



The Crime of Treason at Polda Regional Papua on Criminological Perspective

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Abstract. The Indonesian nation is an independent and sovereign nation an age that is quite old for independence, noble ideals struggle for independence as written and implied in The opening of the 1945 Constitution, which has a free national life, by creating a state government that protects the whole nation and the motherland of Indonesia. High ideals driven by lofty desires and rooted in deep belief, that independence is a fundamental right and therefore every colonization regardless of its form and nature means plunder independence that is clearly contrary to independence humanity and justice. Theory Aanslag, crime of treason is a criminal act of treason against the state (Article 104) of the Criminal Code, a crime of treason to overthrow the Head of State (Article 107) of the Criminal Code and treason in the form of rebellion (Article 108) of the Criminal Code. The purpose of the study was to determine the factors causing treason in the Papua Regional Police and to determine the efforts to overcome the crime of treason by Law Enforcement Officials in the Papua Regional Police. This study uses a type of juridical-normative research sourced from materials primary and secondary, which are analyzed qualitatively by describing descriptively the results of appropriate and relevant data to answer the formulation of the problem in this study. The results of this study are that the factors causing the treason committed by members of the armed criminal group, are the people's welfare factor which is reflected in the economy and the absence of equitable development. In addition, another factor is the factor of government centralization which is considered tyrannical, namely building power that is centered on one person, and the prevention of the crime of treason is carried out through pre-emptive, preventive, and repressive efforts. This effort is carried out by the police and in collaboration with the Papua Provincial Government, Indonesian National Army and the community. With this cooperation, it can create a conducive and safe situation, so that the armed criminal group do not raise the flag or commit the crime of treason again.

Keywords: Crime of Treason · criminological · Armed criminal community attack

1 Introduction

Indonesia is a unitary state in the form of a republic. It consists of islands with a diversity of tribes, nations, races, ethnicity, and religion, as referred to in "Article 1 paragraph"

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(1) of The 1945 Constitution of the Republic of Indonesia.” the state is responsible for maintaining the sovereignty and territorial integrity of the Unitary State of the Republic of Indonesia and justice for every people Indonesia without differences in the diversity of tribes, nations, races, ethnicity, religion. In realizing this, the law is central to controlling every aspect of life, guidelines for human behavior toward other humans, and the laws governing Indonesian people’s lives. Every act of a citizen is regulated by law, and Each aspect has its own rules, regulations, and regulations [1]. The law stipulates what to do, what to do, and what not to do. One area of law is criminal law, which regulates certain prohibited acts. As for criminal acts, they are an act that is prohibited by a legal regulation accompanied by threats (sanctions). One of them is the crime of treason which is considered a threat to the sovereignty and integrity of the state. What is meant by law is a regulation which coercion, which determines human behavior in their environment community formed by authorized official bodies. Which violation of this rule results in? Actions were taken with specific penalties.

The law has its way of legal protection as the opinion of M. Hadjon [1], namely: 1. Preventive legal protection, which aims to prevent disputes. 2. Repressive legal protection aimed at settlement disputes that arise. *Makar* comes from the word *aanslag* (Dutch), which according to the literal letter, is attack or assault. The term *aanslag* is contained in the Criminal Code, namely Articles 87, 104, 105, 106, 107, 130, 139a, 139b, and 140 (Articles 105 and 130 are considered invalid based on Law no. 1 of 1946 concerning Law Criminal Procedure). As for the meaning of *Makar*, according to the Big Dictionary, Indonesian has three meanings, namely (1) horrible thoughts, deceit; (2) action (effort) to attack (kill) people, and so on; (3) action (effort).

Criminology is a science that aims to investigate the symptoms of crime as widely as possible (theoretical criminology or pure criminology). Theoretical criminology is a science based on experience. Like other sciences of its kind, it pays attention to phenomena and tries to investigate the causes of these phenomena using those within them [3]. Edwin H. Sutherland [4] defines criminology as follows: “Criminology is a body of knowledge about delinquency and crime as a social phenomenon.” On the other hand, Paul Moedigdo Moeliono [5] formulated that criminology is a science that studies crime as a human problem.” From the two definitions above, it can be seen that there are differences of opinion between Sutherland and Paul Moedigdo Moelino, both of whom have opposite definitions.

