

## Conference Paper

# Study of Legal History: Traces of Setting Crimes Against the President in the Criminal Code

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**Abstract.**

The regulation of crimes against state security in Chapter I Book II of the Criminal Code (KUHP), especially regarding crimes against the president (and or vice president) has undergone various interpretation efforts related to its meaning and urgency; hence it is necessary to use a legal history approach. Study the law to understand whether or not the regulations regarding crimes against the president (and or vice president) are relevant in the reform era. This normative juridical research examines the history of the regulation of crimes against the president (and or vice president) in Indonesia, using primary legal materials in the form of the Criminal Code contained in Law (UU) No. 1/1946 in conjunction with Law No. 73/1958 and secondary legal materials in the form of various literature related to the problems studied. By using a statutory approach and a historical approach, an assessment of the legal issues is carried out using the prescriptive analysis method and the content analysis method.

**Keywords:** legal history, crimes against the President, criminal code

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## 1. INTRODUCTION

In the reform era in Indonesia, the social life of the nation and state in the field of state security law entered a condition that required wisdom in setting, implementing, and enforcing the law.[1] Due to the provisions in the field of state security law that have been applied to capture crimes against state security, especially regarding crimes against the president (and or vice president) whose arrangements are found in the Criminal Code (KUHP) and outside the Criminal Code, has experienced various attempts at interpretation related to its meaning and urgency, which are contained in various legal opinions, including those contained in various legal literature and those contained in the decision of the Constitutional Court of the Republic of Indonesia (MKRI) Number 013-022/PUU-IV/2006, Decision of the Constitutional Court of the Republic of Indonesia (MKRI) Number 50/PUU-VI/2008, MKRI Decision Number 31/PUU-XIII/2015.

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The current Criminal Code in Indonesia is a legacy of the Dutch East Indies government which has been full of the interests of the colonial rulers since 1918, but was still enforced after the independence of the Republic of Indonesia in 1945, so it was felt necessary to reform the law to accommodate the beliefs and legal awareness of an independent nation. by reviewing the regulation of criminal acts in the Criminal Code.

Along with the development of the discussion of the Draft Criminal Code (RKUHP) at the House of Representatives of the Republic of Indonesia (DPR RI) which led to the fact that there were efforts to reorganize several articles on crimes against the president (and or vice president), it was felt necessary with a legal history approach, a legal review is carried out in relation to whether or not the regulations regarding crimes against state security are still relevant, especially regarding crimes against the president (and or vice president) in Chapter I of Book II of the Criminal Code (KUHP) in the reform era.

## 2. METHODOLOGY/ MATERIALS

This research is normative juridical research [2] that examines the history of the regulation of crimes against the president (and or vice president) in Indonesia, using primary legal material in the form of the Criminal Code contained in Law Number 1 of 1946 in conjunction with Law Number 73 of 1958 concerning Crimes against state security in particular. regarding crimes against the president (and or vice president) in Chapter I of Book II of the Criminal Code, and secondary legal materials in the form of various literature related to the issues studied. By using a statutory approach and a historical approach, an assessment of the legal issues is carried out using the prescriptive analysis method and the content analysis method.[3]

## 3. RESULTS AND DISCUSSIONS

### 3.1. Legal Basis for Regulating Crimes Against State Security

The legal history of the regulation of crimes against state security, especially regarding crimes against the president (and or vice president) in Indonesia, can be found in the Criminal Code and outside the Criminal Code, but the study is only directed at the arrangements in the Criminal Code.[4][5] Actually, the Criminal Code in Book II on Crime, has been scattered in several chapters providing regulations on various crimes that can be categorized as threatening the President (and or the Vice President), but this article will only limit the study to those related to crimes against state security, especially

regarding crimes against the president (and or vice president) in Chapter I Book II of the Criminal Code.

The current Criminal Code in Indonesia is a legacy of the Dutch East Indies government which was full of the interests of the colonial rulers, but was still enforced after the independence of the Republic of Indonesia. It is constitutionally and hierarchically still declared valid in Indonesia based on the following provisions:

- a. Article II Transitional Rules of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), juncto
- b. Article I Transitional Rules of the 1945 Constitution of the Republic of Indonesia after the amendment in 2002
- c. Law Number 1 of 1946 concerning Criminal Law Regulations, juncto
- d. Law Number 73 of 1958 concerning Criminal Law Regulations for the Entire Territory of the Republic of Indonesia and Amendment to the Criminal Code.

