

People's Power Policy in Legal Construction in Treason Criminal Law as Indonesian Penal Code Reform

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ABSTRACT

Last year, People's power was sounded during the presidential election period. It is still reaped the pros and cons in various circles, some called it as part of the treason, and some categorized it as a form of freedom of expression. The purpose of this article to see if the legal construction of treason criminal law is regulated under the current Penal Code, people's power can be categorized as treason and how people's power policies should be in the future under the legal construction of treason under criminal law. the normative point of view with the statutory approach, conceptual approach, and case approach, analyzing the concept of people's power is not appropriate to calls as a criminal act of treason because it does not meet the juridical construction of treason under the Article 104, Article 106, and 107 of the penal code(KUHP). Likewise, in Article 191 Indonesian Penal Code Bill (RKUHP), Article 192, Article 193, and 194 RKUHP. People's power policy in the legal construction of treason criminal law as an effort to reform the Penal Code needs to be reformulated in particular articles, later in Article 194 of the penal code(KUHP). The legal construction of treason criminal law then emphasized in words against the government without using the weapons.

Keywords: Legal Construction; Treason; People's power.

INTRODUCTION

On April 17 of 2019, Indonesia held a democratic party simultaneously in all 34 provinces which known as general elections (*Pemilu*). *Pemilu* is one of the ways in a democratic system to elect people's representatives who will represent the community in people's representative institutions and regional heads including the president and vice president. *Pemilu* is one of the forms of fulfilling the rights of citizens in the political field.¹ *Pemilu* is held to realize the sovereignty of the people guaranteed by the constitution

¹ Mehulika Sitepu. (2019). *Pilpres 2019: Siapa Sebenarnya Pemilih Jokowi Dan Prabowo?*, Available from <https://www.bbc.com/indonesia/indonesia-47909130>. (Accessed on May 5, 2020).

under Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) which states that sovereignty is in the hands of the people and is carried out according to the constitution.

In times of waiting for the results of the vote calculation by the General Election Commission (KPU), which seems to cause conditions that are not conducive after the presidential election on April 17, 2019. It is not just a matter of quick count calculations that differ from the two pairs of presidential-vice presidential candidates who are coloring the election last year but also began to input data errors on the KPU website, the death of hundreds of Voting Organizers Group (KPPS) members, to the development of vote acquisition. Then another topic that became a conversation and reaped the pros and cons was the people's power plan put forward by one of the supporters of the presidential and vice-presidential candidates.²

The call for people's power that was increasingly being voiced by several prominent supporters of PrabowoSubianto and Sandiaga Uno to respond to allegations of electoral fraud eventually led to the determination of treason suspects by the police. As in the case of EggiSudjana, when giving speeches at the Kertanegara House during the voting on April 17, 2019, he called for people's power in front of supporters of Prabowo-Sandi. Responding to the call and invitation made by the supporters of Prabowo-Sandi, a spokesman for the Prabowo-Sandi National Winning Agency (BPN), Andre Rosiade at that time, called it a form of aspiration, not to overthrow the government. On this matter, the criminal law expert from the University of Indonesia, AchyaniZulfa, said that the stipulation of treason article by the Police against EggiSudjana and his friends was not strong enough and instead seemed repressive. She also said that the imposition of Article 107 KUHP and Article 110 KUHP *jo.* Article 87 KUHP is subjective in which there are no clear parameters to determine whether the law includes treason or not. According to Eva, the appeal of the people's power that was made did not necessarily prove the occurrence of treason, and based on its assessment the call of the people's power was only a form of freedom of expression or mere opinion.³

Different opinions by the former Supreme Court Judge (MA) GayusLumbun, who considers that people's discourse tends to lead to treason. According to him the people's power movement voiced by supporters of Prabowo-Sandi was not intended for public justice but was based on the provocation of certain parties to deviate from the law and only to fulfill the wishes of dissatisfied parties.⁴

Oriented to the Philippines, which had experienced the people's power movement in 1986. The movement was carried out by millions of Filipinos who indeed at that time had the same goal to end the authoritarian regime of President Ferdinand Marcos and the appointment of Corazon Aquino as president.⁵ People's power carried out by Filipinos was not a crime against the government but was considered as a form of freedom of opinion as well as a

² Lusy Asa Akhrani et al., (2020). "Kekacauan Pemilu 2019: Fenomena Firehose of Falsehood Dalam Relasi Sikap Terhadap HOAX Dan Kepercayaan Masyarakat Terhadap Komisi Pemilihan Umum," *Jurnal Transformativa* 6(1): 1-27, p. 6.

