MASALAH-MASALAH HUKUM
Available online on https://ejournal.undip.ac.id/index.php/mmh/
Volume 54, Issue 2, July 2025

DISSEMINATION OF COMMUNISM/MARXISM-LENINISM AS POLITICAL OFFENSE IN INDONESIAN: NATIONAL SECURITY PROTECTION OR ACADEMIC FREEDOM THREAT

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Abstract

This study examines Indonesia's historical relationship with Communism and Marxism-Leninism, ideologies linked to the Madiun Rebellion of 1948 and the 1965 attempted coup. Despite the collapse of the Soviet Union and the global decline of Communist influence, legal provisions criminalizing the dissemination of Communism under the Indonesian Penal Code remain, raising concerns about academic freedom. These laws potentially restrict scholarly discussions and research, particularly concerning the 1965 events, both in academic settings and digital platforms. Using doctrinal legal research and comparative insights from Germany and Hungary, this study concludes that criminalizing Communist dissemination is no longer appropriate in Indonesia's current socio-political context. Legal protections should instead focus on safeguarding public interest and the rights of those affected by the 1965 events. Moreover, the vague formulation of Articles 188 and 189 of the Indonesian Penal Code poses a threat to academic freedom. The research suggests that policymakers reconsider these legal provisions and develop a clearer, more precise definition of "clear and present danger" to balance national security concerns with academic freedom. This study contributes to the debate on legal reform, highlighting the need for an updated approach that allows open academic discourse while respecting the rights of those affected by historical events.

Keywords: Communism; Political Offense; Academic Freedom; National Safety; Penal Code.

A. Introduction

On January 6, 2023, the Indonesian Penal Code was passed and is scheduled to take effect in early 2026. The new code includes provisions for the criminalization of the dissemination of Communism/Marxism-Leninism as a threat to national security. This criminalization stems from Indonesia's long history of tension with communist ideologies, particularly in relation to the Indonesian Communist Party (PKI). In 1948, the PKI attempted an armed rebellion in Madiun, East Java, in an effort to establish a Soviet-style government, which became known as the Madiun Affair. Although this rebellion was quickly suppressed, it fueled deep mistrust of communism among the national political elite. A similar event occurred in 1965 with the September 30th Movement (G30S), where members of the PKI were accused of orchestrating the abduction and murder of several Indonesian Army generals. While the historical narrative surrounding these events remains contested, they were used by the New Order regime under President Soeharto as justification for a massive political purge, reinforcing the view that communism was inherently subversive and violent (Fogg, 2020).

These historical events—the Madiun Affair of 1948 and the G30S in 1965—became foundational in the political construction of communism as a threat to national stability. The

aftermath of the G30S led to the fall of the Old Order under President Soekarno and the rise of the New Order under President Soeharto. In 1966, the People's Consultative Assembly issued Decree No. XXV/MPR/1966, which officially disbanded the PKI, declared it a prohibited organization, and banned the dissemination of communist, Marxist, and Leninist ideologies. This decree was a constitutional and ideological maneuver designed to reaffirm Pancasila as the sole foundation of Indonesia's national life, explicitly rejecting the core elements of Marxist doctrine, such as class struggle, the dictatorship of the proletariat, and atheistic materialism.

The fall of the New Order in 1998 did not make the Communism/Marxism-Leninism teaching crime revoked in Indonesia. In fact, Law No. 27 of 1999 criminalized the act of disseminating Communism/Marxism-Leninism. That Communism/Marxism-Leninism dissemination crime was placed under a crime against the national safety. A previous study of Prahassacitta showed that the problem in the implementation of Law No. 27 of 1999 lay in the verdicts of Kuningan State Court Number 140/Pid.B/2017/PN Kng; of Karawang State Court Number 293/Pid.B/2018/PN Kwg; of Bale Bandung State Court Number 288/Pid.B/2017/PN Blb; and of Banyuwangi State Court Number 559/Pid.B/2017/PN.Byw. Law Number 27 of 1999 stipulates that the Communism/Marxism-Leninism dissemination crime is a formal offence, so the court will easily be able to punish a person who uploads or transfers any materials containing an element of Communism/Marxism-Leninism although he or she does not have any intention to do anything that changes Pancasila.

The Penal Code bans the act of disseminating Communism/Marxism-Leninism as stipulated in Article 188 and Article 189 Penal Code. The Penal Code adopts provisions on criminal code stipulated in Law Number 27 of 1999. A previous study of Prahassacitta (2024) showed that there were some problems in the formulation of the crimes as stipulated in Article 188 and Article 189 Penal Code especially in terms of defining misconduct and a dangerous act in the act of disseminating Communism/Marxism-Leninism and defining the limit of danger of that act worth criminalizing. Citrawan and Putri (2024) discussed the relations between the Communism/Marxism-Leninism dissemination crime and historic narratives on the PKI's September 30th Movement and legal transformation in the community. The results of the study showed that the existence of that crime as stipulated in Law Number 27 of 1999 and the Penal Code enabled the law to become a factory used to make those bad narratives on Communism in Indonesia long lasting. Various practices of the court verdicts showed that law became instrumental in socially silencing the discourses on various events taking place in the 1965-1966 period, as well strengthening the scourge of the Communist group's atrocities Indonesia. Other than problems mentioned in those three previous studies, we find it urgent to discuss the Communism/Marxism-Leninism as a crime against the national safety in the Penal Code. Those interests have to do with a political offense posing a threat to academic freedom and the protection of the national safety.

