison Criminal in the Settlement of General Criminal Actions Related to the Indonesian Criminal Justice System. *Global Journal of Politics and Law Research*, 11(3), pp. 54-71. <https://doi.org/10.37745/gjplr.2013/vol11n35471>

⁶ Fabre, C. (2020). The Morality of Treason. *Law and Philosophy*, 39(1), pp. 427-461. <https://doi.org/10.1007/s10982-020-09392-5>

⁷ Haripin, M., & Aninsya, R., C., & Primarizki, A. (2020). The Politics of Counter-terrorism in post-authoritarian states: Indonesia's experience, 1998-2018. *Defense & Security Analysis*, 36(3), pp. 275-299, <https://doi.org/10.1080/14751798.2020.1790807>

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restrictions are made as referred to in paragraph (2). The crimes regulated in paragraph (4) are pure political crimes, but because these crimes are considered to be very capable of shaking society and the state, for extradition they are considered not to be political crimes."

Based on the explanation above, in extradition, there are 4 special principles related to political crimes. The first principle is the double criminality principle, the principle of double crime. This principle means that the act committed by the suspect, both according to the law of the requesting country and the requested country, is declared a crime. The second principle is the principle that the requested country has the right not to hand over its citizens. The third principle is the principle that if a crime is political, then the extradition request is rejected. Fourth, the principle that if a crime that is wholly or partly in its territory falls within the jurisdiction of the requested country, then this country can reject the extradition request.

Concerning the implementation of these principles, there is a clause that even though the crime is political or a politically motivated crime, namely the murder or attempted murder of the head of state, king, president, or other titles, then the person concerned can be extradited. This clause is an attentat clause adopted by Indonesia. This is also by the Explanation of Article 5 above.

CONCLUSIONS

An act can be a Criminal Act if the intention for it has been proven from the beginning of the implementation, as referred to in Article 53. and why it can threaten state security. The crime of treason is identical to an attempt to destroy or overthrow the power of a government that has legitimate legitimacy, so that the crime of treason is conditioned by the tendencies of the ruling government, of course with such conditions making the crime of treason an extraordinary crime. Treason can include various criminal acts, including criminal acts against state security, criminal acts against the head of state, against state officials and institutions or institutions of people's sovereignty, against the constitution and state symbols, against constitutional/state obligations and rights, against public order, against the justice system, and so on. Judging from the causes of the occurrence of the above criminal acts, two symptoms cause the crime of treason, namely dissatisfaction with the ruling government and the ambition to take over power.

The handling of criminal acts cannot be separated from the policy of handling crime in the form of penal efforts. The crime of treason is regulated in the Criminal Code Articles 104 to 129 with 12 scopes of offenses, all of which are protection for the state which is manifested in the form of protection for "legal interests/objects" in the form of President/Vice President, Integrity of the state territory, Government, State/military secrets, State neutrality; and National security. In addition to the Criminal Code, there is a special law regulating political crimes, namely Law Number 11 Pnps of 1963 concerning the Eradication of Subversive Activities. Unfortunately, this law has no longer been in effect since May 19, 1999, based on Law No. 26 of 1999 concerning the Revocation of Law Number 11 Pnps of 1963 concerning the Eradication of Subversive Activities. It is related to the crime of treason is the matter of extradition in Law Number 1 of 1979 concerning Extradition. This law does not explicitly regulate political crimes but tends to regulate matters related to the extradition of perpetrators of political crimes.

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