³ BimoWiwoho. (2019). *Prabowo, 'People Power' Dan Makar*, Available from <https://www.cnnindonesia.com/nasional/20190510131122-33-393705/prabowo-people-power-dan-makar>, (Accessed on May 10, 2020.).

⁴ BBC News. (2019). *Orasi 'people Power' Pendukung Prabowo Disebut Makar, Polisi Represif?*, Available from <https://www.bbc.com/indonesia/indonesia-48244103>, (Accessed on April, 20, 2020).

⁵ Anggara. (2017). "American Intervention In The Overthrow Of President Ferdinand E", *Historical*, 1(1): 116-130, p. 118.

kind of disappointment of Filipinos against the authoritarian government regime at that time.⁶ However, what about the call from people's power that was made by one of the supporters of the presidential and vice-presidential candidates last year?, whether it can be said as a form of treason crime against the government or is a form of other treason categories.

If we glance at the contents of the Indonesian Penal Code (KUHP), the term of treason as contained under article 87 of the KUHP, which states that there is a plot to commit a crime if the intention for that has been evident from the beginning of the implementation referred to in article 53 of the KUHP. The essential element of treason based on Article 87 of the KUHP is that is to be treason if the intention has been proven, and there is a beginning of implementation. There are also three forms of treason mentioned in the KUHP, namely treason against the lives or independence of the President and Vice President, treason against state territory, and treason against the government. The plot for the living or freedom of the President or Vice President is contained in Article 104 of the KUHP. Treason against the territory of the State contained in Article 106 of the KUHP. Whereas treason against the government is contained in Article 107 of the KUHP.

A little explanation above that people's power voiced last year still reaps the pros and cons in various circles, some mention it as part of treason actions, but some people mention it as a form of freedom of speech.⁷ This phenomenon also became a necessary assumption for the further study concerning how the People's Power Policy in the Legal Construction of the Treason Criminal Law as an Effort to Renew the KUHP.

Relating to the issue of treason. Prianter Jaya Hairi, who discusses the "Judicial Review of Treason in the Penal code (KUHP) Article: Perspective on Legal Interpretation and Human Rights." The article analyzes from the perspective of the method of interpreting the law, taking into account the arguments of the debate in the trial process at the Constitutional Court (MK).⁸ There is also an article by Ansari entitled "The offense to state security (treason) in Indonesia (a normative juridical analysis on the Sultan Hamid II case study)", comparison with the case of treason or rebellion against Sultan Hamid II in 1950-1953.⁹ Furthermore, there is also research by Widati Wulandari, who studies on "Problems of Understanding *Aanslag-Aanslag tot en feit*: Comparison of Treason in the KUHP, WvSNI and Sr". In the paper, it traces the comparison of two crucial concepts in the KUHP, namely *aanslag* and *aanslag to en feit* with the conclusion that there was a mistake in translating the terms *aanslag* and *aanslag to en feit* automatically as treason.¹⁰

This article distinguishes from previous writings. In this paper, the focus is more on the analysis of the People's Power Policy in the Legal Construction of Treason Criminal Law as an Effort to Reform the KUHP. Which later aims to see whether judging from the legal construction

⁶ Fanny Fauzie. (2019). "Kemerdekaan Menyampaikan Pendapat Dimuka Umum Sebagai Makar Menurut KUHP", *Al hurriyah: Jurnal Hukum Islam*, 4(2): 205-220, p. 209.

⁷ Abdurrisfa Adzan Trahjurendra. (2014). Politik Hukum Pengaturan Tindak Pidana Makar Di Indonesia", *Kumpulan Jurnal Mahasiswa Fakultas Hukum*, 1(2): 1-20, p. 17.

