

INDONESIAN TREASON LAWS: A BARRIER TO CRIMINAL LAW REFORM



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Abstrak

Tindak pidana makar dikritik karena cakupan "makar" yang tidak jelas menyebabkan ancaman pelanggaran hak asasi manusia. Sayangnya, meskipun kejahatan makar telah mulai dihapuskan secara global, Indonesia masih mengaturnya. Kitab Undang-Undang Hukum Pidana (KUHP) saat ini yang disahkan pada tahun 1946 merupakan warisan penjajahan Belanda, yang mengatur makar sebagai tindak pidana. Kitab Undang-Undang Hukum Pidana yang baru, yang akan diberlakukan secara resmi pada tahun 2026, juga masih memiliki ketentuan tentang makar. Ketentuan baru ini menjadi ironis, mengingat KUHP baru seharusnya menjadi upaya untuk mendekolonisasi hukum pidana Indonesia dan lebih menghormati hak asasi manusia. Selain itu, Undang-Undang Informasi dan Transaksi Elektronik (UU ITE) menjadi aturan lain yang kabur, namun mengkriminalisasi ekspresi daring yang menentang pemerintah. Artikel ini menganalisis bagaimana hukum pidana Indonesia tidak sejalan dengan Konstitusi Indonesia dan semangat reformasi hukum pidana. Undang-Undang Makar yang ada menunjukkan penyalahgunaan kekuasaan dan gagal membebaskan hukum Indonesia dari nilai-nilai kolonial. Penelitian kualitatif akan dilakukan dalam penelitian ini melalui pendekatan hukum analitis terhadap undang-undang dan kasus. Tulisan ini akan dibagi menjadi beberapa bagian: Pertama, menganalisis aturan hukum saat ini tentang makar dan bagaimana peraturan hukum tersebut dapat membatasi kewajiban hak asasi manusia dalam hukum internasional. Kedua, menganalisis kasus-kasus makar baik offline dan online, dengan tujuan untuk mengungkap penyalahgunaan peraturan hukum terkait dan potensi bahaya terhadap kebebasan berekspresi. Terakhir, menguraikan bagaimana hukum Indonesia harus mematuhi kerangka hak asasi manusia internasional melalui kewajiban untuk menghormati, melindungi, dan memenuhi.

Kata Kunci: tindak pidana pengkhianatan, makar, hak asasi manusia, Indonesia.

Abstract

Treason laws have been criticized because the unclear scope of "treason" led to imminent human rights violations. Despite the global abolition of treason laws, Indonesia continues to retain treason laws. The current Criminal Code (KUHP) that became law in 1946 was a legacy of the Dutch colonization, regulating treason, or "makar," as a criminal offense. The new Criminal Code, which is scheduled for enforcement in 2026, still has treason provisions. These new provisions become ironic, considering that the new Criminal Code was supposed to be an effort to decolonize Indonesian criminal law and be more respectful of human rights. Moreover, the Information and Electronic Transaction (ITE Law) brings vague laws that criminalize dissenting online expression against the government. This paper analyzes how Indonesian criminal laws do not align with the Indonesian Constitution and the spirit of criminal law reform. The existing treason laws show abuse of power and fail to liberate Indonesian laws from colonial values. Qualitative research will be conducted in this research through an analytical legal approach to statutes and cases. This paper will proceed in several parts: First, it analyzes the current legislation on treason and how those laws could stifle human rights obligations in international law. Second, it analyzes cases of treason investigated offline and online, intending to reveal the law's abuse and the potential harm to freedom of expression. Finally, it

describes how Indonesian law should comply with the international human rights framework through the obligations to respect, protect, and fulfill.

Keywords: *treason, makar, human rights, Indonesia.*

1. INTRODUCTION

The manifestation of human rights obligation is respect, protect, and fulfill. This obligation means compliance with the international human rights treaties ratified by states and a commitment to ensure human rights protection within the country.

Indonesia ratified the International Covenant on Civil and Political Rights in 2005. However, criticisms towards human rights protection in Indonesia are still vibrant, calling out that Indonesia failed in several areas, such as freedom of association, assembly, freedom of expression, torture, and unlawful killings, to name a few¹.

During the 41st Session of the Universal Periodic Review Working Group in 2022, the same issues that had been highlighted by civil society (freedom of expression, freedom of religion, torture, and human rights defenders) were the ones that got strong recommendations by the working groups², in which Indonesia responded to respond in due time.

The alarming situation on human rights has become clear in the past decade. President Jokowi has been criticized for neglecting human rights issues during his two terms³. In early 2023, President Jokowi admitted that in the past, Indonesia had committed human rights violations. However, a serious commitment to resolving human rights issues has not followed those statements⁴.

The acknowledgment and protection of human rights are one of the important elements in a democratic country⁵. Indonesia has been declared a democratic country since its independence in 1945. Indonesia is the third-largest democratic country and the fourth most populous country in the world⁶.

¹ Amnesty International. "Indonesia 2024", Amnesty International, Accessed 1 June 2025, <https://www.amnesty.org/en/location/asia-and-the-pacific/south-east-asia-and-the-pacific/indonesia/report-indonesia/>.

² Marifatullah, Wening Hapsari. "Perlindungan Hak Asasi Manusia: Catatan dari Penyelenggaraan the 41st Session of the Universal Periodic Review (UPR) Indonesia. *Sekretariat Kabinet Republik Indonesia*, December 4, 2022. <https://setkab.go.id/perlindungan-hak-asasi-manusia-catatan-dari-penyelenggaraan-the-41st-session-of-the-universal-periodic-review-upr-indonesia/>.

³ Hamid, Usman. "Human Rights Overlooked as Indonesia's Presidential Election Nears." *The Diplomat*, January 30, 2019. <https://thediplomat.com/2019/01/human-rights-overlooked-as-indonesias-presidential-election-nears/>.

⁴ Tan, Rebecca. "Indonesia Admits Historical Rights Violations – but Shirks Accountability." *The Washington Post*, January 11, 2023. <https://www.washingtonpost.com/world/2023/01/11/indonesia-jokowi-human-rights-violations-communist/>.

⁵ United Nations Human Rights Office of the High Commissioner. "Democracy and Human Rights." *OHCHR*, Accessed 20 May 2025. <https://www.ohchr.org/en/about-democracy-and-human-rights>.

⁶ Wood, Richard. 2017. "The World's 7 Largest Democracies-Where Do America and India Fit In?" *HICT.COM*, October 22, 2017. <https://www.hitc.com/en-gb/2017/10/22/the-worlds-7-largest-democracies-where-do-america-and-india-fit/>.

Under the Indonesian Constitution 1945 (*Undang-Undang Dasar 1945*), Article 1 Section 2 states that state sovereignty lies in the people's hands, emphasizing the democratic form of the country⁷. Indonesia, as a democratic country, is also indicated through the elections that are held directly, as stated, such as in Articles 6A and 18 Sections 3 and 4 of the Constitution.

Data shows that Indonesia's democracy index has been called a flawed democracy due to the fluctuation of the democracy index. Since 2006, Indonesia's democracy index has always been at the rate of 6, except in 2015, which was at 7.03⁸. The latest data for 2024 shows that Indonesia's democracy index is at 6.44, and ranks Indonesia in 59th position as one of the "flawed democracy countries"⁹.

Democratic regression in Indonesia is occurring rather than showing a low level of democracy¹⁰. Despite the strong political participation and free and fair election¹¹, the regression is apparent due to the illiberal turn in laws and regulations on civil liberties¹², which results in a low index of freedom by Freedom House -an organization that surveyed and analyzes civil liberties countries in the world- from "Free" to "Partly Free" since 2013¹³. The negative trends of civil liberties in Indonesia continue until the 2023 country report shows that Indonesia's freedom is still "partly free," with an index of 58 out of 100¹⁴.

The data above depicts that even though Indonesia left 32 years of an authoritarian regime to the Reformation Order in 1998, harm to democracy is still imminent through the lack of human rights protection. One of the major indicators of the harm to democracy is how opposing political views are banned and even criminally prosecuted, especially during the Elections.

The 2014 Election divided Indonesians into two big supporters and, unfortunately, deepened the political polarization based on identities commonly known as SARA in Indonesian¹⁵. The political battle during the three major Elections: the 2014 Presidential Election, the 2017 Jakarta Gubernatorial Election, and the 2019 Presidential Election set the political conflict between Islamists and pluralists¹⁶.

⁷ Harjono, "Hukum, Demokrasi dan Mahkamah Konstitusi." *Journal Inovatif* Vol. 2 No. 3 (2010): 2.

⁸ Economist Intelligence. "Democracy Index 2024." *Economist Intelligence*, Accessed 14 May 2025, <https://www.eiu.com/n/campaigns/democracy-index-2024/>

⁹ *Ibid.*

¹⁰ Ngalande, Jeb. "Indonesian Democracy is Regressing, but it's not Over Yet, Experts Say." *The Stanford Daily*, February 16, 2021, <https://stanforddaily.com/2021/02/16/indonesian-democracy-is-regressing-but-its-not-over-yet-experts-say/>.

