

THE CRIME OF TREASON COMMITTED JOINTLY FROM THE PERSPECTIVE

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Abstract

In general, treason is an action carried out by a person or group of citizens by questioning the legal order that applies in a country. They took this action because of dissatisfaction with the administration of government, so that citizens carried out various actions that were against the law. Or it can be said to be a discrepancy between an individual or group of people and government regulations. The problems in this journal are how to prove unlawful acts committed jointly by the perpetrators of the crime of treason (Aanslag) in crimes that threaten state security and how each perpetrator of treason is held accountable in the judge's decision in Decision Number 23/PID/2020 /PT.AMB and Decision Number 24/PID/2020/PT. AMB. The research method is carried out using the normative legal method because it describes the applicable laws and regulations and is linked to legal theories in the practice of implementation related to problems that will be researched using this method as well, it will describe/describe the facts that actually occur as reflection of the implementation of statutory regulations and legal principles linked to legal theories and implementation practices. Based on this research, it can be understood that the benchmark for determining whether an act is considered treason is an act that is indicated to endanger the head of state or head of government so that the head of state or head of government is unable to carry out his duties properly. The criminal liability of the perpetrators of the crime of treason is joint responsibility based on Article 106 of the Criminal Code in conjunction with Article 55 paragraph (1) 1 of the Criminal Code, namely those who committed, ordered to commit, and participated in committing the criminal act.

Keywords: Crime of Treason, Criminal Code, Perspective

INTRODUCTION

In general, treason is an action carried out by a person or group of citizens by questioning the legal order that applies in a country. They took this action because of dissatisfaction with the administration of government, so that citizens carried out various actions that were against the law. Or it can be said to be a discrepancy between an individual or group of people and government regulations.

In the Big Indonesian Dictionary (KBBI), treason means cunning, deception, acts (attempts) with the intention of attacking (killing) people and acts (attempts) to overthrow a legitimate government. Treason against the state and government is a dangerous criminal act that threatens the preservation of the nation. The legal order that must be protected in this case is state security including the security of the head of state, the security of state territory and the security of the form of state government.

The term *Makar* itself is in Dutch (*aanslag*) which literally means attack or attack, contained in the Criminal Code, namely Articles 87, 104, 106, 107, 110, and 139a, 139b, 140. Treason contained in Articles 139a, 139b, and 140 is not included in the chapter regarding crimes against state security, but is included in crimes against friendly countries and towards heads of friendly countries and their representatives.

The issue of legal regulations related to the crime of treason has actually been controversial for a long time. The articles in the Criminal Code which regulate the crime of treason are sometimes seen as a tool to silence the public's critical attitude towards the government. Perhaps this is due to the absence of an official interpretation regarding the treason articles in the Criminal Code, so that it is sometimes considered to have the potential to cause violations of democratic rights, especially in demonstration, opinion or expression activities which are basically guaranteed by the Constitution of the Republic of Indonesia. 1945 (1945 Constitution of the Republic of Indonesia) and the UN Universal Declaration of Human Rights.

The criminal acts of treason and rebellion as contained in Articles 104, 106, 107 and 108 of the Criminal Code expand the application of criminal law norms to the acts that precede them, namely acts of conspiracy, treason and rebellion. This expansion of the legal norms for treason and rebellion is regulated in Article 110 of the Criminal Code:

1. Evil conspiracy to commit crimes according to articles 104, 106, 107 and 108 is punishable based on the criminal threats in these articles.
2. The same punishment is applied to people who, with the intent under articles 104, 106 and 108, prepare or facilitate a crime:
 - 1) trying to mobilize other people to commit, order to commit or participate in committing in order to provide assistance when committing or provide opportunities, means or information to commit a crime;
 - 2) trying to obtain the opportunity, means or information to commit a crime for oneself or another person;
 - 3) has a stock of items that he knows are useful for committing a crime;
 - 4) prepare or have a plan to carry out a crime with the aim of informing other people;
 - 5) attempting to prevent, obstruct or thwart actions taken by the government to prevent or suppress the commission of crimes.
- 3) The goods as referred to in point 3 of the previous paragraph can be confiscated.
- 4) No person will be punished whose intention is only to prepare or expedite constitutional changes in a general sense.
- 5) If in one of the cases as intended in paragraphs (1) and (2) of this article, a crime actually occurs, the penalty can be doubled.

