



Anti-Pancasila Offence: Protection of National Security or Threat to Freedom of Speech

Vidya Prahassacitta✉

Business Law Program, Law Department, Faculty Humanities, Bina Nusantara University, Jakarta, Indonesia

Corresponding: vidya.prahassacitta@binus.ac.id

Article Process

Submitted:
01-02-2024

Reviewed:
20-02-2024

Accepted:
15-04-2024

Published:
16-05-2024

Abstract

The research discusses anti-Pancasila offenses in relation to national security and freedom of speech. Focus on the distribution of Communism, Marxism, and Leninism. Three research questions are the harm of spreading anti-Pancasila, the implementation of these offenses in court verdicts, and the formulation of these offenses in the new Penal Code. The research is document research using statutory and case approaches. Harm principles are used to analyze the research problems. Research results show that the distribution of Communism, Marxism, and Leninism has harmed other people, democratic states, and citizen exercising their fundamental rights. The implementation and formulation of these offenses in the new Penal Code also need help. Consequently, this offense cannot fulfill its objection to protecting national security interests; on the contrary, it becomes a threat to freedom of speech in the public sphere.

Keywords: Anti-Pancasila, national security, freedom of speech

Abstrak

Penelitian ini membahas mengenai tindak pidana anti Pancasila dalam kaitannya dengan keamanan nasional dan kebebasan berbicara. Fokus pembahasan adalah mengenai tindak pidana penyebaran Komunisme, Marxisme-Leninisme. Tiga permasalahan dalam penelitian ini adalah mengenai bahaya dari penyebaran anti-Pancasila, pelaksanaan dari tindak pidana ini dalam putusan-putusan pengadilan dan formulasi tindak pidana ini dalam KUHP baru. Penelitian ini merupakan penelitian dokumen dengan menggunakan pendekatan undang-undang dan pendekatan kasus. Pembahasan dengan menggunakan prinsip bahaya. Hasil dari penelitian ini menunjukkan penyebarluasan Komunisme, Marxisme-Leninisme memiliki bahaya bagi individu lain, keberlangsungan negara demokrasi dan warga negara dalam memperoleh hak dasarnya. Selain itu terdapat permasalahan baik dalam implementasi dan rumusan tindak pidana dalam KUHP baru. Permasalahan ini menyebabkan tindak pidana ini tidak dapat secara optimal melindungi kepentingan keamanan nasional dan sebaliknya menjadi ancaman bagi kebebasan berbicara di ruang publik.

Kata kunci: Anti-Pancasila, Keamanan nasional, kebebasan berbicara

I. Introduction

Pancasila is an Indonesian national principle. According to Indonesian history literature, the Indonesian Communist Party, or *Partai Komunis Indonesia* (PKI), attempted to transform Communism into national principles. On 30 September 1965, seven army generals were assassinated, followed by a coup attempt. The Indonesian army accused the PKI.¹ The event is known as the '30 September 1965 PKI Rebellion'. A power transformation followed the tragedy in Indonesia. From President Soekarno to President Soeharto, from Old to New Order.

¹ Kevin W. Fogg, "Indonesian Socialism of the 1950s: From Ideology to Rhetoric," *Third World Quarterly* 42, no. 3 (2020): 465.

Soon after Soeharto was elected president in 1966, the People's Consultative Assembly, *Majelis Permusyawaratan Rakyat* (MPR), issued TAP MPR Number XXV/MPR/1966, which disbanded the PKI, declared it a banned party and prohibited the promotion of Communism, Marxism-Leninism in Indonesia. Communism is viewed as an ideology that is destructive and contradictory to Pancasila. In 1984, New Order promoted the creation of a film about the '30 September 1965 PKI Rebellion'. The first scene depicts PKI militants assaulting and murdering a group of individuals seeking to worship at a mosque. The film exposes the PKI members' sadism as they tortured and executed the generals. The PKI, which is associated with Communism, is defined as a cruel organization with no sense of humanity and no faith in God. This film promotes the idea in Indonesian society that Communism is connected with violence and atheism.² New Order utilized the film as propaganda to highlight the PKI danger to Indonesia's society.

The New Order collapsed in 1998. After the New Order ended, the reformation regime kept TAP MPR Number XXV/MPR/1966. Communism is still banned and viewed as a danger to national security. Then, the legislature considered the importance of criminalizing the spread of Communism by issuing Law Number 27 of 1999 for the revision of the Penal Code connected to Crime against National Security (Law Number 27 of 1999). The legislation adds five additional provisions to articles 107a, c, d, and e concerning the dissemination of Communism and Marxism-Leninism. Legislative grounds that it is vital to preserve Pancasila as the foundation of the State against the doctrines of Communism and Marxism-Leninism, which are opposed to religion, which is the foundation of Indonesian life. The offenses are classified as Anti-Pancasila crimes.

The implementation of the distribution of Communism and Marxism-Leninism offenses under Law Number 27 of 1999 becomes problematic because it hinders citizens' ability to voice and present their opinions in public. According to a study by the National Legal Development Agency, *Badan Pembinaan Hukum Nasional* (BPHN), the dissemination of communism and Marxism-Leninism offenses under Law Number 27 of 1999 has set a harmful precedent for freedom of speech.³ Police in Ternate, North Maluku, and Lamatti Raiwang hamlet, South Sulawesi, detain ladies wearing shirts bearing the PKI symbol of a red hammer and sickle.⁴ A group of protestors was reported to police for bringing a banner with a red hammer and sickle image to a demonstration opposing the draft of a new penal code. In several situations, courts pronounced defendants convicted and found guilty of violating Article 107 of Law Number 27 of 1999. Heri Budiman, an environmental activist from Bayungawi, was prosecuted and found guilty of bringing a banner with a red hammer and sickle image to a rally. In other trials, Purhandi and Wawan Gunawan were convicted and found guilty of posting communist literature on their social media accounts. Then, Hendra Saputra was prosecuted and found guilty of selling red hammer and sickle t-shirts via e-commerce.

Law Number 1 of 2023, respecting the Penal Code (Penal Code), was issued on 6 January 2023. The Penal Code adopts clauses that ban the distribution of Communism and Marxism-Leninism, which were previously regulated by Law Number 27 of 1999. Articles 188 and 189 of the new Penal Code outlaw the distribution of Communism, Marxism-Leninism, and other anti-Pancasila ideologies. Despite protests and rejection from various groups, legislators continue to believe that such provisions are essential. Several organizations provide comments on the proposed Penal Code relating to anti-Pancasila ideology offenses. The Institute for Justice Criminal Justice Reform (ICJR) contends that criminalizing the spread of Communism will jeopardize human rights, particularly the right to free speech, and will have the potential to lead

² Gilang Desti Parahita and Vissia Ita Yulianto, "The Treachery on YouTube: The Politics of Memory on New Media in Indonesia," *Archipel*, no. 99 (2020): 50.