⁸ Prianter Jaya Hairi. (2017). "Judicial Review Pasal-Pasal Makar Kzuhp: Perspektif Penafsiran Hukum Dan Ham (Judicial Review On Treachery Articles Of The Criminal Code: The Perspective Of Law Interpretation And Human Rights)", *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 8(2): 235-253, p. 235.

⁹ Anshari. (2018). "Delik Terhadap Keamanan Negara (Makar) Di Indonesia (Suatu Analisis Yuridis Normatif Pada Studi Kasus Sultan Hamid II)", *Jurnal Hukum & Pembangunan*, 48(3): 457-505, p. 457.

¹⁰ Widati Wulandari and Tristam P. Moeliono. (2018). "Problematika Pengertian Aanslag-Aanslag Tot En Feit: Perbandingan Makar Dalam KUHP, WvSNI Dan Sr.", *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 4(3): 473-492, p. 473.

of the treason criminal law set out in the current KUHP, people's power can be categorized as treason and how should those people's power policies if they want to be constructed in treason crime as an effort to reform the KUHP.

METHOD

The method of this study is using the normative study with the statutory approach, conceptual approach, and case approach. The use of legal data in the form of legal materials is essential in this study, for instance, library materials, which are grouped as follows: first, primary legal materials in the form of statutory provisions, such as the Indonesian Penal code (KUHP). Secondary legal material in the form of literature support in the form of literature relating to this research.¹¹ Third, tertiary legal materials, namely legal materials, which is an explanations for primary legal materials and secondary legal materials related to this research, including newspapers, the internet, and the other sources.¹² The data collection method uses library research, and the data analysis technique used is qualitative analysis with negation.¹³

ANALYSIS AND DISCUSSION

Historical Development of People's power movements

The people's power movement became known during the EDSA revolution by the Filipino people in 1986. The EDSA revolution was a peaceful and massive demonstration by the Philippine people to overthrow the regime of President Ferdinand Marcos at that time. The emergence of the mass movement was in response to martial law that was imposed by the Ferdinand Marcos government, which caused limited freedom of expression and opinion. When the presidential election resumed, Ferdinand Marcos also carried out a series of fraud, such as removing the voting rights of some people and killing governor Evelio Jevier who was the leading supporter of Corazon Aquino who was his opponent during the presidential election. In addition to committing various frauds and atrocities, the government of Ferdinand Marcos was also considered to have committed corruption, collusion, and nepotism.¹⁴ The various frauds and atrocities committed by Ferdinand Marcos increasingly made the emotions of the Filipino people peaked until finally, millions of Filipinos held massive demonstrations to demand Ferdinand Marcos relinquish his post. The peaceful demonstration, or more familiarly known as people's power, which was carried out by Filipinos from various circles, succeeded in removing Ferdinand Marcos from his position as President.

In addition to the Philippines, the Middle East and North Africa have also experienced this power movement. At that time, the social movement was more familiar with the term Arab Spring, which was present as a phenomenon driven by secular liberal groups who wanted a

¹¹ Sahuri Lasmadi, Ahmad Rofiq, Hari Sutra Disemadi, and Sholahuddin Al Fatih. (2020). "Islamic Criminal Law Review on the Duality of Principles of Legality in the Draft of Indonesia Criminal Law Code", *International Journal of Innovation, Creativity and Change*, 14(2): 942-958, p. 946.

¹² Ahmad Rofiq, Hari Sutra Disemadi, and Nyoman Serikat Putra Jaya. (2019). "Criminal Objectives Integrality in the Indonesian Criminal Justice System", *Al-Risalah*, 19(2): 179-190, p. 181.

¹³ Asiyah Jamilah, and Hari Sutra Disemadi. (2020). "Pidana Kerja Sosial: Kebijakan Penanggulangan Overcrowding Penjara", *Jurnal IUS Kajian Hukum dan Keadilan*, 8(1): 26-38, p. 28.

¹⁴ Media Indonesia. (2018). *1986: Awal Peristiwa People Power*, Available from <https://mediaindonesia.com/read/detail/146870-1986-awal-peristiwa-people-power> (Accessed May 5, 2020).

democratic government against the theocracy. Protests and riots grew almost throughout the Arab countries.¹⁵ Including Egypt, the country in this part of North Africa experienced the Arab Spring turmoil in 2011. The movement that start in Tunisia, expanded in Egypt demands a succession of leadership and a more democratic government. Until finally, this movement also succeeded in bringing down Hosni Mubarak as President.

