


Interpretation of *Makar* Offense in the Dynamics of the Government Regime in Indonesia

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Article	Abstract
<p>Keywords: Indonesia Government Regime; Interpretation; <i>Makar</i> offense; Treason.</p> <p>Article History Received: Apr 25, 2025; Reviewed: Jun 11, 2025; Accepted: Jun 15, 2025; Published: Jun 16, 2025.</p>	<p>The purpose of the research is to analyze the development of interpretation against treason/<i>Makar</i> offense on the Penal Code in the law enforcement in Indonesia. This study is a normative legal research which refers to the foundherentism theory and the interpretation of judges theory against enforcement, the supreme court's Verdict No. 574 K / Pid /2012, Verdict number 38 / pid.B /2011/PN.Wmn, verdict No. 07/Pid/2015/PT.AMB. The results of the research finds out that <i>Makar</i> offense has various meanings, Penal Code itself does not on strictly define what <i>Makar</i> offense is. It results in vague norms. Therefore, the interpretation against the article 106 of the penal Code relies on the development of the interpretation of the verdict about <i>Makar</i> offense. So far, various verdict interprets or connect <i>Makar</i> offense -as stipulated in article 106 of Penal Code- with subversion, independence, separatism (martial law i.e. terrorism and armed rebellion). Conducting an independence ceremony which is not an Indonesian independence ceremony, sticking a flag other than the Indonesian flag, an oration which increase the sense of nationality other than a sense of nationality towards the Indonesian state, producing a banner to commemorate the anniversary of independence instead of the Indonesian state.</p>



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Introduction

Indonesian Criminal Code or KUHP (*Wetboek van Strafrecht voor Nederlandsch-Indië*.), under the chapter on crimes, the offense of *Makar* is regulated. This offense includes *Makar* committed against national security and *Makar* committed against friendly states. These provisions are contained in the KUHP under Articles 87, 104, 106, 107, 110, 139a, 139b, and 140. Article 87 of the KUHP states that *Makar* occurs when the intent to commit an act is proved by the commencement of its execution. *Makar* of offence, intent alone is not sufficient; there must be an actual beginning of execution.¹

Article 104 of the KUHP regulates *Makar* with the intent to kill the President or Vice President, to seize their freedom, or to render them incapable of governing. The provisions of Article 338 (ordinary murder) and Article 333 (deprivation of liberty), under Article 104 the commencement of the act is sufficient to fulfill the elements of the crime, without requiring an actual result such as the victim's death or the deprivation of freedom. An attempted *Makar* against the head of state is already considered a completed crime.²

Due to, Article 53 of the KUHP (on voluntary withdrawal) does not apply to cases of *Makar* under Article 104. According to R. Soesilo and Andi Hamzah, an attempt to render the head of state incapable of governing can be accomplished through physical or psychological means, for example by administering harmful substances or by physical attack.³

Article 106 of the KUHP regulates *Makar* with the intent to hand over part or all of the country's territory to the enemy, or to separate part of the territory from the Unitary State of the Republic of Indonesia (NKRI). The commencement of execution is sufficient to satisfy the elements of the crime, without having to wait for an actual outcome.⁴

Article 107 of the KUHP regulates *Makar* with the purpose of overthrowing the government. The official Indonesian dictionary (KBBI) defines “*menggulingkan*” (to overthrow) as bringing down or

¹ Adami Chazawi & Ardi Ferdian, *Hukum Pidana Materiil* (Jakarta: RajaGrafindo Persada, 2015).

² Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana Di Indonesia* (Bandung: Refika Aditama, 2023).

³ R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Dan Komentar-Komentarnya* (Jakarta: Politeia, 1996).

⁴ Adami Chazawi, *Kejahatan Terhadap Keamanan Dan Keselamatan Negara* (Jakarta: Rajagrafindo Persada, 2010).

toppling. Article 88 bis of the KUHP clarifies that the overthrow of the government must be carried out unlawfully, in violation of the 1945 Constitution. Before qualifying an act as *Makar* under Article 107 of the KUHP, law enforcement must assess from the perspective of constitutional law whether the act constitutes a violation of the constitution or is part of fundamental human rights actions such as demonstrations or “people power”.⁵ *Makar* in this context means altering or damaging the governmental structure in an unlawful manner. If a change of government is carried out legally, then it cannot be categorized as the crime of *Makar*.

Article 110 of the KUHP deals with criminal conspiracy to commit *Makar*, with the provision that conspiracy occurs if two or more persons agree to commit a crime. Ordinary conversations or negotiations cannot be considered conspiracy if there is no commencement of action. In practice, the application of Article 110 on criminal conspiracy often overlaps with Article 55 of the KUHP on participation, which regulates persons who commit, order, or take part in a crime.⁶

The word “*Makar*” comes from the Dutch word *aanslag*, which literally means assault or attack.⁷ However, Loebby Loqman argues that the literal interpretation is no longer adequate, although it remains a reference in the formulation of laws.⁸ Literal interpretation is seen as focusing too heavily on the subjective intent of the interpreter and not fully reflecting the purpose of the legislation. Therefore, to cover its weaknesses, other methods of interpretation are needed, including systematic and historical interpretation.