³ Badan Pembinaan Hukum Nasional, Laporan Akhir Kelompok Kerja Analisa dan Evaluasi Hukum Terkait Penguatan Ideology Pancasila, quoted from site https://www.bphn.go.id/data/documents/laporan_akhir_pip.pdf accessed 18 January 2024.

⁴ Muhamad Ridlo, Duh Berani-beraninya Wanita Muda ini Pakai Kaos Berlambang Palu Arit, quoted from site <https://www.liputan6.com/regional/read/5423745/duh-berani-beraninya-wanita-muda-ini-pakai-kaos-bergambar-palu-arit> accessed 18 January 2024; and Winda Chairunisyah Suryani, Penangkapan Pengguna Kaos Palu Arit dan Hoaks yang Dipelihara, quoted from site <https://asumsi.co/post/56843/penangkapan-pengguna-kaos-palu-arit-dan-hoaks-yang-dipelihara/> accessed 18 January 2024.

to numerous coercive acts against people.⁵ The National Alliance Penal Code Reformation, *Aliansi Nasional Reformasi KUHP*, emphasizes the development of anti-Pancasila ideology charges that are vague and have the potential to hinder free speech.⁶

The description above demonstrates that Indonesia has issues with Communism and Marxism-Leninism offenses. Although several article journals have discussed Communism and Marxism-Leninism offenses in Indonesia, this research is different from the previous article and has novelty. Subhan's previous article discusses legal protection for communist and Marxist-Leninist supporters in Indonesia. He concludes that communist and Marxist-Leninist offenses on Law 27 of 1999 are contrary to civil and political proper protection; thus, to give protection to those suitable, it requires a legislative review of Law Number 27 of 1999.⁷ This research has differences with the author's research which not only analyze the freedom of speech protection on communist and Marxist-Leninist on Law Number 27 of 1999 but also discuss those offenses in new Penal Code of 2023. In another journal article, Tawas and Taroreh wrote about the regulation and execution of Communism, Marxism-Leninism, and Pancasila as national security. Tawas and Taroreh conclude that the Communism and Marxism-Leninism offenses in Law Number 27 of 1999 exist because they are designed to protect Pancasila as the sole ideology to protect national security and public order.⁸ The author's analysis is more profound than previous research because the researcher questioning about the justification of criminalization of anti-Pancasila ideology in order to protect national security. Last, Purba and Wijaya's research, which addresses criticism of Communism's implementation and Marxism-Leninism offenses, focuses on Heri Budiman's court decision, Banyuwangi District Court Decision Number 559/Pid.B/2017/Pn.Byw, defendant.⁹ The author analyses the implementation of communist and Marxist-Leninist offenses on Law 27 of 1999 but is not limited to the Heri Budiman case. In this paper, the author analyses four court decisions found on the official website of the Supreme Court of the Republic of Indonesia. In the end, the novelty of the author's research is that the author employs harmful principles to examine the criminalization and implementation of Communism and Marxism-Leninism offenses, as well as whether the criminalization is consistent with the goal of protecting national security and free speech.

II. Research Problems

Based on the introduction section I, the author has three research problems, as formulated on research questions as below:

1. What harm does the distribution of Anti-Pancasila cause?
2. How does the implementation of Anti-Pancasila offenses in Law Number 27 of 1999 in the court verdict in Indonesia impact national security and freedom of speech?
3. What is the critique of Anti-Pancasila offenses under the Penal Code?

III. Research Methods

The research is a document research that utilizes secondary data obtained from papers containing pre-existing information, including data from prior research as well as non-research

⁵ Justice Criminal Justice Reform, Kebebasan Berkumpul, Berekspresi, Berpendapat, dan Hak Informasi Masih dalam Ancaman quoted from site <https://icjr.or.id/kebebasan-berkumpul-berekspresi-berpendapat-dan-hak-informasi-masih-dalam-ancaman/> accessed 18 January 2024.

⁶ Supriyadi Widodo Eddyono, Problem Kejahatan Terhadap Ideologi Negara Dalam R KUHP, quoted from site <https://reformasikuhp.org/problem-kejahatan-terhadap-ideologi-negara-dalam-r-kuhp/> accessed 18 January 2024.

⁷ M. Subhan, "Perlindungan Hukum Bagi Penganut Ideologi Komunisme/Marxisme-Leninisme Di Indonesia," *Mimbar Keadilan* 12, no. 2 (2019): 138.

⁸ Fony Tawas and Hironimus Taroreh, "Tindak Pidana Terhadap Keamanan Negara Berdasarkan Pasal 107a - 107f Kitab Undang-Undang Hukum Pidana," *Lex Crimen* IX, no. 4 (2020): 225.

⁹ Andreas Purba and Firman Wijaya, "Analisis Putusan Nomor 559/Pid.B/2017/Pn.Byw. Pengadilan Negeri Banyuwangi Tentang Penyebaran Ajaran Komunisme/Marxisme-Leninisme Secara Melawan Hukum Berdasarkan Pasal 107a Kuhp," *Jurnal Hukum Adigama* 2, no. 2 (2019): 1108.

material.¹⁰ The literature utilized in this study comprised books, legislative rules, and further corroborating scientific resources presented in pertinent periodicals. This research utilizes secondary data, which comprises primary, secondary, and tertiary legal documents.¹¹

This research uses statutory and case approaches. The statutory approach entails scrutinizing the substance of norms within established legislation while considering the context from which these standards emerged and the degree of consistency across different laws.¹² The case approach employs ratio decidendi to evaluate the significant facts incorporated in the legal principles that the judge then interprets into conclusions.¹³ By analyzing court decisions, this method seeks to examine the applicability of legal standards to legal practice.¹⁴

Following this, data gathered through document research is processed and qualitatively assessed. The researcher endeavors to provide a comprehensive analysis of the study's findings in relation to a legal problem.¹⁵ Following this, the collected and analyzed outcomes of the examination of these resources are provided in an effort to provide answers to the study questions that were posed. In addition to being descriptive, the findings of this study are both prescriptive and critical; specifically, they include the formulation and proposal of guidelines or rules that must be followed by legal practice, and they pertain to legal dogmatics.