In Article II of the Transitional Rules of the 1945 Constitution, it is stated that "all existing state bodies and regulations are still in effect immediately, as long as new ones have not been promulgated according to this Constitution". So in the field of criminal law that was applied at that time was *Wetboek van Strafrecht voor nederlandsch Indie* which had been changed by the government of the Japanese occupation Army, because when they were in power in Indonesia they still used the applicable regulations by providing some additional changes that were deemed necessary for Japanese rule.

So that in the early years of the independence of the Indonesian state after 1945 to 1958 the dualism of the Criminal Code, namely the *wetboek van Strafrecht voor Indonesie* resulted from *Staatblaad no.135 of 1945* which was enforced by the Government of the Dutch East Indies for the Dutch East Indies and the Criminal Code as a result of the Act. No.1 of 1946, both of which were sourced from *Staatblaad 732 of 1915* regarding *Wetboek van Strafrecht voor Nederladsch Indie*, which came into force on January 1, 1918 in the Dutch East Indies. The two Criminal Codes have each made their own changes. The dualism of the criminal law legal system was only ended with the issuance of Law no. 73 of 1958 which states that Law no. 1 of 1946 applies to all regions of Indonesia.

The Government of the Netherlands Indies Runaway in Australia (in the city of Brisbane), has made changes to *Wetboek van Strafrecht voor Nederladsch Indie* to become *wetboek van Strafrecht voor Indonesie*, which applies to areas other than Java and Madura, which are better known as "Brisbane Ordonantie". Changes were made by the "Brisbane Ordonantie", especially on crimes against state security.

While the Government of the Republic of Indonesia through Law no. 1 of 1946 concerning the Criminal Code, has made several changes to the *Wetboek van Strafrecht voor nederlandsch Indie* which took effect on January 1, 1918 in the Dutch East Indies and was reinstated by the Japanese occupation government since March 8, 1942 in the Dutch East Indies, with the name *Wetboek van Strafrecht Voor Nederlandsch Indie* became *Wetboek van Strafrecht* or also known as the Criminal Code (KUHP). UU no. 1 of 1946 gave the power to adapt the material of the Criminal Code to the conditions of the Indonesian state. It can be seen in the provisions in Article V, which states: "Criminal law regulations, which are wholly or partly currently not implemented, or are contrary to the position of the Republic of Indonesia as an independent country or have no meaning anymore, must be considered wholly or partially invalid". According to article XVII, Law No. 1 of 1946 applies to Java and Madura, followed by Jakarta and parts of the island of Sumatra.[6]

The dualism of the criminal law system continues, even though sovereignty is fully in the hands of the Indonesian government, both *de jure* and *de facto*.[7] This is because during the United States of Indonesia (RIS) through the RIS Constitution (when the Unitary State of the Republic of Indonesia became one of the states of the RIS State) and through the 1950 Constitution during the Unitary State of the Republic of Indonesia (NKRI) after the dissolution of the RIS state, it still applies all existing regulations before the new regulations, so that both the Criminal Code and *Wetboek van Strafrecht voor Indonesie* still apply side by side in their respective regions within the territory of Indonesia.[8]

### 3.2. Crimes Against National Security

As is well known, the Criminal Code divides all types of criminal acts into crimes and violations. Book II contains all types of crimes and Book III all types of violations, this is based on the premise that crime is *Rechtsdelicten* and violations are *wetsdelicten*. It means:

*"Rechtsdelicten*: Acts that are felt to have an unfair nature, are reasonable to be punished, even though there is no law that prohibits and threatens punishment.

*"Wetsdelicten*: actions can be punished, because these acts are expressly stated in the law as prohibited and are threatened with punishment."<sup>[9]</sup>

In addition to the above opinion, among writers of criminal law, there is almost an opinion that the difference between these two groups of criminal acts is not "qualitative", but only "quantitative", namely "crimes that are generally threatened with heavier

penalties than violations and this seems to be based on the more serious nature of the crime than the offense.” In essence, various criminal acts formulated in the Criminal Code are considered to violate various interests protected by law (rechtsbelangen). What is meant by legal interests are the interests of individuals, the interests of the community, and the interests of the state.