This act of disseminating Communism/Marxism-Leninism has to do with a political offense, a crime the motivation of which is to overthrow a political and social system, so it will inflict damage to the country's governance (Soleimanfallah et al., 2022). In a political offense, a reprehensible act lies in the existence of a different political view from that of the elected regime. Therefore, the question is whether criminalizing the act of disseminating Communism/Marxism-Leninism is aimed at protecting the national safety or at protecting the ruling government regime. In fact, in democratic countries, a political offense contradicts the liberal viewpoint appreciating and accepting different opinions and new ideas; hence, a political offense deserves a clemency and must be handled differently from those of other offenses (Passas, 1986).

The interests in protecting the national safety must follow the global political development. It is true that Indonesia has bad narratives on Communism, but the World History proves that, since late 1989, Communism has fallen. Russia and the Soviet Union, the centers of Marxism-Leninism, collapsed in 1990. Under the leadership of Putin, Russia no longer adopts Communism, but it tends

to adopt bureaucratic authoritarianism (Everett, 2022). It is important to discuss the feasibility of placing this crime as part of the threats to the national safety.

On the other hand, efforts to restrict discourses on Communism, Marxism, and Leninism in the name of safeguarding national security inevitably intersect with the principle of academic freedom. In a democratic society, the university must remain a space for critical inquiry, including the exploration of controversial or politically sensitive ideologies provided that such discourse is conducted within scholarly frameworks, not as a vehicle for propaganda or subversion. In the Indonesian context, this issue becomes more pressing when viewed through the lens of the six ideal indicators of academic climate outlined by the Ministry of Education, Culture, Research, and Technology, one of which is the freedom of academic forum (*kebebasan mimbar akademik*). This principle guarantees that scholars have the right to discuss, critique, or even question prevailing ideological doctrines such as Pancasila within scientific boundaries, without fear of criminalization or political suppression. Article 188 (6) stipulates that the dissemination of Communism/Marxism-Leninism for the sake of general knowledge shall not constitute a crime. The elucidation of the article limits that the interests of that general knowledge lie in the educational and research institutions. Not only shall those scientific development activities be confined to the lecture halls and be conducted by academicians, but they shall also take place outside of school such as in public discussions open to the public. As a matter of fact, information and communication technology enables the learning and the scientific development activities to be conveyed through various social media platforms such as Facebook, YouTube, TikTok and Instagram. Those platforms play a crucial role in the knowledge-sharing activities and in facilitating broader and more open public discussions. Articles 188 and 189 Penal Code may restrict the academic freedom, hamper a constructive discussion and constitute a risk to criminalizing a person holding a public discourse on Communism and the 1965 events.

Academic freedom is part of the civil and political rights. Academic freedom is freedom to teach and discuss, to do a research, publish and disseminate the results of a research; moreover, it also constitutes freedom to express one's opinion freely without any censors or influence from both the institution where the person works and the authorities (Stachowiak-Kudła et al., 2023). Academic freedom serves as an important element in democracy; thus, the existence of a crisis in academic freedom is an indicator of the birth of an authoritarian regime (Mäntylä et al., 2023). International Covenant on Civil and Political Right (ICCPR) does not specifically discuss academic freedom, but the latter is deemed to be part of freedom of speech (Vrielink et al., 2010). Therefore, academic freedom is restricted by the national security. In the context of Indonesia's democratic system, this issue remains particularly relevant. Since the democratic transition in 1998, Indonesia has made significant progress in protecting civil liberties, including academic freedom. However, concerns have emerged in recent years regarding the shrinking space for academic expression, particularly when research or public discourse is perceived to challenge dominant political narratives, state ideology, or religious orthodoxy. Cases involving administrative sanctions against lecturers, censorship of campus discussions, or criminalization of dissent under expansive interpretations of national ideology or blasphemy laws suggest that academic freedom remains vulnerable. While Indonesia formally adheres to democratic principles and is a state party to the ICCPR, the implementation of academic freedom in practice is often constrained by political sensitivities and legal ambiguities. This tension reflects a broader challenge in transitional democracies: reconciling national unity and ideological conformity with pluralism, critical inquiry, and open debate. Upholding academic freedom is not only a legal obligation under international human rights law but also a democratic imperative essential to the vitality of Indonesian higher education and public discourse.