Several legal experts also offer definitions of *Makar*. *Makar* as a term referring to “betrayal” or “subversion” against the state. Distinguishes between the political term “coup” (*kudeta*) and the juridical term *Makar*, and emphasizes that *Makar* has a narrower scope than a coup.⁹ Andi Hamzah’s Legal Dictionary, *Makar* is “evil intent, deception; an act or effort with the purpose of attacking or killing

⁵ Rio Armanda Agustian, “Tindak Pidana Terhadap Keamanan Negara Dalam Perspektif Delik Politik Di Indonesia,” *MMH* 40, no. 3 (2011), <https://ejournal.undip.ac.id/index.php/mmh/article/view/13073>.

⁶ Soesilo, *Loc.Cit.*

⁷ Chazawi, *Loc.Cit.*

⁸ Loebby Loqman, *Delik Politik Di Indonesia* (Jakarta: IND-HILL-CO, 1993).

⁹ Erdianto, “*Makar* Dengan Modus Menggunakan Media Sosial,” vol. 1 no. 1 *Hukum Pidana dan Pembangunan* (2019), <https://doi.org/10.25105/hpph.v1i2.5461>.

someone.”¹⁰ Charlie Rudyat’s legal dictionary states that *Makar* is an act committed with the goal of killing or seizing the freedom of the head of state, or rendering him incapable of governing.¹¹ Firdaus Muhammad Iqbal and Indah Dwi Prigitaningtias, quoting Christopher Orlando Sylvester, define coup as “the illegal, brutal, and unconstitutional seizure of power,” in line with Article 107 of the KUHP on *Makar* with the aim of overthrowing the government.¹² In the Indonesian dictionary (KBBI), *Makar* is defined as stratagem, evil intent, or an effort to bring down a legitimate government.¹³

In Constitutional Court Decision No. 7/PUU-XV/2017, it was stated that the offense of *Makar* does not always have to involve a physical assault element.¹⁴ Limiting *Makar* to only physical assault can cause delays for law enforcement in handling threats to national security. As a political crime, *Makar* can also be carried out through strategy, intrigue, or other non-physical actions, as reflected in Old Order-era policies such as Law No. 20 of 1946.

The concept of *Makar* in the Criminal Code is not explicitly defined, but can be understood through the provisions of Articles 87, 104, 106, 107, and 110. *Makar* requires the commencement of a real act with the purpose of overthrowing the government, killing the head of state, or separating part of the country. Several legal experts confirm that *Makar* is not only physical attacks, but can also take the form of non-physical strategies. Constitutional Court Decision No. 7/PUU-XV/2017 expanded the interpretation of *Makar*, affirming that *Makar* can occur even without a physical attack. In its application, *Makar* must be interpreted not only literally, but also systematically and historically to safeguard national resilience against various forms of threats.

The National Alliance for Criminal Code Reform (Aliansi Nasional Reformasi KUHP), the case of Sehu Blesman or Melki Bleskadit, adjudicated under Supreme Court Decision No. 574 K/Pid/2012. Similarly, in the appellate judgment rendered under Decision No. 07/Pid/2015/PT AMB, the defendant was charged with

¹⁰ Made Darma Weda, *Tindak Pidana Makar Dalam Rancangan KUHP* (Jakarta: Aliansi Nasional Reformasi KUHP, 2016).

¹¹ Charlie Rudyat, *Kamus Hukum* (Tim pustaka Mahardika, n.d.).

¹² Firdaus Muhamad Iqbal dan Indah Dwi Prigitaningtias, "Kudeta Militer Myanmar dalam Perspektif Hukum Internasional," *Jurnal Hukum Internasional* (2021).

¹³ Pusat Bahasa, *Kamus Besar Bahasa Indonesia* (Jakarta: (Balai Pustaka, 2008).

¹⁴ Mahkamah Konstitusi Republik Indonesia, Putusan Mahkamah Konstitusi No. 7/PUU-XV/2017

committing *Makar*. However, the indictment submitted by the public prosecutor failed to articulate the essential element of "*aanslag*" (attack or assault), as required under the traditional legal construction of *Makar*. Instead, the indictment merely described the defendant's intention to secede from the Republic of Indonesia. These case present fundamental legal concerns. Principally, any criminal conviction for *Makar* must clearly establish the essential elements of the offense – including the element of attack (*aanslag*) – to meet the legal standard of a punishable act. The failure to do so in both cases reflects a lack of legal clarity and specificity, thereby violating the principle of *lex certa* (legal certainty). Furthermore, the ambiguity surrounding what specific conduct constitutes *Makar* exacerbates the risk of arbitrary application. These decisions thus pose a serious threat to the development of Indonesian criminal law, particularly in the context of ongoing efforts to reform the Penal Code.¹⁵

With this context, it is crucial to examine how the interpretation of Article 106 of the Criminal Code has developed in each period of government in Indonesia. This interpretation is reflected in court decisions and in cases of attempts to secede from Indonesian territory that are not officially recorded in court documents, so their interpretation is largely based on analysis of the political and security context during the presidencies of Soekarno, Soeharto, and the Reform era up to President Joko Widodo. By studying concrete cases, one can see how changes in politics, law, and national security influence the application of the *Makar* provisions in Article 106 of the Criminal Code. Legal interpretation of the history of its enforcement in Indonesia involves reviewing past judicial decisions, the laws and regulations applied to *Makar* offenses, and other sources such as the history of enforcement of the *Makar* offense. It is hoped that this will produce a concrete definition of the term "*Makar*" itself, to achieve the truth and provide a solution to the vagueness of the norm so as not to create fundamental problems and uncertainty in applying the *Makar* provision to offenders.