Regarding crimes against the interests of the state in the Criminal Code, it can be divided into 2 parts, namely “first, 4 titles regarding the position of the state, namely titles I, II, III and IV; and second, 2 titles regarding the actions of state instruments, namely titles VIII and XXVIII”. One of the crimes against the interests of the state concerning the position of the state, in the form of crimes against state security contained in Chapter I of Book II of the Criminal Code.[9]

In the previous description, it has been stated that the scope of crimes against state security includes political crimes. In the legal literature, political crimes must be distinguished between crimes directed against the government and crimes committed by the government. In this regard, it is necessary to state an opinion stating:

“Crimes against the government can be in the form of violence which is a protest against the policies implemented by a government, the desire to change the structure of the government outside the constitution and so on. Meanwhile, crimes committed by the government can be in the form of attacks or threats to the human rights of citizens, crimes related to the abuse of authority, and so on”[6]

### 3.3. Crimes Against Heads of State in the Criminal Code.

Wetboek van strafrecht which is also called the “KUHP resulting from the Act. 1 of 1946”. gives the power to adapt the material of the Criminal Code to the conditions of the Indonesian state, then with Law no. 73 of 1958 applies to all regions of Indonesia, meaning that throughout Indonesia the Criminal Code as a result of the amendment to Law no. 1 of 1946 from Wetboek van Strafrecht voor Nederladsch Indie which was enforced in the Dutch East Indies.

Regulations regarding crimes against the president (and or vice president) in Indonesia, can be found in the Criminal Code which are scattered in several chapters, within the scope of crimes against state security especially regarding crimes against the president (and or vice president) are regulated in Chapter I Book II of the Criminal Code and in different chapters regarding crimes against the dignity of the President and Vice President are regulated in Chapter II Book II of the Criminal Code.

### 3.4. ad. 1. Pasal 104.

Article 104 of the Criminal Code reads: "Treason with the intention of taking life, or depriving independence, or negating the ability of the President or Vice President to run the government, is threatened with capital punishment or life imprisonment or temporary imprisonment for a maximum of 20 (twenty) years."

If it is further detailed, the formulation of the crime in Article 104 of the Criminal Code has objective and subjective elements as follows:

- 1). Subjective elements, consisting of:
  - a. Makar
  - b. With the intention of:
  - c. Kill
  - d. Depriving independence:
  - e. Unable to run the government:
- 2). Objective elements: are the President and Vice President

From article 104 it is known that there are three kinds of criminal acts:

1. treason committed with the aim (oogmerk) to kill the Head of State;
2. treason committed with the aim of eliminating the independence of the Head of State;
3. treason carried out with the aim of making the Head of State unable to run the government.[10]

In relation to article 104, several things need to be studied further, including:

#### **a) Makar**

Article 104 as the first article of the title I Book II of the Criminal Code contains a criminal act in the form of treason. The term treason is a term that comes from the Dutch language aanslag. In formal juridical terms, the term treason is not given a specific meaning. There is no definition of the term treason in the Criminal Code itself. Etymologically treason can be interpreted in various senses, namely attacks (aanval) or attacks with bad intentions (misdadige aanrading).[11]

However, it should also be noted that the term attack or assault with bad intentions should not always be interpreted as an act of violence, because included in that context are all actions taken to harm certain legal interests of the President or Vice President, such as the legal interests of the President or Vice President. life, legal interests over

the body, and also includes legal interests for freedom of movement, in the context of carrying out their duties as state duty bearers.

**b). Taking life**

In the case of the 1st crime, taking life has the same meaning in the crime of murder in general. If it is a Head of State who will be killed, the trial of Article 53 of the Criminal Code is already a criminal act that has been completed from Article 104, so it is the same as if the Head of State has been killed. Even though the perpetrator stopped halfway voluntarily, he was still guilty of this treason.

**c). Seizing independence**

With regard to the element of depriving liberty, it should be noted that the notion of depriving liberty in this context has the same meaning as depriving liberty in the context of Article 333 of the Criminal Code. Thus, depriving one's liberty is defined as intentionally and unlawfully depriving someone of their liberty or continuing the deprivation of liberty.

