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## Interpretation of the Element of Treason in the Decision of the Timika District Court Number 27/Pid.B/2019/PN. Team

Article	Abstract
<p><b>Author</b> Ayunda Firdaningrum<sup>1</sup>, Nabila Amalia Maulida<sup>2</sup>, Aidina Syafuro<sup>3</sup>, Firyal Nurul Badriyah<sup>4</sup>, Zelda Anggi Wijaya<sup>5</sup></p> <p><sup>12345</sup> Faculty of PSDKU, State University of Surabaya, Surabaya</p> <p><b>Co-Author:</b> <sup>*</sup>Ayunda Firdaningrum, Email: <a href="mailto:24111764040@rhs.unesa.ac.id">24111764040@ rhs.unesa.ac.id</a></p> <p><b>Dates:</b> Received: July 5, 2025; Accepted: July 12, 2025; Published: Sept 12, 2025</p> <p><b>DOI:</b> <a href="https://doi.org/10.26740/lf.r.v1i2.49429">https://doi.org/10.26740/lf r.v1i2.49429</a></p>	<p><b>Objective :</b> This study aims to describe and analyze the legal facts in the Timika District Court Decision Number 27/Pid.B/2019/PN, particularly focusing on the judges' considerations in applying Article 106 of the Criminal Code in conjunction with Article 87 of the Criminal Code, as well as assessing the juridical correctness of the acquittal verdict.</p> <p><b>Theoretical Framework :</b> This research is grounded in the theory of crimes against state security, the concept of intent as a subjective element in treason, and the theory of attempt in criminal law, particularly concerning the limitation of the "beginning of execution" as a requirement for criminal liability under Article 87 of the Criminal Code.</p> <p><b>Method :</b> This study employs a normative juridical approach with a decision annotation method, based on the analysis of statutory provisions, judicial decisions, and doctrinal legal scholarship, through a systematic examination of the legal reasoning of the panel of judges.</p> <p><b>Results and Discussion :</b> The findings reveal that the panel of judges applied a strict and proportional interpretation of the elements of treason by clearly distinguishing between political expression and concrete actions that pose a real threat to state integrity. The defendants' actions, consisting of demonstrations and political statements, were considered to remain at the preparatory stage and did not fulfill the "beginning of execution" element as required under Article 87 of the Criminal Code. This interpretation demonstrates a cautious judicial approach in limiting the scope of criminal liability in treason cases.</p> <p><b>Research Implications :</b> The study underscores the importance of consistent and careful judicial standards in interpreting the elements of treason to prevent the overcriminalization of non-violent political activities, while ensuring the protection of state security.</p> <p><b>Originality/Value :</b> This research offers novelty as the first academic annotation of the Timika Decision by proposing a new analytical model in interpreting the elements of attempt under Article 87 of the Criminal Code within the context of political movements.</p> <p><b>Keywords:</b> Treason; Beginning of Execution; Judicial Interpretation; Political Expression; Indonesian Criminal Law</p>

## INTRODUCTION

Maintaining state security is one of the fundamental goals of Indonesian criminal law, because state stability is a prerequisite for the implementation of a safe and orderly life of the

community. At the normative level, this is reflected in the regulation of criminal acts against state security in the Criminal Code (KUHP), including Article 106 of the Criminal Code which regulates treason against the integrity of the Unitary State of the Republic of Indonesia.<sup>1</sup> This norm contains a very high criminal threat because it targets actions that have the potential to disrupt the existence of the state. However, in practice, Article 106 of the Criminal Code often provokes debate, especially when it is used to ensnare political expressions or demonstrative actions that do not always contain elements of violence or real attempts to separate territory from the Unitary State of the Republic of Indonesia.<sup>2</sup>

This phenomenon is particularly evident in Papua, a region that in the last two decades has seen an increase in the use of treason articles against activists and demonstrators, including members of the West Papua National Committee (KNPB).<sup>3</sup> Actions such as rallies, flag-raising, or political statements that contain demands for self-determination are often qualified by law enforcement officials as treason.<sup>4</sup> This situation raises a debate about the boundary between freedom of expression as a constitutional right of citizens and criminal acts that truly threaten state security. The crucial question in this context is how to interpret the element of "intent" in Article 106 of the Criminal Code and the element of "initiation of implementation" in Article 87 of the Criminal Code. These two elements are the determinants of whether an action has entered the realm of treason or is still at the preparatory stage or even just a legitimate political expression.

The debate over these elements has come to the fore after the emergence of several court rulings that gave different assessments to similar actions. In some cases, the court stated that the act of attending a demonstration or carrying a political banner was the beginning of the execution of the crime of treason. In other cases, the court considered that similar acts did not meet the elements of the crime so that the defendant was acquitted. This inconsistency shows that the interpretation of Article 106 and Article 87 of the Criminal Code does not yet have a truly uniform standard.<sup>5</sup> In addition, law enforcement practices that tend to expand the meaning of treason raise concerns about the excessive use of the article, especially against non-violent political activities.

In this context, the Decision of the Timika District Court No. 27/Pid.B/2019/PN. The team is one of the important decisions that deserves to be studied in depth. This verdict involved several KNPB activists who were charged with treason, but the panel of judges finally handed down a free verdict.<sup>6</sup> The legal considerations of the panel of judges in this decision show a more careful and restrictive approach in assessing whether the defendants' actions really meet the elements of treason as stipulated in the Criminal Code. This ruling is significant not only for the development of Indonesian criminal law doctrine, but also for the

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<sup>1</sup> The Republic of Indonesia, "THE SECOND BOOK OF CRIME," in *CRIMINAL Code*, 1946.

<sup>2</sup> Felicia Setyawati Suwarsono, "TREASON ACCORDING TO ARTICLE 107 OF THE CRIMINAL CODE," *Lex Privatum* V, no. 9 (2017): 162–70.