If we look back to the history, Indonesia also has experienced the people's power movement in the New Order era, when there were large-scale demonstrations with demands for President Soeharto to resign from his position in 1998. The movement was triggered because of a decline in public trust in the government. Where the government at that time was colored by various cases of kidnapping and curbing freedom of speech. On May 12, 1998, the student of Trisakti University also took part in an action that led to the deaths of four Trisakti University students. The death of these students further fueled the anger of the Indonesian people. After the funeral procession of the four students, the community carried out a massive action. In other places the students held a demonstrations that still demanded that President Soeharto resign from his position. Then on May 18, 1998 the students succeeded in entering the DPR/MPR office, at the same time the house of representatives (DPR) stated that President Suharto should immediately resign from his position. After these events, finally on May 21, 1998 President Soeharto officially announced that he resigned as President of the Republic of Indonesia.¹⁶ The end of this movement was also an early milestone for Indonesia in entering a period called reform.

The various examples of social movement to moments above illustrate that people's power is a movement that can genuinely subvert a ruling government regime.¹⁷ Formerly people's power was known as "empowerment of people," "popular participation," as well as community organizing and mobilization.¹⁸ As for Nicholas Henry, he is argued that "people power is a phrase that evokes images of sudden and dramatic political change-mass demonstrations in the streets of major cities, opposition leaders addressing the crowds, the crumbling of regimes that had appeared seemingly unassailable. These are the images of people power through which domestic political struggles become global events, broadcast by international news media, and eliciting public comments and even interventions by international political elites".¹⁹

People's power can be said to have high power; this movement has the characteristic of involving ordinary people or the lower classes who demand a regime change. One crucial point in the people's power movement is that the movement was carried out peacefully by the community, not carried out brutally.²⁰ The community is just demonstrating to voice their opinions. People power has an influential role in changing or stopping political power that is not in harmony with the common interest. In other words, this people power is an organized

¹⁵ Shafira Elnanda Yasmine. (2015). Arab Spring : Islam Dalam Gerakan Sosial Dan Demokrasi Timur Tengah Arab Spring : Islam within Social Movement and Democracy in the Middle," *Masyarakat, Kebudayaan Dan Politik*, 28(2): 106-113, p. 108.

¹⁶ Devi Febriyanti. (2016). "Signifikansi Surat Kabar Kompas Dalam Pemberitaan Peristiwa Reformasi 98," *Avatara*, 4(3): 1156-1170, p. 1156.

¹⁷ Blasius Mau Kau, Hari Sutra Disemadi, and Yusriadi Yusriadi. (2020). "Membangun Keadaban Politik Pengakuan Dalam Upaya Meredam Isu Agama", *Jurnal Yustisiabel*, 4(1): 57-67, p. 59.

¹⁸ Candra Ulfatun Nisa, Hari Sutra Disemadi, KholisRoisah. (2020). "Aspek Hukum Tentang Black Campaign Pada Platform Media Sosial Instagram", *Mahkamah: Jurnal Kajian Hukum Islam*, 5(1): 1-21, p. 13.

¹⁹ Nicholas Henry. (2011). "People Power: The Everyday Politics of Democratic Resistance in Burma and the Philip pines," Thesis: Victoria University of Wellington.

²⁰ Marthsian Yeksi Anakotta, Hari Sutra Disemadi, and KholisRoisah. (2020). "From Youth for 74 Years of Independence of the Republic of Indonesia (Masohi Militancy: Youth Efforts to Eradicate Radicalism And Terrorism)", *Jurnal Hukum Prasada*, 7(1): 53-60, p. 56.

popular movement consisting of a group of individuals on behalf of justice and social welfare based on the strength of mass mobilization.²¹

Seeing the concept of the emergence of the people power movement, the people power movement voiced along with the reason for the movement's desire to be carried out by one of the supporters of the presidential and vice-presidential elections in the last year according to the Author is not appropriate to do. Several things do not seem to be categorized as the people's power movement, such as the common goals and interests of the Indonesian people not seen in this case. Indonesia is in a conducive condition. We are not in a tense situation; we are still given freedom of expression and opinion while still being in the right portion. If someone want to voice people's power because election fraud occurs everywhere, our country has also provided a place if we do not agree with the election results by filing a lawsuit with the Constitutional Court (MK).²²

According to the description above, at least it can be said that the concept of people's power starts from the existence of interests and goals to be achieved together by the community. So, it is not only based on one interest and one party, but also for many communities consisting of various groups. Almost all people's power movements are caused by the unrest felt by the people towards a government regime, where their rights as citizens feel neglected, and also the government regime causes prolonged riots.