Regarding this 2nd crime, it can be noted that Article 333 contains not only the crime of detaining people, but also the crime of continuing to detain people (van de vrijheid roofd houden). And the act of continuing the detention of this person is not mentioned in Article 104, which causes if the detention of the Head of State is continued by someone other than the original perpetrator, then this other person can only be blamed for violating Article 333 of the Criminal Code with a maximum sentence of eight years in prison.

**d). Makes unable to rule**

Regarding the act of making the Head of State incapable/unable to run the government, in the absence of an explanation in the Criminal Code it can be interpreted broadly, which results in the Head of State being not only physically, but also psychologically or in despair, unable to control himself anymore. run the government.[12]

It should be noted that because in the Criminal Code there is no limit on when treason is deemed to have occurred, it is deemed necessary to link the definition of treason above with the provisions of Article 87 of the Criminal Code. which states: "It is said that there is an act of treason to commit an act, if the intention for that has been proven from the beginning of the implementation, as referred to in Article 53".

Thus, based on the provisions of Article 87 of the Criminal Code above, it is concluded that for the occurrence of treason, two things are required, namely:

1. There is intention.

2. There is a start of implementation as referred to in Article 53 of the Criminal Code.[13]

According to Roeslan Saleh, the initial element of implementing Article 53 of the Criminal Code must be distinguished between preparatory actions and implementing acts. So if the treason is a preparatory act, then it is not punished, while if the treason already has an act of execution, it can be punished.

Cases related to article 104, among others, are as follows:

The South Jakarta District Court in 2003 sentenced Abu Bakar Ba'asyir to four years in prison for guilty of treason because he was associated with the JI leader who was accused of being the mastermind behind the 2000 Christmas Bombing Case, planning to kill Megawati Sukarnoputri who was then vice president and based on facts. Legal facts are related to Abdullah Sungkar, who was declared to undermine the authority of Pancasila / rejects Pancasila as the sole principle.

### 3.5. Ad.2 Pasal 107

The provisions in Article 107 of the Criminal Code states:

1. Makar with the intention of overthrowing the government, shall be punished by a maximum imprisonment of fifteen years.
2. The leader and organizer of treason as referred to in paragraph (1) shall be punished with life imprisonment or imprisonment for a certain period of time, a maximum of twenty years.

If it is further detailed, then the criminal acts of treason as regulated in Article 107 of the Criminal Code are divided into two types, namely the perpetrators of the crime of treason and the leaders and regulators of the treason. Article 107 (1) of the above KUHP has the following elements:

1. The objective element, which consists of:

Makar with the intent:

- Kill the President or Vice President.
- Depriving the President or Vice President of independence.
- Making the President or Vice President incapable of running the government.

1. Subjective elements:



Overthrow the government.

The act of treason in Article 107 (1), basically in the form of the initial form of implementation (of an act) as referred to in Article 53 (1) in order to achieve the goal of overthrowing the government or the overthrow of the government, does not need to be in the form of acts that are so powerful with violence using weapons. It is enough, for example, by forming an organization with its tools such as articles of association, work programs, goals to be achieved, and so on, all of which form activities lead to a larger goal, which is to overthrow the legitimate government.

Regarding what is actually meant by overthrowing the government, it can be seen from the provisions contained in article 88 bis, which states: "By overthrowing the government (omwenteling), it means to nullify or illegally change the form of government". "government" (omwenteling) is interpreted by article 88bis as destroying or illegally changing the form of government according to the constitution. As R. Soesilo argued, overthrowing the government has the meaning of destroying or replacing in an illegal way the structure of government that is based on the Constitution in the Republic of Indonesia[13].

In order to provide an understanding of the criminal acts regulated in Article 107 of the Criminal Code, it is appropriate to put forward an authentic interpretation of the legislators regarding the word overthrow (government) as referred to in Article 107 of the Criminal Code. Based on the authentic interpretation, Tongat concluded that the act of treason as regulated in Article 107 of the Criminal Code consists of acts of treason committed with the intention of causing:[11][14]

1. the destruction or change of the form of government according to the Constitution in a way that is not legal according to the law.
2. the destruction or alteration of the procedure for the replacement of the head of state (president, pen.) according to the Basic Law in an illegal manner according to the law.
3. the destruction or alteration of the procedures in the form of the Indonesian government according to the Constitution in a way that is not legal according to the law.[13]

Meanwhile, Adami Chazami concludes that there are two authentic interpretations of the meaning of overthrowing the government, namely:

1. To abolish the government, which means to make the Republic of Indonesia no longer have a government, or that government to disappear or be destroyed.