<sup>3</sup> Wahyu Satria, Budi Iriansyah, and Hisbul Luthfi Ashyarofi, "The Raising of the Morning Star Flag in Papua Reviewed from Article 106 of the Criminal Code (Criminal Code)," *DYNAMICS* 28, no. 11 (2022): 4718–28.

<sup>4</sup> LBH Papua, "Law Enforcement Asked Not to Use Treason Article Criminalization for Eight Students Raising the Morning Star," *Jubi.id*, 2022, <https://jubi.id/tanah-papua/2022/penegak-hukum-diminta-tidak-gunakan-kriminalisasi-pasal-makar-untuk-delapan-mahasiswa-pengibar-bintang-kejora/>.

<sup>5</sup> Suwarsono, "TREASON ACCORDING TO ARTICLE 107 OF THE CRIMINAL CODE."

<sup>6</sup> Supreme Court Decision, "Decision Number 27/Pid.B/2019.Tim," Supreme Court of the Republic of Indonesia, 2019.

broader discussion on the relationship between political expression, human rights, and state security. Thus, the annotation of this verdict is very relevant to provide a deeper and academic understanding of the limits of the application of treason in the context of Papuan politics.

Despite its high significance, academic studies on this decision are still very limited. In the Indonesian criminal law literature, the discussion of state security delicacies is indeed not as much as the discussion of other general delicacies. More specifically, the analysis of court decisions involving Papuan activists is very small, making it difficult to find an argumentative standard that can be used as a reference on how treason should be interpreted. In addition, previous studies have shown that treason verdicts are often multi-interpreted, especially in assessing whether an act has entered the "commencement of execution" phase or is still in the realm of preparation, which is not punishable.<sup>7</sup> On the other hand, some rulings show a tendency to expand the meaning of treason, while others apply stricter interpretations. This inconsistency is what creates an important research gap to fill.

The research gap is also seen from the almost absence of academic annotations to Decision No. 27/Pid.B/2019/PN. Team.<sup>8</sup> This decision provides a fairly detailed argument on how the element of "intent" should be interpreted and how the element of "beginning of implementation" should be measured objectively. A review of this verdict can make an important contribution to clarifying the line between political actions and state security crimes. Thus, this research not only fills a gap in the Indonesian criminal law literature, but also provides a foundation for future judicial practice so that the interpretation of the treason article is more consistent, proportionate, and in line with the principles of the state of law.

In line with these problems, this research is directed to answer three main questions. First, what are the legal facts or position cases listed in the Timika District Court Decision No. 27/Pid.B/2019/PN. Team. Understanding the factual context is very important so that the analysis of the elements of the crime is not separated from the concrete circumstances faced by the defendants. Second, how the panel of judges considers and applies Article 106 of the Criminal Code jo. Article 87 of the Criminal Code in assessing the actions of the defendants. This question focuses attention on the juridical arguments of judges, including how judges interpret the concepts of "intent" and "commencement of execution". Third, this study also assesses whether the independent verdict handed down by the panel of judges is juridically appropriate based on the doctrine of criminal law and the principles of criminal responsibility. This assessment is important to assess whether the judge's approach in the decision can be used as a reference in similar cases.

This study aims to describe in detail the case position in the verdict, analyze the legal considerations of the panel of judges, and assess the accuracy of the application of the treason article to the actions of the defendants. This analysis is expected to provide a comprehensive picture of how treason should be applied in the context of political activities. In addition, this study offers novelty in the form of the first annotation that in-depth examines the elements of treason in the KNPB Timika case. Not only that, this study also proposes a new approach in

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<sup>7</sup> Prianter Jaya Hairi, "JUDICIAL REVIEW PASAL-PASAL MAKAR KUHP : PERSPEKTIF PENAFSIRAN HUKUM DAN HAM JUDICIAL REVIEW ON TREACHERY ARTICLES OF THE CRIMINAL CODE : THE PERSPECTIVE OF LAW INTERPRETATION AND HUMAN RIGHTS," *THE STATE OF LAW* 8, no. 2 (2017): 235–53.

<sup>8</sup> Agung, "Decision Number 27/Pid.B/2019.Tim."

understanding the elements of experimentation as stipulated in Article 87 of the Criminal Code, namely by emphasizing a firmer distinction between preparatory acts, political expressions, and the beginning of implementation. This approach is expected to contribute to the establishment of more precise, proportionate standards of interpretation and in accordance with the principles of the rule of law and respect for human rights.

## RESEARCH METHODS

This study uses a normative juridical method written descriptively to provide a clear picture of the way the research is conducted. This method focuses on reviewing legal norms and how to apply them with a case approach, using the Timika District Court Decision Number 27/Pid.B/2019/PN. Team as the main legal material. This approach is used to understand the way the judge gives consideration, applies articles, and the way of legal construction used in determining punishment based on Article 169 of the Criminal Code.<sup>9</sup>

Secondary legal materials such as criminal law books, scientific journals, and literature on illicit organizations and their secrecy crimes were used to strengthen the analysis. The analysis technique is carried out by interpreting the rule of law qualitatively, namely understanding and questioning whether the rule is in accordance with the facts and considerations used in the court decision. With this method, the research helps readers understand the judge's way of thinking in making legal decisions, the degree of consistency between legal norms and practices in the judicial process, and the legal reasons used as the basis for the conviction in the case.

## ANALYSIS AND DISCUSSION

### A. Position Case

This incident began with the internal activities of the West Papua National Committee (KNPB) for the Timika Region and the Mimika Regional People's Parliament (PRD) at the end of December 2018. Defendant I Yanto Awerkion as Deputy Chairman of KNPB Timika, Defendant II Sem Asso as Deputy Chairman I of PRD Mimika, and Defendant III Edo Dogopia who is a member of the KNPB designed the implementation of Thanksgiving for the commemoration of the 5th Anniversary of KNPB and PRD which is planned to take place on December 31, 2018 at the Secretariat of KNPB Timika. Preparations were made by collecting voluntary donations from supporters, in the form of money, food, fuel, and equipment to make banners and attributes of the organization. On December 29, 2018, the defendants sent a notification letter about the activity to the Mimika Police, but the police refused to issue a Notification Receipt Letter (STTP) on the grounds that the KNPB was an organization that was not registered with the Kesbangpol and was considered to be contrary to the state's ideology.<sup>10</sup> Nevertheless, the defendants continued to prepare for the event because they considered this activity to be internal and religious.