There is an interesting fact in regards to the Communism/Marxism-Leninism dissemination crime; European countries have similar provisions. The ban has to do with 'Memory Law' which is a legal provision perpetuating the state's interpretation of a historically cruel or important event

in the past, an individual or a heroic event serving as a symbol of a national or social movement (Gliszczyńska-Grabias & Baranowska, 2018). One kind of that memory law is by employing criminal law to criminalize certain statements about the past (Koposov, 2022). Hungary places the crime of disseminating symbols or materials of Communism as part of the crimes against public order (Gliszczynska-Grabias et al., 2023). Germany places the crime of disseminating symbols of Communism as part of the crimes endangering the democratic state under rule of law.

Disseminating Communism is part of freedom of opinion. Mill thought that every competent person should have the right to freely decide the direction of his or her own life. Restricting a person from acting as he or she wishes may only be justified if his or her act shall inflict harm to other people (Mill, 2020). Feinberg revealed that there were interests to be protected from other people's opinion that might inflict harm. There were individual interests, the public interests and the interests of the national safety (Feinberg, 2021). Of those three kinds of interests, the interests of the national safety had to be placed in the highest position. Therefore, when criminalizing the act of disseminating Communism, the authorities had to pay attention to any harm posing a threat to those legal interests to be protected.

From the foregoing, we discuss criticisms to the Communism/Marxism-Leninism dissemination crime regarded as a political offense in the Penal Code. This article is aimed at answering two questions. First, can the criminalization of Communism/Marxism-Leninism dissemination, as stipulated in Articles 188 and 189 of the Penal Code, be considered a political offense that effectively safeguards national security? Second, in what ways does the prohibition of disseminating Communism/Marxism-Leninism pose a threat to academic freedom? These two questions are intended to frame a critical inquiry into how the criminalization of ideological dissemination particularly when it contradicts Pancasila can be balanced with the protection of academic freedom, the legal rights of individuals, and the broader interest of national security. To accomplish these objectives, we do a doctrinal law research by systematically elaborating legal provisions categorized in a certain law, analyzing the relations among those legal provisions, explaining the difficulties faced in the legal field, and predicting the future legal development. A doctrinal law research involves the analysis of various legal cases, the systematization of the the legal position, the study on various legal institutions and the making of a law by employing a legal reasoning (Bhat, 2019).

B. Method

This research adopts a doctrinal legal research methodology, which is grounded in the systematic analysis of legal norms, principles, and doctrines. As a methodological approach, doctrinal research focuses on interpreting, systematizing, and evaluating legal rules within a normative framework. To implement this methodology, the study employs a document-based research method, relying primarily on the collection and analysis of pre-existing secondary data. These data are obtained through an extensive literature review and include various forms of legal materials: primary legal sources (such as statutes, court decisions, and official regulations), secondary sources (such as legal commentaries and scholarly articles), and tertiary materials (such as legal dictionaries and encyclopedias). The collected data are systematically categorized in accordance with the research problems and subsequently analyzed to answer the legal questions posed in the study (Susanti, 2022). The data are categorized according to the identified research problems and subsequently analyzed to derive answers to the legal issues addressed in the study. The research adopts a statutory approach and a micro legal comparative approach. The statutory approach involves a review of the substantive norms contained in existing laws and regulations, taking into account the context of their origin, statutory hierarchy, and legal consistency (Kristiawanto, 2022). The micro legal comparative approach is defined as a legal comparison not comprehensively conducted in other countries' legal systems. It only compares certain legal arrangements such as laws and regulations, court verdicts and verdicts of any legal institutions

(Husa, 2023). The comparison is focused on smaller units such as positive laws, doctrines and precedents aimed at identifying the similarities and the differences and solving the existing problems (Bhat, 2019).

The discussion in this article is organized into six sections. The first section explores the concept of academic freedom and its limitations, drawing on the philosophical perspectives of John Stuart Mill and Joel Feinberg. The second section examines the criminalization of the dissemination of Communism/Marxism-Leninism, as outlined in the Decree of the People's Consultative Assembly Number XXV/MPR/1966, Law Number 27 of 1999, and the Indonesian Penal Code, along with the associated legal issues. The third section provides a comparative analysis of the legal regulation of Communist dissemination in Hungary and Germany—two countries with deeply entrenched historical experiences under authoritarian Communist regimes. This section reviews each country's historical context, relevant criminal law provisions, and various judicial decisions banning the dissemination of Communist ideology. The fourth section offers a critical evaluation of the classification of the dissemination of Communism/Marxism-Leninism as a political offense. The fifth section addresses the impact of such criminalization on academic freedom, especially when it is justified on the grounds of national security. The sixth and final section presents the conclusion, summarizing the key findings and arguments of the article.