Method

This study uses normative legal research as its method, which involves studying the norms, principles, and legal values in legislation,

¹⁵ Institute For Criminal Justice Reform ICJR, *Melihat Potensi Ancaman Kebebasan Berekspresi Dalam Pasal-Pasal Makar Rkenhp* (Jakarta: Yayasan Tifa., 2017).

with a focus on the vagueness of the norm in the definition of the crime of *Makar*. The research is based on literature study (library materials) and secondary data. The approaches used are the Statute Approach, Case Approach, and Historical Approach. The collection of legal materials is carried out through document study in stages of inventory, systematization, synchronization, and harmonization, which are recorded in catalogs, cards, or by browsing the internet.¹⁶ To strengthen the theoretical foundation, this research adopts Susan Haack's approach of foundherentism, which combines foundationalism and coherentism. In the context of interpreting the *Makar* offense, foundherentism is important because it demands that judges not merely rigidly adhere to the text of the law (foundationalism) nor rely solely on consistency between norms (coherentism), but instead integrate both systematically and interactively. Using foundherentism, interpretation of the *Makar* offense is carried out rationally: linking the underlying legal norms to their consistent application in various decisions, taking into account the evolving legal experiences, and maintaining the coherence of the criminal legal system. This approach is expected to yield a more balanced and logical interpretation of *Makar* that aligns with societal developments.¹⁷

Result and Discussion

To understand the legal politics of regulating the offense of *Makar* in Indonesia, it is important to see how the legal provisions on *Makar* have evolved over history, as reflected in the nation's social, legal, and political dynamics.¹⁸ From the Old Order era, regulation on crimes against state security began to be formulated in Law No. 1 of 1946 on Criminal Law Regulations, which included provisions on *Makar* in Articles 104 through 129 of the Criminal Code.¹⁹ These articles gave rise to the understanding that *Makar* is not just an ordinary criminal act, but a political offense with an ideological motive aimed at undermining or destroying the stability of the state. In this

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Surabaya: Prenadamedia Grup, 2016).

¹⁷ Susan Haack, *Evidence and Inquiry: A Pragmatist Reconstruction of Epistemology* (New York: Prometheus Books, 2009).

¹⁸ Abdurisa Adzan Trahjurendra, "Politik Hukum Pengaturan Tindak Pidana *Makar* Di Indonesia" (Universitas Brawijaya, 2014), <https://repository.ub.ac.id/id/eprint/111806/>.

¹⁹ Rio Armanda Agustian, *Loc.Cit.*

perspective, *Makar* is categorized as a political crime with the potential to threaten the continuity of state law and the nation's constitution.

Furthermore, in the view of legal experts such as Loebby Loqman, political crimes often involve acts aimed at replacing or destroying the legitimate system of government, or even shaking the state's sovereignty.²⁰ In this context, *Makar* is considered an offense that directly affects the political structure and security of the state. Based on this explanation, Article 106 of the Criminal Code – which regulates *Makar* with the intent to bring Indonesian territory under foreign control or to separate part of it into an independent, sovereign state – is highly relevant. This article encompasses two of the most serious forms of *Makar*: (a) causing all or part of Indonesia's territory to become a colony of a foreign state, and (b) separating part of Indonesia's territory to form an independent, sovereign state.²¹

Both of these actions clearly pose a grave threat to the sovereignty and integrity of the Unitary State of the Republic of Indonesia, which are fundamental in Indonesian law and politics. Therefore, a deeper study is needed on how Article 106 of the Criminal Code is interpreted under each government regime. The interpretation of *Makar* by law enforcement in each period of government can be described as follows:

A. Old Order Regime

During Indonesia's Old Order era – specifically during the Guided Democracy period (1959–1966) – the country was led by President Ir. Soekarno together with Vice President Mohammad Hatta.²² During this era, various factions emerged that rejected the legitimacy of the Unitary State of the Republic of Indonesia (NKRI) as proclaimed on 17 August 1945. These factions engaged in subversive acts, rebellions, and even attempted coups d'état with the intent to overthrow the legitimate government and secede from the Republic.

Among the notable insurgent movements were Darul Islam/Tentara Islam Indonesia (DI/TII) led by Sekarmadji Maridjan Kartosoewirjo, the Indonesian Communist Party (PKI) led by D.N.

²⁰ Bayu Dwiwiddy Jatmiko, "Periodisasi Pengaturan Kejahatan Keamanan Negara Di Indonesia," *Jurnal Legality*, <http://ejournal.umm.ac.id/index.php/legality/article/view/310>.

²¹ Made Darma Weda, *Loc.Cit.*

²² Moh. Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: PT RajaGrafindo Persada, 2017).

Aidit, the Revolutionary Government of the Republic of Indonesia (PRRI) initiated by Lt. Col. Achmad Husein, and the Permesta movement led by Lt. Col. Ventje Sumual, Colonel D.J. Somba, and Major Eddy Gagola.²³

Of these, DI/TII stood out prominently. Kartosoewirjo aspired to replace the legitimate government system with an Islamic state, proclaiming the establishment of the Islamic State of Indonesia (NII). The movement garnered support from several regions, including West Java, Central Java, Aceh, South Sulawesi, and South Kalimantan. Through Proclamation No. 1 dated 25 August 1948, Kartosoewirjo officially declared the formation of NII in West Java. Subsequently, on 17 August 1949 in Tasikmalaya, he proclaimed the independence of the Islamic State of Indonesia.²⁴

As the movement's influence expanded, Kartosoewirjo on 15 January 1950 established the Indonesian Islamic Army as the military wing of the NII. This insurgency included several former independence fighters from the Hizbullah and Sabilillah groups who disagreed with the central government's policies. Such rebellion was deemed an act of *Makar* against the legitimate government and qualified as the criminal offense of *Makar* under Article 108 of the Indonesian Penal Code (KUHP), which stipulates that armed rebellion against the government constitutes a grave offense.