¹¹ Bland, Ben. "Politics in Indonesia: Resilient Elections, Defective Democracy." *The Lowy Institute*, April 10, 2019. <https://www.loyyinstitute.org/publications/politics-indonesia-resilient-elections-defective-democracy>.

¹² Aspinall, Edward and Warburton, Eve. 2017. "Indonesia: The Dangers of Democratic Regression." *Proceedings of the Third International Conference on Social and Political Sciences*. <https://doi.org/10.2991/icsps-17.2018.1>.

¹³ *Ibid.*

¹⁴ Freedom House. "Freedom in the World 2023: Indonesia." *Freedom House*, June 2, 2023. <https://freedomhouse.org/country/indonesia/freedom-world/2023>.

¹⁵ Suku, Agama, Ras dan Antar Golongan - means Tribe, Religion, Race and Inter-Groups.

¹⁶ Eve Warburton. 2020. "Deepening Polarization and Democratic Decline in Indonesia," in *Political Polarization in South and Southeast Asia: Old Division, New Dangers*, ed. Thomas Carothers and Andrew O'Donohue, 2. (Washington DC: Carnegie Endowment for International Peace, 2020), 25.

The battle between Islamists and pluralists is a long-standing topic that scholars have pointed out regarding the Indonesian political realm. To understand this conflict, the discussion should start with the Pancasila (Five Principles) ideology. Pancasila is an ideological foundation in Indonesia. Pancasila's values are reflected in the Indonesian 1945 Constitution, which consists of the principles: Belief in the One True God, A Just and Civilized Humanity, Indonesian Unity, Representative Democracy, and Social Justice.

The principle "Belief in the One True God" means that religious freedom is protected in Indonesia. Article 29 Section 2 of the Indonesian 1945 Constitution states that the state guarantees individuals' freedom to practice religion. However, the state has not fulfilled the true practice of religious freedom due to the practice imposed on the definition of religion in society¹⁷. Therefore, practicing a minority religion or not practicing any religion among the six religions recognized by the government: Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism, may result in prosecution under blasphemy laws¹⁸. In other words, with the first pillar of Pancasila, each Indonesian should practice a recognized religion (theist), even though there is no valid ground for atheism, as blasphemy¹⁹. Although in 2009, during the judicial review process of the Indonesian Constitutional Court of Law No.1/PNPS/1965, the Court emphasized that practicing religion is not limited only to the six recognized religions, given the 1965 Law's Elucidation Section that other religions and beliefs are also protected under Article 29 Section 2 of the 1945 Constitution²⁰.

Pancasila itself has faced challenges from the conservatives who planned to establish an Islamic State or change the Constitution to Islamic Sharia²¹. The debate on religion and state began during the New Order (*Orde Baru*) era²², a political regime under Suharto as the President, commonly known for its authoritarian regime. Furthermore, the 2014 Election that brought two distinct candidates, Jokowi and Prabowo, enabled political polarization, and when Jokowi won the Election, political cleavage emerged.

One of the reasons why the political conflict arose could be analyzed in how Jokowi's leadership treats Islamic groups. His predecessor, Susilo Bambang Yudhoyono (SBY), was backed up by a coalition of Islamic secular parties²³. However, SBY's two presidential terms brought

¹⁷ Ibrahim, Nur Amali. "The Law and Religious Intolerance in Indonesia." *Baker Institute*, August 23, 2019. <https://blog.bakerinstitute.org/2019/08/23/the-law-and-religious-intolerance-in-indonesia/>.

¹⁸ Pusat Studi Hukum dan Kebijakan. "Freedom of Religion in Indonesia." *PSHK*, Accessed March 18, 2025. <https://pshk.or.id/blog-id/freedom-of-religion-in-indonesia/>.

¹⁹ Hasani, Ismail. "Not Allowed to Believe? The Troubled Place of Atheism in Indonesia." *Indonesia at Melbourne*, June 7, 2016. <https://indonesiaatmelbourne.unimelb.edu.au/not-believing-not-allowed-the-troubled-place-of-atheism-in-indonesia/>.

²⁰ The Indonesian Constitutional Court Decision Number 140/PUU-VII/2009.

²¹ Anwar, Dewi Fortuna. "Indonesia's Democratization Underpinned by Major Islamic Groups and Consensus on National Ideology." *Middle East Institute*, February 26, 2019. <https://www.mei.edu/publications/indonesias-democratization-underpinned>.

²² Afrimadona. "Revisiting Political Polarisation in Indonesia: A Case Study of Jakarta's Electorate." *Journal of Current Southeast Asian Affairs* Vol. 40 (2) (2021): 316.

²³ Webb, Sara and Creagh, Sunanda. "Indonesian President Woos Islamists, Upset Minorities." *Reuters*, April 26, 2009. <https://www.reuters.com/article/idINIndia-39252720090426>.

Indonesian democracy to a standstill with its stagnant movement due to his decisions on major issues that encountered resistance from his administration, political parties, and groups²⁴. The major decisions to avoid political turmoil, including reducing the fuel price three times, contributed to his election in 2009. This policy was viewed as a political decision over the economy²⁵.

Jokowi, on the other hand, prioritized the economy and overlooked the political support from Islamic parties that had much influence on Indonesian political schemes. In his first term, Jokowi planned to boost economic growth²⁶. The priority on economic development affected the lack of attention to human rights protection²⁷. By the end of Jokowi's first term, the Commission for Disappeared and Victims of Violence (KONTRAS) noted that Jokowi's administration played compromised politics, especially with his coalition, and the opposition voice emerged stronger.

His second term, currently in the fourth year, is undergoing a similar political attitude. Another non-governmental organization, the Institute for Policy Research and Advocacy (ELSAM), argued in 2020 that there is an evolution in the human rights situation in Indonesia. The main factors for human rights violations are the shrinking civic space, improper legislation process, and suppressive laws for opposing expressions.

The way that Jokowi chose not to moderate the emerging intolerance and the opposing political parties and groups led to the banning of the expressions without clear limitation on the laws that drive the illiberal evolution of laws that are supposed to protect civil liberties²⁸.

The reduction of civil liberties also occurred on the Internet. Since the Information and Electronic Transaction Law (ITE Law) was passed in 2008, the law has been applied as a cybercrime legislation that criminalizes online expressions instead of providing a proper cybersecurity law. In 2019, when Jokowi was re-elected, 3,100 cases of online crimes were reported and prosecuted under the ITE Law²⁹.

The many cases investigated using the ITE Law vary, such as defamation, hate speech, threatening, and pornography. However, implementing the ITE Law has been called unfair due to its draconian content in prosecuting political dissidents³⁰.

²⁴ Aspinall, Edward., Mietzner, Marcus., and Tomsa, Dirk. "Stability and Stagnation under SBY." *New Mandala*, July 31, 2015. <https://www.newmandala.org/stability-and-stagnation-under-sby/>.

²⁵ Sulaiman, Yohanes. 2014. "Indonesian Farewells SBY and His Wasted Opportunities." *The Conversation*, October 17, 2014. <https://theconversation.com/indonesia-farewells-sby-and-his-years-of-wasted-opportunities-32561>.

²⁶ Tisdall, Simon. "Joko Widodo Takes Office with Plans for Economic Growth and Political Clout." *The Guardian*, October 20, 2014. <https://www.theguardian.com/australia-news/2014/oct/20/joko-widodo-takes-office-in-indonesia>.

²⁷ Gabrilin, Abba. "Menurut Kontras, Ada 4 Alasan HAM bukan Prioritas Pemerintahan Jokowi." *Kompas.com*, October 19, 2018. <https://nasional.kompas.com/read/2018/10/19/17325561/menurut-kontras-ada-4-alasan-ham-bukan-prioritas-pemerintahan-jokowi>.

²⁸ Warburton, Eve and Aspinall, Edward. "Explaining Indonesia's Democratic Regression: Structure, Agency, and Popular Opinion." *Contemporary Southeast Asia* Vol. 41, No. 2 (2019): 260.

²⁹ Hermawan, Ary. "Fight for Your Freedom: Indonesian Online Civic Space Under Siege." *The Jakarta Post*, August 25, 2020. <https://www.thejakartapost.com/academia/2020/08/25/fight-for-your-freedom-indonesian-online-civic-space-under-siege.html>.

³⁰ Hamid, Usman. 2019. "Indonesia's Information Law Has Threatened Free Speech for More than A Decade. This Must Stop." *The Conversation*, November 25, 2019. <https://theconversation.com/indonesias-information-law-has-threatened-free-speech-for-more-than-a-decade-this-must-stop-127446>.

The regression trend started when the ITE Law was passed as a law in 2008 and still goes on today. Particularly in 2019, there were harsh practices in prosecuting expressions, as shown in the student and civil society's protest of the amendment of the Indonesian Criminal Code (KUHP) and the Commission of Corruption Eradication (KPK) Law. The result of the 2019 Election, which happened a few months before the protest against the laws, initiated the emergence of political expression prosecution, especially on the internet.

The 2019 Election sparked controversies for some people, calling out the unfair result and protesting, but the government called that action treason³¹ and instead saw those as political expressions. The protest went offline and online, which was then investigated as crimes, including online treason, through the ITE Law. However, the law has insufficient provisions for charging treason on the Internet.