IV. Result And Discussion

1. The Harm of Distributed Communism as Anti Pancasila

What is the harm of spreading Communism, Marxism-Leninism as anti-Pancasila ideology in the public realm that it should be prohibited? The central dilemma is when to criminalize a particular expression. When a specific speech is outlawed without causing any harm, it disrupts free speech. The prohibition of spreading Communism and Marxism-Leninism in the public sphere is due to the speech's harmful effects on others.

Before answering those questions, it is essential to understand the prohibition of distributed Communism and Marxism-Leninism under Law Number 27 of 1999. Article 107 a Law Number 27 of 1999 prohibits anyone who unlawfully, in public orally, in writing, and or through any media, spreads or develops the teachings of Communism, Marxism-Leninism in all forms and manifestations. The punishment is a maximum imprisonment of twelve years. Article 107 c Law Number 27 of 1999 prohibits anyone who unlawfully in public orally, in writing, or through any media, spreads or develops the teachings of Communism, Marxism-Leninism, which results in riots in society or causes loss of life or loss of property. The punishment is a maximum imprisonment of fifteen years. Article 107 d Law Number 27 of 1999 prohibits anyone who unlawfully, in public orally, in writing, and or through any media, spreads or develops the teachings of Communism, Marxism-Leninism with the intention of changing or replacing Pancasila as the basis of the State. The punishment is a maximum imprisonment of twenty years. Article 107 e Law Number 27 of 1999 prohibits two actions. First, it establishes an organization that is known or reasonably suspected of adhering to the teachings of Communism and Marxism-Leninism in all its forms and manifestations. Second, he assists organizations, both within and outside the country, which he knows are based on the teachings of Communism, Marxism-Leninism, or in all forms and manifestations thereof with the intention of changing the foundations of the State or overthrowing the legitimate government.

Distributed Communism and Marxism-Leninism constitute a crime against national security. The official explanation of Law Number 27 of 1999 emphasizes the importance of criminalizing such crimes in order to safeguard Pancasila as Indonesia's national principle. The legislation grants expiations that distributed Communism and Marxism-Leninism offends

¹⁰ R Singleton and B C Straits, *Approaches to Social Research* (Oxford: Oxford University Press, 2018), 326.

¹¹ Dyah Ochtarina Susanti, *Penelitian Hukum: Legal Research* (Jakarta: Bumi Aksara, 2022), 19.

¹² Kristiawanto, *Memahami Penelitian Hukum Normatif* (Jakarta: Prenada Media, 2022), 29.

¹³ *Ibid.*

¹⁴ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: MNC Publishing, 2022), 321.

¹⁵ William Lawrence Neuman, *Social Research: Qualitative and Quantitative Approaches.*, Seventh Ed (Edinburgh: Pearson Education Limited, 2020), 19-20

elements of anti-Pancasila doctrine because Communism and Marxism-Leninism contradict religion, which is the fundamental precept of Pancasila. Indeed, Indonesia has 'trauma' or 'bad memory' with the PKI, which used violence and a coup attempt to replace Pancasila with Communism. However, prosecution based just on 'trauma' or a poor memory is insufficient; it must also include injury from disseminated Communism and Marxism-Leninism. Thus, what is the harm?

Feinberg argues that harm is a setback of interest caused by improper behavior.¹⁶ Harm is caused by behaviors that are not ethically justified. It not only harms others' interests but also their rights. Harm occurs when a person's interests are worse off than they were before. Harm includes the loss of welfare interest, the desire to achieve and maintain a specific level of mental and physical health, economics, financial resources, and political independence in accordance with the intended aims. Liberty is one of these welfare concerns. Feinberg classifies interest into three categories: private interest, public interest, and national security interest.¹⁷ National security considerations can be prioritized over individual and public interests, but this can only be done if the situation is actually threatening. Beyond these legitimately hazardous conditions, criminalization will hurt both private and public interests if it eliminates the benefits of free expression in the name of national security.

Simster and von Hirsch divide harm into two categories: direct harm and remote harm.¹⁸ Direct harm is defined as a significant loss to others caused directly by someone's conduct or a direct risk stemming from someone else's acts. This form includes both murder-related death and theft-related property loss. The most apparent type of loss or harm caused by a forbidden act is direct harm. Remote harm occurs when activities do not cause immediate loss or risk, but the effects of these actions can endanger others. For example, there is a restriction on inducement to perform a criminal act that could cause a third party to suffer loss or harm as a result of another's activities.

Distributed Communism and Marxism-Leninism shall be considered incitement under Articles 107 a and c of Law Number 27 of 1999 if it is used to hurt others. Incitement does not produce danger on its own; the severity of the danger is determined by the consequences of the act committed by another person who has independence and free choice. The other party is an autonomous individual who can select between alternative possibilities and accept responsibility for his decision. A's statement does not directly endanger B, but the effects of such speech may motivate B to take action that endangers C. B's actions are influenced by A's speech, but B can choose his or her actions. This risk is a type of remote harm. In contrast, distributed Communism Marxism-Leninism as incitement is consistent with Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which states that the exception of freedom of expression is justified in order to protect human reputation, public order and national security, as well as Article 20 of the ICCPR, which states that the exception of freedom of expression includes incitement and the advocacy of hatred.

Articles 107 d and e of Law Number 27 of 1999 prohibit action in a slightly different manner and do not consider inducement. Those actions are part of political crime. A political crime is one committed with a political motive because present norms and legal structures do not reflect their values and are unfair.¹⁹ A political criminal does a forbidden act in order to disrupt state structures. The risk of these activities is not only that they destroy the democratic State but also that they harm citizens by preventing them from defending and exercising their fundamental

¹⁶ Nina Peršak, "Using 'Quality Of Life' To Legitimate Criminal Law Intervention: Gauging Gravity, Defining Disorder," in *Liberal Criminal Theory: Essays for Andreas von Hirsch*, ed. A P Simester, A du Bois-Pedain, and U Neumann (Oxford: Bloomsbury Publishing, 2014), 229.

¹⁷ Joel Feinberg, *Freedom and Fulfillment: Philosophical Essays*. (New Jersey: Princeton University Press, 2021), 124-5.

¹⁸ RA Duff and SE Marshall, "Remote Harms' and the Two Harm Principles," in *Liberal Criminal Theory: Essays for Andreas von Hirsch*, ed. A P Simester, A du Bois-Pedain, and U Neumann (Oxford: Bloomsbury Publishing, 2014), 205-9.