In this research the author conducted a study of decisions related to the crime of treason (*Aanslag*) which were carried out jointly in decision number 23/Pid/2020/PT.Amb and decision no. 24/Pid/2020/PT Amb with the Defendant Markus Noya Alias Maku have been legally and

convincingly proven guilty of committing the crime of Conspiracy to commit the crime of treason which commits or participates in committing acts as regulated and is punishable by violation of Article 110 paragraph (1) of the Indonesian Criminal Code . Article 55 paragraph 1 1 of the Criminal Code. Sentenced the defendant Markus Noya Alias Maku to a prison sentence of 5 (five) years reduced by the time the defendant was in custody with the order that the defendant be detained. Charge the defendant at both levels of court at the appeal level a case fee of IDR 5,000.00 (five thousand rupiah);

Furthermore, Decision No. 24/Pid/2019/PT Amb with the defendant Izaak Josias Siahaya alias Bapa Cak mentioned above, were legally and convincingly proven guilty of committing a criminal act together in carrying out an agreement for the crime of treason who committed or participated in committing the act as regulated and was threatened with a crime of violating article Article 110 paragraph (1) of the Criminal Code Jo. Article 55 Paragraph (1) 1st of the Criminal Code. Sentenced the Defendant Izaak Josias Siahaya alias Bapa Cak to prison for 5 (five) years and 6 (six) months, determined that the period of arrest and detention that the Defendant had served was deducted entirely from the sentence imposed and ordered that the Defendant remain detained and Charges case costs at both levels of court to the Defendant at the appeal level in the amount of Rp. 2,500.00 (two thousand five hundred rupiah).

The problem formulation is as follows;

1. How to prove unlawful acts carried out jointly by the perpetrators of the crime of treason (Aanslag) in crimes that threaten state security?
2. What is the responsibility of each perpetrator of treason in the judge's decision in Decision Number 23/PID/2020/PT.AMB and Decision Number 24/PID/2020/PT. AMB?

The theory used to examine the problems in this research is:

1. Penal System Theory

According to LHC Hulsman, the "sentencing system" or "the sentencing system" is "the statutory rules relating to penal sanctions and punishment". Meanwhile, according to Barda Nawawi Arief, if the definition of the criminal system is interpreted broadly as a process of administering or imposing punishment by a judge, then it can be said that the criminal system includes the following:

1. The entire system (legislative rules) for punishment;
 2. The entire system (legislative regulations) for the imposition/imposition and execution of criminal penalties;
 3. The entire system (legislative regulations) for the functionalization/ operationalization/ concretization of criminal law;
 4. The entire system (legislation) that regulates how criminal law is enforced or operationalized concretely so that someone is given sanctions (criminal law).
- #### 2. Theory of Criminal Responsibility

The basis of criminal liability is error, where the error can be intentional (opzet) or negligent (culpa). This shows that the basis for accountability for a person's actions is placed in the concept or rationale for whether the elements of a criminal act are proven or not. If the elements of a criminal act are proven, the guilt is also proven and the person will be punished accordingly, so that criminal responsibility is attached to the elements of the criminal act.

RESEARCH METHODS

This research has the character of normative legal research because it describes the applicable laws and regulations and is linked to legal theories in the practice of implementation related to the problem. It will be researched using this method as well, it will describe/describe the facts that actually occur as a reflection of the implementation of statutory regulations and legal principles linked to legal theories and implementation practices.

Normative Legal Research is an activity that will examine internal aspects (to resolve existing problems) of positive law. This is done as a consequence of the view that law is an autonomous institution that has no relationships.

DISCUSSION

Proving unlawful acts committed jointly by the perpetrators of the crime of treason (Aanslag) in crimes that threaten state security

Treason against the State and the State's form of government is a dangerous criminal act that threatens the preservation of the Indonesian nation and State. The order that must be protected in this case is state security which includes the security of the Head of State, the security of the State territory and the security of the form of State Government.

The word treason only has meaning when it is associated with an act intended by the perpetrator. So what constitutes a legal concept is "treason" in sentences such as "treason with the intent to assassinate the president or vice president"; "treason with the intention of separating part of the State's territory"; "treason with the intention of overthrowing the government". This is also made clear by the provisions of Article 87 of the Criminal Code which in this article states that acts of treason regulated in Article 104, Article 106, Article 107 and Article 140 of the Criminal Code only exist or can only be said to be treason if there is "beginning of implementation". So the article determines that the crime of treason is only deemed to have occurred if the commission of the person committing the treason has begun. The crime of treason itself is a crime that is specifically formulated ("successful treason" and "treason" that are unsuccessful are regulated by the same article) because this crime is classified as a very dangerous crime because it can threaten the security of a country.

In the Draft Criminal Code, the crime of treason is formulated in Articles 215 to Article 220. From these provisions it can be seen that the crime of treason is grouped as follows, namely:

Treason against the president and vice president, treason against the Unitary State of the Republic of Indonesia, and treason against the legitimate government. In the group of criminal acts of treason against the legitimate government, apart from the regulation of the crime of treason, this group also includes the crime of rebellion, namely every person who opposes the legitimate government by taking up arms; or with the intention of opposing the legitimate government, moving together or uniting oneself with a group that is opposing the legitimate government by taking up arms.