Legally, the acts of *Makar* committed by DI/TII were also linked to Articles 104, 106, and 107 KUHP, which cover various forms of acts against the state, including attempts to assassinate the president, overthrow the legitimate government, or separate part of the national territory. Specifically, Article 106 provides that *Makar* encompasses efforts to separate part of the territory of Indonesia to establish an independent or foreign-controlled state. Therefore, the declaration of NII by DI/TII constituted a violation of Article 106, as it aimed to establish a new state outside the framework of the NKRI.²⁵

As a legal consequence, Kartosoewirjo was tried by the Emergency Military Court (Mahadper) and sentenced to death on 16

²³ Fathoni Ahmad, "Sejarah Para Pemberontak Negara," *NU.or.Id*, 2020, <https://www.nu.or.id/post/read/122413/sejarah-para-pemberontak-negara>.

²⁴ *Ibid*.

²⁵ Dwi Ayu Suetha, Anny Wahyudi, and Budi Purnomo, "Menganalisis Perjuangan Susilo Bambang Yudhoyono Dalam Merawat Demokrasi Indonesia," *Bihari* 4, no. 1 (2021): 31–42, <https://jurnal.unsil.ac.id/index.php/bihari/article/download/2799/1780>.

August 1962. This punishment demonstrated the government's commitment to enforcing the law against perpetrators of *Makar* to maintain national stability. In addition to legal measures, the government conducted military operations to suppress DI/TII, as provided for under Government Regulation No. 59 of 1958. Through military operations led by the Siliwangi Military Command, Kartosoewirjo was ultimately captured alive on 4 June 1962, marking the effective end of the movement's active presence.²⁶

The government regulation also provided for awards in the form of the Satyalancana Military Operation Medal to personnel involved in quelling the rebellion. DI/TII was officially designated as a *Makar* group attempting to secede from Indonesia and establish a new state entity. Although their struggle employed armed force, the ultimate goal of secession rendered it a violation of Article 106 KUHP on *Makar*.

The DI/TII case serves as a clear example of the application of *Makar* n law in Indonesia. Beyond reflecting the applicable criminal provisions, the case also illustrates how political dynamics influence the legal process when addressing threats to state sovereignty. The resolution of this case underscores the importance of legal interpretation aligned with national interests in preserving the unity of the NKRI.

B. New Order Regime

After Soekarno was constitutionally dismissed by the Provisional People's Consultative Assembly (MPRS) in 1966 for failing to account for his handling of the G30S/PKI incident and being deemed to have betrayed the state, Indonesia entered a new era known as the New Order. The New Order was led by Soeharto, who assumed power following the issuance of the 11 March Order (Supersemar) from Soekarno. This era spanned from 1965 to 1998 and was characterized by significant changes in governance, including the achievement of stability through more authoritarian methods.²⁷

²⁶ Tatiek Aryani, "Pemimpin DI/TII Kartosoewirjo, 'Bung Karno Sampai Menangis, Rupanya Hal Ini Penyebabnya,'" *Grid.Id*, 2020, <https://www.grid.id/read/042375970/tandatangan-sk-hukuman-mati-pemimpin-ditii-kartosoewirjo-bung-karno-sampai-menangis-rupanya-hal-ini-penyebabnya>.

²⁷ Ignatius Haryanto, *Kejahatan Negara Telaah Tentang Penerapan Delik Keamanan Negara* (Jakarta: ELSAM, 1999).

During the New Order period, the application of *Makar* provisions under Indonesian law was not frequently invoked. Instead, the government often relied on the Subversive Activities Law (Law No. 11/PNPS/1963), which had been enacted during the Old Order. However, the violent incident in Aceh on 30 May 1990 demonstrated that efforts to suppress groups deemed subversive continued. In this incident, members of the Armed Forces of the Republic of Indonesia (ABRI) conducting civic operations were disturbed by remnants of the Security Disturbance Movement (GPK). At the time, ABRI Commander Try Sutrisno stated that the GPK was proven to have engaged in murder, robbery, and intimidation of the populace.

The suppression of the Aceh GPK continued into the mid-1990s. The state carried out military operations, including arrests, shootings, and prosecutions of GPK members and sympathizers. According to media reports such as Kompas and Buana in 1991, many GPK members were arrested and brought to trial, including Bachtiar bin Ismail, who was sentenced to 20 years' imprisonment for involvement in the Aceh GPK and for attempting to establish an Islamic State of Aceh. During the trial, evidence was presented, including firearms and ammunition used to carry out acts of terror. The Lhokseumawe District Court also tried a PT Kertas Kraft Aceh employee suspected of providing explosives to the GPK for terrorist attacks.²⁸

These cases demonstrate that the defendants' objective was to separate Aceh from Indonesia and establish an Islamic State of Aceh. In this context, their actions fall under the category of the criminal offense of *Makar* under Article 106 KUHP, which governs acts aimed at seceding from Indonesian territory. For example, in the case of the PT Kertas Kraft Aceh employee, although the indictment did not explicitly cite a violation of Article 106 KUHP, providing explosives to support the Aceh Merdeka Movement (GAM) should be regarded as an attempt to secede from the NKRI and thus should be classified as *Makar*. Furthermore, The Panel of Judges is of the opinion that the act of execution required in the crime of treason does not necessarily refer to acts of physical violence, but also includes other acts of execution aimed at subjugating a state.²⁹

