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A VIEW OF HUMANITARIAN LAW ON TREASON IN COURT DECISIONS IN INDONESIA: A LEGAL ANALYSIS

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ABSTRACT

The 1949 Geneva Conventions set out clear obligations for participating states to uphold the humanitarian norms contained therein. In Indonesia, the two regions of Aceh and Papua have experienced violent conflict with significant escalation, raising the question of whether these situations can be legally classified as non-international armed conflicts under international humanitarian law. The purpose of this study is to examine this issue by focusing on how treason cases have been tried in Indonesian courts, as judicial reasoning provides an important perspective for assessing the threshold of violence. This study uses normative legal methods, reviewing relevant statutory provisions, legal principles, and court decisions. The research findings indicate that, from a humanitarian law perspective, the acts of violence in Aceh and Papua have not reached the legal threshold required to be categorized as non-international armed conflicts. Instead, the handling of treason crimes still relies on national legal instruments, particularly Article 7 paragraph (2) of the Indonesian National Armed Forces Law, which frames such acts as military operations other than war. In conclusion, although these conflicts exhibit significant social and political tensions, they remain outside the scope of humanitarian law, highlighting the reliance on criminal law and military law in addressing treason.

A. INTRODUCTION

The international obligation for a State under the 1949 Geneva Conventions, firstly, lies on the common Article 1 of each convention, mentions that the State Parties should give "respect and guarantee respect" for the existing International Humanitarian Law norms.[1] The phrase "guaranteeing respect" in this case includes the obligation of military commanders to ensure that actions taken in a military operation in an armed conflict are appropriate and not contrary to International Humanitarian Law.[2] However, it is undeniable that there are violations in carrying out these international obligations; Starting from administrative violations, serious violations including war crimes, and other violations.

The legal issue that arises is the gap between the state's obligation under the 1949 Geneva Conventions to respect and ensure respect for international humanitarian law and actual practices on the ground, which actually demonstrate various forms of violations.[3] This raises questions about the extent of the state's responsibility, particularly the role of military commanders, in preventing and responding to such violations in accordance with applicable legal norms.

As is the basic obligation in the common article Article 1, when there is a violation of international obligations arising as a result of the ratification of an international treaty or because a country is bound by customary international law, the thing that must be carried out by a country is to enforce the rules of the HHI in the judicial field.[4] Some of the court decisions that will be discussed in the scope of this topic are the decisions of the district courts in Aceh and Papua, considering that in these two provinces there is a high escalation of conflicts in the context of movements that can be considered as (forerunners) of rebellion movements. Rebellion, also known as "treason".[5] One example of the decisions that adjudicate on this matter is the decision from the Wamena District Court Number 120/Pid.B/2018/PN Wmn which was decided on April 29, 2019.[6] In this case, the defendants Jakub Fabian Skrzypski

[1] ICRC. "Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949. Commentary of 2016. Article 1," Geneva COnventions of 1949, Additional Protocols and Their Commentaries, 2016.

[2] Ni Putu Era Daniati, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliartini, "Status Hukum Tentara Bayaran Dalam Sengketa Bersenjata Ditinjau Dari Hukum Humaniter Internasional," *Jurnal Komunitas Yustisia* 3, no. 3 (2020): 289.

[3] Josef M. Monteiro, "Judges' Decisions According to a Socio-Legal Perspective," *Journal of Jurisprudence* Law 22, no. 2 (2021): 12.

[4] Yehezkiel Rober Antouw, "Peran International Committee Of The Red Cross Dalam Perlindungan Korban Perang Menurut Konvensi Jenewa 1949," *Lex Et Societatis* 8, no. 2 (2020).

[5] Suntara Wisnu Budi et al., "Terorisme dan Keamanan Global: Perspektif Singkat Hukum Humaniter," *Jurnal Sosial Teknologi* 5, no. 5 (2025): 1418.

[6] Denny Andica Rama, "Pelaksanaan pemufakatan jahat dalam perkara tindak pidana narkotika (studi putusan nomor 120/PID. B/2018/PN. PAL)," PhD diss., Palu: Universitas Tadulako, 2021.

and Simon Magal were legally and convincingly proven guilty of treason, according to the alternative first indictment from the Public Prosecutor.[7]

This research is important because it will critically examine the gap between legal norms that require states to uphold International Humanitarian Law and judicial practices that often frame armed conflict as an act of treason or treason. This study is relevant because court decisions in conflict areas such as Aceh and Papua not only have implications for law enforcement but also concern the protection of human rights and the legitimacy of the application of humanitarian law in Indonesia.