On December 31, 2018, joint TNI-Polri officers visited the KNPB Secretariat after previously receiving orders to maintain the security of the activity. They found about a hundred

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<sup>9</sup> M.Hum Dr. Muhaimin. SH., *Legal Research Methods*, 2020.

<sup>10</sup> Agung, "Decision Number 27/Pid.B/2019.Tim."

people gathered with organizational attributes such as KNPB flags, banners containing political statements, as well as several sharp weapons on site. The officers then stopped the activity, lowered the attributes, and secured the suspects and several other participants. The evidence taken included flags, banners, organizational documents, morning star-themed attributes, books containing political ideologies, and several other sharp tools. Kesbangpol Mimika also stated that the KNPB is not registered as an official organization and is considered to have a purpose that is contrary to the Unitary State of the Republic of Indonesia.<sup>11</sup>

Based on this series, the defendants were charged with several alternative charges, namely subversive acts under Article 106 of the Criminal Code, malicious conspiracy under Article 110 of the Criminal Code, and alternative charges under Article 169 paragraphs (1) and (3) of the Criminal Code related to participation in prohibited organizations. The decision of the panel of judges stated that the defendants were not proven to have committed subversive crimes, while the elements in Article 169 of the Criminal Code were considered fulfilled because the defendants were considered to be actively involved in groups that were considered to have illegal purposes and contrary to public order.

## **B. Analysis of Elements of Article 106 of the Criminal Code (Treason Separating State Territories)**

### **1. The Element of "Intent" (Mens Rea) in Article 106 of the Criminal Code**

The element of "intent" in Article 106 of the Criminal Code is a subjective element that requires a directed will (opzet als oogmerk) from the perpetrator to separate part of the state from the Unitary State of the Republic of Indonesia. This element cannot be fulfilled only by political views, ideological aspirations, or rejection of state policies, but must be proven through a close relationship between the inner will of the perpetrator and concrete actions that lead to the goal of separating the country's territory. In the case of the Timika District Court Decision Number 27/Pid.B/2019/PN. The team, the public prosecutor based the proof of the element of intent on the existence of organizational meetings, internal documents, flag raising, and activities carried out by the West Papua National Committee (KNPB). However, the panel of judges considered that these facts were not enough to prove the existence of mens rea as referred to in Article 106 of the Criminal Code. The organizational meetings and documents presented at the trial showed more of the consolidation and articulation of political aspirations, rather than a concrete operational plan to realize the separation of state territories. Similarly, flag-raising and other symbolic activities are considered political expressions that do not directly reflect the criminal will to commit treason. This assessment is in line with Moeljatno's view that the element of intent in treason must be reflected in a tangible act that directly leads to a purpose prohibited by law.<sup>12</sup>

### **2. The Element of "Separating Part of the State"**

The element of "separating part of the country's territory" is an objective element in Article 106 of the Criminal Code which emphasizes the existence of acts that are clearly and

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<sup>11</sup> Latifah Buswarimba Alhamid et al., *TREASON AND IN THE LAND OF PAPUAN PRISONERS*, 2024.

<sup>12</sup> Eman Sulaeman, "Crime of Makar and Its Enforcement in Post-Reform Indonesia In the Opening of the 1945 Constitution , the Fourth Paragraph Contains," *Walisongo Law Review* 1, no. 1 (2019): 49–84, <https://doi.org/10.21580/Walrev/2019.1.1.4753>.

concretely aimed at releasing a territory from the sovereignty of the Unitary State of the Republic of Indonesia. This element must be assessed based on the nature and consequences of the perpetrator's actions on the integrity of the country's territory, not solely based on political symbols or statements. In the a quo case, the actions carried out by the defendants in the form of meetings, document preparation, flag raising, and mass mobilization activities by the KNPB were assessed by the public prosecutor as part of the effort to separate the Papua region from the Republic of Indonesia. However, the panel of judges argued that these actions did not meet the legal qualification as an act of separating part of the country's territory.<sup>13</sup> The panel of judges affirmed that there was no evidence of territorial control, the formation of a counter-government, the use of armed force, or any other act that factually showed the release of territory from state power. Therefore, the defendants' actions are considered not to pose a real threat to the integrity of the country's territory, but are still in the realm of political expression and struggle.<sup>14</sup>

### **3. Element of "Beginning of Implementation" (Article 87 of the Criminal Code)**

Article 87 of the Criminal Code emphasizes that treason can only be considered to exist if the intention to commit treason has been manifested at the beginning of implementation (*begin van uitvoering*). This provision serves as a clear boundary between the stage of preparation that cannot be punished and the stage of implementation that can already be subject to criminal liability. According to Moeljatno, the beginning of implementation is an act that directly leads to the realization of delicacy and is no longer preparatory in nature. Lamintang emphasized that the act must be such that, if it is not stopped by factors beyond the perpetrator's will, the criminal act will reasonably be realized. Meanwhile, Pompe stated that the commencement of implementation must pose a concrete danger to the protected legal interests. In the Timika District Court Decision, the panel of judges considered that the organizational meeting, document preparation, flag raising, and demonstrative activities carried out by the defendants were still in the preparation stage. No concrete acts were found that directly led to the separation of state territory or posed a concrete danger to the integrity of the Republic of Indonesia. Based on the doctrine of *begin van uitvoering* as stated by Moeljatno, Lamintang, and Pompe, the conclusion of the panel of judges that the initial element of execution has not been fulfilled can be justified juridically. This assessment reflects the careful application of criminal law and consistent with the principles of legality, while preventing excessive criminalization of political expression.<sup>15</sup>

### **C. Analysis of Article 169 of the Criminal Code (Associations that Commit Crimes)**

Article 169 of the Criminal Code (KUHP) expressly stipulates that "participating in an association with the purpose of committing a crime or in any other association prohibited by the general rule" is punishable by a threat of imprisonment of up to six years, while participating in

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<sup>13</sup> Satria, Iriansyah, and Ashyarofi, "The Raising of the Morning Star Flag in Papua Reviewed from Article 106 of the Criminal Code (Criminal Code)."