²⁸ *Ibid.*

²⁹ Sulthanah Mukhlis, Zuleha, and Handri Aldino, "Pertimbangan Hakim Dalam Putusan Perkara Nomor 15 / Pid . B / 2021 / PN . Sgi Terhadap Tindak Pidana

The Subversive Activities Law of 1963 provides a broad definition of acts deemed subversive, such as undermining the state ideology, destabilizing governmental power, or inciting hostility among the people. Article 1(1) of Presidential Decree No. 11 of 1963 states that subversive offenses include activities aimed at undermining or damaging state power and threatening national stability. However, in several cases, such as the PT Kertas Kraft Aceh employee's case, the actions would be more appropriately classified as *Makar*, given the clear aim of secession from Indonesia, as set out under Article 106 KUHP.

From a legal perspective, the application of the Subversive Activities Law in certain cases was not entirely appropriate considering the actual conduct of the defendants, whose aim was to separate Indonesian territory. Therefore, such acts should have fallen under the legal category of *Makar* pursuant to Article 106 KUHP, which specifically addresses criminal acts aimed at detaching part of Indonesia's territory or creating a sovereign state separate from the NKRI.

In legal practice, judges systematically interpret legal texts by linking Article 106 KUHP with Presidential Decree No. 11 of 1963. Although the Subversive Activities Law was frequently applied, the acts committed by the Aceh GPK and its sympathizers were more properly classified as *Makar* offenses, given their intent to separate Aceh from Indonesia and establish a new state.

The Subversive Activities Law was predominantly used during the New Order, the application of Article 106 KUHP in *Makar* cases deserved greater emphasis, as it more accurately reflected the defendants' aim of secession, as exemplified by the Aceh GPK's attempts to establish an Islamic State of Aceh.

C. Reform Era

The Reform Era was marked by the transfer of power from President Soeharto to Vice President B.J. Habibie between 1997 and 1998, with 21 May 1998 becoming the historic moment that signaled the fall of the New Order regime and the birth of the Reform Era.³⁰

Makar Atas Aksi Pemasangan Spanduk Aceh Merdeka" 06, no. 2 (2024): 299–313, <https://ejurnalunsam.id/index.php/majim/article/view/10868/5118>.

³⁰ Hayatun Naimah, "Peralihan Kekuasaan Presiden Dalam Lintasan Sejarah Ketatanegaraan Indonesia," *Khazanah: Jurnal Studi Islam Dan Humaniora* 12, no. 2 (2015): 119–39, <https://doi.org/10.18592/khazanah.v13i1.518>.

1. President B.J.Habibie

On 21 May 1998, President Soeharto resigned from office, and Vice President B.J. Habibie assumed the presidency. This transitional period coincided with the intensification of the East Timor issue, where the population sought independence from Indonesia. East Timor had previously been annexed by Indonesia and designated as the 27th province through Law No. 7 of 1976.³¹

In 1983, the FALINTIL (Forças Armadas de Libertação Nacional de Timor Leste) leader, Xanana Gusmão, signed a ceasefire agreement with Colonel Purwanto from the Indonesian National Armed Forces (TNI). However, General L.B. Moerdani later annulled the agreement and launched a military operation, reaffirming Indonesia's position of not negotiating with separatist groups.³²

Following the collapse of the New Order regime, the Habibie administration opened the door for international political negotiations involving Indonesia, Portugal, and the United Nations. Habibie approved the conduct of a referendum in East Timor, giving the people the choice to remain part of Indonesia with special autonomy or to become independent. This referendum was not conducted under the framework of Law No. 5 of 1985 on Referendums, as that law had been repealed by MPR Decree No. 8 of 1998 and replaced by Law No. 6 of 1999.

The formal legal definition of a referendum only applied to constitutional amendments, in the East Timor case, the referendum was employed as a political solution. As a result, 78.5% of East Timor's populace voted for independence. On 20 October 1999, the People's Consultative Assembly (MPR) revoked the decision integrating East Timor with Indonesia, and East Timor officially gained independence on 20 May 2002 as the sovereign state of Timor-Leste.³³

From a criminal law perspective, the efforts by East Timor to secede from Indonesia fulfilled the elements of the offense of *Makar* as regulated under Article 106 KUHP, particularly the element of engaging in acts aimed at detaching part of the Unitary State of the Republic of Indonesia (NKRI). These acts included guerrilla warfare,

³¹ *Ibid.*

³² Jerry Indrawan, "Analisis Faktor-Faktor Penyebab Terjadinya Konflik Di Timor Timur Sebelum Kemerdekaannya Dari Indonesia," *Jurnal Ilmiah Hubungan Internasional* 11, No. 2 (2015): 169–190, <https://doi.org/10.26593/jihi.v11i2.1616.%25p>.

³³ *Ibid.*

urban activism, demonstrations, international campaigns through NGOs like ETAN, and support from the Catholic Church and the FRETILIN diaspora. Under President Soeharto, the state's response to separatism was repressive, including transmigration policies, military operations, and the exile of pro-independence figures. Under Habibie, however, the approach fundamentally shifted to political negotiations and a peaceful referendum.