Previous research has been limited in examining the implementation of International Humanitarian Law (*Hukum Humaniter Internasional*/HHI) norms at the implementation level in Indonesia, particularly regarding the state's role in enforcing the rules through judicial processes against violations.[8] Many studies highlight the ratification of conventions, but few evaluate the effectiveness of law enforcement and courts against violations, including the fulfillment of the state's obligation to ensure military action complies with HHI. This gap is significant given the continued prevalence of violations and suboptimal enforcement mechanisms.[9]

The theory of state responsibility in HHI, likewise, emphasizes that states are obligated not only to respect norms but also to ensure respect through legislation, education, supervision, and prosecution of violators.[10] Recent research in Indonesia indicates government efforts to strengthen regulations and multi-stakeholder cooperation, but practical law enforcement still faces challenges such as regulatory inconsistencies, unclear inter-agency coordination mechanisms, and political influence on enforcement.[11] Field studies highlight the need for increased training and legal awareness among military and law enforcement personnel. This is considered important to see

See too, Heru Susetyo, "International Humanitarian Law in Internal Armed Conflict: Implementing Common Article 3 and Additional Protocol II to the Geneva Conventions to Internal and Horizontal Conflicts in Indonesia," *terAs Law Review: Jurnal Hukum Humaniter dan HAM* 3, no. 4 (2007): 235.

[7] Suntara Wisnu Budi et al., "Terorisme dan Keamanan Global," 1419.

[8] Melisa Nasir et al., "Kedudukan Hukum dalam Mewujudkan Keadilan dan Kesejahteraan di Indonesia," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (2023): 244. See too, Josef M. Monteiro, "Judges' Decisions According to a Socio-Legal," 14.

[9] Frikelsia Sampe, "Perlindungan Hukum Bagi Prajurit Angkatan Bersenjata Dalam Sengketa Tata Usaha Angkatan Bersenjata= Legal Protection For Armed Forces Soldiers In Armed Forces Administrative Disputes," Phd diss., Makassar: Universitas hasanuddin, 2024.

[10] Umar Suryadi Bakry, *Hukum Humaniter International: Sebuah Pengantar*. (Jakarta: Prenada Media, 2019): 24.

[11] Ikhwannul Kholis and Andri Sutrisno, "Tanggung Jawab Negara atas Pelanggaran Hukum Humaniter Internasional dalam Konflik Israel-Palestina ditinjau dari Konvensi Jenewa 1949," *Policies On Regulatory Reform Law Journal* 1, no. 1 (2024): 38.

how far the implementation of HHI norms is considering that Indonesia has ratified the 1949 Geneva Conventions with Law Number 58 of 1959.[12]

This research contributes theoretically by clarifying the relationship between the ratification of international law and its enforcement at the national level, adding insight into the role of the state in the context of a developing country like Indonesia.[13] Practically, this research provides empirical data and an evaluation model for the implementation of IHL that can be used as a reference for policymakers and law enforcement officials to increase accountability and effectiveness in handling violations, as well as strengthen judicial mechanisms to enforce international humanitarian law more consistently and fairly in Indonesia.

In this regard, the identification of the problem to be studied in this study is to find out the type of conflict that actually occurs in the crime of treason that occurs in the two regions and what is the causal relationship between legal instruments related to humanitarian law in the court decision, by discussing the judge's opinion contained in the decision. This study aims to examine the decisions made in courts in Indonesia which the author assesses are related to the use of IHL instruments.

B. RESEARCH METHODS

This research uses socio-legal research methods, or often referred to as legal and social research methods. The socio-legal research method is an approach in legal research that combines elements of law and social sciences, with the aim of knowing and understanding the relationship between law and society through the two sciences, as well as knowing that law functions to influence and be influenced by various social, cultural, economic, political, and various other aspects in the real life of a society.[14] In other words, the socio-legal research method is a method that integrates normative research and empirical research in legal research.[15]

Therefore, this research method is no longer just a normative or doctrinal research method that only researches the order of rules, norms, principles, theories, philosophies and legal rules in order to find solutions or answers to predetermined problems[16] that only use literature research to find primary, secondary and tertiary legal materials. However, research in this