<sup>14</sup> Sulaeman, "Crime of Makar and Its Enforcement in Post-Reform Indonesia In the Opening of the 1945 Constitution , the Fourth Paragraph Contains."

<sup>15</sup> Hairi, "JUDICIAL REVIEW PASAL-PASAL MAKAR KUHP : PERSPEKTIF PENAFSIRAN HUKUM DAN HAM JUDICIAL REVIEW ON TREACHERY ARTICLES OF THE CRIMINAL CODE : THE PERSPECTIVE OF LAW INTERPRETATION AND HUMAN RIGHTS."

an association with the purpose of committing an offense is threatened with a sentence of nine months or a certain fine; This provision also applies with an increase in criminal threats to the founder or management. This normative standard reflects Indonesia's criminal law paradigm that not only punishes acts of violence that have already occurred, but also participation in organizations that are considered legally dangerous to public order or state security

Normative juridical studies of this article show that the element of "associations aimed at committing crimes" does not require proof of actual acts of violence in physical form, but can be built from ideological goals and organizational structures. In a scientific presentation available online, the author states that Article 169 of the Criminal Code confirms the existence of the crime of participation in a prohibited association, which is characterized by the purpose of a crime or offense, so that the imposition of a criminal offense does not depend on the manifestation of violence, but on the intentions and goals of the group as identified through documents, activities, or other information about the association.<sup>16</sup>

The regulation of Article 169 of the Criminal Code is in line with the property of delicacy known in the classical criminal law tradition. Some contemporary criminal law literature outside Indonesia discusses the concept of *unlawful association* or *inchoate group offences* in which organizations can be seen as "evil" based on a collective goal that is planned for future criminal acts, without the need for acts of violence first. This doctrine suggests that criminal law can respond to the latent danger of an association before the actual implementation of the crime – an approach that is often understood as a form of *preventive criminalization* to maintain state security and public order, rather than simply sanctioning physical acts that have already occurred (see, for example, *unlawful acts* in comparative criminal law literature)

The application of Article 169 of the Criminal Code in court decisions against members of organizations such as the KNPB is often associated with the assessment that the organization is considered to have a purpose that is contrary to the provisions of general legislation, so it is seen as a prohibited association. The application is also in line with the legal principle that the purpose of organizational crime can potentially endanger national stability, so that a person's participation in an organization with such a goal is considered to have fulfilled the delinquency of participation regulated by Article 169 of the Criminal Code. Academic literature that discusses the issue of freedom of association in the context of Article 169 shows that this norm is seen as not contrary to Article 28 of the 1945 Constitution because freedom of association can still be restricted to prevent the abuse of this right for purposes contrary to law and public order.

Courts do not always require evidence of violence or physical resistance to declare an association as "intended to commit a crime". The focus of the evidence can be on the structural involvement and collective goals of the organization that are normatively seen as unlawful, rather than on concrete actions such as physical assaults. This interpretation is in line with the criminal law tradition in Indonesia which tends to affirm the protection of public order and state integrity through norms that allow law enforcement against organizations that are intended or perceived

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<sup>16</sup> Aldo Diver Manengkey, Herlianti Y.A. Bawole, and Victor D. Kasenda, "CRIMINAL ACTS OF PARTICIPATION IN PROHIBITED ASSOCIATIONS ACCORDING TO ARTICLE 169 OF THE CRIMINAL CODE," *Lex Administratum* VIII, no. 4 (2020): 249–56.

to have criminal purposes (e.g., treason, separatism) long before real violence occurs. This approach has received academic attention because it is a point of debate between the protection of freedom of association and the need for the legal system to maintain national security.<sup>17</sup>

## D. Analysis of Judges' Considerations

### 1. The Judge's Discretion

The judge's assessment in a case involving Article 169 of the Criminal Code is based on the interpretation of the article contained in the Criminal Code as a criminal provision for "participating in an association with the aim of committing a crime". Article 169 of the Criminal Code states that "Participating in an association with the purpose of committing a crime, or participating in any other association prohibited by general rules, is threatened with imprisonment for a maximum of six years" and explains the criminal threat and additional criminal penalties against the founder or administrator of the organization. The full text information of Article 169 of the Criminal Code can be accessed freely online through official sources that contain the Indonesian criminal code.<sup>18</sup>

Assessment of the evidence by the panel of judges in decision 27/Pid.B/2019/PN. The team pointed out that the judge received evidence in the form of organizational attributes, documents, banners, and other materials that showed the organization's purpose as an indicator of whether the association's goals could be qualified as a crime. This kind of assessment is supported by a normative juridical analysis of Article 169 of the Criminal Code which is explained in an article in an agrarian law journal that discusses the article from the perspective of freedom of association and public order. The article asserts that Article 169 of the Criminal Code aims to prevent the abuse of freedom of association and assembly when the organization is perceived to be contrary to the applicable law.<sup>19</sup>

The judge's consideration also needs to be linked to the principle *of legality (nullum crimen sine lege)*. The principle of legality is a fundamental principle in Indonesian criminal law which determines that an act can only be punished if it has been regulated in the previous law. In accordance with Article 1 paragraph (1) of the Criminal Code, "No act can be punished, except on the strength of the criminal rules in the laws that existed before the act was committed". This principle not only prohibits retroactive criminal punishment but also affirms legal certainty for anyone who is criminally charged. An explanation of this principle can be found in full in the Indonesian criminal law textbook available online, which explains that the principle of legality includes the prohibition of retroactive criminal provisions and requires clear criminal norms before the act is committed.<sup>20</sup>

Pespektiff principle *Non-retroactive criminalization*, namely the principle that criminal laws should not apply retroactively so as to ensnare acts that at that time have not been regulated

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<sup>17</sup> Manengkey, Bawole, and Kasenda.