In this article, those who wish to be protected from criminal acts are the president or vice president. Therefore, the perpetrator of the criminal act must know or at least be aware that the person being targeted in committing this criminal act is the president or vice president. The goal is to kill them, deprive them of their freedom, or make them incapable of governing. Meanwhile, what is meant by "depriving of independence" also includes continuing the deprivation of independence. Furthermore, what is meant by "rendering incapable of running the government" is any act other than killing or taking away liberty, so that the president or vice president is unable to carry out their constitutional duties.

The crime of treason in Indonesia has experienced developments in its formulation, starting from the first phase, to the final phase. These phases contain the social, legal and political conditions that influence the regulation of the crime of treason. In the first phase, the legal instrument used is Article 107 of the Criminal Code (KUHP). As is known, the Criminal Code. is a Dutch WvS adopted by the Indonesian government.

Furthermore, in the second phase, the legal instrument used by the government in relation to the crime of treason is Law Number 20 of 1946 concerning Imprisonment Punishments. Law Number 20 of 1946 emerged as the post-independence situation was filled with domestic

turmoil. The regulation of the crime of treason in this second phase tends to be focused more on minimizing domestic turmoil with a reactive government attitude.

In the third phase, the legal instrument used by the government was Presidential Decree Number 11 of 1963 which was subsequently made into a Law based on Law Number 5 of 1969. The legal instrument in this phase became known as the Law on the Eradication of Subversion Activities (UUPKS). As is known, the Law on the Eradication of Subversive Activities (UUPKS) originates from Presidential Decree No. 11 of 1963 which was originally issued by the Old Order Government (second phase) to safeguard the unfinished revolution.

The crime of treason is regulated in Book Two of the Criminal Code (Crimes) in Chapter I concerning Crimes Against State Security in articles 104 to article 129. If traced, in a narrow sense, treason includes crimes against the President and Vice President, crimes against the government or government bodies and rebellion.

One of the issues that needs to be studied is the interpretation of the term treason which is said to come from the word aanslag which means "attack". The word "attack" also has various interpretations, namely it can mean a physical attack or a non-physical attack. Some people interpret the word "attack" as "violence" and it doesn't have to be "violence".

As one example, in the perspective of Article 104 of the Criminal Code regarding treason with the intention of taking life or taking away liberty, or eliminating the ability of the president or vice president to run the government. Treason in this article does not always have to mean a physical attack, but can also mean a non-physical attack, for example by putting poison in food and drink, or in other ways that can make the president or vice president unable to run the government. Basically, the crime of treason as intended in Article 104 of the Criminal Code cannot be concluded with a meaning that is too broad. Just as if the crime of treason is interpreted with a meaning that is too broad, such as being interpreted as a form of "attack", then the element of intention, the initial act of implementation and the element are aimed at eliminating the life of the President/Vice President or eliminating their independence or making them incapable of governing must exist.

Thus, it can be concluded that aanslag (treason) is an offense in which there are only two elements, namely intention and the beginning of implementation. Meanwhile, an attempt as regulated in Article 53 of the Criminal Code has three elements, namely intention, beginning of implementation, and the beginning of implementation is not stopped because of the perpetrator's desire alone. So if we refer to the interpretation of treason as regulated in Article 87 of the Criminal Code, even though this interpretation is unsatisfactory, it can at least be used as a juridical basis. Article 87 of the Criminal Code is in book one. The first book is a general rule which lays down the foundations or principles of norms, so that the first book does not regulate offenses which are punishable by criminal law, but contains explanations of several offenses.

Accountability of Each Treason Perpetrator in the Judge's Decision in Decision Number 23/PID/2020/PT.AMB and Decision Number 24/PID/2020/PT. AMB.

According to Hans Kelsen, a concept related to the concept of legal obligation is the concept of legal responsibility. That a person is legally responsible for certain actions or that he is responsible for a sanction if his actions conflict.

Based on the judge's decision Number 23/Pid/2020/PT.AMB, the defendant Markus Noya Alias Maku on Saturday, June 29 2019, at around 10.15 WIT. or at least at some time in June 2019 at the defendant's house which is located in Hulalui Sector III Village, Pulau Haruku District, Central Maluku Regency or at least in a place that is still included in the legal area of the Ambon District Court which carries out the ordered to do it or participated in doing it either individually or together with witness Pelpina Siahaya alias Ibu Peli, witness Johan Noya alias Jon, witness Basten Noya alias Basten and witness Izaak Josias Siahaya alias Bapa Cak (whose

respective files were submitted separately) has carried out an evil conspiracy to commit the crime of treason as regulated in article 106 of the Criminal Code, namely with the intention that all or part of the State Territory falls into the hands of the enemy or separates part of the Territory of the Unitary State of the Republic of Indonesia.