[12] Isplancius Ismail, "Penerapan Konvensi Jenewa 1949 dan Protokol Tambahan 1977 Dalam Hukum Nasional Indonesia," *Jurnal Dinamika Hukum* 13, no. 3 (2013): 56.
[13] Josef M. Monteiro, "Judges' Decisions According to a Socio-Legal," 16.
[14] Sulistyowati Irianto, "Legal Education for The Future of Indonesia: A Critical Assessment," *The Indonesian Journal of Socio-Legal Studies* 1, no. 1 (2021): 12.
[15] Afif Noor, "Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research," *Jurnal Imiah Dunia Hukum* 7, no. 2 (2023): 98.
[16] Soerjono Soekanto and Sri Mamudji, *Normative Law Research: A Brief Overview*. (Depok: Rajawali Press, 2021): 76.

approach has also included other aspects as an objective social fact; in this case, the role of the Chief Judge and the Panel of Judges as well as other institutional actors[17] in a court, to find out how the relationship between the perception, knowledge and ability of a panel of judges in deciding a case, which is related to certain aspects in a legal field.

Thus, in this study, the researcher uses various kinds of information that can be used for the implementation of socio-legal research, for example primary legal materials that refer to the rules obtained from legislation, and legal theories and principles. In this case, the primary legal material determined for this study is Law Number 1959 of 1958 concerning the ratification of the 1949 Geneva Conventions, and various laws and regulations as rules for the implementation of the 1949 Geneva Conventions and laws and regulations related to armed conflict. The secondary legal material is the use of various legal documents including literature and journals related to the topic discussed. The researcher will also use the interview method of court clerks as a tool to collect empirical data[18]. According to Opeskin[19], as an aspect outside the law, official recordings or records will also be used in a court hearing such as minutes, memorandums, and other records from the Registrar, although according to Opeskin, this kind of data has several weaknesses, besides being useful in compiling an argument in research.

Thus, this study seeks to interpret relevant judges' decisions from a socio-legal perspective, which includes the construction of the formation of judges' legal decisions; factors that affect the formation of judges' decisions; Problems of judges in carrying out their profession as well as substantial justice as the basis for quality judges' decisions.[20] To find out how judges' decisions relate to the norms of international humanitarian law, analysis is carried out qualitatively, that is, analysis that is based not on numbers or the use of certain formulas, but by looking for relationships or causal causes between the topics of the problem with each other.

C. DISCUSSION

1. Literature Review of Socio-Legal Approaches in Normative Research

The research we conducted can be classified as normative/doctrinal research with a socio-legal approach. Normative research in general can be

[17] Gabrielle Appleby and Heather Roberts, "Studying judges: The role of the Chief Justice, and other institutional actors," *Oñati Socio-Legal Series* 13, no. S1 (2023): 91.

[18] Fachrizal Affandi, "Reza Banakar's Interdisciplinary Legal Research: The Urgency and Design of Sociolegal Research," *Law: Journal of Law* 5, no. 1 (2022): 232.

[19] Brian Opeskin, "Lazy Data? Using Administrative Records in Research on Judicial Systems," *Oñati Socio-Legal Series* 4, no. 2 (2023): 24-45.

[20] Sidi Ahyar Wiraguna, "Metode normatif dan empiris dalam penelitian hukum: Studi eksploratif di Indonesia," *Public Sphere: Jurnal Sosial Politik, Pemerintahan dan Hukum* 3, no. 3 (2024): 210. See too, Josef M. Monteiro, "Judges' Decisions According to a Socio-Legal," 18.

understood when research is focused on analyzing the norms and legal principles contained in a regulation, both written and in the form of customary law.[21] Researchers will generally conduct an assessment of legal norms and rules, see if these norms or rules are applied in a case, look at equations and comparisons to produce benefits in research, and other matters related to written and unwritten legal rules and norms.[22]

Normative research with a socio-legal approach in the last two decades is believed to be more necessary in understanding a legal problem, as well as finding solutions that are applicable in society.[23] Socio-legal research does not mean eliminating studies on the aspects of norms and rules that are the main pillars of normative research.[24] Even in sociolegal research, the study of legal rules and norms is something that must exist, but it further enriches the normative study with socio-legal aspects. This refers to a term "sociological jurisprudence", and not "sociology of law". Based on the writings of Yati Nurhayati[25] formulated this understanding very clearly. Yati Nurhayati said that research with this approach is essentially a study of law that is interdisciplinary. Although the approach is called "socio-legal", the approach does not refer to sociology or social sciences, but uses certain social theories only as a tool to conduct analysis, which is still directed to conduct legal studies.