¹⁹ David Hardiogo, "Delik Politik Dalam Hukum Pidana Indonesia," *Jurnal Hukum & Pembangunan* 50, no. 4 (2021): 911.

rights.²⁰ The danger is not that it dethrone the legitimate monarch but rather that citizens may lose their freedoms. During the transition period, there would be disruptions in state and government institutions, affecting the welfare of citizens. When the regime becomes authoritarian, various essential rights of citizens, such as freedom of expression and speech, would be violated. The hazard can be viewed as indirect harm. Thus, the dangers of disseminating Communism and Marxism-Leninism as a political crime, as mentioned in Articles 107 d and e of Law Number 27 of 1999, are also part of the remote harm.

As a result, the State has the authority to outlaw specific words or actions in order to defend national security interests. Like, Indonesia has the authority to criminalize the spread of Communism and Marxism-Leninism in order to safeguard Pancasila as a national principle from other anti-Pancasila ideologies. Indonesia has a "trauma" or "bad memory" associated with Communism and Marxism-Leninism, particularly the "30 September 1965 PKI Rebellion" event. However, a faulty memory cannot be used to justify criminalizing Communism or Marxism-Leninism. It requires a negative outcome. Thus, the danger of spreading Communism and Marxism-Leninism is that the word or action harms others. Distributed Communism and Marxism-Leninism, as incitement under Article 107 a and c of Law Number 27 of 1999, cause remote harm because they put another person in danger. Then, according to articles 107 d and e of Law Number 27 of 1999, Communism, and Marxism-Leninism are classified as political crimes, as well as remote injury, because they harm the democratic State and citizens' ability to defend and enjoy their fundamental rights. It will preserve citizens' right to express their opinions in public by identifying the harm caused by the spread of Communism and Marxism-Leninism.

2. The Implementation

This section discusses the implementation of the distribution of anti-Pancasila offenses in Indonesia – especially offenses under Article 107 a Law Number 27 of 1999. The discussion focuses on four court verdicts as follows: Kuningan district court verdict number 140/Pid.B/2017/PN Kng; Karawang district court verdict number 293/Pid.B/2018/PN Kwg; Bale Bandung district court verdict number 288/Pid.B/2017/PN Blb; and Banyuwangi district court number 559/Pid.B/2017/PN.Byw. Due to their actions, as detailed in Table 1 below, the defendants in those cases were found guilty of violating Article 107a of Law Number 27 of 1999 regarding the distribution of Communism and Marxism-Leninism material.

Table 1. Court Verdicts regarding the Violation of Article 107 a Law Number 27 of 1999

Court Verdict Number	Defendant Name	Violation Act
140/Pid.B/2017/PN Kng	Purhandi / Andi Bajang Bin Dasher	The Defendant, a labor activist, posted a picture of himself holding an imaging hammer and sickle, a PKI symbol; below the image, he wrote a caption: "The laborers stand with the peasants, the impoverished, and the poor." He also posted several images of books entitled Indonesian Communism Under Sukarno and Ideologi dan Politik 1959-1965, both written by Rex Mortimer, and The Communist Collapse in Indonesia by Arnold C. Brackman, the author of Indonesian Communism: A History. He also posted an image of three soldiers captioned I am proud to be a Communist and another nine pictures of a hammer and sickle next to

²⁰ Khalid Ghanayim and Mordechai Kremnitzer, "Offences against the Democratic System of Government," (January 2016) Oxford U Comparative L Forum 1 <https://ouclf.law.ox.ac.uk/offences-against-the-democratic-system-of-government/#:~:text=Offences against the democratic regime, to establish or change the accessed 18 January 2024>.

Court Verdict Number	Defendant Name	Violation Act
293/Pid.B/2018/PN Kwg	Wawan Gunawan / Cikal /Wewew Bin Hermawan	the State's symbol of Pancasila. The Defendant also wrote a post: "If only Nasakom were maintained in Indonesia, Indonesia would certainly have allies, such as Russia, China, and the (capitalist) allied states." The Defendant posted an imaging hammer and sickle, a PKI symbol, and wrote, "Call us if no one is willing," "We are not you," "We are still here," and finally posted a picture of a statue of a man and a woman where the woman is holding a sickle and the man holding a hammer and above it are the words "Sezarah" and updating the Defendant's profile photo using the PKI symbol.
288/Pid.B/2017/PN Blb	Hendra Saputra / Boedi Paiman	The Defendant sells a hammer and sickle, PKI symbol, and shirts in his social media.
559/Pid.B/2017/PN.Byw; 174/Pid/2018/PT Sby; 1567K/Pid.Sus/2018	Heri Budiawan / Budi Pego	The Defendant, the leader of a demonstration against mining in the village of Gunung Salak, unfurled a banner containing the hammer and sickle, the PKI symbol.

Source: Indonesia Supreme Court Official Website

The focus of the discussion from those court verdicts is the harm of the distribution of Communism. Does the Defendant's action of distributing communist material cause serious harm to national security? It requires an extraordinary time of great tension so that a speech in the public sphere can have serious harm to national security.²¹ An advocacy for a revolution by distributing Communism, Marxism-Leninism does not have serious harm if it does not follow with a revolution that overthrew the legitimate government. The revolution will happen if certain conditions support the revolution. For example, there is a group of people who are dissatisfied and do not support the current government, political crisis, economic crisis, and other circumstances. These conditions are necessary for a revolution to occur. It means that the distribution of Communism and Marxism-Leninism does not create clear and present dangerous conditions.

Defendants' actions are selling or posting hammer and sickle symbol parts of distributing Communism and Marxism-Leninism material, but there are no extraordinary times of great tension that can create a revolution. During that time, Indonesia's social, political, and economic situation was safe and stable. Even more, defendants do not have the capacity to incite people to conduct a revolution. Defendants are only ordinary people, not public figures or organization leaders or members. Then, the defendants do not have the intention to advocate revolution to change Pancasila as the national principle. In Bale Bandung District Court Verdict Number 288/Pid.B/2017/PN Blb, the Defendant, Hendra Saputra, sells hammer and sickle shirts that identic with the PKI symbol because he has convection business, thus selling hammer and sickle shirts is part of his business. Moreover, Defendant does not have any affiliation with a forbidden organization that uses Communism or Marxism-Leninism as their central basic ideology. In Karawang District Court Verdict Number 293/Pid.B/2018/PN Kwg, the Defendant, Wawan

²¹ Feinberg, *Op. cit.* 148-149.

Gunawan, does not have evil intentions because the Defendant's purpose of posting the hammer and sickle and writing the caption was only for joking.