2. Changing the form of government according to the law is illegal, meaning that the change in the form of government is not according to the existing laws and regulations. The result or consequence of the act of changing is in the form of a government that has changed its form, so there is still a government, what is missing is the original or old form of government.[15]

Based on the provisions of Article 107 (2) of the Criminal Code, it is concluded that the crime of treason with the intention of overthrowing the government is usually carried out by certain groups or gangs, where there are always people who act as leaders and those who are led.[10] And paragraph 2 of article 107, stipulates a more severe punishment for the leader or person who regulates the plot, with life imprisonment or a maximum temporary sentence of 20 years. It is understandable that the exacerbation of the movers or their leaders is because the involvement (objective or subjective) in the treason activity is much stronger than that of its members or other people. So that the guilt and liability for criminal liability is greater.

### 3.6. Ad. 3. Pasal 108

Criminal acts that are qualified by the legislators with rebellion (opstand), are regulated in the provisions of Article 108 of the Criminal Code which states:

(1) Whoever is guilty of rebellion, is threatened with a maximum imprisonment of five years:

1. (a) people who fight the Government with weapons;  
(b) people who with the intention of opposing the Indonesian government attack together or join groups against the government with weapons.

(2) The leaders and organizers of the rebellion are threatened with life imprisonment or temporary imprisonment for a maximum of 20 (twenty) years.

Qualification of rebellion (opstand) according to the formulation of article 108 paragraph (1), there are 3 forms of crime, namely:

1. (a) people whose actions are against the Government with weapons;  
(b) people who with the intention of opposing the Indonesian government attack together with groups that oppose the government with weapons;  
(c) a person who intends to fight the Government joins a group against the Government with weapons.

Paragraph 2. In the form of an aggravated rebellion, the weight of the punishment is placed on the quality of the legal subject, which consists of two, namely (1) for people who are qualified as leaders of the rebellion and (2) for people who are qualified as regulators or planners of rebellion.[15]

This article is entirely absent in the Dutch Criminal Code, perhaps because in the Netherlands there is no fear of this kind of crime, only in the Dutch East Indies WvS which was published in 1930. The legislators in the Netherlands, never thought that in their own country they would be able to do so. the crime of rebellion, as defined above. To ensure the safety of the Dutch East Indies government from possible attacks like that, the crime of rebellion is included in article 108.

To provide a clearer picture of what actions are formulated in Article 108 of the Criminal Code, the following will describe the elements of these criminal acts. The elements contained in Article 108 of the Criminal Code are:

The elements in Article 108 (1) of the 1st Criminal Code, consist of:

1. Fight with weapons.
2. Against government or power.
3. The one in Indonesia.

The first element in Article 108 (1) of the Criminal Code is the element of fighting with weapons. With this element, so that a person can be blamed for violating the prohibition in Article 108 (1) of the Criminal Code number 1, it must be proven that at the time he committed the crime he was armed or used a weapon.

According to Adami Chazawi,

“This form of rebellion has a very short formula, originally it reads ”hij, die de wapenen voert tegen het Indonesie gevestigde gezag”, which Prof. Satochid Kartanegara is translated as ‘whoever takes up arms against the existing power in Indonesia’ (322). The formulation with the translation from Satochid, there is a difference with that carried out by BPHN, namely the word ”de wapenen voert tegen” by Satochid translated by taking up arms against” while by BPHN it is translated as ”against with weapons”, also the sentence ”Indonesie gevestigde gezag” by Satochid is translated as ”the power that exists in Indonesia, so gezag is translated with power, and BPHN translates ”Indonesie gevestigde gezag” with ”Government of Indonesia”, so gezag translates to government “[15]

What is meant by weapons (wapenen) not only in the sense of firearms such as rifles, cannons, grenades, rockets and perfect weapons of war that are usually used by

the Armed Forces or Police forces, but all types of weapons that can be used by the armed forces. people to fight (by force), for example sharp weapons (spears, machetes, kerises, bamboo spears, arrows, sickles, sickles) or hammers, wooden or iron sticks, ketepil, which are not limited in type.