In this regard, we also agree with the opinion of Sulistyowati Irianto, who stated that the socio-legal approach is a new approach in legal research in Indonesia.[26] Quoting Hammerslev's opinion, Sulistyowati Irianto said that the analysis of the judge's decision, with a socio-legal perspective, can clarify how justice mapped in the implementation of applicable legal norms, is merged in various societal perspectives. Sulistyowati Irianto stated this straightforwardly as follows:

> *"The characteristics of sociolegal research methods can be identified through the following two things. First, sociolegal studies conduct textual studies, articles in laws and regulations and policies can be critically analyzed and their meaning and implications on legal subjects (including*

[21] Sidi Ahyar Wiraguna, "Metode normatif dan empiris," 216.

[22] Herman Suryokumoro et al., *Hukum Humaniter Internasional: kajian norma dan kasus*. (Malang: Universitas Brawijaya Press, 2020): 34.

[23] Kushartoyo Budisantosa, "Studi Komparatif Konflik Bersenjata Non-Internasional Dalam Hukum Humaniter Internasional (Comparative Study on Non-International Armed Conflict in International Humanitarian Law)," *terAs Law Review: Jurnal Hukum Humaniter dan HAM* 2, no. 2 (2020): 23.

[24] Suntara Wisnu Budi et al., "Terorisme dan Keamanan Global," 1420.

[25] Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, "Metodologi normatif dan empiris dalam perspektif ilmu hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 15.

[26] Sulistyowati Irianto, "Legal Education for The Future," 14. See too, A. S. Silva, "Legal decision in socio-legal research: systemic elements to observe the construction of sense in law," *World Society's Law: Rethinking Systems Theory and Socio-Legal Studies* (2020): 278.

marginalized groups) can be explained, in this case, it can be explained how the meanings contained in these articles harm or benefit certain groups of people and in what way. Therefore, sociolegal studies also deal with the heart of the problem in legal studies, namely discussing the constitution to laws and regulations at the lowest level such as village regulations. In addition, the study of judges' decisions is very important. … The method used is to review trial cases based on the text of the judge's decision...".

The research of Sally[27] cited in Herlambang Wiratraman[28], emphatically states that researchers who take a socio-legal approach to legal issues, firmly reject that normative research with a socio-legal approach does not in any way deny or remove normative research itself. Even studies of a doctrinal nature will always be placed as the beginning of normative research with a socio-legal approach.

It is written in Herlambang's writings that the tradition of those who conduct socio-legal studies and research always explores and resolves first the normative framework of a problem, because normative studies need to be carried out first.[29] However, studies with a doctrinal approach are felt to be not satisfactory, especially answering the context of justice that is more sustainable and more accepted by the public. Because the law is directed to serve the needs and interests of humans, it becomes difficult to separate the law and its society that is the context.[30] Law does not necessarily come down from the sky so that it is value-free but always goes through political, sociological and cultural processes and dynamics.[31]

By looking at various opinions on the need for a socio-legal approach in court decisions, we base our argument on this research that a socio-legal approach is needed in order to clarify and find the common thread of the decisions issued by judges as the final of the case, with their decisions describing the creation of a justice for society; either normative or substantive justice.[32] Therefore, research on judges and their role in imposing punishments

[27] Sally Wheeler, "Socio-legal studies in 2020," *Journal of Law and Society* 47, no. 7 (2020): 211.
[28] Herlambang P. Wiratraman, *Penelitian Sosio-Legal dan Konsekuensi Metodologisnya.* (Surabaya: Center of Human Right Law Studies, Fakultas Hukum Universitas Airlangga, 2008): 23.
[29] Sidi Ahyar Wiraguna, "Metode normatif dan empiris," 218.
[30] Rendi Prayuda et al., "Resolusi Konflik Internasional: Studi Kasus Konflik Bersenjata Sipil antara Sudan Armed Forces (SAF) dan Rapid Support Force (RSF) di Sudan," *Andalas Journal of International Studies* 13, no. 2 (2024): 216. See also, Kushartoyo Budisantosa, "Studi Komparatif Konflik Bersenjata," 26.
[31] Naomi Creutzfeldt, Marc Mason, and Kirsten McConnachie, eds. *Routledge handbook of socio-legal theory and methods*. (New York: Routledge, 2020): 12. See too, Herlambang P. Wiratraman, *Penelitian Sosio-Legal.* 26.
[32] Herman Suryokumoro et al., *Hukum Humaniter Internasional.* 36.