C. Results and Discussion

1. Balancing Freedom of Speech and its Limits: Examining the Role of Academic Freedom and National Security in Public Discourse

John Stuart Mill (2020) stated that speeches were justified to seek the truth. Open discussions and debates are invaluable since they help us seek the truth. Not only do silencing and repressing any efforts made to express ideas aimed at seeking the truth harm the speaker personally, but they are also detrimental to the society. An open discussion or debate tends to oppose a generally-accepted opinion. Any contradiction between a new opinion and an old opinion is supposed to be accepted as a new point of view since sometimes there are some weaknesses in a popular, old opinion at a time. This new opinion can complete or enhance that popular, old opinion. Therefore, any individuals expressing those unpopular views must be protected by the majority group and the authorities. That Mill's view has to do with power. Those ruling institutions will always try to maintain their power by silencing and intimidating any views opposing the ruler's opinion by stating that those views are misguided outlooks. The protection of freedom of opinion focuses on the public interests, not personal interests (Mill, 2020).

That Mill's view is relevant to the nature and scope of academic freedom (Simpson, 2020). Academic freedom should be protected since the functions of academicians and universities are to produce and disseminate knowledge. An open debate is aimed at examining a presented argument comprehensively. Although this freedom is exercised by individuals, the main benefits do not lie in those individuals' interests but in the public interests. Therefore, autonomy is required to support this objective (Simpson, 2020).

It seems that Mill's view providing ample space to public discussions and debates underestimate the potential danger (Simpson, 2020). There are times when adiscussions held in the academic framework do not result in public discourses criticizing the majority groups or the ruling institutions. However, it will not be so when the ideas and opinions serving as the materials for those public discussions and debates have to do with a policy related to the position of a particular group especially a ruling group. It will have such a big potential for bringing great harm that a restriction is required in this stage. John Stuart Mill argued that every competent individual possesses the inherent right to freely determine the course of his or her own life, provided that such autonomy does not cause harm to others. This principle of individual liberty forms the

cornerstone of liberal thought and affirms the moral agency of each person as the rightful architect of their own existence. This conception of personal autonomy aligns, albeit from a different philosophical tradition, with Immanuel Kant's moral and legal philosophy. As interpreted by Allen W. Wood, Kant asserts that the fundamental purpose of law (*recht*) is to guarantee the "mutual external freedom" of individuals under a system of universal law. For Kant, legal norms are justified not by utilitarian calculations, but by the imperative to respect each person as an end in themselves, capable of rational self-legislation. In this view, the role of law is not to perfect individuals morally, but to establish the necessary conditions under which each person's freedom can coexist with the freedom of others (Mill, 2020). A person must be responsible for his or her act if that act harms other people. A punishment may be imposed on a perpetrator harming other people if the community thinks that it is necessary to do so. The punishment is aimed at protecting that interest. This interest is interpreted in relation to harm. Mill wanted to create a balance between individual freedom and the need to maintain social harmony order. He argued that, although freedom was a very important thing, the community has the right to intervene when an individual's act will potentially harm other people. However, this intervention had to carefully be conducted and only conducted in cases urgently required to protect other people from clear and present danger (Miller, 2021).

Thus, academic freedom is not an absolute right. It is true that it is important to encourage intellectual exploration and freedom of thought, but there lies a responsibility to ensure that the opinion and the result will not harm or irritate other people. Mill demanded a balance between freedom and responsibility. Academic freedom must be conducted by fully realizing its impacts on other people and the wider community. Furthermore, Joel Feinberg (1984) stated that the interest should be welfare interest namely the interest to accomplish and maintain a particular situation such as mental and physical health, economy, material sources, and political independence that suit the desired goals. Welfare interest includes interest in liberty. This welfare interest to be protected will serve as a valid moral legitimacy to criminalize any acts harming those interests.

Joel Feinberg categorized legal interests into several types, including personal interests, the public interest, and the interest of national security. These classifications reflect the common grounds upon which legal regulations are often justified, especially in matters concerning harm, rights, and state protection. However, this framework appears relatively narrow when compared to Roscoe Pound's broader theory of "social interests". According to Pound (1911), the law functions to balance a diverse array of individual, public, and social interests, which include not only personal security and public order, but also interests in domestic institutions, industry, morality, and the general progress of society. Unlike Feinberg's model, which tends to emphasize protection against harm in a more compartmentalized structure, Pound's sociological jurisprudence offers a more expansive and dynamic understanding of legal interests. It underscores the law's role as an instrument of social engineering that must reconcile competing claims in a complex and evolving society. Therefore, while Feinberg's typology is useful for delineating immediate justifications for legal intervention, Pound provides a richer theoretical lens through which to assess how law can mediate the broader interplay between individual autonomy, collective welfare, and institutional integrity (Feinberg, 1984). This view lives up to Article 19(3) ICCPR using the term "carries with it special duties and responsibility". It means that freedom of expression must be followed with one's obligation and responsibility to respect other people's rights and reputation and to protect the national safety and public order. The State's intervention against freedom of opinion may be justified to a statement that may harm the legal interests to be protected. One cannot deliberately ignore the high risk of an act and irrationally allow the risk of that harm resulting from a statement to take place. Nevertheless, that clear and present danger must constitute a serious harm as a consequence of that person's statement uttered both deliberately or negligently that may be punished (Feinberg, 1984).