People's Power Policy under the Legal Construction of Treason Criminal Law by virtue of Current Indonesian penal code (KUHP)

According to the existing penal code (KUHP), there is no scientific juridical understanding of what is meant by the treason. However, Article 87 KUHP stated that "it is said that there is a plot to commit alaw if the intention has been proven from the beginning of the implementation as referred to Article 53". If we pay attention to the phrases of the article, the juridical construction of treason built-in article 87 of KUHP has two essential elements: the intention and the beginning of implementation. Where the existing intention was manifested in an initial implementation to commit law of treason.

One remembers a legal adage that says "cogitationis poenam nemopatitur" which means that no one can be convicted for solely what he thinks. This is certainly in line with the flaw that no one can be convicted only because of an intention or only what he has predicted.²³ These intentions must be realized in a specific deed. As said by Moeljatno:²⁴

1. Intentions should not be equated with intentions, but those intentions can turn into intentions if they have been translated into desired lawions;
2. If it has not been fully fulfilled in crime, then the intention still exists and is an inner nature that gives direction to the lawion, namely subjectiefonrechtselement;
3. Intentions are not the same and cannot be equated with intentionality, and it is necessary to prove itself that specific contents have also been there since the intention has not

²¹ Puteri Rezki Manan. (2017). "Pengaruh People Power Dalam Sukses Kepemimpinan Di Mesir", Thesis: Universitas Hasanuddin.

²² Siti Faridah. (2018). "Relevansi "Makar" dalam # 2019 Ganti Presiden", *Seminar Nasional Hukum Universitas Negeri Semarang*, 4(2): 238-249, p. 241.

²³ Astri C. Montolalu. (2016). "Tindak Pidana Percobaan dalam Kitab Undang-Undang Hukum Pidana (KUHP)". *Lex Crimen*, 5(2):75-81, p. 78.

²⁴ Moeljatno. (1983). *Hukum Pidana Delik-Delik Percobaan Dan Delik-Delik Penyertaan*. Jakarta: PT BinaAksara, p. 67.

been fulfilled as a law.

Based on Moeljatno opinion, it can be said that the intention is different from deliberate, the intention will turn into intentional if it has been fulfilled into the desired action. In addition to the intention that becomes an essential element in the crime of treason, then no less important, namely the beginning of the implementation.

As for what is meant by the beginning of the implementation, which is a preliminary law carried out by the perpetrator with his intention or will. Related to the beginning of the implementation element, Moeljatno stressed that the beginning of the implementation of treason laws is the beginning of the implementation in committing a crime. Citing the opinion of Moeljatno published in the writing of the Institute for Criminal Justice Reform (ICJR) mentions several guidelines regarding the implementation of laws, namely:²⁵

1. Objectively, what is done must be closer to the intended offense and thus must be able to have the potential to realize the offense;
2. Subjectively, where the defendant's intention does not doubt carrying out the offense;
3. What is done must be an unlawful law.

The legal experts stated that the plot was mostly a dangerous crime, even Prof. Moeljatno stated that even though the defendant had stopped his intention, it could still be processed legally. An action can be said to endanger the legal interest that can be seen from the type of material offense and formal offense. In formal offenses, the initial law is a law that is prohibited and threatened with punishment by the law if the law is part of the prohibited law earlier. This means that if an offense has several elements and someone commits one of the offenses, then it can be said that the law is the beginning law. Then in the material offense, the law of execution is a law which according to its nature in such a way can have a prohibited effect and is punishable by law.

Treason is a special offense to protect national security. Some people see treason as an attack, violence, or a real effort (which is concrete). There is no more specific explanation of the type of attacks and violence, whether attacks in physical form or non-physical form. However, whether attacks, violence, or efforts, the experts agree on at least two elements, namely the intention and the beginning of the implementation.