According to some scholars, such as Erdianto, *Makar* constitutes a political crime. However, the East Timor case demonstrates that *Makar* is not merely political in nature but also encompasses physical acts such as armed guerrilla warfare. Therefore, *Makar* can manifest both physically and non-physically, provided the aim is to secede from the state.³⁴

The elements of Article 106 KUHP were technically satisfied in the East Timor case, the state chose to resolve the matter politically. As the secession was ultimately formalized through official political mechanisms (the referendum), the acts were not prosecuted as criminal offenses of *Makar*. This aligns with the legal principle that *Makar* under Articles 106 and 107 KUHP is a preliminary offense (*delik permulaan*), and once the objective is achieved, it is no longer categorized as a criminal offense.

2. President Abdurrahman Wahid

K.H. Abdurrahman Wahid was elected as Indonesia's fourth president on 20 October 1999 for the 1999–2004 term, though his tenure ended in 2001 due to impeachment by the MPR. One notable case related to *Makar* during his administration was the Papua People's Congress involving members of the Papua Presidium Council (PDP).³⁵ The Congress resulted in a resolution demanding the restoration of the independence of West Papua and the raising of the Morning Star flag. This act was deemed *Makar* under Article 106 in conjunction with Article 55 KUHP.

The Jayapura District Court ruled that the elements of *Makar* were fulfilled; however, the defendants were not punished because the government had provided funding and facilitation for the Congress. President Abdurrahman Wahid was known to have provided funding amounting to Rp1 billion, and local governments provided logistical

³⁴ Erdianto, *Loc.Cit.*

³⁵ Ahmad Nurhuda and Yera Zettira Agesti, "Masa Pemerintahan Abdurrahman Wahid (1999-2001)," *Tarikhuna: Journal of History and History Education* 3, no. 1 (2021): 113–14, <https://doi.org/10.15548/thje.v3i1.2949>.

support. This was deemed an exculpatory ground (*ontslag van alle rechtsvervolging*) under Article 191(2) of the Criminal Procedure Code (KUHP), resulting in the defendants being released from all legal charges.

In this judgment, the court interpreted that *Makar* can occur not only through violence but also through political means such as congresses or declarations. However, due to the government's involvement in supporting the event, the actions of the PDP members were not punishable, despite meeting the formal elements of the offense. This outcome reflected the complex interplay between legal and political considerations.

3. President Megawati Soekarnoputri

Megawati Soekarnoputri assumed office as Indonesia's fifth president on 23 July 2001 following the constitutional removal of Abdurrahman Wahid under MPR Decree No. III/MPR/2001. During her administration, one of the major challenges was the threat of national disintegration due to armed conflict and separatist movements, particularly in Nanggroe Aceh Darussalam Province and Papua.

In Aceh, the Free Aceh Movement (GAM) posed a significant threat to Indonesia's territorial integrity. Established on 4 December 1976 by Hasan di Tiro, GAM sought to separate Aceh from Indonesia and establish an independent state. From its inception, GAM engaged in armed conflict that resulted in an estimated 15,000 deaths. Despite various peace efforts, including granting special autonomy and engaging in dialogue, violence persisted, with GAM continuing guerrilla activities and receiving foreign military training from countries such as Libya and Iran.

Given the escalating situation, President Megawati issued Presidential Decree No. 28 of 2003, declaring a state of military emergency across the province of Nanggroe Aceh Darussalam. This measure was taken as peaceful approaches were deemed ineffective in halting GAM's violent activities. The government viewed GAM's actions not only as separatist but also as terrorist threats that disrupted security, governance, and public order in Aceh.³⁶

³⁶ Verelladevanka Adryamarthanino, "Gerakan Aceh Merdeka: Latar Belakang, Perkembangan, Dan Penyelesaian," *Kompas.Com*, 2021, <https://www.kompas.com/stori/read/2021/08/02/130000979/gerakan-aceh-merdeka-latar-belakang-perkembangan-dan-penyelesaian>.

To address the situation, the government conducted integrated operations encompassing humanitarian efforts, law enforcement, governance restoration, and security recovery. These operations aimed to apprehend perpetrators of violence, protect the population from intimidation, and enforce laws against illegal arms possession. Furthermore, they sought to promote legal awareness and rebuild national solidarity among Acehese communities.

Legally, GAM's actions were classified as *Makar* under Article 106 KUHP, given their aim to secede from the NKRI. Physically, their acts also constituted rebellion under Article 108 KUHP, as they involved armed violence against the government. Consequently, GAM's conduct fell into two legal categories: political *Makar* and physical rebellion.

As a further measure, President Megawati issued Presidential Decree No. 97 of 2003, extending the military emergency status. The decree reaffirmed that GAM remained an armed separatist threat despite six months of ongoing operations. These steps demonstrated the Megawati administration's strong commitment to safeguarding Indonesia's sovereignty and territorial integrity. Although the military emergency policy drew criticism from certain quarters, it was an integral component of the government's broader strategy to suppress separatist movements and ensure national stability.