Courts do not analyze the harm of post-PKI symbols against national security. In Kuningan District Court Verdict Number 140/Pid.B/2017/PN.Kng, the Panel of judges does not analyze the meaning of these symbols in a particular context and how this picture would affect the reader's opinion and understanding of Communism. Likewise, with books, the Judges foreclosed any discussion about the book's substance, whether these books contained communist teachings or not. A panel of judges defines the threat literally by book covers and their titles.²² Judgments of whether there is a clear and present danger of the distribution of communist material are overridden. In clear and present danger, it is necessary to analyze whether a speech constitutes a threat that is likely to be followed by a substantive crime and whether there is a natural, imminent threat.²³ In the verdict, the Panel of judges does not consider the impact of posting that material to the audience, whether the Defendant's posting is an advocacy or incites the audience to conduct a revolution or not, and whether there was an imminent threat to national security or not.

Critics address the judges' legal consideration of Heri Budiawan or Budi Pego's case both in District Court and Supreme Court verdicts. In Banyuwangi District Court Verdict Number 559/Pid.B/2017/PN.Byw. The Panel of Judges argued that PKI symbol parts of communism symbol, which is against Pancasila values. Utilizing the PKI symbol during protest demonstrations is part of distributing communism ideology. The demonstration of different Pancasila education or seminar activities in universities where Communism is introduced as an ideology that is against Pancasila's values.²⁴ Then, in Supreme Court Verdicts Number 1567K/Pid.Sus/2018, judges argue that utilizing a hammer and sickle symbol during a protest is an attempt to revive Communism in Indonesia. Communism is an anti-Pancasila ideology, a threat to democracy in Indonesia, and represents terrible memories or trauma to the Indonesian people.²⁵ Both arguments are incorrect because judges need to consider the context of the hammer and sickle symbol. The Defendant led protesters to demonstrate that gold mining activities can harm their village's environmental interests. Hammer and sickle are tools for farmers and village people to conduct daily work. Thus, the hammer and sickle symbol represents protesters and is not necessarily represented identically with PKI and Communism. On the other hand, the defendants used a hammer and sickle symbol not during political or illegal organization activities that have the purpose of changing Pancasila as a national principle. Judges also did not consider the situation and conditions during the protest, where the demonstration was orderly and peaceful. In this case, there is no clear and present danger from using a hammer and sickle symbol, which is identical with PKI and Communism symbols, during the protest demonstration because it does not incite members of protesters to conduct a revolution that threatens national security.

Other critics about the relation between sentencing with blame and harm of forbidden action or consequences. The sentencing should fit with the Defendant's culpability and the harm that it has caused.²⁶ In order to analyze whether the sentencing fits the Defendant's action, it is also essential to consider the Defendant's exceptional circumstances. Judges usually see this variable as a basis for aggravating or reducing the defendant punishment. In Table 2 below, the author shows the relation between that variable.

²² Harison Citrawan and Ganesh Cintika Putri, "Law, Memory, and Silence: The Case Of Anti-Communism Laws in Indonesia," *The Age of Human Rights Journal* 22, no. January (2024): 7-8.

²³ Ronald J. Krotoszynski Jr., "The Clear and Present Dangers of the Clear and Present Danger Test: Schenck and Abrams Revisited," *SMU L. Rev.* 72, no. 3 (2019): 423.

²⁴ District Court of Banyuwangi Verdict Number 559/Pid.B/ 2017/PN.Byw, *Heri Budiawan v Republic of Indonesia* (2017), 54.

²⁵ Supreme Court of Indonesia Verdict Number 1567K/Pid.Sus/2018, *Heri Budiawan v Republic of Indonesia* (2018), 6.

²⁶ Darrell Steffensmeier and Noah Painter-Davis, "Focal Concerns Theory as Conceptual Tool for Studying Intersectionality in Sentencing Disparities: Focus on Gender and Race Along With Age," in *Handbook on Punishment Decisions Locations of Disparity*, ed. Jeffery T. Ulmer and Mindy S. Bradley (New York: Routledge, 2018), 195.

Table 2. Relation between Culpability, Harm, and Sentencing on Court Verdicts

Court Verdict Number	Culpability	Harm	Special Circumstances	Sentencing
140/Pid.B/2017/PN Kng	The Defendant has intention.	Disturbing the public, especially on the internet	-	One year and nine months in prison
293/Pid.B/2018/PN Kwg	The Defendant has intention.	Disturbing the public, especially on the internet	-	One year and three months in prison
288/Pid.B/2017/PN Blb	The Defendant has intention.	Disturbing the public, especially on the internet	-	Nine months in prison
559/Pid.B/2017/PN.Byw; 174/Pid/2018/PT Sby; 1567K/Pid.Sus/2018	The Defendant has intention.	They are disturbing the public.	The Defendant leads the protest.	Ten months in prison; the Supreme Court increased the sentence to four years in prison

Source: Analyse from Court Verdicts

Table 2 shows that there is a disparity in those court verdicts. Disparity means non-uniformity of punishment for similar crimes and conditions. The type of disparity is in sentences that are imposed by different panels of judges for the same crime.²⁷ In Bale Bandung District Court Number 288/Pid.B/2017/PN Blb has similarity in culpability, harm, and exceptional circumstances variables with Kuningan District Court Number 140/Pid.B/2017/PN Kng and Karawang District Court Number 293/Pid.B/2018/PN Kwg. However, the punishment that judges give different ranges. Imprisonment under one year is light punishment; the Defendant's action is considered a less severe crime, different from imprisonment between one year and two years, which is a moderate punishment; thus, defendants are considered to conduct a more serious crime. Disparity clearly shows Banyuwangi District Court Verdict Number 559/Pid.B/2017/PN.Byw Jo. Supreme Court Verdicts Number 1567K/Pid.Sus/2018. Although there are particular circumstances, it cannot be a prime variable to punish the Defendant with severe imprisonment.

Judges shall consider two other variables. However, the judges do not give explicit consideration to the seriousness of culpability and harm variables that lead to a punishment of four years in prison for the Defendant. An intentional act shall consider the Defendant's knowledge about the action and the risk of his action. In Budi Pego's case, judges argue that the Defendant should know the symbol is identic with Communism but do not mention the Defendant's knowledge about the potential risk or harm of his action. Judges underline that the Defendant does not stop the actions, even though he knows that the symbol is forbidden. The Defendant ignores it because he does not know the danger of his action. Next, regarding the seriousness of harm, the judge only stated that the protest had disrupted the public without giving any explanation, and the judges ignored that the protest did not create any condition that disrupted people's activities. In the end, disparities in court verdicts show that there is inconsistency in considering the seriousness of the distribution of communist offenses. Judges do not apply clear and present danger tests to measure the seriousness of the distribution of

²⁷ Yudisial Komisi, *Disparitas Putusan Hakim* (Jakarta: Komisi Yudisial dan JPIP, 2014), 39.

communists in the public sphere. This causes two things: first, failure to achieve the interests of protecting national security, and second, it threatens freedom of speech.