In KUHP, there are three types of treason, namely the plots of life or independence of the president and vice president stipulated under Article 104, the plots against state territory are regulated under Article 106, as well as the plots against the governmental areas are affirmed in Article 107.

First, treason regulated under Article 104 KUHP. In this article regulates treason against the president and vice president which reads "treason with the intent of killing the President or Vice-President or intending to usurp their independence or be unable to govern, threatened with capital punishment or life imprisonment or imprisonment for a certain period or maximum for twenty years". If we see that the treason construction of the president or vice president in this article emphasizes the intention, taking lives, depriving of independence, making it unable to govern. The existence of intention or will in the element means that the perpetrator knows or wants that the target is the president or vice president, then killing and depriving independence is not further explained in a way that means it can be physical or non-physical, as well as the

²⁵ ICJR. (2017). *Mengembalikan Makna "Makar" Dalam Hukum Pidana Indonesia*, Available from <https://icjr.or.id/mengembalikan-makna-makar-dalam-hukum-pidana-indonesia/> (Accessed April 10, 2020).

element of being unable governing has a broad meaning, which means that any action that makes the president or vice president no longer can govern physically or psychologically.

Another treason as contained in Article 106 KUHP, namely treason with the intention that the whole territory of the country knows that part of it has fallen into the hands of the enemy or intending to separate part of the country's territory from the others. The legal construction built in this article that is most important is the personal intention or will of the perpetrators so that the whole or a part of the country's territory falls into foreign hands. In other words, the perpetrators do know what they are doing in purpose to separate themselves from parts of the country.²⁶

The third treason is the plot of government governed by Article 107 KUHP. Construction built-in that article, namely treason, to overthrow the legitimate government. To overthrow a government is to abolish or change the structure of the government by illegal or illegal means. According to AdamiChazawi that the formulation of Article 107 KUHP stated that treason with the intent to overthrow the government does not have to be done by armed force, but enough with all actions that are not in line with the applicable laws and regulations.²⁷

Previously we have discussed the concept of people's power which has the characteristics of involving ordinary people or from the lower classes who demand a change of regime. One crucial point in the people's power movement is that the movement was carried out peacefully by the community, not carried out brutally. The community is just demonstrating to voice their opinions. The basis of the people's power movement is the mobilization of the masses that embraces justice and community welfare together, which is built on goals and desires together as well.

Then when we discuss treason, it seems a little different from the people's power movement. treason movement usually starts mostly from brutal actions by a group of people who have a specific purpose. If it is seen in general, the factors that influence someone committing treason and people's power have in common, namely the existence of a sense of dissatisfaction or disappointment with a government regime that is in power. However, treason tends to be done in a way against the law that endangers the interests of society and the state, whether done using weapons or other forces, as took place in Indonesia, the September 30, 1965 Movement. This movement aimed to overthrow the government of President Sukarno at that time and wanted to turn Indonesia into a communist state. The movement was spearheaded by D.N. Aidit who was also the chairman of the Indonesian Communist Party (PKI), this movement also killed as many as six high-ranking Army officers (TNI).²⁸

If we compare, there is a difference between the people's movement of power and the movement of treason that the author illustrated above. The people's power movement is indeed a large-scale demonstration. However, the action is carried out peacefully, and based on the people interests together, not carried out in a way against the law. Certainly, different

²⁶ LaniSujiagnesPanjaitan et al., (2016). "Penerapan Hukum Pidana Terhadap Tindak Pidana Makar Oleh Organisasi Papua Merdeka (Opm) Di Kabupaten Jayawijaya (Studi putusan nomor 38/Pid. b/2011/Pn. Wmn)", *USU Law Journal*, 4(3): 88-98, p. 93.

²⁷ Adami Chazawi. (2002). *Kejahatan Terhadap Keamanan Dan Keselamatan Negara*. Jakarta: PT RajaGrafindo Persada, p. 76.