is carried out from various theoretical, disciplinary, and methodological perspectives. Each of these approaches offers valuable insights, including the judge's conception both explicitly and implicitly. According to Sharyn Roach Anleu et.al.,[33] from various cases, it can be understood that a judge works in the experiential, emotional and social dimensions, as well as the legal dimension.

2. Implementation of Humanitarian Law and National Law Norms in Practice and the Obstacles Encountered

The content of common article 1 of the 1949 Geneva Conventions is the first basic rule, which imposes an international obligation on States parties. This article describes pacta sunt servanda in order to respect and ensure respect for the application and enforcement of the 1949 Geneva Conventions, not only in times of armed conflict, but also in all circumstances including during peace time. The principle of *pacta sunt servanda* has been codified in Article 26 of the 1978 Vienna Convention on the law of international treaties. Article 1 of the 1949 Geneva Convention common articles means that each State Party must take all necessary measures to ensure that each State organ is bound by and able to implement the HHI norms contained in the 1949 Geneva Convention.[34]

According to the latest Commentary on the 1949 Geneva Conventions published in 2016 by the International Committee of the Red Cross, the obligations arising as a result of the entry into force of Article 1 of the common article on a State Party are as follows:[35]

1) The obligation to respect and ensure respect for the 1949 Geneva Conventions by the Armed Forces and other persons, or other groups whose actions may be attributed to states parties to the 1949 Geneva Conventions.[36] The 2016 Commentary on the Convention outlines that under the theory of state responsibility, an act or omission that constitutes a violation of the Convention will give rise to the responsibility of a state party to the Convention, provided that such action can be attributed to the state party.

[33] Sharyn Roach Anleu, Kathy Mack, Jennifer Elek, and David Rottman, "Judicial ethics, everyday work, and emotion management." *Journal of Law and Courts* 8, no. 1 (2020): 127-150.

[34] Knut Dorman Serralvo and Jose, "Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations," *International Review of the Red Cross* 96, no. 895/896 (2014): 702.

[35] International Committee of the Red Cross, "Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, Commentary of 2016," *IHL Databases*, May, 23, 2016. Retrieved in July 12, 2025 from https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/sources/commentary/2016

[36] Erlies S. Nurbani, "Kewajiban Indonesia berdasarkan ketentuan yang bersamaan Konvensi Jenewa 1949," *Jatiswara* 33, no. 3 (2018): 335.

2) The obligation to respect the 1949 Geneva Conventions by all the inhabitants of a country to which the convention has been bound by them;
3) Obligation to guarantee respect by other groups such as: a. Negative obligation; b. Positive liability; c. Restrictions on permissible actions; and d. A study of possible actions to be taken. This results in internal obligations as well as the possibility that a country is responsible in the event of a failure or violation of the 1949 Geneva Conventions, both in the event of international and non-international armed conflicts.[37] This same obligation also applies to third parties or countries that are not involved in armed conflict.[38] The obligation to find the perpetrator, and prosecute him in accordance with a fair and equitable judicial process[39] must be undertaken by the state party because it is an international obligation that arises when the state fails to prevent or when there is a violation of the norms of IP.[40] Violations of International Humanitarian Law (IHL) may be committed not only by state organs but also by private actors. This is important to analyze because it shows how Indonesia's national criminal law functions in implementing IHL norms, given that not all instruments have been ratified. The role of judges becomes central in adjudicating such cases. A comparative example is seen in Cambodia's ECCC, where judges significantly applied national law as an interpretive tool to expand responsibility while upholding legality principles.[41] Another example is the work of the German judiciary who refuse to grant immunity to HHI violators who raise the objection that this aspect of immunity is not customary international law, to which the German district courts do not have to submit.[42] In addition to the social aspect, the political aspect is considered another determinant aspect in examining the implementation of international