Analysis from court verdicts shows that the distribution of Communism and Marxism-Leninism offenses become a threat to free speech in the public sphere. Article 107 a Law Number 27 of 1999 prohibits individuals who distribute Communism and Marxism-Leninism material without clearly the prohibited consequences. It is a formal offense, which is formulated by prohibiting certain forms of action and not by their consequences. The offense is completed by carrying out the prohibited act and not waiting for the consequences.²⁸ The formal offense can easily criminalize an individual who processes, posts, or transfers using any material that contains Communism or Marxism-Leninism, even though the individual does not have any intention to conduct any action to change Pancasila. It threatens free speech in the public sphere, for example, conducting any discussion about the truth about the '30 September 1965 PKI Rebellion' or PKI members or sympathizer massacre in 1965-1967. Protection does not cover this discussion because it is only sometimes part of academic or educational discussion. It is essential to discuss the truth about past or historical events because it is part of the justification of freedom of expression to find the truth.²⁹ On the other hand, Article 107 of Law Number 27 of 1999 does not give protection to national security interests. It is because of the long line between the risk or harm and the prohibited action. The disparity of court verdicts shows there is inconsistency in order to consider the seriousness of the distribution of communist offenses. All the court verdicts above show that there is no clear and present danger of the Defendant's actions in the distribution of Communism or Marxism-Leninism. An advocacy for revolution will create clear and present danger if there is an extraordinary time of great tension that supports the revolution.

3. Critique Against Penal Code

Legislator adopts distribution of Communism, Marxism-Leninism offences at article 107 Law Number 27 of 1999 into article 188 and 189 Penal Code. Article 624 of the Penal Code states that this legislation will be applied three years after it is issued, which means the Penal Code will be applied in 2026. When the new penal code was applied, Law Number 27 of 1999 was no longer valid. The formulation of Articles 188 and 189 of the Penal Code is in line with the formulation of Article 107 Law Number 27 of 1999.

Table 2. Formulation on Law Number 27 of 1999 and Penal Code

Law Number 27 of 1999	Penal Code
Article 107 a Prohibit anyone who unlawfully in public orally, in writing, and or through any media, spreads or develops the teachings of Communism-Marxism-Leninism in all forms and manifestations. The punishment is a maximum imprisonment of twelve years.	Article 188, paragraph (1) Prohibit anyone who spreads and develops teachings of communism/Marxism-Leninism or understanding others that conflict with Pancasila in the public sphere by oral or written, including dissemination or development through media, also be punished with a maximum prison sentence of four years.
-	Article 188, paragraph (2) In terms of actions as referred to in paragraph (1) carried out with the intention of changing or replacing Pancasila as the basis of the State, be punished with a maximum imprisonment of seven years.

²⁸ Topo Santoso, *Principles of Indonesian Criminal Law (Studies in International and Comparative Criminal Law)*, *Angewandte Chemie International Edition*, 6(11), 951-952., 1st ed. (Oxford: Hart Publishing, 2023), 96-7.

²⁹ Adrienne Stone and Frederick Schauer, eds., *The Oxford Handbook of Freedom of Speech* (Oxford: Oxford University Press, 2021), 46.

Law Number 27 of 1999	Penal Code
<p>Article 107 b</p> <p>Prohibit any person who unlawfully in public orally, in writing, and through any media, expresses a desire to abolish or replace Pancasila as the basis of the State, which results in unrest in society or causes loss of life or loss of property. The punishment is a maximum imprisonment of twenty years.</p>	<p>Article 188, paragraph (3)</p> <p>In terms of actions as referred to in paragraph (1) or paragraph (2), they result in the occurrence of unrest in society or loss of property wealth, punishable by the longest prison sentence of ten years.</p>
<p>Article 107 c</p> <p>Prohibit anyone who unlawfully in public orally, in writing, or through any media, spreads or develops the teachings of Communism-Marxism-Leninism, which results in riots in society or causes loss of life or loss of property. The punishment is a maximum imprisonment of fifteen years.</p>	<p>Article 188, paragraph (4)</p> <p>In terms of actions, as referred to in paragraph (3), it causes people to suffer serious injuries, punished with the longest prison sentence of twelve years.</p>
<p>Article 107 d</p> <p>Prohibit anyone who unlawfully in public orally, in writing, or through any media, spreads or develops the teachings of Communism-Marxism-Leninism with the intention of changing or replacing Pancasila as the basis of the State. The punishment is a maximum imprisonment of twenty years.</p>	<p>Article 188, paragraph (4)</p> <p>In terms of actions as referred to in paragraph (3), results in the death of a person shall be punished with a maximum prison sentence of fifteen years.</p>
<p>Article 107 e</p> <p>(1) Establishes an organization that is known or reasonably suspected of adhering to the teachings of Communism-Marxism-Leninism in all its forms and manifestations.</p> <p>(2) He assists organizations, both within and outside the country, which he knows are based on the teachings of Communism-Marxism-Leninism or in all forms and manifestations thereof with the intention of changing the foundations of the State or overthrowing the legitimate government.</p> <p>The punishment is a maximum imprisonment of fifteen years.</p>	<p>Article 189</p> <p>Sentenced to a maximum imprisonment of ten years, Everyone who:</p> <ol style="list-style-type: none">Establishing a known or suspected organization that adheres to the teachings of communism/Marxism-Leninism or other ideologies that conflict with Pancasila orEnter into relations with or assist to or receiving assistance from organizations, both at home and abroad, which should be known to adhere to the teachings of communism/Marxism-Leninism or other ideologies contrary to Pancasila, with the intent to change the basis of the State or overthrow the government.

Source: Law Number 27 of 1999 and Penal Code

A comparison of two laws, Law Number 27 of 1999 and the Penal Code, shows there are no significant differences in formulation offenses. The formulation of the Penal Code follows and is in line with the formulation of offenses in Law Number 27 of 1999. The differences are only two things. First, the legislator adds a new formulation to Article 188 paragraph (2). Second, sentencing on the Penal Code is lower than those regulated in Law No. 27 of 1999. The sentencing on articles 188 and 189 of the Penal Code is still in the category of serious because it is part of

national security offenses. However, it shows that legislators have shifted their point of view about the seriousness of these offenses.