²⁸ Husni Afriadi. (2017). *Aksi Makar Dan Kudeta Yang Pernah Terjadi Di Indonesia*, Available from <https://www.covesia.com/news/baca/30938/aksi-makar-dan-kudeta-yang-pernah-terjadi-di-indonesia> (Accessed May 9, 2020).

from the treason movement, which always departs from specific political goals by a group of individuals.²⁹

From the construction of the treason that we have previously discussed, the author says that it seems challenging to state that people's power can be said to be a dangerous treason movement that can overthrow the government.³⁰ Although people's power can subvert a government regime, people's power and treason are two different contexts. Because if we turn back to Article 87 of KUHP, two elements are essential in treason crime, namely the intention and the beginning of implementation. Which means that it is not enough to be able to convict someone of treason charges, but that intention is realized by the beginning of the execution of treason or committing laws that are against the law. Likewise, under Article 107 KUHP concerning treason against government, the construction of the arrangements established in the article is illegally overthrowing the government and certainly in a way against the law. If we pay attention also the legal construction built in the article is still not relevant if the concept of people's power is seen from the construction of this article. The people's power movement does not fulfill the element of overthrowing a legitimate government by fighting the law because the concept of people's power comes from the aspirations of the people who carried out peacefully.

People's power, when viewed objectively, does not get closer to the intended offense and also does not contain an indication of treason crime as regulated in the KUHP. Then subjectively, seen from the intention, people's power is done to express the disappointment of a society that contains community expectations. Moreover, people's power is not allowed in a way against the law. People's power becomes a means of freedom of expression and public opinion. As long as people's power is carried out with peaceful action and not against the law, it certainly cannot be categorized as a law of treason. Another case is people's power only used as a cover for carrying out a particular mission, and there is an intention to overthrow the government by way of breaking the law.³¹

People's Power Policy in Legal Construction of Treason Criminal Law under the Future Indonesian Penal Code (KUHP)

If we look at the current KUHP, we do not find a scientific juridical term for treason.³² However, in the current era of amendment of the KUHP, especially as seen from the latest Indonesian Penal Code Bill (RKUHP) concept in September 2019, there has been progressed regarding the inclusion of scientific juridical terms regarding what is meant by treason. According to Article 167 of the RKUHP "treason is the intention to carry out a law that has been realized by the commencement of the conducting law". Also, in the RKUHP, the treason was specifically regulated as a treason crime. The RKUHP also recognizes three types of treason, namely Article 191 RKUHP regulates the plots of the President and Vice-President, Article

²⁹ Fauzan Hamsyah Permana, Eko Sopyono, and R. B. Sularto. (2017). Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Makar Di Indonesia", *Diponegoro Law Journal*, 5(4): 1-11, p. 6.

³⁰ Eman Sulaeman. (2019). "Crime of Makar and Its Enforcement in Post-Reform Indonesia", *Walisono Law Review (Walrev)*, 1(1): 4-9-84, p. 79.

³¹ Bakti Cikita Setiya Ningsih. (2020). "Tinjauan Yuridis Tindak Pidana Makar Pada Gerakan People Power Tanggal 17 April 2019", *Dinamika: Jurnal Ilmiah Ilmu Hukum*, 26(7): 869-881, p. 878.

³² Erdianto Effendi. (2019). "Makar Dengan Modus Menggunakan Media Sosial", *Hukum Pidana dan Pembangunan Hukum*, 1(2): 1-13, p. 6.

192 concerning plots towards the Unitary State of the Republic of Indonesia, and Article 193 regulating treason for a legitimate government.

Between Article 104 and Article 191 of KUHP, there is no significant difference, the regulation and threat of criminal are the same. Where it is based on Article 191 RKHUP states that “Every person who commits treason intending to kill or deprive the President or Vice President of independence or making the President or Vice President incapable of carrying out a government convicted with capital punishment, life imprisonment, or imprisonment for a maximum of twenty years”.

Further, the plot of the Unitary State of the Republic of Indonesia as stipulated under Article 192 of the RKUHP which mentions “Anyone who commits treason with the intention whether in a part or all of the territory of the Unitary State of the Republic of Indonesia falls into foreign powers or to separate from the Unitary State of the Republic of Indonesia is convicted with capital punishment, life imprisonment, or a maximum imprisonment of 20 (twenty) years “. The formulation contained in this RKUHP is the same as the phrase treason formulation regulated under Article 106 KUHP, however there is a slight difference, which lies under the criminal threat. Where Article 192 RKUHP presents the threat of capital punishment in Article 106 KUHP, there is no threat of capital punishment for this category of treason crime, that there is a sentence of imprisonment for a specific time.