This paper analyzes treason, in which the prosecution stemmed from opposing political views in the history of Indonesian criminal law. In addition, the analysis of treason will be on laws and cases, both offline and online. Particularly for online treasons, this paper focuses on several arrests in the 2019 Election, in which there were criminal charges for political expressions that were subjectively considered treason crimes.

The article will proceed in three parts: First, an analysis of the existing treason laws. Second, this article analyzes the past cases of treason that occurred offline, investigated with the Indonesian Criminal Code, and online, which were investigated with the Information and Electronic Transaction Law. The second part focuses on how these laws have been abused in legally processed treason cases and the effect on human rights protection. The ultimate goal of this article is to describe how Indonesian law should comply with international human rights and move on from human rights decolonization.

2. DISCUSSION

2.1. TREASON CRIME AND THE BANNING OF POLITICAL EXPRESSIONS

Treason is mostly known as a criminal act of betraying a nation or a sovereign territory through acts that harm security³². Treason is considered a more serious crime than murder because the victims of treason are the welfare and safety of society³³.

Considering the harm aimed at the ruling government and/or State officials, treason is also considered a political crime. Treason becomes more political because there are political motivations for overthrowing the ruling government or reorganizing the governmental system. Therefore, the perpetrator of this crime would be called a "traitor" or even a "terrorist."

Even though the regulation of treason as a crime seems to protect society's interest, the political element in the laws has the potential to be abused. Along with sedition and espionage, treason has

³¹ Reuters Staff. "Indonesia Election Tainted, Opposition Marcher Say, but Government Warns against Treason." *Reuters*, May 10, 2019. <https://www.reuters.com/article/uk-indonesia-election-protests-idUKKCN1SG13H>.

³² Britannica "Treason Crime." n.d. *Britannica*. Accessed July 1, 2023. <https://www.britannica.com/topic/treason>.

³³ McConkie, Taylor. "State Treason: The History and Validity of Treason Against Individual States." *Kentucky Law Journal* Vol. 101: Issue 2 (2013): 281.

been defined as a pure political offense³⁴. Historically, treason was committed through physical offenses such as assault or war. However, even laws against those are potentially being abused by the ruling government if the laws are regulated to serve the interests of tyranny.

In a democracy, political expression is ideally a common element in society. Because the people hold sovereignty, criticisms of the government are essential to safeguard the right governance track. Therefore, the marketplace of ideas, a metaphor for various ideas in society first

The main problem with treason laws is that the government determines such conduct and the subjectivity of the grounds to assess the unloyalty to the state as the basis of the crime. Therefore, treason laws do not align with the marketplace of ideas because they do not allow the free flow of ideas within society. Even the laws potentially curb freedom of speech because the government does not let the public test any ideas.

Treason laws are also one of the major problems in the Indonesian criminal justice system. Treason is commonly known as “*makar*” under Indonesian legal terms. Historically, treason as criminal conduct has a subjective view from the government’s side, as depicted in the case of Sultan Hamid II in 1953, the founder of the Indonesian Symbol “Garuda Pancasila” was brought to the criminal court after being accused of cooperating with Captain Westerling for treasonous conduct³⁵. It is also mostly related to different political views, as it is the main concern in applying the criminal provision to such conduct.

With the ease of information flows through the internet, constitutionalized expression faces challenges in which restrictions can be enforced by the government, as in this treason ruling, because the ruling does not provide the specific scope of what kind of offense falls into treason. Recent cases have shown that online hate speech, under the Information and Electronic Transaction Act (ITE Law), was taken into charge along with the treason ruling in the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana-KUHP*). The double charges of criminal provisions make it seem like allegedly treasonous conduct expressed in the digital realm, but unclearly regulated, as in the ITE Law; thus, the closest charges are online hate speech and threats.

2.2. TREASON CRIME UNDER INDONESIAN CRIMINAL LAW

The Netherlands colonized Indonesia until its independence in 1945. Therefore, the criminal justice system was formerly a derivative system from the colonial government. From this point, it is known that the Criminal Code was also an enactment of the Dutch Criminal Code. Despite the long effort to amend the Criminal Code, unfortunately, the amendment was never passed by the

³⁴ Garcia-Mora, Manuel R. “Treason, Sedition and Espionage as Political Offenses under the Law of Extradition.” 26 *University of Pittsburgh Law Review* (1964): 65.

³⁵ Anshari. “Delik Terhadap Keamanan Negara (Makar) di Indonesia (Suatu Analisis Yuridis Normatif pada Studi Kasus Sultan Hamid II).” (Jakarta: University of Indonesia, 2012), 147.

Indonesian Representative Council (*Dewan Perwakilan Rakyat-DPR*)³⁶. Even the latest effort to amend the Code was protested by most Indonesians, which once again led to chaos in some cities³⁷. Eventually, in 2023, despite the massive protest, the government passed the 2023 Criminal Code. However, several criminal provisions in the new Criminal Code still carry out similar problems to the current Criminal Code³⁸.

The provision of treason is one of the problems in criminal law. Treasonous conduct is legally named “*makar*” in the current Indonesian Criminal Code, which is regulated in several Articles. Article 106 rules that:

*“Treason with the intention of partly and fully placing the state region into enemy hands, or to separate a part of state region from another country is punishable with a lifelong prison term or certain term, maximum of 15 years.”*³⁹

This provision rules that treason is officially considered whenever there is a physical attack to colonize the country. Slightly differently, in Article 104, treasonous conduct is taken into account if the conduct involves harming or killing the Indonesian President and Vice President to make him or her unable to run the Presidential office⁴⁰. This conduct is punishable by the death penalty, with a lifelong or 20-year prison term as a minimum criminal punishment⁴¹. Another treason ruling is regulated in Article 107. In the article, we can see treason defined as intentionally becoming a coup as an imminent threat to the ruling government, which means taking over the office, which is also considered criminal conduct with a 15-year prison term⁴². However, the punishment will be at least a lifelong or 20-year prison term for the leader and organizer of the act⁴³.

There is no specific definition or explanation of the meaning of “*makar*” within the current Criminal Code, which causes the vagueness of the norm⁴⁴, leading to unnecessary prosecutions. The issue of the ambiguity of norms has been acknowledged by lawmakers. During the parliamentary session on the Criminal Code Bill, lawmakers emphasized that “*makar*” is an obsolete criminal provision in a democratic country, especially since the law was aimed at

³⁶ Lamb, Kate. “Indonesia’s Criminal Code: What is it, Why Does it Matter, and Will it be Passed?” *The Guardian* September 26, 2019. <https://www.theguardian.com/world/2019/sep/26/indonesias-criminal-code-what-is-it-why-does-it-matter-and-will-it-be-passed>.

³⁷ Hollingsworth, Julia. “Indonesian Police Fired Tear Gas, Water Cannons, As Students Protest Law That Would Criminalize Extramarital Sex.” *CNN*, September 25, 2019. <https://www.cnn.com/2019/09/25/asia/indonesia-protests-criminal-code-intl-hnk/index.html>.

³⁸ Butt, Simon. “Indonesia’s New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?.” *Griffith Law Review*. Vol. 32. No. 2, 190-214 (2023): 195.

³⁹ The Criminal Code, 1946, Article 106 (Indonesia).

⁴⁰ The Criminal Code, 1946, Article 104 (Indonesia).

⁴¹ *Ibid.*

⁴² The Criminal Code, 1946, Article 107 (Indonesia).

⁴³ *Ibid.*

⁴⁴ Ristanti, Yuni, Parman, Lalu, and Urfan. “Perkembangan Penafsiran Delik Makar dalam KUHP di Indonesia.” *Jurnal Kertha Semaya*. Vol. 10, No. 1, 26-38 (2021): 26.

preventing the freedom fighter movement during the Dutch colonization⁴⁵. Unfortunately, when the new Criminal Code was passed, “makar” still exists and is included as a treason offense, although Article 160 defines “makar” as intention along with act of preparation and distinguishes it with Article 87 of the Current Criminal Code that solely of the initial implementation, but there is no scope of limitation of the intention which fall into the category of “makar” under Article 160 of the new Criminal Code⁴⁶.

Therefore, treason under Indonesian criminal law terminology should be traced historically from the root word, especially with the fact that a new Criminal Code in January 2023, which is planned to be enforced officially in 2026. The transition from the old Criminal Code to the new one is less than a year. The following sub-sections will discuss treason in Indonesia, both offline and online.

2.2.1. OFFLINE TREASON CRIME

For offline treason, in addition to the definition in Article 106, the Indonesian Criminal Code regulates that treason occurs when an initial action is undertaken. Therefore, treason becomes a complete criminal act to fully place the state into the enemy's hands (*mens rea*) and an action that manifests that intention (*actus reus*). However, the element of initial action for treason is still debatable in Indonesian criminal law. Considering the Criminal Code itself has been in several formulations⁴⁷: The first one is during the colonization of the Netherlands to Indonesia, in which the law is still under the name of *Wetboek von Strafrecht* (WvS), second phase is after the independence of Indonesia, with the Law Number 20 of 1946 on Undisclosed Penalty (*Hukuman Tutupan*), third phase is Presidential Decree Number 11 of 1963 which continued by Law Number 5 of 1969, and last phase is the current Criminal Code which will be valid until 2026, given the transition period until the official implementation of the new Criminal Code that is scheduled in January 2026.