Sutherland’s definition describes the occurrence of crime because of actions opposed by the community. In contrast, Paul Moedigdo Moeliono’s definition describes the occurrence of crime because of the perpetrator’s urge to commit a crime. Soedjono Dirdjosisworo [6] defines criminology as follows: “Criminology is the science that studies cause and effect, correction and prevention of crime as a human phenomenon by collecting contributions from various sciences.

From Soedjono Dirdjosisworo’s understanding above, it can be concluded that criminology is not only a science that studies crime in a narrow sense, but criminology is a means to find out the causes of crime and its consequences, ways to correct perpetrators of crimes, and ways to prevent possible occurrences. Crime. J. Constant [7] defines criminology as a science that aims to find out the factors that cause crime and the perpetrators of crime. The definition of crime in Dutch is known as “*stafbaar feit*,” which is an

official term in the strap wetboek or the Criminal Code (from now on abbreviated as the Criminal Code), which is now applicable in Indonesia. The term in a foreign language is a violation of regulations. According to Simons, staff feit is behavior (handling) that is punishable by crime, against the law related to errors, and is carried out by parties who can take responsibility [8]. Simons formulation is a complete formulation because it includes: Threatened with criminal by law; Against the law Done by a guilty person, The person is held responsible for his actions.

Stafbaar feit has two meanings: referring to actions threatened by law and legal acts committed wrongly by people who can be held accountable [9]. The prohibition and the person who causes it cannot be separated. To express this close relationship, action is used, namely an abstract understanding that leads to the first two concrete conditions, the existence of certain events and, secondly, the existence of people who act that cause these events. According to Wirjono Prodjodikoro, a crime is an act for which the perpetrator can be punished, where the perpetrator can be said to be the object of a criminal act.

According to Waluyadi, the formulation of criminal acts in the Criminal Code is broadly divided into three, namely, which only lists the classification (name of crime), which only mentions the element (element of crime), and which includes both (name and element of crime). Therefore, the formulation of the problem in this research is: what are the factors that cause treason in the Papua Regional Police, and how are the efforts to overcome the crime of treason by law enforcement officers at the Papua Regional Police. Therefore, the purpose of this study was to determine the factors causing the occurrence of treason in the Papua Regional Police and to find out the causes of the treason, and know the efforts to overcome the crime of treason by Law Enforcement Officials in the Papua Regional Police.

2 Method

The author uses a juridical-normative research method, namely the overall primary data and secondary data that the author has collected. In addition, the author analyzes the results of qualitative descriptive data that are appropriate and relevant to answer the problems in this study.

3 Result and Discussion

3.1 Factors Causing Crime of Treason in Papua Regional Police

Treason comes from the word “aanslag” (Dutch), which means attack, or “anual,” which means attack with bad intentions and misguided branding. The plot in question in the second book of chapter I of the Criminal Code of Treason with the intent to kill, deprive freedom or negate the ability of the President or vice president to govern is threatened with the death penalty or life imprisonment or imprisonment for a maximum of twenty years. Not only to attack the President or vice president but act. The crime of Treason also means where it has a purpose, separate all or part of the threatened territory of the State with life imprisonment or temporary imprisonment of twenty years at most. Moreover, it regulates Treason that attacks the legal interests of upholding the state

government. In the Big Indonesian Dictionary (KBBI), Treason has: meaning; 1) Dirty thoughts; scam: everything is known to his opponent. 2) Action (effort) to attack (kill) people, and so on. 3) Actions (attempts) to overthrow the legitimate government [15]. Treason Form Crimes that fall into the category of Treason threaten the legal interests of security and safety; countries, as stated in Chapter I Book II of the Criminal Code, consisting of: of 3 forms, namely: a. Attacking the Security of the President or His Deputy The type of crime of Treason by attacking The security of the President or Vice President is mentioned in Article 104 of the Criminal Code, which is formulated as follows “treason” with the intent to kill, or rob independence, or negate the ability of the President or Vice President running the government, threatened with the death penalty or life imprisonment or criminal imprisonment for a maximum of 20 (twenty) years.