If there is a statement threatening the national safety, that statement can be criminalized since the interests of the national safety are put higher than any other interests. On the grounds of the interests of the national safety, freedom of opinion can be restricted. Personal or public interests can be outweighed by the interests of the national safety (Feinberg, 1984). The position of the interest of the national safety is higher than any other interests. However, that national safety is only limited to such a very threatening scale. Only the needs for preventing the direct and substantial harm against the community may override those privileges (Corlett, 2018). The social benefits of freedom of speech constituting an individual's right can be overridden if it affects the national safety (Feinberg, 2021).

When assessing a question that may threaten the national safety, we must pay attention to several things. The first is the perpetrator's capacity. The perpetrator's capacity has to do with his or her social, political, and economical backgrounds (Feinberg, 2021). A call for launching a revolution will surely attract public attention if it is made by a person who exerts a powerful influence in the community or a prominent figure. The second is the situation and condition when the statement is conveyed one of which is to whom the statement is addressed. Feinberg made an example of advocating a revolution to a child in the dining room. It did not constitute clear and present danger. An unpopular statement may agitate greatly-indignant mobs (Feinberg, 2021). In the context of academic freedom, Mill's and Feinberg's views can be applied to serve as a basis for restricting the publication of the results of a study that will potentially harm or irritate other people. Individual freedom including academic freedom is important and should be protected, but it cannot be left alone without restraint when it poses a risk that can harm other people. For instance, an academic study produces some conclusions encouraging violence or discrimination against a particular group. Therefore, that academic freedom must be restricted.

Those Mill's and Feinberg's views have widely been adopted by various educational institutions in several countries when regulating academic freedom. In many universities, Speech Code ethics bans a discussion deemed to be a hate speech. It is aimed at protecting the university students and the faculty members from a potential psychological or moral harm that may result from this unlimited academic freedom. It is worth noting that there is a fine line between the protection of an individual and excessive censorship of academic freedom. Healthy discussions and debates oftentimes involve controversial or unpopular ideas which sometimes offend other people. Therefore, this restriction must carefully be applied.

Hence, freedom of opinion is justified in order to seek the truth. This justification is not for a personal interest but for the public interest. The same thing applies to academic freedom. Under no circumstance are silencing and repressing freedom justified unless they invade other people's interests, the public interest and the interest of the national safety. The position of the interest of the national safety must be placed in the highest place and must be able to override any personal or public interests on the condition that the statement shows a clear and present attack to the national safety. When assessing that clear and present danger, we must take into account the perpetrator's capacity and the situation and the condition when the statement is conveyed.

2. Revisiting the Legacy of Anti-Communism Laws in Indonesia: Implications for Freedom of Expression and Academic Freedom

The dissemination of Communism/Marxism-Leninism ideology is considered to be fundamentally incompatible with Pancasila, the foundational philosophy of the Indonesian state, as well as with the 1945 Constitution (Rahaditya & Fadhlillah, 2020). he core of this contradiction lies in several key aspects: firstly, Communism promotes class struggle and the abolition of private property, which directly conflicts with Pancasila's principles of social harmony, deliberative consensus (*musyawarah*), and belief in one supreme God. Secondly, the atheistic character of Marxist-Leninist doctrine is perceived as undermining the first principle of Pancasila"*Ketuhanan Yang Maha Esa*" (Belief in One God) which affirms the religious character of the Indonesian state.

Thirdly, the totalitarian tendencies associated with Communist regimes are viewed as incompatible with the constitutional commitment to democracy, human rights, and pluralism enshrined in the 1945 Constitution. In line with these ideological divergences, various Indonesian laws have been enacted to prohibit and prevent the spread of Communism/Marxism-Leninism. Most notably, during the New Order regime, the Decree of the Provisional People's Consultative Assembly (TAP MPRS) Number XXV/MPRS/1966 was issued. This decree provided the legal foundation for the government to undertake repressive measures against individuals or groups suspected of being affiliated with the Indonesian Communist Party (PKI) or of disseminating Communist ideology (Reinardus, 2022). The decree not only outlawed the PKI but also banned the teaching and promotion of Communist and Marxist-Leninist doctrines in any form, both in public and academic spheres.

The implementations involved arrests, trials, and punishments of thousands of those assumed to be PKI's members or sympathizers. Several PKI's important officials were even executed, an act confirming the government's determination to eradicate Communism to its foundation. However, in practice, many of the government's acts were committed without a just trial process, and the arrests were oftentimes based on accusations without clear evidence, making so many people who were not actually involved become victims. Other than legal actions against many individuals, the government also severely banned all kinds of organizations, publications and activities deemed to be connected to Communism. This ban included symbols, books and meetings representing or supporting Communism (Hufron & Hajjatulloh, 2020). In this context, the government's control over various political and cultural activities became very tight in that not only did the government try to totally erase any traces of Communism, but it also tried to control public narratives on this ideology. Moreover, the New Order government tightly monitored the educational field. The national educational curriculum explicitly rejected Communism. Marxism-Leninism serving as the theoretical basis for Communism was strictly prohibited in all kinds of educational activities. On the other hand, Pancasila was designated as the national ideology that had to be taught in all educational levels.