Because during the colonization era, the criminal law was based on the Netherlands' WvS, the formulation of treason crime was directly adopted from the provision of state security crimes in the WvS. Therefore, the treason crime formulation was heavily influenced by the colonial principle of treason crime⁴⁸. Using the treason crime provision in the WvS means that the colonizer wants to maintain the status quo. Unfortunately, the situation continued when Law Number 20 of 1946 and Presidential Decree Number 11 of 1963 were implemented. The first law was formulated to secure the post-independence situation from social and political upheavals between domestic parties. While the latter was subsequently made into law based on Law Number 5 of 1969 on the Eradication of Subversion Activities, stemming from polarization and riots that happened from the

⁴⁵ Laporan Singkat, “Rapat Panja Komisi Iii Dpr-Ri Dengan Kepala Badan Pembinaan Hukum Nasional (BPHN) Dalam Rangka Pembahasan DIM RUU Tentang Kitab Undang-Undang Hukum Pidana”, Bidang Hukum, HAM, dan Kemananan DPR (2016), 9.

⁴⁶ Rahman, Riyan, Lasmadi Sahuri, and Usman. “Tindak Pidana Makar dalam Perspektif Pertanggungjawaban Pidana.” *Hangoluan Law Review*. Volume 3, Nomor 2, 507-544, (2024): 534.

⁴⁷ Siregar, Febby. “Analisis Unsur Permulaan Pelaksanaan Dalam Tindak Pidana Makar.” *Jurnal Kajian Hukum* Vol. 2 No.2, 276-284, (2021): 278.

⁴⁸ Siregar, Febby. 2021. *Op Cit*, 279.

period from 1945 to 1960. However, despite its effectiveness, the law was abused to stifle freedom of expression and assembly⁴⁹.

The previous laws are currently not valid. The current treason laws included in Chapter I, Book II of the Criminal Code have three forms, namely Article 104 of the Criminal Code regulates treason, which attacks the legal interests of the security of the Head of State or his deputy. Article 106 of the Criminal Code regulates treason, which attacks legal interests for the State's territorial integrity. Article 107 of the Criminal Code regulates treason, which attacks against legal interests for the upholding of the State government, depriving the President or Deputy of his or her independence capacity, is punishable by death, life imprisonment, or temporary imprisonment for a maximum of twenty years. The provisions of criminal sanctions in Article 107 of the Criminal Code stated that the perpetrators of the crime of treason, in accordance with paragraph (1), were threatened with a maximum imprisonment of fifteen years. The provisions of paragraph (2) stated that the punishment for the leaders and organizers of treason was more severe, namely imprisonment for life or a maximum sentence of twenty years.

Despite the criticisms towards the treason provisions in the Criminal Code, such as perpetuating monarchy laws⁵⁰ because the colonizer first drafted treason laws and the misuse of the provision to curb free speech and the right to assembly⁵¹, treason is still a valid crime in the Indonesian criminal law⁵². An attempt to revoke treason provisions in the Criminal Code through judicial review at the Indonesian Constitutional Court (*Mahkamah Konstitusi*) was rejected in 2017. One of the reasons the Court was not against the Indonesian Constitution 1945 because the formulation of treason (Articles 104, 106, 107, 139a, 139b, and 140) should be associated with Article 87 of the Criminal Code as the complete element of a crime (intention and action), which will avoid legal uncertainty⁵³.

Since it officially became a state 74 years ago, Indonesia has experienced some treasonous conduct during its history. Two cases that get much attention from Indonesian criminal law scholars involve the Indonesian Communist Party (*Partai Komunis Indonesia-PKI*)⁵⁴.

The first attempt at treason by the PKI occurred in 1948. The event was known as the Madiun Affair, marking the location of the armed conflict between the Republic of Indonesia and the left-wing Party. Three years after the independence of Indonesia, the communication between the PKI

⁴⁹ Abdusammad, Azmroni. "Kebijakan Hukum Menuju Sistem Nasional (Suatu Kajian terhadap Undang-Undang Nomor 11/PNPS/1963 tentang Pemberantasan Kegiatan Politik dalam Reformasi Hukum Dewasa ini." *Jurnal Inovasi* Vol. 7 No. 3, 1-13, (2010): 4.

⁵⁰ Pusat Studi Hukum dan Kebijakan Indonesia. "5 Alasan Menolak Pasal Penghinaan Presiden dimasukkan kembali ke dalam RKUHP." *PSHK*, June 17, 2021. <https://pshk.or.id/publikasi/siaran-pers/5-alasan-menolak-pasal-penghinaan-presiden-dimasukkan-kembali-ke-dalam-rkuhp/>.

⁵¹ Nurbaiti, Alya. "Stop Confusing Freedom of Expression with Treason in Papua: Activists. *The Jakarta Post*, June 24, 2020. <https://www.thejakartapost.com/news/2020/06/24/stop-confusing-freedom-of-expression-with-treason-in-papua-activists.html>.

⁵² Mahkamah Konstitusi. "Pasal Makar dalam RKUHP Konstitusional." *Mahkamah Konstitusi*, January 31, 2018. <https://www.mkri.id/index.php?page=web.Berita&id=14271>.

⁵³ The Indonesian Constitutional Court Decision Number 7/PUU-XV/2017.

⁵⁴ R. Bass, Jerome. "The PKI and The Attempted Coup." *Journal of Southeast Asian Studies*, Vol. 1 No. 1, (1970): 104.

and the Soviet Communist Party continued. Although Japan's loss that resulted in Indonesia's independence also meant Indonesia was still building its government and leadership, the PKI kept a low profile by communicating, contacting, and building bases in several areas.⁵⁵

The PKI movement was perceived when Amir Sjarifuddin resigned from his position as Indonesia's Prime Minister due to the failure of the Renville Agreement, an agreement between Indonesia to maintain its independence, and the Netherlands to reestablish their colonization in the Southeast Asian area. The failure of the Renville Agreement's political accord gave Amir much backlash, leading him to form the Society Democratic Front (*Front Demokrasi Rakyat*-FDR). Some left-wing organizations, including PKI, supported the organization. In September 1948, PKI declared a communist government in Indonesia, opening several headquarters in the Madiun area, which led to the armed conflict.

Despite its controversies, as the Indonesian government has been using it for indoctrination⁵⁶, the 1965 affair is also a monumental event in Indonesian history associated with PKI, popularly known as the September 30th Movement, as that night, the treason was indicated by the murder of seven generals of the Indonesian army. The murders were followed by the occupation of hundreds of troops dispatched by Lieutenant Colonel Untung Syamsuri⁵⁷. The trial court of the Extraordinary Military Court noted that the more serious discourse regarding allegations of treasonous conduct concerning the action attributed to the PKI⁵⁸, several military and civilian officers were also tried and received a death sentence⁵⁹. The trial was established by Presidential Decree Number 16/PNPS/1963, which grants the authority to try cases related to national security⁶⁰.

The association of PKI with the murders and treason attempts inside the Indonesian military resulted in an anti-communist purge in several locations in Indonesia, mostly on Java Island⁶¹. This case was never officially brought into a criminal or human rights trial court, even to this date. However, many scholars have been analyzing the inconsistencies in this particular history.

Holding a criminal justice system along with its Criminal Code as a "legacy" from the Netherlands, which once colonized it, means that Indonesia has to deal with legal terms that are not originally rooted in Malay or Indonesian as its language. "*Makar*" was originally a loanword from Arabic that means a guilty or deceitful plan⁶². Strangely, whenever it is used in Indonesian,

⁵⁵ Poeze, Harry A. "The Cold War in Indonesia." *Journal of Southeast Asian Studies*, Vol. 40, No. 3, (2009): 498.

⁵⁶ Lane, Max. "50 Years Since 30 September 1965: The Gradual Erosion of a Political Taboo." *Perspective Issue* 2015 No. 66, (2015): 4.

⁵⁷ Hughes, John. *Islamic Extremism and the War of Ideas: Lessons from Indonesia*, (California: Hoover Institute Press, 2010), 55.

⁵⁸ Prakoso, Djoko. *Tindak Pidana Makar Menurut KUHP*, (Jakarta: Ghalia, 1986), 11.

⁵⁹ Prakoso, Adji. "Mengenang Mahmilub: Pengadilan Khusus yang Vonis Mati Dalang G30SPKI." MARINews, May 31, 2025. <https://marinews.mahkamahagung.go.id/serba-serbi/pengadilan-khusus-yang-vonis-mati-dalang-g30spki-0jt#:~:text=Undang%20RI%20Nomor%2016,Nomor%2016%2FPNPS%2F1963>.

⁶⁰ Presidential Decree Number 16/PNPS/1963, 1963, Preamble Section (Indonesia).