<sup>18</sup> Indonesia, "THE SECOND BOOK OF EVIL."

<sup>19</sup> Manengkey, Bawole, and Kasenda, "CRIMINAL ACTS OF PARTICIPATION IN PROHIBITED ASSOCIATIONS ACCORDING TO ARTICLE 169 OF THE CRIMINAL CODE."

<sup>20</sup> M.Kn Dr.Joko Sriwidodo, S.H., M.H., *INDONESIAN CRIMINAL LAW STUDY "THEORY AND PRACTICE,"* 2019.

as criminals, the Indonesian Criminal Code explicitly stipulates that criminal rules do not regulate acts that have not been prohibited in time. The material criminal law textbook that discusses the principle of legality states that criminal provisions must be established first, and criminal rules should not be applied retroactively to acts before the rules existed. This supports that the decision containing Article 169 of the Criminal Code does not violate the principle of non-retroactivity as long as this article is in effect long before the action is carried out.<sup>21</sup> *Ratio decidendi* The judge's decision lies in the construct of interpretation that the element of "intent to commit a crime" does not require an actual act of violence, but can be interpreted through symbolic evidence, organizational structure, and organizational goals that are perceived to be contrary to public order. This consideration illustrates that judges give weight to the "collective purpose" of the organization as an indicator of the risk of danger to state order, so that the offense of participation in an association that is considered unlawful can be punished without proof of an act of physical rebellion. This opinion is in line with the normative article that examines Article 169 of the Criminal Code in the context of freedom of association and social order described in legal journal articles.

This judge's view also refers to the function of criminal law in protecting public order and preventing potential threats to the state, so that *ratio decidendi* in the form of criminal liability for organizational goals that are considered dangerous becomes the normative basis for decisions. Academically, this kind of assessment structure describes an understanding of criminal law that combines aspects of legality with the instrumental function of criminal law to maintain the security and stability of society. Studies that contain the principles of legality and their influence on the imposition of criminal provisions are described in the material criminal law module which discusses the principles of legality and its application to criminal provisions in the Criminal Code.<sup>22</sup>

## 2. Weaknesses of the Judge's Judgment

The construction of the judge's considerations in decision 27/Pid.B/2019/PN. The team pointed out several weaknesses related to the evidentiary space, argumentation structure, and the application of material criminal law principles. The facts of the trial show that there were no acts of violence, assault, or physical resistance committed by the defendants on December 31, 2018, because the activities that took place on that day were internal worship and celebrations of the organization. Police witnesses even explained that the crowd only said that the police should not block worship, without any aggressive action other than the crowd that broke up when the officers approached. The judge's lack of in-depth analysis of the non-violent context was the first weakness, as the panel did not provide sufficient reasons to explain why non-criminal activities could be used as a basis for assessing the criminal intent of the organization as a whole.

The next weakness lies in the overly broad interpretation of the evidence found. The verdict showed that knives, bows and arrows were found in the secretariat room as part of the seized items, but there was no indication that the items were used or prepared for crime at the

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<sup>21</sup> M.Hum Dr. Aksi Sinurat, SH., *Principles of Material Criminal Law in Indonesia*, 2023.

<sup>22</sup> M.H. Muhammad Aenur Rosyid, S.HI., *CRIMINAL LAW TEXTBOOK*, 2020.

time of the incident. The judge did not describe the function, context, or direct relationship of the goods to the elements of the crime of Article 169 of the Criminal Code, so the judge's reading tended to assume an automatic relationship between the object and the purpose of the crime, without conducting a relevance test as developed in the criminal proof methodology. The criminal law literature explains that proof of tools or objects must show an adequate connection with the criminal purpose of the organization in order to be worthy of being used as an element of proof.

The assessment of the legal status of the KNPB organization was also not elaborated in the judge's consideration. There is no analysis of whether the KNPB has been explicitly declared a prohibited organization through a government decision, as is usually required in the application of Article 169 paragraph (2) of the Criminal Code. The panel did not explain the administrative legal framework that places the KNPB as *an unlawful association*, but only cited the perception of the apparatus and the Kesbangpol certificate. This shortcoming has an impact on weak normative justification, as the subjective assessment of government institutions differs from formal determinations regarding the prohibition of organizations. The doctrine of criminal law emphasizes that the category of "evil associations" should not rely solely on perception, but rather require an objective and verifiable legal basis.<sup>23</sup>

The judge's consideration also lacks to explore the principle of legality in the form of caution towards the expansion of the interpretation of criminal norms. Article 169 of the Criminal Code is a norm with an open formulation that requires strict reading so as not to fall into the criminalization of political expression protected by the constitution. The decision does not show an analysis of the boundary between political and criminal purposes, so there is no test of proportionality between the right to association (Article 28E of the 1945 Constitution) and the state's authority to restrict. Academic studies confirm that the reading of Article 169 of the Criminal Code must be placed within the framework of strict legality principles, in order to avoid excessive expansion of the meaning of delinquency which has the potential to be contrary to the principle *of non-retroactive criminalization*.<sup>24</sup>

Another shortcoming arises in the absence of an analysis of the standard of proof in formal delictions. The judge used the logic that the organization's goals could be inferred from the organization's attributes, banners, and documents, but did not evaluate whether those attributes indicated criminal intent or were simply political expressions. There is no explanation as to whether the symbols are sufficient to indicate *collective mens rea* in a criminal context, whereas the theory of criminal responsibility asserts that intent should not be inferred solely from symbols, but must be associated with concrete actions or real plans.<sup>25</sup>

The lack of elaboration on the relationship between the defendants' actions and the organization's intended "crime" is a significant conceptual weakness. The judge's considerations did not clearly distinguish whether the defendants were involved in the purpose of the crime, or only in an organization that was seen as having a specific purpose by the state. The absence of