Furthermore, the treason against the Government that is regulated under Article 193 RKUHP stated that: 1). Every person who commits treason intending to overthrow a legitimate government shall be sentenced to a maximum imprisonment of 12 (twelve) years; and 2). The treason leader or regulator as referred to in paragraph (1) shall be sentenced to a maximum imprisonment of 15 (fifteen) years.

What is contained in Article 193 of the RKUHP further confirms that what is meant by the Government here is a legitimate government, which in Article 197 KUHP there is no affirmation of a valid government. Then what is different is the criminal threat, where Article 193 KUHP paragraph (1) is threatened with imprisonment for a maximum of twelve years, while in Article 107 paragraph (1) KUHP is threatened with imprisonment for a maximum of twenty years. Furthermore, in Article 193 RKUHP paragraph (2) is punishable by imprisonment for a maximum of fifteen years, which in Article 107 paragraph (2) KUHP is liable to life imprisonment or imprisonment for a certain period, with maximum of twenty years.

Based on the three types of treason regulated in the RKUHP is not much different from the formulation of KUHP, the only difference is the criminal threat. Thus, the movement of people has not yet been entirely constructed into the original form of treason. As previously the author said that the people’s power movement did not fulfill the element of overthrowing a legitimate government by against the law because the concept of people’s power came from the aspirations of people who carried out peacefully. As long as people’s power is carried out with peaceful action and not against the law, it certainly cannot be categorized as alaw of treason. Another case is that people’s power only used as a cover for carrying out a particular mission, and there is an intention to overthrow the Government by way of breaking the law. Moreover, Article 194 of the RKUHP only emphasizes resistance to governments by using weapons. Which mentions as follows:

- 1) Convicted of a mutiny with a maximum imprisonment of 15 (fifteen) years, any person who: a). against legitimate governments using the power of weapons; or b). to resist a legitimate government move together or uniting with a gang that opposes a legitimate government using the force of arms.
- 2) The leader or regulator of the rebellion as referred to under paragraph (1) shall be sentenced to life imprisonment or a maximum imprisonment of 20 (twenty) years.

People's power policy can be constructed in the form of treason crime, it is necessary to add the formulation in the regulation of treason crime. As stipulated under Article 194 of KUHP, it can be added that not only someone who opposes the Government using a weapon can be convicted, but a legal movements have the purpose of overthrowing the Government even without using a weapon, such as people's power can be subject to crime. During the people's power movement caused excessive noise in the community and brought specific missions to some groups. Because basically if the people's power is pure, then it does not only carry out missions for certain groups but for the common interest that is genuinely felt by almost all people in a country, thus demanding a regime change in Government. So, it is necessary to re-formulate this people's power policy in the construction of treason crime which will be regulated under the RKUHP, where the formulation should further emphasize the arrangement of treason categorized without using a weapon.

CONCLUSION

According to the discussion above, The author conclude that if we see the concept of people's power in the legal construction of treason criminal law based on KUHP, then people's power is not appropriate to say that it is a crime of treason, both treason in Article 104 KUHP, 106 KUHP, and 108 of the KUHP. Likewise, the treason set out under Article 191 RKUHP, 192 RKUHP, 193 RKUHP, and 194 RKUHP. The concept of people's power does not fulfill the juridical construction built in the articles concerning treason crime. The people's power movement does not fulfill the element of overthrowing a legitimate government by fighting the law because the concept of people's power comes from the aspirations of the people who done peacefully. People's power policy in the legal construction of treason as an effort to reform the KUHP needs to be reformulated in particular articles as mentions under Article 194 KUHP. The legal construction of the treason crime law, further emphasized by the opposition to the government without using the weapons.

Treason and people's power sometimes challenging to distinguish, but what must be considered is to look back at the basis of the people's power and treason movements. Do not let an actual movement a form of freedom of expression and opinion categorized as treason. As for the recommendations, they should examine the people's power as a means to commit treason, of course, it also deserves further study.

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