It attacks the Security and Territorial Integrity of the Country Crimes that attack security and integrity. This area is also a crime of Treason. Crime The intended flow is formulated in Article 106 of the Criminal Code, namely as follows “treason with the intention that all” or part of the country’s territory fell into enemy hands or separating part of the country’s territory, is threatened with life imprisonment or temporary imprisonment maximum of 20 (twenty) years” c. Attacking Legal Interests Upholding the Government Country Plot is not meant by action with violence using weapons. Betrayal here enough for example by forming an organization with its tools such as articles of association, work program, goals to be achieved and so on, the form of activities that lead to goals, namely: bigger is to overthrow the legitimate government. Treason in this form is a formulated crime in Article 107 of the Criminal Code, namely: “(1) Treason with the intent of to overthrow the government, threatened with criminal imprisonment for a maximum of 15 (fifteen) years; (2) Leader and the gang as referred to in paragraph (1), are threatened with life imprisonment or imprisonment while a maximum of 20 (twenty) years.

The community welfare factor is a factor behind the occurrence of the crime of Treason in the Papua Regional Police area, which is stated as an imbalance between the center and the regions. This inequality stems from economic problems, namely the unequal distribution of income. In developing countries, development is still concentrated in big cities. Regions often feel mistreated. Inequality in the distribution of power leads to separatism [13]. Some areas in Papua have the infrastructure, such as deplorable roads and school buildings, that are unsuitable for use. This is what causes separatist actions because they are considered to be abuses by the State.

3.1.1 Government Centralization Factor

The centralization factor is a centralized government system. The leadership style in Indonesia tends to be centralized, everything is regulated by the center, and the center only dictates the regions. This indeed has a negative impact because the regions are not given the freedom to regulate their territory. Physical development is only concentrated in big cities like Jakarta. The results of regional natural wealth are brought to the center of most of the significant development and the rest in the regions [14]. Let us think about the roots of the emergence of a separatist movement. It usually arises from the dissatisfaction of an ethnic group with politics, economics, social treatment, and human

rights violations. In addition, the absence of a democratic process also exacerbates the conflict.

Moreover, the absence of a mutually beneficial political communication process, both central and regional, has also triggered the emergence of a separatist movement. The Separatist movement emerged from several factors, which were generally caused by the injustice of the central government towards the regions and the implementation of laws that were not in the wishes of the separatist movement. Therefore, the struggle carried out by activists of the separatist movement almost always invites open conflict with the official Indonesian government.

Indonesia is a legal country as regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. As a state of law, running the country and protecting human rights must be based on the law. This condition causes the laws and regulations to remain a very strategic role as the basis for the country's strategy to achieve the predetermined goals. Criminal law policies determine an action prohibited or criminal acts in statutory regulation. Criminal or political policy (policy) law: How can criminal law be formulated? Properly guide lawmakers (legislative policy), implementation of policies (judicial policy), and implementation of criminal law (executive policy). We know that legislative policy is critical in determining the next steps. It means Regarding the criminalization process, the following is the meaning: criminalization; Criminalization is a term used by the community in law enforcement that is not done for law enforcement itself.

By language, criminalization is determining a crime or a person who misbehaves. In criminology, criminalization is a process when there is a change in the behavior of individuals who tend to become criminals and become criminals. The term criminalization is a criminological terminology and the science of criminal law, which means determining behavior previously not seen as a crime to be punishable. In this sense, the process of criminalization is carried out through laws and regulations by regulating specific actions or actions as criminal acts in-laws or other statutory regulations that regulate criminal provisions.

A concrete example of criminalization in this sense is the determination of the crime of money laundering in 2002. Previously, receiving the proceeds of a crime was not a crime. However, the term "criminalization," which is prevalent in Indonesian society, has a different meaning from the term "criminalization" in criminology and law crime. If "criminalization" is a general term in criminology and criminal law, "criminalization" in the broader sense has a negative meaning. Unfortunately, the idea of "criminalization" in this widespread sense does not seem very concrete. Therefore, this definition search is essential to clarify what exactly is meant by "criminalization" in the widespread sense.

Moreover, for the development of legal science Criminalization, criminalization must be looked at more deeply, right? is it a legal issue or not, and is there a solution for this problem. Although this term has no clear meaning, however at least this term has been used since the early 2000s. This term arose when a labor activist reported committing crimes and processing cases. A criminal act that is reportedly quite strange is stealing flip-flops.