Decree of the People's Consultative Assembly Number XXV/MPR/1966 and all of its implementation bore various negative impacts. Standardizing the thoughts hindered academic freedom and ideological criticism. Moreover, it fostered fear among the people especially when they tried to express any views different from those official narratives made by the government. Any criticisms against the government would easily be labeled as a subversive act related to Communism. This showed how the law could be misused as a political tool to maintain power and to silence different opinions, an important lesson of the danger of the implementation of an excessive and disproportional law over an existing threat.

After the fall of the New Order in 1998, the government maintained Decree of the People's Consultative Assembly Number XXV/MPR/1966. Moreover, Law Number 27 of 1999 was passed. This law added articles stipulating crimes against the national safety. Article 107a - 107e stipulated various kinds of crimes imposed on individuals or groups disseminating or developing Communism/Marxism-Leninism teachings. Various civilians and academic groups criticized and asked the government to revoke this law. However, this law is still maintained until now. This shows us that historical trauma of Communism having deeply been anchored in the national narratives after the 1965 events, still strongly affects Indonesia's stance and public policy.

The Reformation Government is more open to any criticisms and changes, yet anti-Communism legislations are still maintained as a means of maintaining political stability and fulfilling sensitivity of the people who are still traumatized by the past. The government still strictly monitors any activities deemed to disseminate Communism including academic discussions and publications and symbols related to that ideology. Any alleged act of disseminating Communism is still harshly dealt with until now, in which individuals or groups are arrested or investigated since they allegedly have, disseminate, or promote any materials related

to Communism. This creates various debates on freedom of expression. The ban is no longer relevant and is in contradiction with democratic principles and freedom of opinion guaranteed by the Constitution.

The Indonesian Penal Code, passed in 2023, strictly bans any acts of disseminating Communism/Marxism-Leninism as an ideology that conflicts with Pancasila. This prohibition is outlined in the chapter on crimes against national security. Article 188 of the Penal Code consists of six clauses. Article 188(1) bans the dissemination and development of Communism/Marxism-Leninism, or any other ideologies that oppose Pancasila in public spaces. Dissemination and development are defined as actions aimed at encouraging others to adopt Communism/Marxism-Leninism and form a movement that opposes Pancasila. Article 188(2) prohibits the dissemination of Communism/Marxism-Leninism with the intent of replacing Pancasila as the national foundation of Indonesia. Article 188(3) bans the dissemination of Communism/Marxism-Leninism that results in riots or property damage. Article 188(4) prohibits dissemination that leads to serious harm to individuals. Article 188(5) outlaws dissemination resulting in death. Article 188(6) permits the study of Communism/Marxism-Leninism strictly within the context of scientific development.

This article has sparked controversy due to the ambiguous definitions of “dissemination” and “development” of ideology, leading to concerns that it may be used as a “rubber article.” There are worries that it could be applied to restrict freedom of expression, particularly academic freedom, in critically analyzing or proposing alternative views on ideologies that conflict with Pancasila. This controversy highlights the enduring influence of the New Order regime's anti-Communist laws, which continue to shape Indonesia’s legal framework for regulating ideological freedom.

The persistence of this prohibition is rooted in historical trauma, particularly the events surrounding the 1965–1966 political upheaval and the perceived existential threat posed by the Indonesian Communist Party (PKI) at the time. The state continues to portray Communism/Marxism-Leninism as a dangerous ideology that undermines Pancasila and threatens national unity, justifying its legal suppression. However, in today's democratic and academic context, this prohibition has become increasingly irrelevant. Indonesia has undergone significant political transformation since the fall of the New Order, embracing pluralism, constitutionalism, and civil liberties. In this environment, a blanket ban on the discussion or academic study of certain ideologies, including Communism, risks violating academic freedom and undermining the democratic principles the nation now upholds. Furthermore, the ideological threat that Communism once posed no longer aligns with the current political landscape, making its continued criminalization appear outdated and incompatible with Indonesia’s commitment to human rights and freedom of thought, as guaranteed by both national and international law.

Article 189 Penal Code bans two acts. According to verse one, the prohibited act shall be founding an organization embracing Communism/Marxism-Leninism teachings or other teachings conflicting with Pancasila. Moreover, according to verse two, the prohibited act shall be nurturing a relation or giving funds to or receiving funds from other international or domestic organizations embracing Communism/Marxism-Leninism teachings or other teachings conflicting with Pancasila intent on replacing Pancasila as Indonesia’s national foundation.