Formulation Article 188 Penal Code can be defined into two types. First, article 188, paragraphs (1) and (2) of the Penal Code are formulated as formal offenses, which are formulated by prohibiting certain forms of action and not by their consequences. Second, article 188 paragraphs (3), (4), and (5) of the Penal Code are formulated as material offenses which prohibit certain consequences of the action. The critic addresses the distribution of Communism and Marxism-Leninism offenses, which are formulated as formal offenses. As discussed and analyzed previously, the problem of the implementation of the distribution of Communism and Marxism-Leninism offenses in Law Number 27 of 1999 is because the offenses were formulated as formal offenses. The protection of national security interests is not achieved because there is a long line between the forbidden action and the clear and present danger harm. Therefore, it threatens free speech in the public sphere because it can easily criminalize individuals who process, post, transfer, using any material that contains Communism and Marxism-Leninism in public, including on the internet.

Another criticism of Article 188, paragraph (1), Penal Code is about the immoral act of distributing Communism and Marxism-Leninism in the public sphere. Paragraph (2) requires a special intention to replace Pancasila with Communism, Marxism-Leninism, or paragraphs (3), (4), and (5) require a particular purpose to create riots, private or public property damage, injury, and death. Those actions in Article 188, paragraphs (2), (3), (4), and (5) can be interpreted as incitement, which has immoral acts and severe harm. However, Article 188, paragraph (1), does not require particular intention. This can criminalize a person who delivers an argument about Communism or Marxism-Leninism on the internet or in public discussion or criminalize a person who sells or buys material or symbols of Communism or Marxism-Leninism for collection purposes. Those actions are not part of the execution of Article 188, paragraph (6), the Penal Code, which is the exception of distributing Communism and Marxism-Leninism offenses if they are conducted for educational purposes. There is no immoral act or harm to discussing Communism or Marxism-Leninism on the internet or in the public sphere, nor selling or buying material or symbols of Communism or Marxism-Leninism for collection purposes. The formulation of Article 188 paragraph (1) of the Penal Code is flexible, especially about the consequences and intention of the action. On the other hand, the exception in paragraph 188 (6) of the Penal Code is minimal; it cannot cover other actions that do not have bad intentions and create serious harm. Therefore, article 188 paragraph (1) of the Penal Code does not include *certain* principles which require that offenses in legislation must be explained clearly.³⁰

Next, critics of the distribution of Communism and Marxism-Leninism offenses in the Penal Code discuss the position of those offenses as crimes against national security. Offenses against the government have two functions. In narrow function, it is the government's efforts to represent the State to carry out the function of maintaining social order. In order for the government to carry out this function, it requires a strong and stable government.³¹ In broader function, it is the government's efforts to represent the State to carry out the function of maintaining national security, especially from revolution. Therefore, social stability is essential to maintain national security. However, offenses in Article 188 paragraphs (3), (4), and (5) of the Penal Code require harm against society, such as riot, private or public property damage, injury, and death. This harm is prohibited because it is more to maintain social order. There is a long line to draw these harms from threats to state security. Especially a revolution attempts to replace Pancasila with Communism and Marxism-Leninism. A riot, private or public property damage, injury, and death might not create a severe threat against national security unless it massively

³⁰ Nella Sumika Puteri, "Memikirkan Kembali Unsur 'Hukum Yang Hidup Dalam Masyarakat' Dalam Pasal 2 Rkuhp Ditinjau Perspektif Asas Legalitas," *Indonsia Criminal Law Reviw* 1, no. 1 (2021): 62.

³¹ Shidarta, Lagi-Lagi Tentang 'Haatzaai Artikelen' quoted from <https://business-law.binus.ac.id/2018/02/26/lagi-lagi-tentang-haatzaai-artikelen/>; access on 20 January 2024.

happens in significant Indonesian territory. Therefore, article 188, paragraphs (3), (4), and (5) of the Penal Code should be part of the crime against public order.

In the end, the formulation of the distribution of Communism and Marxism-Leninism offenses in articles 188 and 189 of the Penal Code is too broad and not rigid. Formal offense in Article 188 paragraphs (1) and (2) becomes a problem because it does not give the protection of national security interest. On the other hand, it threatens freedom of speech. Moreover, article 188, paragraph (1), is not in line with inline *lex certa* principles because the offense does not require consequences and intention of the action. On the other hand, the exception of the offenses in 188 paragraph (6) is very limited, only for education purposes. Then, offenses in Article 188 paragraphs (3), (4), and (5) should be part of the crime against public order because those required harms are prohibited more to maintain social order rather than to protect national security.

V. Conclusion

The harm of spreading Communism and Marxism-Leninism is anti-Pancasila because it threatens others. It distributed Communism and Marxism-Leninism as incitement causes remote harm because it puts another person in danger and harms the democratic State and citizens' ability to defend and enjoy their fundamental rights. It will preserve citizens' right to express their opinions in public by identifying the harm caused by the spread of Communism and Marxism-Leninism.

The distribution of Communism, Marxism-Leninism, and anti-Pancasila offenses have problems. The offenses were regulated by Article 107 (a), (b), (c), (d), and (e) Law Number 27 of 1999, which represented the State's interest in protecting national security from any revolution activist who wanted to change Pancasila as a national principle with other ideologies. The implementation problem of the offenses, especially Article 107 (a) Law Number 27 of 1999, shows that the offenses can easily criminalize individuals who process, post, or transfer using any material that contains Communism or Marxism-Leninism, even though the individual does not have any intention to change Pancasila as national principles. Court verdicts show that judges do not consider the Defendant's knowledge of the risk of their actions and do not consider the clear and present danger of the Defendant's actions in the distribution of Communism and Marxism-Leninism. Consequently, the implementation of the distribution of Communism and Marxism-Leninism offenses does not protect national security interests; otherwise, it threatens freedom of speech.

The new Penal Code adopts the formulation of Article 107 (a), (b), (c), (d), and (e) Law Number 27 of 1999. Articles 188 and 189 of the Penal Code also have problems because they are too broad and flexible. The formulation of Article 188, paragraphs (1) and (2) is a formal offence and not in line with *lex certa* principles. The prohibited consequences in Article 188 paragraphs (3), (4), and (5) are more to protect public order and instate national security. Those articles could potentially threaten people's freedom of speech in the public sphere.

References

- Badan Pembinaan Hukum Nasional, Laporan Akhir Kelompok Kerja Analisa dan Evaluasi Hukum Terkait Penguatan Ideology Pancasila, quoted from site https://www.bphn.go.id/data/documents/laporan_akhir_pip.pdf accessed 18 January 2024
- Citrawan, Harison, and Ganesh Cintika Putri. "Law, Memory , and Silence : The Case Of Anti-Communism Laws in Indonesia." *The Age of Human Rights Journal* 22, no. January (2024): 1-23. <https://doi.org/10.17561/tahrj.v22.8021>
- Duff, RA, and SE Marshall. "'Remote Harms' and the Two Harm Principles." In *Liberal Criminal Theory: Essays for Andreas von Hirsch*, edited by A P Simester, A du Bois-Pedain, and U Neumann, 205-23. Oxford: Bloomsbury Publishing, 2014.