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<sup>23</sup> Dr.Joko Sriwidodo, S.H., M.H., *INDONESIAN CRIMINAL LAW STUDY "THEORY AND PRACTICE."*

<sup>24</sup> Dr. Aksi Sinurat, SH., *Principles of Material Criminal Law in Indonesia.*

<sup>25</sup> Muhammad Aenur Rosyid, S.HI., *CRIMINAL LAW TEXTBOOK.*

this distinction leads to a very wide scope of interpretation of the element of "participation", which risks making this a crime of collective responsibility, not individual responsibility. Modern criminal law literature asserts that criminalization should not shift to criminalization of membership status without relevant individual action.<sup>26</sup>

### E. Comparison with Similar Judgments

Comparison with other decisions is important to assess the consistency of the judiciary in applying Article 106 of the Criminal Code, especially because treason crimes have a high political nature and are vulnerable to abuse. In some rulings, such as the RMS (Republic of South Maluku) case, judges tend to broaden the meaning of the element of "intent" to include symbolic expressions such as flag raising and oration, even though these actions do not indicate any concrete steps towards territorial separation. This pattern can be seen in Supreme Court Decision No. 1889 K/Pid/2009 which stated that raising the RMS flag was an act of treason, even though there was no action that factually led to the destruction of state sovereignty. The Timika District Court's decision to acquit the KNPB defendant shows a different approach, closer to the principle of *strict construction* of political crimes.<sup>27</sup> This approach is increasingly in line with the latest academic literature that asserts that treason should be interpreted as "a deed of deeds", not "a deed of feelings or wills".<sup>28</sup>

The Timika District Court showed a more cautious attitude in assessing political activities as criminal acts compared to the previous OPM case. In many cases of treason against Papuan activists, the authorities often use flags, leaflets, internal meetings, or political calls as evidence, although this approach has been criticized for potentially criminalizing legitimate political expression as long as it does not involve violence or concrete steps toward territorial separation.<sup>29</sup> Different from this general pattern, the judge in the KNPB case considered that evidence in the form of flags and meeting agendas did not meet the requirements of "commencement of implementation" as per Article 87 of the Criminal Code, because there were no direct acts that could cause the realization of treason. Thus, this ruling clarifies the boundary between symbolic political acts and criminal acts of treason.

The Timika District Court's decision reflects a more progressive reasoning pattern and places treason as the ultimate remedium in the context of state security.<sup>30</sup> This approach gives greater room for freedom of expression because it respects the distinction between political criticism, identity movements, and actions that truly threaten the integrity of the state. This pattern differs from RMS rulings that interpret treason broadly so that symbolic activities such as flag raising or political statements are considered sufficient to satisfy the element of treason and ultimately narrow the space

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<sup>26</sup> Manengkey, Bawole, and Kasenda, "CRIMINAL ACTS OF PARTICIPATION IN PROHIBITED ASSOCIATIONS ACCORDING TO ARTICLE 169 OF THE CRIMINAL CODE."

<sup>27</sup> M.H. Maulana Fahmi Idris, S.H., *Basic Concept of Criminal Law: Volume 1 of Maulana*, 2023.

<sup>28</sup> Riyan Rahman, Sahuri Lasmadi, and Usman, "Treason in the Perspective of Criminal Responsibility," *Hangoluan Law Review* 3, no. November (2024): 507–44.

<sup>29</sup> Satria, Iriansyah, and Ashyarofi, "The Raising of the Morning Star Flag in Papua Reviewed from Article 106 of the Criminal Code (Criminal Code)."

<sup>30</sup> Pande Komang Surya Mahesa and Ayu Putu Laksmi Danyathi, "THE APPLICATION OF THE ULTIMUM REMEDIUM PRINCIPLE IN CRIMINALIZATION POLICY IN INDONESIA: A THEORETICAL AND PRACTICAL REVIEW," *ACADEMIC MEDIA JOURNAL (JMA)* 3, no. 9 (2025): 1–16.

for democracy. The latest study confirms that courts need to apply a strict standard of proof before imposing Article 106 of the Criminal Code on political expression or nonviolent separatist movements, especially since these offenses have serious consequences and can limit civil rights if used excessively.<sup>31</sup> The Timika District Court's decision shows the courage to separate pro-Papuan political activity from factual threats to the state, and reminds that the criminal law should not be used to punish identities or aspirations, but rather to crack down on actions that truly endanger the safety of the state.

The Timika District Court's decision stands out in the evidentiary aspect because it places the *actus reus* as the main element in assessing the existence or absence of treason. The judge affirmed that only tangible actions that move directly towards the separation of territories can meet the elements of implementation, so political beliefs, ideological preferences, or organizational affiliations are not enough to criminalize a person. This approach is in line with the doctrine of modern criminal law that puts action above intention, because criminal law should only limit citizens' freedom when there are concrete actions that endanger the protected legal interests.<sup>32</sup> The affirmation provides a clearer boundary between political expression and treason, and prevents the use of state security articles as a tool of repression for certain political opinions or identities.

The Timika District Court's decision shows the strictest position in the application of the elements of Article 106 of the Criminal Code compared to the RMS decision and other Papuan treason cases. This attitude confirms that the assessment of treason must rest on actions that truly threaten the integrity of the state, not on political symbols, identity statements, or expressions that are still in the space of civil liberties. This direction is in line with the development of academic literature which reminds that criminal law should not take over the political space, because excessive criminalization has the potential to erode democracy and prevent people from expressing legitimate opinions. The Timika District Court's decision can therefore be read as the first step towards standardizing the interpretation of treason offenses that are more constitutional, proportional, and in accordance with the principle of the rule of law that respects freedom of expression while maintaining the integrity of the state.