4. President Susilo Bambang Yudhoyono

Susilo Bambang Yudhoyono was Indonesia's sixth president and the first to be directly elected by the people. His first term began on 20 October 2004, and he was sworn in for his second term before the MPR on 20 October 2009.³⁷ During his administration, numerous *Makar* cases emerged, one of which was the *Makar* case involving Sehu Blesman or Melki Bleskadit, addressed in Supreme Court Decision No. 574 K/Pid/2012 and District Court Decision No. 38/Pid.B/2011/PN.Wmn.

a. Supreme Court Verdict No. 574 K/Pid/2012

The Supreme Court, in Decision No. 574 K/Pid/2012, granted the cassation filed by the Public Prosecutor against the case of Sehu Blesman or Melki Bleskadit, overturning the prior rulings of the Jayapura High Court and the Manokwari District Court and adjudicating the case itself. The Supreme Court declared the defendant legally and convincingly guilty of participating in *Makar* and

³⁷ Dwi Ayu Suetha, et.al., *Loc.Cit.*"

imposed a five-year prison sentence, reduced by time served, and ordered the defendant to pay court costs of Rp2,500.00.

The Supreme Court panel found that the Jayapura High Court's decision, which merely upheld the two-year sentence imposed by the Manokwari District Court, was too lenient compared to the prosecutor's demand of five years. The key reasons were that the defendant's actions seriously endangered the unity of the NKRI, the defendant showed no remorse, and he played a dominant role in the *Makar* acts as stipulated under Article 106 KUHP.

Initially, the Manokwari District Court, in Decision No. 53/Pid.B/2011 dated 18 August 2011, had sentenced the defendant to two years' imprisonment for participating in *Makar*. The prosecutor then appealed to the Jayapura High Court, which affirmed the lower court's decision. Dissatisfied, the prosecutor filed a cassation on 3 November 2011, arguing that the sentence was disproportionate to the severity of the defendant's actions, which posed a substantial threat to the NKRI's territorial integrity, and that the lenient punishment failed to provide a deterrent effect.

Under the first indictment, the defendant was accused of acting as a principal, instigator, or accomplice in the offense of *Makar* with the intent to separate part of Indonesia's territory (West Papua) from the Republic, pursuant to Article 106 in conjunction with Article 55(1) KUHP. The second indictment related to inciting the public to resist the government or lawful authority, under Article 160 in conjunction with Article 55(1) KUHP.

Article 106 KUHP stipulates that *Makar* is defined as acts intended to cause all or part of the country's territory to fall into enemy hands or to secede from the NKRI, carrying a maximum penalty of 20 years' imprisonment. In this context, Sehu Blesman's *Makar* aimed to establish an independent state, namely the Republic of West Melanesia.

The acts of *Makar* were evidenced through concrete actions, such as organizing the celebration of the purported independence anniversary of the said republic on 14 December 2010, where the defendant served as the organizing committee's chairman and bore full responsibility for the event. He also delivered political speeches calling for West Papua's independence. These actions went beyond mere

preparation and entered the execution phase of the criminal offense as contemplated under Articles 87 and 53 KUHP.³⁸

During the event, authorities discovered various attributes, including flags, banners, and pamphlets themed around West Papua's independence and critiques of the Special Autonomy policy. This evidence reinforced the conclusion that the defendant's actions constituted active *Makar*, not merely preparatory acts.

As Secretary-General of the Independence Implementation Committee, the defendant further made political appeals to the Papuan public to pursue independence based on the 1988 proclamation by Thomas Wapoi Wanggai. His role as the main organizer and primary orator provided a strong basis to categorize him as the principal offender (*dader*), instigator, and accomplice under Article 55 KUHP.

Under the second indictment, the prosecutor accused the defendant of inciting the public to commit unlawful acts through open political statements. Such conduct carries a maximum penalty of six years under Article 160 KUHP.

The indictments and verdict centered on *Makar*, the prosecutor was criticized for not explicitly detailing the element of "*aanslag*" (aggressive action), a defining feature of *Makar*. Nonetheless, the judges concluded that organizing an independence anniversary and calling for the establishment of a new state constituted completed acts of *Makar*, not mere plans.

In the final ruling, the Supreme Court declared that Sehu Blesman or Melki Bleskadit was legally and convincingly guilty of committing *Makar* in concert with other individuals, including Daniel Yenu and several other witnesses, at a political event involving students and the general public. Consequently, the Supreme Court imposed a five-year prison sentence as a means of fulfilling the sense of justice and safeguarding the NKRI's territorial integrity.

b. District Court Verdict Number 38/pid.B/ 2011/ PN. Wmn.

In criminal case No. 38/Pid.B/2011/PN.Wmn, six defendants – Obeth Kosay, Teobaga Kilungga (or Yahya Kilungga), Wombi Tambuni, Wiki Meaga, Reverend Ali Jikwa (or Ali Wenda), and Meki Tabuni – were declared legally and convincingly guilty of jointly committing the crime of *Makar*. Each was sentenced to eight months'

³⁸ Rihan Rahman, Sahuri Lasmadi, and Usman, "Tindak Pidana Makar Dalam Perspektif Pertanggungjawaban Pidana" 3, no. November (2024): 507–544, <https://hlr.unja.ac.id/index.php/hlr/article/view/25>.

imprisonment, although the Public Prosecutor had previously demanded a twelve-year sentence under Article 106 in conjunction with Article 55(1) KUHP.

This case stemmed from the activities of Dani Tani Tabuni (or Pes Tabuni), a fugitive and commander of the Free Papua Organization (OPM) in the Moragame area, who formed a military group known as the West Papua Revolutionary Army (TRPB), using the Morning Star flag as its symbol. The six defendants were recruited as TRPB members. On 20 November 2010, they were ordered to attend the funeral of a TRPB member in Wananuk village, Yalengga district. There, they hoisted the Morning Star flag by planting a flagpole into the ground, eventually leading to their arrest by a joint TNI-Police task force.