The second element of the 1st Article 108 (1) is the element against the government or power. It should be noted that in this element there are many different views. The term power in Article 108 (1) 1 actually comes from the Dutch term *gezag* which, by other scholars, is also translated as government. Even in terms of interpreting or translating the term *gezag*, legal scholars in Indonesia do not have unity of opinion,[16] but in essence, between these differences there is one understanding, where the power or government referred to in this crime is the power or government of the State.

The third element, namely the elements that exist in Indonesia, then what is meant by government or power is the government in Indonesia or the power in Indonesia. So, the understanding of the Government of Indonesia is not just a body or equipment of state government at the center and in the regions, but is broader than that, namely in the form of general powers that exist within the government and its institutions and parts, both at the central and national levels in the area.

It should be noted that the crime of rebellion as regulated in Article 108 (1) of the 1st Criminal Code requires that resistance or attacks with weapons must be carried out by many people in organizational relations. If it is only carried out by one or two people and not in an organizational relationship but is only carried out against government employees or employees holding power, then it is not included in the crime of rebellion as regulated in Article 108 (1), but is only a crime. resistance which is punishable by criminal under Article 212 of the Criminal Code.[17]

There is also no requirement that such a person joins an armed gang, so that after joining the gang the perpetrator must join in the resistance by carrying weapons. Joining armed gangs, who are fighting against the government or the existing power in Indonesia, for example by being spies, or just being a news anchor or doing other jobs, which are part of the resistance effort, for example by providing meal for the members of the mob.[11]

Another element in Article 108 (1) of the 2nd Criminal Code that still requires explanation is the element of attacking together or advancing together. The element "go forward together" in the context of Article 108 (1) of the 2nd Criminal Code is actually a translation of the *Dutch term optrekken*. The term *optrekken* by Indonesian scholars has then been translated into various terms. There are scholars who translate the term

*optrekken* with the term forward with , fight, and various other terms such as raiding and others.[11]

With the example of the Indonesian term, it is indeed difficult to find the actual meaning that includes the three terms, because it is difficult to be able to combine the meanings of the terms "invade" with "participate". Presumably the meaning of the term "to attack together" is not much different from "advance with troops", which describes a sense in which many or a group of people (troops), together and simultaneously, commanded and coordinated move to a certain area/region, with the same specific purpose or objective, namely to oppose the Indonesian Government.

The next element of the provisions of Article 108 (1) of the 2nd Criminal Code is the element of merging. In the context of the Indonesian language, it is not too difficult to understand what is meant by these elements, because the term has become a general term that people can easily imagine what it means.

The act of joining oneself in its embodiment can take various forms. This form can be in the form of registering in writing or verbally, received in writing or orally, or it can also be in a more concrete form in the form of being a courier, cook, receiving a ride, giving food, carrying out espionage activities, all of these actions are for the benefit of the group or community. the mob against the Government with those weapons.

The act of joining is not required to use a weapon, because the nature of joining is not by using violence in any form, but is done voluntarily. While the use of weapons is always associated with violence. In fact, if joining is due to coercion, either by using violence or threats of violence, then for such an act, it is in a state of coercion, then. the person is not sentenced to a crime, but is decided by the judge in the form of waiver from the lawsuit (*ontslag van rechts verwoijng*). Therefore, it is clear that joining (with the gang) is done voluntarily.

Another element in Article 108 (1) of the 2nd Criminal Code is the element of a gang. In the context of Article 108 (1) of the 2nd Criminal Code, what is meant by gangs are groups that carry out resistance to the government or legitimate power in Indonesia. What does mob mean? The gang element in the context of Article 108 (1) of the 2nd Criminal Code, refers to a group of people who fight for a certain political goal. With this limitation, it is clear what is meant by a mob.

### **3.7. Ad. 4. Article 110 of the Criminal Code**

- (a) Conspiracy to commit one of the crimes mentioned in articles 104, 106, 107 and, 108 shall be punished with the same crime.