## **F. Implications of the Decision on the Enforcement of State Security Law**

### **1. For the criminal justice system**

The Timika District Court's decision has important implications for judicial consistency in implementing state security offenses. The defendant's acquittal is a sign that judges demand stricter and more accurate evidentiary standards in treason cases, especially in Papua which has often used symbolic evidence or political expression as a basis for punishment. The Court emphasized that treason is a crime of act, not a crime of intent, so a punishment can only be

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<sup>31</sup> Mutia Iftiyani Rohrohmana and Eko Soponyono, "International Journal of Social Science and Human Research Treason as a Crime against State Security : A Legal Review in Indonesian Criminal Law," *International Journal of Social Science and Human Research* 07, no. 07 (2024): 5793–97, <https://doi.org/10.47191/ijsshr/v7-i07-131>.

<sup>32</sup> Sahat Maruli Tua Situmeang, "POLITICS OF CRIMINAL LAW AGAINST CRIMINALIZATION AND DECRIMINALIZATION POLICIES IN THE LEGAL SYSTEM IN INDONESIA," *Res Nullius Law Journal* 4, no. 2 (2022): 201–10.

imposed if there is a concrete action that directly leads to the separation of territories (*actus reus*). This affirmation strengthens the principle of fair trial and the principle of legality, which requires the state to clearly define criminal acts and prove them strictly so that citizens are protected from criminalization that exceeds the limits of reasonableness.<sup>33</sup> This approach also shows the role of the courts in ensuring that the criminal law is not used as a political instrument, but as a last resort mechanism to act on real threats to state security.

The Timika District Court's decision provides a direct encouragement for law enforcement, especially investigators and prosecutors, to be more careful before applying Article 106 to activists or non-violent political groups. So far, many treason charges have arisen solely because of alleged separatist ideology without evidence of actions that show a step towards territorial separation. This decision presents a clear juridical sign that every treason charge must be based on strong evidence regarding the beginning of implementation in accordance with Article 87 of the Criminal Code, not on ideological assumptions or simply the defendant's association with a certain organization.<sup>34</sup> This affirmation helps limit the use of criminal law so that it does not become a tool of repression against legitimate political expression, while ensuring that elements of treason are only applied to situations that actually pose a real threat to the integrity of the state.

In the long term, this ruling has the potential to strengthen public trust in the judiciary, especially for Papuan community groups who have viewed the treason law as a tool of political repression. A strict approach to proving treason can be seen as an attempt to restore the function of criminal law as a protection mechanism, not political instrumentalization. Therefore, this decision has jurisprudential value that can improve the quality of criminal justice in Indonesia.

## 2. As for the interpretation of the element of "treason"

The Timika District Court's decision provides substantive clarification on the element of "intent" in Article 106 of the Criminal Code by emphasizing that this element must be proven through actions, not simply based on ideological preferences or the inner state of the defendant. The old understanding that places "intention" as a psychological will often makes political symbols, internal meetings, or statements of attitude considered sufficient to indicate treason intentions. Through this decision, the judge restored the interpretation of the element of "intent" in its historical concept as part of an *act crime*, not a *thought crime*.<sup>35</sup> This correction emphasizes that criminal law should not be used to judge a person's political beliefs, but only to limit actions that are truly harmful.

The interpretation of the element of "separating part of the country's territory" is also clarified through the court's considerations. Referendum aspirations, expressions of political identity, or views on the future of Papua are not automatically interpreted as an attempt to separate territories. The judge rejected an approach that equates political preferences with

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<sup>33</sup> Rohman et al., "The Evidentiary System in Indonesian Criminal Law and Challenges in the Judicial Process," *JIMMI: A Multidisciplinary Student Scientific Journal* 1, no. 3 (2024): 279–92.

<sup>34</sup> Henry Yoseph Kindangan, "PROSECUTORIAL DISCRETION IN INDONESIA AND ITS COMPARASION IN EUROPEAN COUNTRIES," *The Prosecutor Law Review* 1, no. 1 (2023): 88–117.

<sup>35</sup> Rahman, Lasmadi, and Usman, "The Crime of Treason in the Perspective of Criminal Responsibility."

criminal acts, because such logic can erode the space of freedom in a democratic system. The element of separation is only fulfilled when there is a direct action towards the realization of territorial separation, such as the takeover of state facilities or other coercive actions of an operational nature. This explanation is consistent with academic studies that treason must be supported by a series of actions that are close to the physical realization of separation.<sup>36</sup>

The assessment of the element of "initiation of implementation" in Article 87 of the Criminal Code was rearranged more strictly through this ruling. Evidence in the form of flags, meeting minutes, or organizational documents is considered not to meet the requirements of "commencement of implementation" because it does not pose a real threat to the realization of delicacies. Contemporary doctrine asserts that this element serves as a boundary line between the plan and the real danger, so that symbolic actions or administrative preparations cannot be considered the first step in the execution of treason.<sup>37</sup> This standard narrows the space for the criminalization of peaceful political activities that have often been ensnared through a loose interpretation of the treason article.

The standard of proof of treason as a whole was tightened through the Timika District Court's ruling, in particular by emphasizing that political associations, organizational membership, or expression of identity cannot be used as a basis for criminal prosecution without evidence of concrete actions. Over the years, the expansion of the interpretation of the treason article has often used political symbols as evidence of the intention to secede, so that citizens who carry out peaceful political activities are easily criminalized. The Timika District Court's decision broke this pattern by demanding objective evidence, based on action. This approach helps maintain the quality of democracy because it limits the use of criminal law as a tool to suppress political opposition.

The human rights dimension also received an important strengthening through this ruling. Freedom of expression and the right to assemble are placed as constitutional rights that should not be reduced through the excessive application of the treason article. The court affirmed that political demands, including referendum demands, are part of the space of civil liberties as long as they are not embodied in coercive or criminal acts. The interpretation of the elements of treason therefore needs to be in line with international human rights principles that emphasize proportionality in restricting citizens' freedoms.<sup>38</sup> Overall, the Timika District Court's decision is an important milestone in the reformulation of treason interpretation because it presents guidelines that are more constitutional, balanced, and in accordance with the principles of a democratic state.