[37] John Hursh, "International humanitarian law violations, legal responsibility, and US military support to the Saudi coalition in Yemen: a cautionary tale," *Journal on the Use of Force and International Law* 7, no. 1 (2020): 134.
[38] Md Hasnath Kabir Fahim and Mohammad Aktarul Alam Chowdhury, "Addressing Non-International Armed Conflicts Vis-Ã€-Vis International Humanitarian Law and Human Rights Regime," *Jurnal Hukum dan Peradilan* 12, no. 2 (2023): 353.
[39] Larisa V. Deriglazova, Olga Yu. Smolenchuk. "Prosecution for Violations of International Humanitarian Law: Russia's Position," *Russia in Global Affairs* 19, no. 4 (2021): 198–225.
[40] Md Hasnath Kabir Fahim and Mohammad Aktarul Alam Chowdhury, "Addressing Non-International Armed," 356.
[41] Patricia Hobbs, "The Interaction Between Domestic Law and International Humanitarian Law at the Extraordinary Chambers in the Courts of Cambodia," In *Applying International Humanitarian Law in Judicial and Quasi-Judicial Bodies: International and Domestic Aspects*, pp. 289-314. The Hague: TMC Asser Press, 2014.
[42] Manfred Dauster, "Germany's Attitude Vis-à-vis International Crime and its Prosecution by Domestic Courts," *Bratislava Law Review* 7, no. 1 (2023): 13.

humanitarian law norms. [43] This is based on a premise that states that the more stable and good a government is, the better the law and its implementation in society.[44]

Based on the laws and regulations, there are several laws related to acts of rebellion. The law is Law Number 3/2025[45] on amendments to Law Number 34/2004 concerning the Indonesian National Army (TNI); Law Number 1/2023 concerning the Criminal Code (KUHP)[46]; and Law Number 3/2002 on National Defense.[47]

Based on Article 7 paragraph (1) of Law Number 3/2025, the main task for the TNI is to be in the field of national defense.[48] In addition, the TNI also has the main task of protecting the entire nation from threats and disturbances to the integrity of the nation and state. Therefore, one of the main tasks in order to maintain and maintain the integrity of the country, is to conduct military operations other than war. In paragraph (2), it is clearly stated that one of the tasks in the corridor of military operations other than war is to overcome armed insurgency. In the explanation of Article 7, armed rebellion is an armed movement carried out against the legitimate Government. The Law on State Defense (Law Number 3/2002) has included in the Explanation Article 7 (f) that armed rebellion is one of the military threats.[49] It is referred to as a military threat because armed rebellion has used organized armed force and is considered to be able to endanger state sovereignty, territorial integrity and national security.

Meanwhile, based on Law Number 3/2025, rebellion is regulated in Part Two concerning the Crime of Treason.[50] The crime of treason consists of various classifications, namely treason against the President and Vice President; treason against the Unitary State of the Republic of Indonesia; and treason against the Government. Under Article 194, rebellion is included in any treason against the government that is specifically carried out by the use of

[43] Kyra Wigard, "Matter of Opinion: Assessing the Role of Individual Judicial Opinions at the International Criminal Court," *International Criminal Law Review* 23, no. 3 (2023): 473.
[44] Mahfud MD, *Constitutional Law Debate After Constitutional Amendment*. 1st ed. (Jakarta: Raja Grafindo Persada, 2010): 42.
[45] Republic of Indonesia, "Law No. 3 of 2025 concerning Amendments to Law No. 34 of 2004 concerning the Indonesian National Army" (2025).
[46] Republic of Indonesia, "Law No. 1 of 2023 concerning the Criminal Code (KUHP)" (2023).
[47] Republic of Indonesia, "Law Number 3 of 2002 concerning State Defense" (2002).
[48] Indonesia, Republic. Law No. 3 of 2025 concerning Amendments to Law No. 34 of 2004 concerning the Indonesian National Army (2025).
[49] Republic of Indonesia, "Law Number 3 of 2002 concerning State Defense" (2002).
[50] Floridus Ujung et al., "Kajian Yuridis terhadap Undang-Undang Nomor 3 Tahun 2025 tentang Perubahan Atas UU No 34 Tahun 2004 pada Pasal 47 tentang Tentara Nasional Indonesia," *Jurnal Penelitian Ilmiah Multidisipliner* 1, no. 03 (2025): 312.

force of arms, or is carried out against the government by joining or joining with a mob that opposes the government by the use of force of arms.[51]

In addition, Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to in this article as the New Criminal Code) also regulates the imposition of criminal penalties on anyone who advocates or facilitates rebellion among the TNI (Article 369), and rebellion on ships (Part Three of the Criminal Code, in Articles 553-557).[52]

There are a number of court decisions in Indonesia that decide cases of rebellion or what is also called the crime of treason. The verdict is mostly contained in the Sorong District Court Decision, Southwest Papua; then followed by the decisions of the Sigli District Court, Aceh and the District Court of Timika City, Central Papua.