⁶¹ Robinson, Geoffrey B. *The Killing Season: A History of The Indonesian Massacres 1965-1966*, (Oxford: Princeton University Press, 2018), 8.

⁶² Yasin, Muhammad. "Bahasa Hukum: "Makar" alias Aanslag dalam Pasal 104 KUHP." *Hukum Online*, May 14, 2019. <https://www.hukumonline.com/berita/baca/lt5cda38ed1e155/bahasa-hukum--makar-alias-iaanslag-i-dalam-pasal-104-kuhp/>.

“*makar*” is a direct translation for “*aanslag*,” a word in Dutch, for which one of the meanings is an attack or an assault. The problem with most treasonous conduct regulations in Indonesian criminal law arises from this point. The Criminal Code does not provide any specific provisions or explanation section regarding the truest or most exact meaning of “*aanslag*” before translating it into “*makar*.”⁶³

In finding the treason-related meaning for “*makar*,” Widati Wulandari and Tristam P. Moeliono use a comparative approach between the Indonesian Criminal Code in its original language (*Wetboek van Strafrecht Nederlands-Indie-WvSNI*) and the unofficial translation of the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana Indonesia*). As of this date, there is no official translation from the Indonesian government for WvSNI. Wulandari and Moeliono then found that one of the meanings of “*aanslag*” is an attempt to attack, but to see it as criminal conduct, the word must be added to the phrase “*tot en feit*.” The whole phrase “*aanslag tot en feit*” means to perpetrate or commit a crime⁶⁴. That finding is actually in line with other Indonesian legal scholars’ doctrines, such as those of R. Soesilo, Lamintang, Noyon, and Langemeijer, about the meaning of “*aanslag*” being simply an attempt to attack, not related to the assault on the government’s official⁶⁵.

However, its translation is not about the assault on the government’s officials; the Indonesian Criminal Code’s compilers seemed to agree to use “*makar*” as an official legal translation of “*aanslag*.” It was believed that WvSNI was used as an official Indonesian Criminal Code in 1946, with some adjustments of the legal terms to avoid legal vacuums since Indonesia’s independence in 1945. However, the meaning of “*makar*” as treasonous conduct remains debatable to this date—even when it was judicially reviewed in the Indonesian Constitutional Court,⁶⁶ although the Court partially rejected it—and the usage of this provision is based on the principle that the threat is not required to be undertaken. Therefore, even the beginning of the execution of treasonous conduct that may not culminate in a violent attack is already considered treasonous conduct.

Applying such regulations for treasonous conduct certainly sparks debate among legal scholars and practitioners. Concerning human rights and freedom of expression, criticizing the current government or expressing justice for some people discriminated against is hardly seen as treasonous conduct. The following are several treason cases that occurred offline and were investigated under the Criminal Code.

2.2.1.1 JOHAN TETERISA’S CASE

⁶³ Lamintang, PAF and Lamintang, Theo. *Delik-Delik Khusus Kejahatan terhadap Kepentingan Hukum Negara*, (Jakarta: Sinar Grafika, 2010), 45.

⁶⁴ Wulandari, Widati and Moeliono, Tristam P. “Problematika Pengertian Aanslag-Aanslag Tot en Feit: Perbandingan Makar dalam KUHP, WvSNI dan Sr.” *Jurnal Ilmu Hukum Padjajaran*, Vol. 4, No. 3. (2017): 476.

⁶⁵ Institute of Criminal Justice Reform. *Mengembalikan Makna “Makar” dalam Hukum Pidana Indonesia*. (Jakarta: ICJR, 2017). <https://icjr.or.id/wp-content/uploads/2017/10/Mengembalikan-Makna-Makar.pdf>, 37.

⁶⁶ Mardathilah, Aida. “MK Tegaskan Pasal Makar dalam KUHP tetap Konstitusional” *Hukum Online*, February 1, 2018. <https://www.hukumonline.com/berita/baca/lt5a72c0085038c/mk-tegaskan-pasal-makar-dalam-kuhp-tetap-konstitusional/>.

One of the modern-day cases of treasonous criminal conduct occurred in 2007. Johan Teterisa was arrested and imprisoned for allegedly engaging in treasonous conduct along with 21 other activists. This legal process was undertaken after he waved the “*Benang Raja*,” the flag of the *Republik Maluku Selatan (Republic of South Mollucas-RMS)*⁶⁷.

RMS is inevitably a part of Indonesian history, with its separatist declaration on April 25, 1950. The event that was then popularly known as the RMS event in Indonesian political history was also undergoing a trial under a military court⁶⁸. During the case trial, it was discovered that the suspects of those charges had already gathered and prepared an army that had suited up with weapons, calling themselves the “RMS Army.” They had already made foreign contacts to help them establish an RMS State⁶⁹.

Trying to compare a treasonous attempt that had happened only five years after Indonesia reached its independence with the one that happened in a modern situation, where the Indonesian government is still dealing with injustice and development in all the country’s provinces, is difficult due to the differences in environment. One such case, as happened in Johan’s trial, was hardly viewed as treasonous conduct. According to the Criminal Code, an act must involve violence or at least an attempt to instigate one, like what happened in 1950. The only thing Johan did was merely wave the flag. Despite banning RMS’s flag-waving regulated under Government Regulation Number 77 of 2007, both the Government Regulation and the Criminal Code application in this case clearly rule against the freedom of expression because Johan’s act occurred solely for the peaceful expression of his view⁷⁰.

2.2.1.2 GAFATAR’S CASE

Another treason-cum-blasphemy situation was shown in the Gafatar case. In 2016, three people accused of initiating the Gafatar movement were caught by the Indonesian police and charged with treason and blasphemy. Despite their plan to establish *Negeri Karunia Tuhan Semesta Alam* (a State gifted by the Lord of the Universe), the potential threat was still debatable, as the government rejected the movement to be registered as an organization⁷¹. However, Gafatar’s exercise of a minority religion should be considered a freedom of religion, particularly since the group also consists of a small membership without any weapons activity.

Johan Teterisa is jailed for waving the flag for 15 15-year prison sentence. Meanwhile, the three leaders of Gafatar were free from treasonous convictions. Unfortunately, they were charged with blasphemy. The court ruled on the blasphemy offense in their lecture to the group members,

⁶⁷ Amnesty International UK. “Johan Teterisa Jailed for Waving a Flag in Indonesia.” *Amnesty*, April 17, 2015. <https://www.amnesty.org.uk/indonesia-johan-teterissa-torture>.

⁶⁸ Wittermans, Tamme and Gist, Noel P. “The Ambonese Nationalist Movement in the Netherlands: A Study in Status Deprivation.” *Social Forces* Vol. No.4. (1962): 314.

⁶⁹ See Djoko Prakoso, 45.

⁷⁰ Human Rights Watch. *Prosecuting Political Aspiration Indonesia’s Political Prisoners*, (New York: Human Rights Watch, 2010) 7.

⁷¹ Topsfield, Jewel. “Ex-Gafatar Leaders Charged with Blasphemy and Treason in Indonesia.” *The Sydney Morning Herald*, June 8, 2016. <https://www.smh.com.au/world/exgafatar-leaders-charged-with-blasphemy-and-treason-in-indonesia-20160607-gpd9h5.html>.

given that Gafatar states that Islamic rituals should not be done yet because they believe the civilization is not completely under Islamic influence and free from full ignorance⁷² (*Jahiliyyah*)⁷³. The cumulative indictment drafted by the public prosecutor accused the three defendants of conducting blasphemy (Articles 156a Section a juncto Article 55 Section juncto Article 64 Section 1) and treason (Articles 110 Section 1 juncto Article 107 Section 2 KUHP juncto Article Section 1 of the current Criminal Code)⁷⁴. Adding to the concern, the East Jakarta First Degree Court ruled that the three defendants were guilty of blasphemy, even though their actions were an exercise of their right to express their religion. The defendants appealed the decision, but the East Jakarta Appellate Court upheld the blasphemy convictions against the Gafatar leaders, disregarding their right to freedom of religion, while treason was not committed by the defendants⁷⁵.

Those two cases and many treason cases in Indonesia indicate two points: first, no clear limitation is applied for allegedly treasonous cases, despite the beginning of execution is a required element as stated in Article 83 of the Criminal Code. The treason provision clearly states that not only should a guilty mind (*mens rea*) be considered in the elements of a treason crime, but also, the court should consider the beginning of the execution of that guilty mind. The elements are part of an attempt to commit a punishable crime⁷⁶. Second, the judicial decisions of such cases are dangerous for the Indonesian criminal justice system in satisfying the *lex certain* requirement, or clearness, to develop the criminal law in a foreseeable Criminal Code amendment⁷⁷.

In January 2023, Indonesia passed a new Criminal Code after decades of effort to pass the new Criminal Code. Since the latest draft was announced, public criticisms and protests have been addressed to the Criminal Code amendment plan because many provisions violate human rights⁷⁸.