Considering, that after carefully examining, reading, studying and reviewing the case files as well as the minutes of the trial and the official copy of the decision of the Ambon District Court, Number 454 /Pid.B/ 2019/PN Amb., dated 19 March 2020, along with the evidence and letters letter in the case file, the Panel of Judges of the Ambon High Court is of the opinion that the legal considerations given by the Panel of Judges of the Ambon District Court on each element of Article 110 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph 1 of the 1st Criminal Code, are appropriate and correct, and the considerations is taken into consideration in examining, deciding and adjudicating at the appeal level;

Whereas, however, the Panel of Judges at the Ambon High Court, does not agree with the length of sentence imposed by the Panel of Judges of First Instance, for legal reasons, in imposing a sentence on the Defendant, the Panel of Judges of First Instance did not take into consideration the condition of the Defendant who is already elderly;

That the Panel of Judges at the Ambon High Court is of the opinion that a criminal decision must not be seen solely as an attempt at revenge, but a decision must feel fair and beneficial, and a decision can only provide a sense of justice and benefit, if it is constructed on a juridical and philosophical basis. as well as sociological, therefore at the appeal level, the condition of the Defendant who is elderly is considered as a mitigating factor in imposing a sentence on the Defendant, so the aggravating and mitigating factors in imposing a sentence on the Defendant are as follows;

Aggravating things:

- The defendant disturbed the stability and security of the State;
- The Defendant's actions caused unrest in society;

Mitigating factors:

- The defendant frankly admitted his actions;
- The defendant was polite during the trial;
- The defendant has family responsibilities;
- The defendant has never been convicted;
- The defendant is elderly;

The judge applies Article 106 of the Criminal Code with considerations based on the elements contained in Article 106 of the Criminal Code, namely the element with intent which means there is a personal intention of the perpetrators to bring all or part of the country's territory under foreign rule or to separate part of the country's territory, which means that the perpetrator The person must have knowledge that the plot he committed was indeed intended to bring all or part of the country's territory under foreign rule or to separate part of the country's territory.

In connection with the theory of punishment used in writing this thesis, punishment is an action against perpetrators of criminal acts so that they do not commit the same criminal acts again. Punishment is not an effort to take revenge but rather as an effort to educate the perpetrators and as a prevention effort so that criminal acts do not happen again, as well as to create security in society.

In relation to the theory of criminal responsibility used in this research, a person can only be held responsible for actions committed by the defendants which constitute unlawful acts. The prison sentence of 9 months imposed by the judge on the defendants and 8 months is appropriate, if it is related to Jan Rammelink's opinion, that even if the perpetrator is not a participant, it is understandable why he needs to be named.

Its connection to the theory of criminal responsibility determines whether the perpetrators are able to take responsibility for their actions or not. Criminal responsibility must consider at least three things, namely, firstly, the responsible ability of the perpetrator, namely the psychological condition of the perpetrator, secondly, the relationship between the perpetrator's inner attitude and his actions, and thirdly, whether there are reasons that eliminate the perpetrator's responsibility.

The judge has seen based on the facts at trial that the perpetrators of the crime of treason were aware and knew that the actions they committed could be punished and the perpetrators were also able to differentiate between good and bad things, in which case the defendants admitted openly about their actions. and pleaded guilty and pleaded no contest. In its implementation, the judge took into account the facts before the court that the perpetrators had fulfilled the elements of the crime of treason as contained in Article 106 of the Criminal Code and sentenced the perpetrators to prison sentences of 9 months and 8 months.

Furthermore, regarding the sentence imposed on the perpetrator, the author is of the opinion that the perpetrator's actions should not be subject to Article 106 of the Criminal Code Jo. Article 55 of the Criminal Code, however, should be subject to Article 106 Jo. Article 87 of the Criminal Code regarding the act of treason is accompanied by attempted treason itself, as Andi Hamzah believes that "The provisions regarding aanslag (which is translated 'treason') need to be reviewed in the national Criminal Code and returned to the original provisions of 'attempt (pogging attend)'. So it can be said that the relationship between the act of treason and the element of attempt in the act of treason is very continuous, because they cannot be separated from one another.

CONCLUSION

The benchmark for determining whether an act is considered treason is an act that is indicated to endanger the head of state or head of government so that the head of state or head of government is unable to carry out his duties properly.

The criminal liability of the perpetrators of the crime of treason is joint responsibility based on Article 106 of the Criminal Code in conjunction with Article 55 paragraph (1) 1 of the Criminal Code, namely those who committed, ordered to commit, and participated in committing the criminal act.

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