(b) The sentence is also imposed on people who with the intention of providing or facilitating one of the crimes mentioned in articles 104, 106, 107, and 108.

First: Attempting to move other people to commit, order to do or participate in committing a crime, or to provide assistance when committing or providing an opportunity, means or information to commit a crime.

Second: Trying to get an opportunity, means or information to commit a crime for oneself or another person.

Third: Have a stockpile of items that are known to be used to commit crimes.

Fourth: Prepare or have a plan to commit a crime means to be notified to others.

Fifth: Trying to prevent, hinder or thwart actions taken by the government to prevent or suppress the commission of crimes.

(a) Anyone referred to in paragraph (2) 3 can be confiscated.

(b) The criminal act of whoever turns out that the intent is only to prepare or expedite changes in the state administration in a general sense.

(c) If in any of the cases as referred to in paragraphs (1), (2) of this article, a crime actually occurs, the penalty can be doubled.

In general, based on the provisions of Article 110 of the Criminal Code, it is concluded that there are two types of criminal acts regulated, namely:

1. Criminal acts regulated in Article 110 (1) of the Criminal Code, namely in the form of a criminal act of conspiracy to commit one of the crimes stipulated in Articles 104-108 of the Criminal Code.
2. Criminal acts regulated in Article 110 (2) of the Criminal Code, namely in the form of criminal acts with the intention of preparing or facilitating one of the crimes stipulated in Articles 104-108 of the Criminal Code.

The type of crime regulated in Article 110 (1) of the Criminal Code is in the form of conspiracy (samenspanning) to commit one of the crimes in Articles 104, 106, 107, and 108 of the Criminal Code. What is meant by agreement? Article 110 paragraph 1 of the Criminal Code contains an understanding of "consensus" to commit certain crimes, namely those contained in the articles above and the "consensus" is punished the same as the crime itself.

With regard to the notion of consensus, it should be noted that in the Criminal Code itself, the term consensus has been given an interpretation, namely as contained in

the provisions of Article 88 of the Criminal Code. In this article the word "consensus" is given the interpretation "if two or more people agree to commit a crime together". What's special is that if two or more people agree to commit a crime, they can be punished like the crime itself. R. Soesilo argues that:

"Threats of punishment for people who commit the crimes mentioned in articles 104, 106, 107 and 108 are the same as the threat of punishment for people who only commit 'consensus' to commit these crimes. It is not only people who commit "consensus" to commit the crimes that are threatened with the same punishment, but also those who commit the acts as described in sub 1 to 5 s/d (2) of this article with the aim of providing (preparing) or facilitating one of the crimes mentioned above and even then the threat of punishment is the same".[12]

So the holding of this "consensus" crime signifies the importance of the crime in question, which is how likely it is to be eradicated at the time it is planned.

Thus, when detailed, the criminal acts in Article 110 (1) of the Criminal Code, include the following acts:

- i. Two or more people agree to commit treason with the intention of killing the President or Vice President, or with the intention of depriving them of their independence or rendering them incapable of governing.
- ii. Two or more people agree to commit treason with the intention that the territory of the state either wholly or partly falls into the hands of the enemy, or with the intention of separating part of the territory of the state.
- iii. There are two or more people agree, to commit treason with the intent to overthrow the government.
- iv. There are two or more people agree, to carry out a rebellion.[13]

In order for a person to be punished according to article 110 of the Criminal Code, he must actually have committed the act, with the real intention of preparing or facilitating one of the crimes mentioned in articles 104, 106, 107 and 108 of the Criminal Code. So if you prepare for other things, you are not punished.

Another specialty is the criminal problem, where the sentence imposed for a trial offense is as regulated in article 53, which is the maximum penalty. the principal is reduced by one third or a maximum imprisonment of fifteen years, if the crime is punishable by death or life imprisonment. As for the criminal act of treason, a weighting can be carried out in accordance with Presidential Decree no. 5 of 1959 if it is known that the actions of the perpetrators will hinder the Government's Program which consists of: equipping the people with food and clothing in the shortest possible time, providing

security for the people and the state and continuing the struggle against economic and political imperialism.