- Eddyono, Supriyadi Widodo. Problem Kejahatan Terhadap Ideologi Negara Dalam R KUHP, quoted from site <https://reformasikuhp.org/problem-kejahatan-terhadap-ideologi-negara-dalam-r-kuhp/> accessed 18 January 2024.
- Feinberg, Joel. *Freedom and Fulfillment: Philosophical Essays*. New Jersey: Princeton University Press, 2021.
- Fogg, Kevin W. "Indonesian Socialism of the 1950s: From Ideology to Rhetoric." *Third World Quarterly* 42, no. 3 (2020): 465–82. <https://doi.org/10.1080/01436597.2020.1794805>
- Ghanayim, Khalid, and Mordechai Kremnitzer. "Offences against the Democratic System of Government," quote from [https://ouclf.law.ox.ac.uk/offences-against-the-democratic-system-of-government/#:~:text=Offences against the democratic regime,to establish or change the;](https://ouclf.law.ox.ac.uk/offences-against-the-democratic-system-of-government/#:~:text=Offences%20against%20the%20democratic%20regime,to%20establish%20or%20change%20the;) access on accessed 18 January 2024.
- Hardiogo, David. "Delik Politik Dalam Hukum Pidana Indonesia." *Jurnal Hukum & Pembangunan* 50, no. 4 (2021): 908-925. <http://dx.doi.org/10.21143/jhp.vol50.no4.2859>
- Ibrahim, Johnny. *Teori Dan Metodologi Penelitian Hukum Normatif*. Malang: MNC Publishing, 2022.
- Justice Criminal Justice Reform, Kebebasan Berkumpul, Berekspresi, Berpendapat, dan Hak Informasi Masih dalam Ancaman quoted from site <https://icjr.or.id/kebebasan-berkumpul-berekspresi-berpendapat-dan-hak-informasi-masih-dalam-ancaman/> accessed 18 January 2024.
- Kristiawanto. *Memahami Penelitian Hukum Normatif*. Jakarta: Prenada Media, 2022.
- Nella Sumika Puteri. "Memikirkan Kembali Unsur ' Hukum Yang Hidup Dalam Masyarakat' Dalam Pasal 2 Rkuhp Ditinjau Perspektif Asas Legalitas." *Indonsia Criminal Law Review* 1, no. 1 (2021): 60–72. <https://scholarhub.ui.ac.id/iclr/vol1/iss1/5>
- Neuman, William Lawrence. *Social Research: Qualitative and Quantitative Approaches*. Seventh Ed. Edinburgh: Pearson Education Limited, 2020.
- Parahita, Gilang Desti, and Vissia Ita Yulianto. "The Treachery on YouTube: The Politics of Memory on New Media in Indonesia." *Archipel*, no. 99 (2020): 47–73. <https://doi.org/10.4000/archipel.1677>
- Peršak, Nina. "Using 'Quality Of Life' To Legitimate Criminal Law Intervention: Gauging Gravity, Defining Disorder." In *Liberal Criminal Theory: Essays for Andreas von Hirsch*, edited by A P Simester, A du Bois-Pedain, and U Neumann, 225–45. Oxford: Bloomsbury Publishing, 2014.
- Purba, Andreas, and Firman Wijaya. "Analisis Putusan Nomor 559/Pid.B/2017/Pn.Byw. Pengadilan Negeri Banyuwangi Tentang Penyebaran Ajaran Komunisme/Marxisme-Leninisme Secara Melawan Hukum Berdasarkan Pasal 107a Kuhp." *Jurnal Hukum Adigama* 2, no. 2 (2019): 1108–29. <https://doi.org/10.24912/adigama.v2i2.6907>
- Ridlo, Muhamad. Duh Berani-beraninya Wanita Muda ini Pakai Kaos Berlambang Palu Arit, quoted from site <https://www.liputan6.com/regional/read/5423745/duh-berani-beraninya-wanita-muda-ini-pakai-kaos-bergambar-palu-arit> accessed 18 January 2024;
- Ronald J. Krotoszynski Jr. "The Clear and Present Dangers of the Clear and Present Danger Test: Schenck and Abrams Revisited." *SMU L. Rev.* 72, no. 3 (2019): 415–440. <https://doi.org/10.1080/23311886.2023.2274430>
- Singleton, R, and B C Straits. *Approaches to Social Research*. Oxford: Oxford University Press, 2018.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: UI Press, 2007.

- Steffensmeier, Darrell, and Noah Painter-Davis. "Focal Concerns Theory as Conceptual Tool for Studying Intersectionality in Sentencing Disparities: Focus on Gender and Race Along With Age." In *Handbook on Punishment Decisions Locations of Disparity*, edited by Jeffery T. Ulmer and Mindy S. Bradley, 189–210. New York: Routledge, 2018.
- Stone, Adrienne, and Frederick Schauer, eds. *The Oxford Handbook of Freedom of Speech*. Oxford: Oxford University Press, 2021.
- Subhan, M. "Perlindungan Hukum Bagi Penganut Ideologi Komunisme/Marxisme-Leninisme Di Indonesia." *Mimbar Keadilan* 12, no. 2 (2019): 138–54.
- Suryani, Winda Chairunisyah. Penangkapan Pengguna Kaos Palu Arit dan Hoaks yang Dipelihara, quoted from site <https://asumsi.co/post/56843/penangkapan-pengguna-kaos-palu-arit-dan-hoaks-yang-dipelihara/> accessed 18 January 2024.
- Susanti, Dyah Ochtarina. *Penelitian Hukum: Legal Research*. Jakarta: Bumi Aksara, 2022.
- Tawas, Fonny, and Hironimus Taroreh. "Tindak Pidana Terhadap Keamanan Negara Berdasarkan Pasal 107a - 107f Kitab Undang-Undang Hukum Pidana." *Lex Crimen IX*, no. 4 (2020): 225–33.
- Topo Santoso. *Principles of Indonesian Criminal Law (Studies in International and Comparative Criminal Law)*. *Angewandte Chemie International Edition*, 6(11), 951–952. 1st ed. Oxford: Hart Publishing, 2023.
- Yudisial Komisi. *Disparitas Putusan Hakim*. Jakarta: Komisi Yudisial dan JPIP, 2014.