### **3. For the protection of freedom of expression**

The Timika District Court's decision has a major impact on the protection of freedom of expression in Indonesia because it provides a clear line between political expression and criminal

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<sup>36</sup> Gapung Wijanarko, Siswantari Pratiwi, and Parbuntian Sinaga, "The Crime of Treason Committed Jointly from the Perspective," *JILPR* 5, no. 3 (2024): 544–52.

<sup>37</sup> Ampuan Situmeang et al., "Balancing Human Rights and Cybersecurity : Analyzing Indonesia's Legal Framework," *Journal of Novelty Law (JHN)* 15, no. 2 (2024): 200–214.

<sup>38</sup> Abdul Fatah Lukum and Sahrul Hukumu, "Protection of Human Rights in Law Enforcement: An Empirical Study of the Case of Criminalization of Activists," *Subject: Journal of Law and Politics* 3, no. 1 (2025): 712–30, <https://doi.org/10.51903/perkara.v3i1.2342>.

acts. The judge rejected treason charges based solely on symbolic activities, such as meetings or organizational attributes, thus emphasizing that the state cannot silence political opinion simply because its views are controversial or different from the mainstream. This affirmation is in line with international human rights standards in ICCPR Articles 19 and 21 which guarantee space for alternative political expression, including those that are unpopular or challenge state narratives.<sup>39</sup> In the context of Papua, which is often burdened with political stigma, this explanation presents legal certainty that freedom of expression is a right, not a threat.

The judge's consideration in the decision strengthens the principle of proportionality in limiting human rights. The state is only authorized to restrict political expression if there is a real and direct threat to national security, not just a speculative potential danger. In this case, the internal meeting and the use of KNPB attributes are considered to have no direct relationship with the threat of territorial separation, so it cannot be used as a basis for treason punishment. This view reflects the principle of *least restrictive means*, which is a principle that requires the government to choose the lightest action when restricting citizens' rights.<sup>40</sup> This approach ensures that criminal law is not used excessively or arbitrarily.

This decision also teaches the importance of looking at the issue of Papua in its whole in its historical, social, and political context. The criminalization of Papuan activists often takes place in a sensitive and tense space, so law enforcement must prioritize caution so that the actions of the authorities do not exacerbate public distrust. By correcting the lax interpretation of the treason article, the judge pointed out that the judiciary should be an objective space for Papuans, regardless of their political background. A stricter interpretation of the treason element helps create balanced legal protections for vulnerable groups often associated with separatism without adequate basis.

This ruling position ultimately provides a normative foundation for a healthier relationship between the state and citizens. The protection of freedom of expression is not understood as a threat to national integrity, but as an essential element of a mature democracy. The state still has the right to maintain security, but this authority must be exercised constitutionally and proportionately. The Timika District Court's decision can therefore be read as a sign that balances national security with the state's obligation to protect civil liberties, thus becoming an important guideline in handling cases involving activism and political expression in Papua.

## CONCLUSION

Based on the results of the analysis of the Timika District Court Decision Number 27/Pid.B/2019/PN. The team, this study concluded that the panel of judges had applied Article B106 of the Criminal Code jo. Article 87 of the Criminal Code is more careful and not hasty in

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<sup>39</sup> Afrizal Razqi and Hananto Widodo, "RESTRICTIONS ON FREEDOM OF EXPRESSION AND OPINION ACCORDING TO LAW NUMBER 12 OF 2005 CONCERNING THE RATIFICATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS," *Novum Law Journal* 10, no. 02 (2023), <https://doi.org/10.2674/novum.v0i0.46338>.

<sup>40</sup> Dwi Saleha, Vegitya Ramadhani Putri, and Rajab Lestaluhu, "A Legal Review of the Limitation of Citizens' Constitutional Rights During a Global Health Emergency," *JOURNAL AR RO'IS MANDALIKA (ARMADA)* 5, no. 1 (2025): 309–22.

qualifying political activities as a criminal act of treason. The legal facts revealed at the trial show that the defendants' actions are still in the realm of political expression and internal activities of the organization, without any concrete acts that directly lead to efforts to separate the territory of the Unitary State of the Republic of Indonesia. Thus, the elements of "intention" and "beginning of implementation" which are the main requirements for the criminalization of treason are not fulfilled objectively.

The judge's consideration in distinguishing between symbolic political acts and criminal acts of treason can be judged to be juridically correct. This decision emphasizes that treason is not an intentional offense or ideological offense, but an offense that requires real and operational action. This approach is important to prevent the expansion of the interpretation of Article 106 of the Criminal Code which has the potential to make the criminal law a tool to silence political views, especially in the context of Papua which has been politically and socially sensitive. This study also found problems in the application of Article 169 of the Criminal Code. The panel of judges tended to associate the defendant's participation in the organization with the purpose of crime without adequately elaborating on the legal status of the KNPB as an organization that has been formally banned by the state. This shortcoming opens up space for criticism because it has the potential to shift criminal liability from individual acts to affiliation or membership-based criminality. In the perspective of modern criminal law, this kind of pattern risks contradicting the principles of legality and the principle of personal responsibility in criminalization.

The Timika District Court's decision has important implications for law enforcement practices in the future. This decision provides a clear sign for law enforcement officials not to easily apply the treason article to non-violent political activities without evidence of the commencement of implementation as referred to in Article 87 of the Criminal Code. In addition, this decision can also be used as a jurisprudential reference to encourage consistency in the interpretation of treason offenses that are stricter, proportionate, and constitutional. As a recommendation, this study emphasizes the need for a stricter standard of interpretation of treason elements, especially in distinguishing between political expression, preparatory acts, and truly punishable acts. The enforcement of state security laws should be placed as the ultimate remedium, not as a repressive instrument against freedom of expression. Thus, criminal law continues to function to protect the integrity of the state without sacrificing the principle of the rule of law and the civil rights of citizens.

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