Relations must be made with persons or bodies outside the country, for example a leader, committee or committee, and associations of revolutionary movements residing abroad. In order to be punished, people must know or be able to think that the items that are imported into the country, such as weapons, explosives, etc., can be used to provide assistance to prepare for facilitating or causing the overthrow of the government. So, what is threatened with punishment is the act of "inserting" goods, what is prohibited is "keeping or providing goods".

The provisions in articles 107, 108, 110 and 111bis of the Criminal Code above, can actually be applied to cases involving Abu Bakar Ba'asyir. However, it turned out that he was charged with other provisions. The trial of the case, briefly as follows:

"In the trial of Abu Bakar Ba'asyir on Wednesday, 09 February 2005, the Public Prosecutor's Team (JPU) led by Salman Maryadi demanded that the caregiver of the Al-Mukmin Ngruki Islamic Boarding School, Sukoharjo, be sentenced to eight years in prison. Asyir. At the previous trial, in mid-August 2003, the emir of the Indonesian Mujahidin Council (MMI) was sentenced to 15 years in prison on different charges (treason and forgery of identity cards). Public Prosecutor Salman Maryadi believes that Ba'asyir has been legally and convincingly proven to have violated the law according to the multiple charges. Namely, deliberately causing fires, explosions that endanger people's lives, and cause death. In his prosecution, the Public Prosecutor stated that Ba'asyir was proven to have committed a criminal offense in violation of the indictment of a subsidiary of Article 6 of Perpu No. 1 of 2002 concerning Eradication of Criminal Acts of Terrorism in conjunction with Article 1 of Law Number 15 of 2003 in conjunction with article 55 paragraph 1 of the first Criminal Code. The first indictment is primary article 14 in conjunction with article 6 of Perpu Number 1/2002 in conjunction with article 1 of Law Number 15/2003 in conjunction with article 55 paragraph 1 of the Criminal Code, which concerns accusations of participating in planning or mobilizing other people commit criminal acts of terrorism or acts intentionally using violence or threats of violence that create an atmosphere of terror or fear of people and cause mass casualties, are considered unproven. As is known, Abu Bakar Ba'asyir was charged with multiple charges. The first primary charge is violation of Article 14 in conjunction with Article 6 of Law Number 1/2002 in conjunction with Article 1 of Law Number 15/2003 in conjunction with Article 55 paragraph (1) of the 1st Criminal Code. Subsidiary, the violation of Article 6 of Perpu Number 1/2002 in conjunction with Article 1 of Law Number 15/2003 in conjunction with Article 55 paragraph 1 of the 1st Criminal Code. While the charges



are more subsidiary, the violation of Article 6 of Law Number 1/2002 in conjunction with Article 1 of Law Number 15/2003 in conjunction with Article 55 paragraph 91) of the 1st Criminal Code. The indictment is moreover subsidiary, violating Article 15 in conjunction with Article 6 of Perpu Number 1/2002 in conjunction with Article 1 of Law Number 15/2003. The last one is an even more subsidiary indictment, namely a violation of Article 13 letter c of Perpu Number 1/2002 in conjunction with Article 1 of Law Number 15/2003. While the second primary charge is a violation of Article 187 paragraph (3) in conjunction with Article 55 (1) 1 of the Criminal Code. Subsidiary charges: 3rd violation of Article 187 in conjunction with Article 55 paragraph (1) of the 2nd Criminal Code. While the indictment is more subsidiary: violation of article 187 of the Criminal Code. as a party that moves or orders people to mobilize to commit a criminal act of terrorism. also accused of deliberately providing convenience to terrorist actors, hiding information on terrorism, and engaging in conspiracy.

Thus, the various opinions that provide comments related to the regulation of crimes against state security, especially regarding crimes against the president (and or vice president) contained in Chapter I Book II of the Criminal Code, which are actually still felt to be relevant to various legal issues that have existed in the enforcement of various cases of crimes against the President that have occurred in the past in Indonesia.

#### 4. CONCLUSION AND RECOMMENDATION

The study of the legal history of regulating crimes against state security in Chapter I Book II of the Criminal Code (KUHP) contained in Law Number 1 of 1946 in conjunction with Law Number 73 of 1958, especially regarding crimes against the president (and or vice president) was assessed still has relevance and urgency to various legal issues that have existed in the past, so that its regulation is still needed in the reform era with various improvements.

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