The trial judges determined that the defendants had collectively committed the crime of *Makar*. Their actions satisfied the elements of Article 106 KUHP, pertaining to efforts to secede from the NKRI. In its legal considerations, the court also referenced Article 110 KUHP on criminal conspiracy, highlighting the existence of an agreement among two or more persons to commit a crime, even if the crime had not yet been fully executed.

Expert testimony was presented in court to explain the concept of *Makar* under Article 87 KUHP, which states that *Makar* arises when intent and commencement of execution are present, such as preparatory acts like forming organizations, displaying independence symbols, or raising flags. Therefore, the defendants' conduct was categorized as part of the execution phase of *Makar* intent.

The judges also considered the element of participation under Article 55 KUHP, finding that the collective actions of the defendants constituted conscious cooperation reflecting a shared will to commit *Makar*. The court concluded that acts such as raising a flag other than the national flag, forming separatist organizations, and establishing the symbols of an independent state constituted concrete forms of *Makar*.

More broadly, the court observed that during Susilo Bambang Yudhoyono's administration, many *Makar* cases arose, particularly related to separatist movements in Papua and Maluku. Actions such as organizing independence ceremonies, creating parallel government structures, and declaring a desire for independence were regarded as political *Makar* even without the element of "*aanslag*" or overt physical attack. From a legal standpoint, separatism is seen as a form of *Makar*

aimed at detaching part of the state's territory, thereby meeting the elements of Article 106 KUHP.

5. President Joko Widodo

The Ambon High Court Decision No. 07/Pid/2015/PT.AMB arose from an appeal in a *Makar* case involving William Lawalata or Ebeng. In its legal considerations, the panel of judges declared the defendant guilty of participating in *Makar* by creating a banner reading "April 25, 2014 is the day of reconciliation/cessation of hostilities between NKRI and RMS (South Moluccas Independence Day)..." This banner was made at the request of witness Frans Sinmiasa to be used in a parade commemorating the 64th anniversary of the Republic of South Maluku (RMS), held in Ambon on 25 April 2014. The purpose of making and using the banner was deemed part of efforts to separate the Moluccas from the NKRI.

The court found that William's actions satisfied the elements of *Makar* under Article 106 KUHP in conjunction with Article 55(1) KUHP. Although the defendant's role was limited to making the banner, his participation in the parade with the banner calling for reconciliation between the NKRI and RMS was considered part of the *Makar* act. The defendant's involvement was classified as "participation" (*deelneming*) in the criminal offense of *Makar*, even if his role was minor.³⁹

Compared to Supreme Court Decision No. 574 K/Pid/2012 during President Susilo Bambang Yudhoyono's administration, the application of Article 55(1) KUHP in this case was considered more appropriate, as the defendant's involvement was limited to making the banner, not as an intellectual actor. In contrast, the Sehu Blesman or Melki Bleskadit case, which involved more complex participation, should have invoked Article 110 KUHP on criminal conspiracy.

In its ruling, the court decided to grant the defense counsel's appeal but still upheld the Ambon District Court Decision No. 307/Pid.B/2014/PN.Amb dated 22 January 2015. The court also ordered that the defendant remain in detention and imposed court costs of Rp2,500 at the appellate level.

The Public Prosecutor had previously charged the defendant under Article 110(1) in conjunction with Article 55(1) KUHP and sought a five-year prison sentence. The banner used as evidence was

³⁹ Deny Noer Wahid & Ilham Dwi Rafiqi, "Manifestation of Eastern Cultural Values by Re-arranging Norm on Insulting the President and Vice President" *Hang Tuah Law Journal* 6, no. 1, (2022): 61–76, <https://doi.org/10.30649/htlj.v6i1.76>

confiscated for destruction, and the defendant was also ordered to pay court costs of Rp2,000. The prosecution viewed the defendant's actions as a criminal conspiracy to commit *Makar*, carrying a maximum penalty of six years under Article 110 KUHP.

Overall, the ruling reflected the consistent application of legal norms based on the defendant's role. The judges applied an authentic interpretation of the KUHP, ensuring that every form of involvement in *Makar* was prosecuted according to each actor's degree of participation.

Conclusion

The interpretation of the *Makar* offense under Indonesian criminal law has undergone significant evolution, influenced by the political and legal context of each governmental regime. The absence of a clear and explicit definition in the Criminal Code has led to varying judicial interpretations, often shaped by security concerns and state interests. From the Old Order to the Reform Era, *Makar* has been interpreted not only as a physical act of rebellion but also as encompassing non-physical acts such as political speech, symbolic expressions, and organized movements advocating for independence. Article 106 of the Indonesian Criminal Code remains central in prosecuting acts aimed at separating a part of the state's territory or submitting it to foreign control. However, the vague and broad interpretation of *Makar*, particularly when disconnected from concrete violent acts (*aanslag*), has raised legal concerns regarding the principles of *lex certa* (legal certainty) and proportionality. The application of *Makar* provisions must therefore be conducted carefully, using systematic and historical interpretations, to ensure that legal enforcement remains aligned with democratic principles and respects constitutional rights. A more concrete and consistent legal interpretation of *Makar* is urgently needed to prevent the criminalization of dissent and to protect national sovereignty without compromising human rights. Clarifying the legal boundaries of *Makar* will help ensure that the law is applied justly and that Indonesia's criminal justice system adheres to both national and international legal standards.

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