The new Criminal Code will be officially implemented in 2026, with a three-year transition period. After the amendment, treason is still part of the Chapter of Crimes Against Security of the Criminal Code, which treason is regulated under Articles 191 (treason against the President and/or Vice President), 192 (treason to place partly or fully region of the state into the enemy hands), 193 (treason against the government), 194 (treason with riot to against the government), and 195

⁷² BBC Indonesia. "Dinyatakan Menodai Agama Tokoh Eks Gafatar divonis 3-5 Tahun." *BBC Indonesia*, March 7, 2017. <https://www.bbc.com/indonesia/indonesia-39189909>.

⁷³ Originated from Arabic language "*jahala*" which means not knowing or not having knowledge. Al-Quran refers Jahilliyyah to the pre-Islamic society in the Arabian Peninsula, where the society plagued with ignorance. *See more* at Shukri Hanapi, Mohd. "From Jahiliyah to Islamic Worldview: In a Search of an Islamic Educational Philosophy." *International Journal of Humanities and Social Science* Vol. 3, No. 2, (2013): 214.

⁷⁴ The case was in the trial by the East Jakarta First Degree Court under Decision No. 1107/Pid.Sus/2016/PN.Jkt.Tim, but access to the case was not granted by the Indonesian Supreme Court's repository. This particular information was taken from the Appelant Court's ruling.

⁷⁵ The East Jakarta Appellate Court Decision No. 105/PID.Sus/2017/PT DKI.

⁷⁶ Chazawi, Adami. *Kejahatan terhadap Keamanan dan Keselamatan Negara*. (Jakarta: Raja Grafindo Persada, 2002) 8.

⁷⁷ Weda, Made Darma. *Tindak Pidana Makar dalam Rancangan KUHP*. (Jakarta: Aliansi Nasional Reformasi KUHP, 2016), 9.

⁷⁸ Human Rights Watch. "Indonesia: New Criminal Code Disastrous for Rights." *Human Rights Watch*, December 8, 2022. <https://www.hrw.org/news/2022/12/08/indonesia-new-criminal-code-disastrous-rights#:~:text=Articles%20in%20the%20new%20code,been%20under%20consideration%20for%20decades.>

(having connection with a foreign individual or a foreign organization to take over the government).

Since the drafting process, the treason provision has been one of the controversial crime formulations. Before the latest draft was published in 2018, one of the criticisms was that the treason provision in the new Criminal Code draft was feared to violate Articles 7A and 7B of the Indonesian Constitution⁷⁹. In the draft, treason was formulated as an act of overthrowing and/or taking over the government. However, in Articles 7A and 7B, the President and/or Vice-President can be impeached if they commit law violations, namely treason, corruption, bribery, and other serious crimes.

Another criticism of the draft was the definition of treason itself. Article 191 of the draft of the Criminal Code states that treason is an intention to commit an act that manifests with an initial action. However, that formulation does not completely define what treason is⁸⁰. Because the Article only defines the element of treason instead of treason itself.

After the new Criminal Code is eventually passed, the formulation of Article 191 will change. Article 191 regulates treason through killing, seizing independence, and making the President and/or Vice President incapable of governing the state. Unfortunately, the treason definition in the new Criminal Code remains unclear. Article 160 defines treason as an intention to attack that is manifested in the preparation of the attack⁸¹. The new definition also changed from “action” to attack⁸². However, the definition in the new Criminal Code does not provide a clear meaning because treason is defined as preparation, which is considered as an intention or guilty mind. In contrast, the action itself is not defined in the Article.

Furthermore, as discussed in the previous section, there is also no clear scope of what kind of intention falls into the category of intention to treason (*niat untuk melakukan serangan*). Therefore, if, according to Article 160 of the new Criminal Code, an actionable treason is defined as intention with an act of preparation of the reason, it does not make sense, and it would be complicated to cross-examine the facts and circumstances that suggest the intention and preparation to commit treason before the court.

For example, if one is alleged to have the intention to conduct a treasonous offense, but has not taken any preparation such as plotting, gathering information, or acquiring equipment, how does the intention alone fall into law in Article 160? Let alone the full offense regulated from Article 191 to Article 195. Therefore, it is a challenge for the Court to find the correlation between such intention and the preparation for committing treason⁸³.

⁷⁹ Ayuni, Qurrata. “Makar dalam RKUHP.” *Fakultas Hukum UI*, February 9, 2018. <https://law.ui.ac.id/makar-dalam-rkuhp/>.

⁸⁰ Weda, Made Darma. *Op Cit*, 6.

⁸¹ The Criminal Code, 2023, Article 160 (Indonesia).

⁸² Simanjuntak, Surya Dua Artha. “Pemerintah Ganti Istilah Makar di RKUHP dengan Kata Serangan.” *Kabar 24*, November 24, 2022. <https://kabar24.bisnis.com/read/20221124/16/1601741/pemerintah-ganti-istilah-makar-di-rkuhp-dengan-kata-serangan>.

⁸³ Ikhwan Adabi, Muhammad, et al. “Analisis Penerapan Tindak Pidana Persiapan Dalam Undang-Undang No. 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.” *Jurnal Ius Civile* Volume 7 Nomor 2. (2023), 53.

The ambiguity also emphasizes that although Article 160 correlates with Articles 191, 192, 193, 194, and 195 about treason through different forms, it basically regulates *makar* as solely an intention, rather than a full criminal offense, which is not significantly different from the current Criminal Code that is going to be replaced. The act of preparation is a criminal principle that was introduced in the 2023 Criminal Code enactment, regulated in Articles 15 and 16.

While the new principle aims to prevent crime by acting as a deterrent, it is ideally intended to function as an alternative requirement, applied only under very specific circumstances and in cases of particularly serious crimes. This is why Article 15, Section 2 serves to limit its application. However, the provision merely states that preparatory acts can be prosecuted if established by law, without providing further specific details⁸⁴. This is particularly problematic for the treason law, as Article 160 defines treason as requiring both intent and an act of preparation. However, lawmakers only provided further clarification in Article 15 of the new Criminal Code for Section 1, which applies to offenses with a highly dangerous impact. Despite this, there is no clear standard or element specified to determine what constitutes a "dangerous impact" for a criminal offense in this context. As highlighted by recent cases and trends discussed in this paper, the absence of such a standard could lead to abuse, especially considering the government's recent responses to dissenting or provocative expressions.

A recent example is how the Indonesian government has been reacting to the viral movement of Indonesians raising the flag "Jolly Roger" from the anime "One Piece". The recent incident is similar to Johan Teterisa's case, but what is worse is how the government reacted to a flag that was sourced from a fictional work. This movement stemmed from public disappointment with various policies that were harming their rights, but was accused of being "*makar*"⁸⁵, despite simply raising a flag and a valid expression⁸⁶.

While the Criminal Code is a law for treason that occurred offline, there is a new problematic trend: the internet is also considered a place where treason could occur. The internet laws in Indonesia emphasize the authoritarian regime, especially those who express opposite views⁸⁷. The following section will discuss the law and cases of the so-called online treason.

⁸⁴ Heriani, Fitri Novia. "Asas Persiapan Tindak Pidana dalam KUHP Baru, antara Ancaman dan Potensi Terobosan." *Hukumonline.com*, July 15, 2024. <https://www.hukumonline.com/berita/a/asas-persiapan-tindak-pidana-dalam-kuhp-baru--antara-ancaman-dan-potensi-terobosan-lt669490a84f37b/?page=all>.

⁸⁵ Ryan Aditya, Nicholas and Belarminus Robertus. "Soal Pengibaran Bendera "One Piece" Jelang 17 Agustus, Anggota DPR: Makar Itu." *Kompas.com*, August 1, 2025, <https://nasional.kompas.com/read/2025/08/01/12220571/soal-pengibaran-bendera-one-piece-jelang-17-agustus-anggota-dpr-makar-itu>.

⁸⁶ Octavia, Shela and Rusiana, Dita Angga. "Sosiolog Sebut Pengibaran Bendera One Piece sebagai Ekspresi Sosial, Bukan Makar." *Kompas.com*, August 2, 2025. <https://nasional.kompas.com/read/2025/08/02/23452221/sosiolog-sebut-pengibaran-bendera-one-piece-sebagai-ekspresi-sosial-bukan>.

⁸⁷ Lazarus, Eduard. "The Authoritarian Threat of Indonesia's Latest Internet Bill." *The Lowy Institute*, June 7, 2021. <https://www.loyyinstitute.org/the-interpreter/authoritarian-threat-indonesia-s-latest-internet-bill>.

2.2.2. ONLINE TREASON CASES

Treason cases mentioned in the previous section were all punishable by the Indonesian Criminal Code, as those crimes were undertaken offline. With many possibilities ushered forth by internet realms, spreading ideas that the government might see as harmful and treasonous are more likely to happen. However, as explained in the previous section, a clear limitation that stemmed from an inaccurate translation of the Criminal Code from the Dutch to the eventual Indonesian Criminal Code became the main problem that led to many criminal charges for treason. Furthermore, with the enactment of Law Number 11 of 2008 on Information and Transaction and its amendment in 2016 and 2024 (the ITE Law), cybercrime, which should only focus on cybersecurity, criminalizes digital expression.