Based on the decision of the Sorong District Court Number 117/Pid.B/2013/PN. Stretch out[53] who tried the defendant Antonius Saruf, the judge emphasized that the definition of treason in Article 106 of the Criminal Code (at the time of the incident was still using the old Criminal Code), does not mean that it is only a real and physical act in the form of an attack, but can also be in the form of an attack on the object of sovereignty of a country's territory.[54] The judge based his view on comments or explanations of Article 106 of the Criminal Code.[55] The element of the criminal act of "intention" of the defendant is to intend to conquer or separate part of the country to a foreign government.[56] This means that the ultimate goal of the defendant's actions is to make part of the area separate and independent as a state. Based on the provisions of the old Criminal Code, to prove the existence of an element of intention, it is sufficient if it can be proven that there is a consensus, or agreement, or agreement to commit treason. This has also been regulated in Article 53 of the Criminal Code.[57]

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[51] Herman Suryokumoro et al., *Hukum Humaniter Internasional.* 38.

[52] Indonesia, Republic. Law No. 1 of 2023 concerning the Criminal Code (KUHP) (2023).

[53] Direktori Putusan Mahkamah Agung Republik Indonesia. "Pengadilan Negeri Sorong, Putusan Nomor 117/Pid.B/2013/PN.SRG (2013)," *Direktori Putusan Mahkamah Agung Republik Indonesia,* March 12, 2013. Retrieved in July 7, 2025 from https://putusan3.mahkamahagung.go.id/search.html?q=Pengadilan+Negeri+Sorong%2C+Putusan+Nomor+117%2FPid.B%2F2013%2FPN.SRG+%282013%29.

[54] Henning Lahmann, "Protecting the global information space in times of armed conflict," *International Review of the Red Cross* 102, no. 915 (2020): 1234.

[55] R. Soesilo, *The Criminal Code and its comments are article by article*. (Bogor: Politeia, 1990): 87.

[56] Heru Susetyo, "International Humanitarian Law," 235.

[57] Direktori Putusan Mahkamah Agung Republik Indonesia. "Pengadilan Negeri Sorong, Putusan Nomor 117/Pid.B/2013/PN.SRG (2013)," *Direktori Putusan Mahkamah Agung Republik Indonesia,* March 12, 2013. Retrieved in July 7, 2025 from https://putusan3.mahkamahagung.go.id/search.html?q=Pengadilan+Negeri+Sorong%2C+Putusan+Nomor+117%2FPid.B%2F2013%2FPN.SRG+%282013%29.

3. Restorative Justice and Sentencing Reform in Treason Cases

An alternative legal solution that can be proposed is to prioritize a more humane and restorative approach to sentencing, such as the implementation of community service sentences, strict supervision, and rehabilitation programs aimed at reintegrating perpetrators into society constructively. Strengthening norms is also needed by clarifying the definition of treason to prevent the misuse of the article to silence legitimate political aspirations. Furthermore, proposing new regulations that support the flexibility of judges in imposing sentences according to the context of the defendant's actions and motives is crucial to avoid overly repressive sentences and the triggering of prolonged conflict. This approach can also reduce overcrowding in correctional institutions, making the justice system more just and oriented towards social recovery.

D. CONCLUSION

Based on the opinion of the judge in the case of treason in court decisions in Indonesia, it can be concluded that several things can be concluded: first, the scope of the situation that occurred in some parts of Indonesia, in this case Aceh and Papua, based on court decisions, is not enough to be considered an armed conflict based on humanitarian law; Second, therefore, the criminal act of treason that is being tried can be considered as the initial act in organizing an armed rebellion. By looking at the involvement of the perpetrators in a more structured and organized organization that has this desire, the legal basis related to the issue of treason and armed rebellion remains within the scope of national law, especially as stipulated in Article 106 of the old Criminal Code or Article 194 of the new Criminal Code and Article 7 paragraph (2) of the TNI Law which states that the eradication of rebellion movements is qualified as a military operation other than war.

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