The existence of Article 189 can be justified since it is deemed to be the state’s effort to maintain the integrity of Pancasila serving as the state’s national foundation. Therefore, the state has the right to restrict any activities deemed to conflict with the official ideology. Nevertheless, the existence of that article can be perceived as the state’s political tool that can be employed to criminalize a critical thought deemed to threaten the existing power. For instance, when there is an organization criticizing a government’s policy not siding with the common people, Communism originating from Marx’s view on the proletariat’s struggle against the bourgeois, serves as the foundation of thinking of this criticism. Therefore, this view is vulnerable to being

criminalized by the authorities applying Article 189 Penal Code. A repressive regime will easily take advantage of this article to silence any criticisms against the ruling government not siding with the common people. In fact, the formulation of Article 189 Penal Code is not strict since it does not specifically elaborate the definition of any serious prohibited harm.

Articles 188 and 189 Penal Code shows that although some attempts are made to enhance Indonesian criminal law, several provisions in the older legislation are still maintained and integrated to the new law. This potentially has the same risk and is ever worse and disproportionate in the implementation. This affirms people's worry that although Indonesia has transitioned to democracy, there are still clear challenges in managing the legacy of old legislation in the past. Not only does Indonesia's legal reformation need law reform, but it also requires profound understanding on how those laws shall be applied and how they will impact on individual freedom and intellectual life in this country.

3. Comparative Analysis of Anti-Communism Laws and Academic Freedom in Hungary and Germany

a. Hungary

The Soviet Union's invasion to Hungary in World War Two aimed at establishing a communist government there resulted in misery to the Hungarian people. In the 1945-1946 period, around 35,000 people were arrested, around 1,000 of whom were tortured and executed. Around 55,000 other people were imprisoned in various concentration camps. After World War Two was over, the Soviet Union intervened against the Hungarian government, making the latter a puppet government. In 1947, the Hungarian Communist party supported by the Soviet Union staged a coup against the legitimate government. In 1948, the Communist party merged with the Hungarian Socialist Worker and dominated the 1949 general election. In the 1949 – 1989 period, Hungary become a one-party socialist state. In that period, Hungary was still under the influence of the Soviet Union and became a member of the Warsaw Pact, a defense alliance of communist-socialist countries. In this era, the Hungarian government arrested so many people who had different political views. In 1956, a big mass rally demanding various things, one of which ending the occupation of the Soviet Union broke out. This movement made the Hungarian government release several political prisoners and declare its departure from the Warsaw Pact. The Soviet Union reacted by sending its troops to and invaded Hungary. At least 20,000 people were killed during this invasion, and the loyalist Communist group supported by the Soviet Union regained control of the government. After 1957, the ruling government at that time imprisoned around 13,000 sympathizes of the revolution and executed 400 other people. In 1960, the secret police still monitored the activities of various opposition groups. 1980 became the apex of Hungary's economic problem. Inflation, higher foreign debts, and the high level of poverty made the government elite agree to do some reforms including changing the existing political system by changing a one-party system into a multi-party system. The 1990 general election was won by the Christian Democratic People's Party, and it marked the fall of the Communist regime in Hungary.

In 2011, Hungary had a new constitution, the Fundamental Law of Hungary, *Magyarország alaptörvénye.* The Preamble of the Fundamental Law of Hungary underscored the atrocities of the Communist regime. In 2016, the Fundamental Law of Hungary was amended. The amendment added verse U (1) stating that, together with its satellite organizations, the Hungarian Socialist Worker Party, a political organization with the Communism spirit, was a criminal organization the leaders of which bore full responsibility (Halmai, 2023). The Fundamental Law of Hungary admits that academic freedom differs from freedom of expression. Academic freedom takes the forms of freedom of research, art creation, freedom of learning and teaching in the framework regulated by the law. The state has no rights to decide any questions on a scientific truth; only the scientists are

entitled to evaluating a scientific study. Higher educational institutions are autonomous institutions in matters such as the contents and the methods of a study or teaching. The government only regulates the management and the oversight of the state higher educational institutions. Hungarian Penal Code regulates two crimes regarding anti-Communism. The first is denial of communist crime. This crime prohibit a person before the public from denying crimes against humanity perpetrated by the Communist regime. The second is the dissemination of Communism symbols. This crime prohibit a person from violating human dignity and being a victim of a tyrannical regime by disseminating, using, and showing symbols of Communism and totalitarianism including swastika, hammer and sickle, and red star. Those two crimes are parts of crimes against public order.