3.1.2 Treason Arrangements in Indonesian Criminal Law

Legal Politics Regulates the Crime of Makar Indonesia can be seen in several phases Indonesia has experienced. These phases contain legal instruments issued by the government regarding the crime of treason. These phases consist of 4 (four) phases, namely the first phase in 1866–1946, phase the second in 1946–1963, the third from 1963- 1999, and the last phase from 1999 until now. Legal Politics Regulating the crime of treason in Indonesia, developed in the formulation. From the first phase until the last phase. These phases contain the social, legal, and political conditions that affect the regulation of the crime of treason. Phase First is the legal instrument used in Article 107 of the Criminal Code (KUHP). As It is known, the Criminal Code is WvS The Netherlands was adopted by the Indonesian government.

Therefore, the Indonesian government also used the formulation of the crime of treason in a criminal act of state security, formulated previously in the WvS. As seen in the first stage, the legal politics of crime regulation treason in Indonesia is influenced by the politics of regulatory Law previously formulated state security crime in WvS, so indirectly, the government of Indonesia follows the formulation of regulations on treason colonial state. Furthermore, in the second stage, the legal instrument used by the government in connection with criminal acts of treason is Law Number 20 of 1946 concerning Penalty Closing [10]. Law Number 20 of 1946 emerged when the post-independence conditions were met in domestic turmoil. President Soekarno gradually second, trying to secure the post-independence situation from the existence of social and political upheaval between local parties. Political Law regulating the treason crime in the second phase is likely to focus on minimizing domestic turmoil with the attitude of the reactive government. Action setting development Then, the crime of treason in Indonesia is in phase third.

In the third stage, the legal instrument used by the government is Presidential Decree No. 11 of 1963, which later became Law based on Law Number 5 of 1969. The legal instruments at this stage, later known as the Eradication Act Subversion Activities (UUPKS). The Law on the Eradication of Subversive Activities (UUPKS) comes from Presidential Decree No. 11/1963, initially issued by the Old Order Government (second stage) to secure the unfinished revolution. Inadvertently directly, in this phase, the government revives and reaffirms the position of previous legal instruments issued by the old Order as a tool to secure post-revolutionary government [12]. However, the situation in the second stage is much different from this third stage. In this phase, social and political conditions tend to be free from outside influences, like in the old Order era, which was much influenced by the colonial side. Because of that, reaffirmation of legal instruments issued during the old order period carried out in this phase is not by the urgency of the initial Presidential Decree issued. See From the legal politics of regulating the crime of treason, this third phase was during the New Order era, especially in the field of Law [11].

The authorities use the regulation of the crime of treason as the legitimacy of all actions to secure the “Policy” taken at that time. For 32 years, the new Order secured the wheels of government with a concentration of power. In addition, the legal politics of regulating the crime of treason in the third phase is more likely to be repressive in the face of a government that upholds constitutional principles by making legal instruments

per Pancasila and the state constitution Republic of Indonesia. Indonesia's journey in formulating the treason crime regulation began to change significantly from the previous phases. In the fourth phase, discourse emerged to revoke Law no. 11, 1963. Towards the end of the Suharto era, there were strong calls from the public, especially civil society, to further enhance the exercise of political rights. So that stability, needed for sustainable development, does not hinder the democratization process.

3.1.3 Efforts to Eradicate the Crime of Treason by Law Enforcement Officials in the Regional Police of Papua

The target of the police response is reflected in pre-emptive, preventive and repressive efforts.

1. Prevention Efforts

Prevention efforts are the initial efforts made by the police to prevent crime. Target The main points to be achieved in efforts to prevent and counter terrorism in Papua are as follows:

- a. Formulation of state resilience policy
- b. Creating and maintaining a conducive atmosphere in Papua through the empowerment of special autonomy capacities and equitable development
- c. The decline in the durability and strength of the armed criminal group in Papua, as well as the weakening of support for KKB sympathizers in Papua from within and outside the country
- d. Symptoms and potential for separatism can be detected and prevented in conflict-prone areas.
- e. Strengthening the sense of state and national pride of the Papuan people towards the Unitary State of the Republic of Indonesia
- f. The development of understanding and practice of multiculturalism among community leaders and the media

2. Prevention Efforts

Preventive efforts are efforts to control or inhibit the occurrence of undesirable things in the future, including all efforts to prevent crimes from happening in the future. The policy directions taken by the National Police in the context of preventing and overcoming treason as a preventive measure are as follows:

- a) Restore security conditions to take decisive action against armed separatism that violates the rights of civil society;
- b) Improving the quality of implementation of autonomy and decentralization as well as democratization c) Conduct early detection and prevention of potential conflicts and separatism.
- c) Improving the welfare of people in areas prone to conflict or separatism, through increasing access of local communities to economic resources and equitable distribution of development among regions.
- d) Strengthening local government institutions in the field of public services.