Online defamation and online hate speech as criminal acts are the main concerns regarding criminalizing online expression. Based on the 2024 Freedom on the Net Report for Indonesia, Obstacles to Access marked for 15 out of 25, Limits on Content were only marked for 18 out of 35, while Violations of Users' Rights scored 16 out of 40. Those two figures contributed to the total Internet Freedom Score, only 49 out of 100, a two-point decrease from the 2023 report⁸⁸. The partly free index of the Indonesian internet scheme was contributed by the criminal policy that, instead of moderately regulating the internet to be less wild, tends to rob the users' rights.

There was hope for an orderly situation during Indonesia's National Election in 2019, where Indonesians could choose their representatives and President; however, the event shortly became chaos⁸⁹. Some people believe the election was deceitful and unfair⁹⁰. The protest movement was initiated by a group claiming they rejected the national election result. Starting from this, much hate was expressed on social media, and those expressions were addressed toward the current government—even directly toward President Joko Widodo (Jokowi)⁹¹. All those hateful online expressions eventually culminated in a chaotic protest from 21 May to 22 May 2019 in Jakarta, the capital city of Indonesia.

In the context of treasonous conduct, the criminal charge for behaviors is presented by recent cases during the National Election, as mentioned in the Introduction. The lack of another clear regulation under the ITE Law poses a problem in enforcing a suitable law to punish allegedly treasonous acts. Furthermore, the inexistence of online treason provisions under the ITE Law makes the Indonesian police mostly rely on other online expression provisions in the Act. In order to focus on the analysis and cases of treasonous conduct on the internet, the following section will

⁸⁸ Freedom House. "Indonesian Freedom Net 2024." Freedom House, 2024, <https://freedomhouse.org/country/indonesia/freedom-net/2024>.

⁸⁹ Widiyanto, Stanley and Matani, Shibani. "Protesters Clash with Police after Indonesian President's Reelection, Leaving 6 Dead." *The Washington Post*, May 22, 2019. https://www.washingtonpost.com/world/demonstrators-clash-with-police-over-after-president-joko-widodo-reelected-in-indonesia/2019/05/22/0908139a-7c52-11e9-a66c-d36e482aa873_story.html.

⁹⁰ Soeriaatmadja, Wahyudi and Chan, Francis. "Indonesian Presidential Candidate Prabowo Rejects Election Result, Vows to Challenge it in Constitutional Court." *The Strait Times*, May 21, 2019. <https://www.straitstimes.com/asia/se-asia/prabowo-after-defeat-says-will-not-accept-indonesia-election-result>.

⁹¹ Nathalia, Telly. "Jakarta Police Investigate Death Threat Against Jokowi." *Jakarta Globe*, May 12, 2019. <https://jakartaglobe.id/context/jakarta-police-investigate-death-threat-against-jokowi/>.

discuss several alleged online treason cases. Given that all of these cases were not brought into the trial, the discussion in the following sections relied on the references of news portal as the primary resources.

2.2.2.1 . EGGI SUDJANA'S CASE

During the protest, police arrested some suspects for criminal conduct and assault on the ruling government. The earliest suspect that was investigated by police was Eggi Sudjana, a lawyer-cum politician who is also affiliated with the group that rejected the National Election result. His case was taken into account after a "People Power" declaration in order to rally against the National Election result.⁹² The "People Power" movement declaration was recorded in a video, where Eggi exhorted society to support the movement and protest. Eggi argued that the protest he addressed during his speech was the one that occurred on 9 and 10 May in front of the Election Supervisory Agency (*Badan Pengawas Pemilu-BAWASLU*). It was more of a peaceful protest instead of treasonous conduct⁹³. Despite his denial of his actions, Eggi is officially a suspect and will face a criminal trial.

The main charges for Eggi's conduct stem from his having narrated and encouraged a "people power" movement that wanted to reject any deceitful acts during National Election. The initial investigation flagged his action under the treason criminal provisions ruled in Articles 87 and 107 of the Criminal Code. However, Eggi was also charged with Article 28 Section 2 of the ITE Law at the beginning of his case investigation, which ruled about online hate speech⁹⁴. This provision charge was brought based on his speech that was recorded and disseminated on the Internet. It seems likely that online hate speech is the proper provision to charge Eggi; however, since it is not Eggi who created and posted his speech video, the online hate speech provision is not the correct ruling. All cybercrime sections under the ITE Law require a deliberate element to satisfy the conduct. That element is mostly attached to who is distributing, transmitting, and making it accessible⁹⁵.

Using an online hate speech provision is also not a correct criminal charge, as hate speech as a criminal act should be addressed toward a tribe, religion, race, and/or inter-groups⁹⁶. Eggi's speech was not about anything, despite his illogical action to encourage a rally protest. Even in the context of the Criminal Code's treason provisions, he was not undertaking any act that could threaten the current government because the "people power" movement specifically addresses the

⁹² Ghaliya, Ghina. "Police Arrest "People Power" Rally Instigator for Alleged Treason." *The Jakarta Post*, May 15, 2019. <https://www.thejakartapost.com/news/2019/05/15/police-arrest-people-power-rally-instigator-for-alleged-treason.html>.

⁹³ Wildansyah, Samsudhuha. "Kirim Surat Dari Tahanan Eggi Sudjhana Kembali Bantah Berbuat Makar." *Detik*, May 29, 2019. <https://news.detik.com/berita/d-4569045/kirim-surat-dari-tahanan-eggi-sudjhana-kembali-bantah-berbuat-makar>.

⁹⁴ Alfons, Matius. "Dipolisikan atas Dugaan Makar Eggi Sudjana datangi Polda Metro." *Detik*, April 26, 2019. <https://news.detik.com/berita/d-4525925/dipolisikan-atas-dugaan-makar-eggi-sudjana-datangi-polda-metro>.

⁹⁵ The Information and Electronic Transaction, 2008, Article 27 Section 3 (Indonesia).

⁹⁶ The Information and Electronic Transaction, 2008, Article 28 Section 2 (Indonesia).

National Election Agency. Eggi's action was part of his solely expressing his view about the National Election.

2.2.2.2 HERMAWAN SUSANTO'S CASE

In a viral video on May 10, Hermawan Susanto spoke directly to the camera phone, which recorded him threatening to behead President Jokowi. Hermawan was one of the people who joined a rally of protesters in front of the Election Supervisory Board (*Badan Pengawas Pemilu-BAWASLU*). This protest is encouraged by Eggi Sudjana. No longer than a week later, Hermawan was arrested by police and charged with treason.

Hermawan, in a viral recorded video, was saying:

*We, from Poso [of Central Sulawesi], are ready to behead Jokowi. Insya Allah, Allahu Akbar [God willing, God is the greatest]. We will behead him. Jokowi, be ready, [because] we from Poso will behead you in God's name.*⁹⁷

His action, when he said he was ready to decapitate Jokowi's head, was followed by angry emotional displays⁹⁸, as he also stated in a later apology letter he wrote for President Jokowi. However, law enforcement still pursues his case by charging him with Article 104 Criminal Code and Article 27 Section 4 of The ITE Law⁹⁹.

As stated earlier, all treasonous criminal acts' provisions rely on what is regulated under Article 87 regarding the "beginning of execution" and "harmful intention as the guilty mind" elements. Hermawan had already said he was thinking illogically because of anger, which was why he made such a threatening statement, even if he meant his words. He undertook no action even to start the murder process, but it was probably because the police had arrested him, and the viral effect scared him. The main question was if the threat to the President was imminent once Hermawan's video went viral, so he had to be charged by Article 104 and Article 27 Section 4.

Another drawback to this charge is that merely making threats without any actions taken would not satisfy the element of incapacitating the President's governing ability, as the guilty mind or intention to eliminate the President's ability must take on the form of such an action¹⁰⁰. Fulfilling those incapacitating actions also defines treasonous conduct, as regulated under Article 104.

Invoking Article 27 Section 4 of the ITE Law is equally improper. Despite its suitability over the online hate speech provision, this Article required a subjective element, the fear of being threatened, that can only be measured by the victim or potential victim. This is the same problem

⁹⁷ Coconuts Jakarta. "Prabowo Supporter Arrested for Saying He Wants To Decapitate President Jokowi During Protest, May Face Death Penalty." *Coconuts*, May 13, 2019. <https://coconuts.co/jakarta/news/prabowo-supporter-arrested-for-saying-he-wants-to-decapitate-president-jokowi-during-protest-may-face-death-penalty/>.

⁹⁸ Muthiarini, Dewi Elvia. "Police Reveal Reason Behind HS Threat to Behead Jokowi." *Tempo.co*, May 15, 2019. <https://en.tempo.co/read/1205700/police-reveal-reason-behind-hs-threat-to-behead-jokowi>.

⁹⁹ Tri Haryanto, Agus. "Awat! Sebar Video Ancam Presiden Kena UU ITE." *Detik*, May 14, 2019. <https://inet.detik.com/law-and-policy/d-4548232/awat-sebar-video-ancam-presiden-kena-uu-ite>.

¹⁰⁰ See Adami Chazawi, 12.

in Eggi's case: Hermawan was not the disseminator of the video, so the three elements of cybercrime under Article 27 Section 4 are not satisfied either.