3. Repressive Efforts

Repressive measures are efforts taken after the occurrence of a crime. This repressive effort is a transfer effort or law enforcement effort. In this study the author uses as an example of law enforcement carried out by the Papuan Police against the Makar Case, as follows: That on Sunday, August 26, 2018 in Wamena, Jayawijaya Regency, after observations were made by members of the Papuan Police Task Force and information was obtained about the delivery of ammunition from Wamena to Puncak Jaya Regency, allegedly by Br. NAMAN ENUMBI (people search list in the Treason Case who was previously investigated and is also a sympathizer of the Free Papua Movement National Liberation Army/TPN OPM). After the case developed, finally two suspects were named, namely Yakub Pabian Skripski and Simon Karlos Magal and an investigation was carried out related to efforts to assist crimes against state security as referred to in Article 106 of the Criminal Code and or Article 110 of the Criminal Code and or Article 111 of the Criminal Code jo. Article 53 of the Criminal Code and Article 55 of the Criminal Code

4 Conclusion

The factor causing the treason committed by armed criminal group members is the people's welfare factor which is reflected in the economy and the absence of equitable development. In addition, another factor is the factor of government centralization, which is considered tyrannical, namely building power that is centered on one person. Therefore, eradication of the crime of treason is carried out through pre-emptive, preventive, and repressive efforts. This effort is carried out by the police and in collaboration with the Papua Provincial Government, Indonesian National Army, and the community.

The incident is an expression of aspiration so that the government is more responsive in solving problems in the Papua region. This collaboration can create a conducive and safe situation so that the armed criminal group residents no longer raise the flag or commit treason again.

References

1. Bekti Cikita Setiya Ningsih, "Tinjauan Yuridis Tindak Pidana Makar Pada Gerakan People Power, Tanggal 17 April 2019", *Dinamika Jurnal Ilmiah Ilmu Hukum*, Vol 26 No. 7, Februari 2020, hlm. 870.
2. R. Soesilo. (1995). *Kitab Undang-undang Hukum Pidana Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*. Bogor: Politeia, hlm. 108–110.
3. Topo Santoso dan Eva Achjani Zulfa. (2003). *Kriminologi*. Cetakan Ke-3. Jakarta: Raja Grafindo Persada, hlm. 5.
4. J.E. Sahetapy. (1992). *Teori Kriminologi Suatu Pengantar*. Bandung: Citra Aditya Bakti, hlm. 5.
5. Soedjono Dirdjosisworo. (1976). *Penanggulangan Kejahatan*. Bandung: Penerbit; Alumni, hlm. 24.
6. A. S. Alam dan Amir Ilyas. (2010) *Pengantar Kriminologi*. Makassar: Pustaka Refleksi, hlm. 2.

7. Wirjono Prodjodikoro. (2003) Tindak-Tindak Pidana Tertentu Di Indonesia. Bandung: Refika Aditama, hlm. 59.
8. Pipin Syarifin. (2008) Hukum Pidana di Indonesia. Bandung: Pustaka Setia, hlm. 53.
9. Bambang Poernomo. (2002). Dalam Asas-Asas Hukum Pidana. Jakarta: Ghalia Indonesia, hlm.54.
10. Wirjono Prodjodikoro. (2003). Tindak-Tindak Pidana Tertentu Di Indonesia. Bandung: Refika Aditama, hlm. 59.
11. Waluyadi. (2003). Hukum Pidana Indonesia, Jakarta: Djambatan, hlm. 67.
12. Criminal Code Book
13. Adami Chazawi, 2002, Kejahatan Terhadap Keamanan Dan Keselamatan Negara, PT Raja Grafindo Persada, Jakarta, hlm. 7.
14. Ismu Gunadi dan Jonaedi Efendi, 2014, Cepat Dan Mudah Memahami Hukum Pidana, Prenadamedia Group, Jakarta, hlm. 38.
15. Alam.A.S. Dr Prof. . 2010. Pengantar Krininologi. Penerbit Pustaka Refleksi. Makassar.hlm. 102

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