Expressing the intent to kill someone, especially the head of the government, is illegal. However, the current legislation in Indonesia for treason is no longer contextual, as the Criminal Code itself was enacted in 1946. In this example of Hermawan, law enforcement seems to be trying to simplify the investigation without considering the chance that it will be completely verdict as a conviction. This kind of action taken by the police potentially poses the danger of a wrongful investigation, which unfortunately already happened and will be presented in the next case analyzed.

2.2.3. MUHAMMAD FAHRI'S CASE

Fahri committed the same crime as Hermawan, threatening to kill President Jokowi, but at a different time and place. He threatened this during the rally protest–cum-chaos in Jakarta on May 22. Fahri is currently being charged with treasonous acts and has already been arrested¹⁰¹. In the video, the suspect was walking along with his partner protester, as they claimed they were avoiding the police due to a lack of resources to answer the attack by the police. Fahri then yelled, “*Barbaric regime!*” addressing Jokowi's administration which had been criticized for committing injustices against Muslims. Fahri then stated that if he met Jokowi, he would like to kill the President, threatening to kill and curse Wiranto (the Indonesian Minister of Political, Law, and Security)¹⁰².

Unfortunately, before this suspect was arrested, a treason charge was issued against the wrong suspect: Teuku Yazhid, a college student who had a similar physical appearance and was even arrested. Indonesian police initially stated that they did not arrest the wrong person earlier. Instead, the arrest was needed to do a full investigation regarding vocal and facial forensics completely¹⁰³. For this incident, the treason provision charged to the suspect lacked the required elements for a conviction and pulled an innocent victim into this investigation. Furthermore, Fahri's treasonous act was charged with Articles 104 and 110 of the Criminal Code, a strange decision since the evidence collected for the criminal charge was the video of Fahri threatening Jokowi that spread on WhatsApp, an instant messaging application¹⁰⁴. If the police continued the investigation, the usage of those Criminal Code Articles would not be correct, as the Criminal Code does not regulate any crimes that occur in cyberspace. Based on the evidence, the proper legislation used for Fahri's act should be the ITE Law, with the ruling provided under Article 27 Section 4 for online threats.

¹⁰¹ R, Mei Amelia. “Pria Berserban Hijau Pengancam Bunuh Jokowi dan Wiranto Ditangkap!” *Detik*, May 24, 2019. <https://news.detik.com/berita/d-4564063/pria-berserban-hijau-pengancam-bunuh-jokowi-dan-wiranto-ditangkap>.

¹⁰² R, Mei Amelia R. “Cerita Muhammad Fahri, Perusuh 22 Mei yang Ancam Bunuh Jokowi.” *Detik*, June 11, 2019. <https://news.detik.com/berita/d-4581738/cerita-muhammad-fahri-perusuh-22-mei-yang-ancam-bunuh-jokowi>.

¹⁰³ Azhari, Jimmy Ramadhan. “Polisi Tegaskan Tak Salah Tangkap Pria yang Ancam Bunuh Jokowi dan Hina Wiranto.” *Kompas.com*, May 28, 2019. <https://megapolitan.kompas.com/read/2019/05/28/22125341/polisi-tegaskan-tak-salah-tangkap-pria-yang-ancam-bunuh-jokowi-dan-hina>.

¹⁰⁴ Briantika, Adi. “Polisi Tangkap Terduga Pelaku Pengancam Jokowi dan Wiranto.” *Tirto.id*, June 10, 2019. <https://tirto.id/polisi-tangkap-terduga-pelaku-pengancam-jokowi-dan-wiranto-ecaX>.

Even though using an online threat provision seems correct for this case, it might become another improper law to use within this case. The problem stems from the fact that, based on the explanation section of the ITE Law, Article 27 Section 4 only relies on Articles 368, 369, 370, and 371 of the Criminal Code for blackmail and threats¹⁰⁵. Furthermore, Article 27 Section 4 is more suitable when applied for a criminal deed committed towards a private citizen, not the President and Vice President.

2.2.4. HAIRIL ANWAR'S CASE

On his Facebook account that, was labeled with his pseudonym, Putra Kurniawan, Hairil Anwar, an adjunct teacher at elementary school, posted a hateful expression towards the President. His Facebook status said, "*Just kill that Jokowi dog, already!*", which he then admitted was addressing President Jokowi, and he wrote that merely to chime in with the heat of the political situation that occurred during and after the National Election¹⁰⁶.

Hairil was also already arrested on May 16 and charged with online hate speech under Article 28 Section 2 of the ITE Law. Slightly different from the other three cases analyzed in this section, no treason charge is brought against Hairil. However, invoking the online hate speech provision in the ITE Law is legally wrong since threatening to kill addresses Jokowi as the President, not as a private citizen. Online hate speech under the ITE Law is also an online hate expression based on a tribe, religion, race, or group of people, not a political reason, as in Hairil's case.

Based on the cases above, it is clear that the Indonesian criminal justice system lacks proper regulation for dissenting opinions, including treasonous conduct within cyberspace. The current cases' investigations also illustrate that the provisions are being artificially enforced to match the elements of crime required by the treason provisions in the Criminal Code or online hate speech in the ITE Law, due to the unclear scope of protected and unprotected expressions in the laws. If this situation continues, any expression that sounds unpleasant, even though not fall into the category of violating the limitation, will be prosecuted. Eventually, this will affect not only freedom of expression in Indonesia but also human rights in a broader context, particularly with the current and new Criminal Code that is still unclear on treason crime formulation and criminalizes dissenting views

2.3 GOING FORWARD WITH HUMAN RIGHTS DECOLONIZATION

In modern days, the universal value of human rights is still debated among scholars¹⁰⁷. One of the main questions on implementing human rights is due to the human rights treaties or other factors, such as economic growth and the fall of communism¹⁰⁸.

¹⁰⁵ The Information and Electronic Transaction, 2008, Elucidation Section of Article 27 Section 4 (Indonesia).

¹⁰⁶ Rinanda, Hilda Meilisa. "Guru Honorer yang Ancam Bunuh Jokowi sempat Tantang Polisi." *Detik*, May 19, 2019. <https://news.detik.com/berita-jawa-timur/d-4555600/guru-honorer-yang-ancam-bunuh-jokowi-sempat-tantang-polisi>.

¹⁰⁷ Lower, Matthew. "Can and Should Human Rights be Universal?" *E-International Relations*, December 1, 2013, <https://www.e-ir.info/2013/12/01/can-and-should-human-rights-be-universal/>.

¹⁰⁸ Posner, Eric. 2014. "The Case Against Human Rights." *The Guardian*, December 4, 2014. <https://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights>.

Under its Constitution, Indonesia claims as a democratic country in which human rights protection is the main element of democracy. Indonesia is also one of the state parties in the major human rights treaties. Indonesia ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social Rights (ICESCR) in 2005.

Unfortunately, Indonesia has still failed to provide adequate protection for human rights. Especially with treason laws on the current and new Criminal Codes and the ITE Law, Indonesia has not fully decolonised human rights, which is ironic. The ironic situation stemmed from the fact that despite Indonesia having ratified human rights treaties such as the ICCPR and ICESCR, the country has participated in the anti-imperialism movement as it failed to implement the human rights framework properly into the criminal law, in particular on the treason provisions.

The claim from the Indonesian government is that the new Criminal Code, which scheduled to be implemented in 2026, is decolonizing criminal law. However, given the fact that the upcoming treason law within the new Criminal Code provides a broader and extensive meaning of “*makar*,”¹⁰⁹ this could eventually lead to the existing problem of the abuse of the law’s implementation. While it is understandable that treason is a major threat to national security, regulating any criminal offense that could allegedly harm national security should be regulated with extreme care and strict requirements¹¹⁰.

The aforementioned strict requirements reflected in Article 19 Section 3 of the ICCPR, which is commonly known as the three-part test, where the restriction imposed based on national security should consider legality, legitimacy, and necessity principles. These principles should ideally be implemented in all laws that restrict expressions, including the ITE Law, although the ideal solution is to revoke unnecessary criminal provisions that harm freedom of expression.

3. CONCLUSION

By looking at the current criminal laws, especially the treason provisions, it is clear that the Indonesian legal system does not favour human rights protection. Despite the goal of drafting a new Criminal Code that can be a momentum to decolonize Indonesian criminal law towards better protection of human rights, Indonesia still fails to propose a proper law. The improper laws should not exist because they will harm democracy.

The amendment of the laws should be the main effort in aligning the current laws with the international human rights framework. It will be implemented in Indonesia’s compliance with international human rights treaties.

Moreover, Indonesia has been participating in the international human rights regime. Indonesia should reconsider and comply with the international human rights framework. Many of

¹⁰⁹ Rahman, Riyan, Lasmadi, Sahuri, and Usman, *Op Cit*, 541.

¹¹⁰ General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights, 2011, CCPR/C/GC/34 (United Nations).

the current provisions in the Indonesian criminal laws do not reflect the self-determination principle, which is one of the key aspects of the international human rights framework¹¹¹.

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¹¹¹ Eckel, Jan. "Human Rights Decolonization: New Perspectives and Open Questions." *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*. Vol. 1, Number 1 (2010): 112.

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