In its development, in the case of Vajnai v Hungary (Blanuša & Kulenović, 2018), European Court of Human Rights (ECHR) stipulated that it could not be justified to criminalize the act of disseminating symbols of Communism and totalitarianism. This case was about Attila Vajnai, Vice Chairman of the Labor Party (*Munkáspárt*), who was arrested since he was wearing the symbol of five red stars becoming the symbol of International Labor Movement. The criminalization against the act of disseminating the red star symbol was aimed at protecting the public interest from an incitement resulting from the use of red star. ECHR thought that a clear, urgent and specific social need should be excluded from freedom of expression. The existence of trauma over the Communist group having severely violated the human rights might justify the restrictions on the use of communist symbols in public activities. However, in the case of the red star symbol serving as the symbol of International Labor Movement fighting for a better society, the symbol could not be identified with the communist regime since that symbol was used by a legal organization in a peaceful activity. This act did not constitute a dangerous propaganda. In this case, there were no urgent public needs serving as the reason to protect democracy from any danger justifying Attila Vajnai's arrest.

b. Germany

Before World War Two broke out, The Communist Party of Germany was a party that had relatively insignificant influence. During the era of Weimar Republic, this party only managed to obtain 10-15% percent of the votes in the general elections. In Nazi era, this party was declared a prohibited party. Furthermore, Nazi era marked the time of suffering for the communist groups; over 30,000 people were executed and 15,000 people were sent to various concentration camps. Aimed at defeating and crushing Nazi regime, the Russian Red Army invaded Germany, followed with atrocities, murders, and robbery against the Germans. Tens of thousands of Germans were arrested and imprisoned in various Nazi's concentration camps. The mortality rate was as high as that of the Nazi era. After World War Two was over, Germany was split into two. German Federal Republic, *Bundesrepublik Deutschland,* or better known as West Germany was a country under the influence of the allied countries (The United States, The United Kingdom, and France). German Democratic Republic, *Deutsche Demokratische Republik* or better known as East Germany was a country with Communism ideology under the influence of the Soviet Union.

The 1949 – 1990 period was the period of a dictatorial Communist regime in East Germany with the one-state party system, Socialist Unity Party. This period was marked with violence and repression. In 1953, a revolt broke out in East Germany. The Soviet Union reacted by deploying its tanks to East Germany to bring the revolt to a close. At least 50 people were killed in the clash and 10,000 others were arrested. Many East Germans fled to West Germany. The Berlin Wall was erected in 1963 to stop those escapes. Those trying to climb over the wall were shot dead. The Ministry of Defense (Stasi) sought, monitored, and tortured those labeled rebels and dissidents of the government policy. Moreover, this act included constant searches and wiretappings. In the 1950–1989 period, The Ministry of Defense made around 90,000 crackdowns, many of which resulted in the imprisonment of the suspects. Although it created fear among the people, the

economic slowdowns make them leave for West Germany to find jobs and seek freedom. In 1989, the fall of the Berlin Wall came to be the symbol of the fall of the Communist regime. In 1990, the dictatorial Communist regime collapsed.

Article 1 of The German Constitution, The Basic Law or *Grundgesetz,* stipulates that human dignity shall be inviolable, and to respect and protect it shall be the duty of all state authority. It means that human dignity is an inviolable right and shall constitute the highest value in the Constitution (Prahassacitta, 2023). Any interpretation of the basic rights shall take into consideration the appreciation values and the protection of human dignity including other people. This protection includes freedom of expression, art and science. Article 5 The Basic Law stipulates that every person shall have the right freely to express his opinions in speech and to inform himself without hindrance from generally accessible sources without censorship. However, that freedom of expression is restricted by various legal provisions, provisions on child protection, and rights to personal dignity. Academic freedom is also guaranteed and is part of freedom of expression. This freedom includes arts, sciences, researches, and teaching. Nevertheless, this freedom shall not relieve a person of his obligation to obey the constitution.

In regards to academic freedom, ECHR heard the case of Vogt v. Germany. Mrs. Vogt was a civil servant and a teacher at a state junior high school. The German government banned her from teaching on the basis of professional disqualification (*Berufsverbot)* as stipulated in German law since when she was a university student, Mrs. Vogt was a member of German Communist party. Her presence at school was deemed to endanger democracy and the national safety. The German government argued that Mrs. Vogt's position as a teacher and an academician could not be separated from the expression of values that she embraced. A teacher served as a role model for her students. She would be able to employ a subtle method discreetly to inculcate her political and moral values in an academic language and logic. ECHR did not accept that argument and stated that the German government's act violated freedom of expression as stipulated in Article 10 European Convention on Human Right. ECHR said that Mrs. Vogt's position as a German and French language teacher in a junior high school does not constitute a position posing a threat to the national safety. There was no evidence that when doing her jobs and her activities outside of school, Mrs. Vogt showed any unconstitutional stances.

The Basic Law of 1949 was designed to prevent dictatorship oppressing human dignity. Nazi regime's bad history made The Basic Law makers provide guidelines to prevent the emergence of an authoritarian government, and that included preventing a political movement from becoming too "rightists" or too "leftists". Political plurality enabled every citizen to participate in politics by joining a political organization or party that was in accordance with his or her choice (Nieuwenhuis, 2000). This open system did not impede any political party to maintain its power. Article 21 in regards to political parties showed this. This article stipulated that political parties should not have aims or behavior of its adherents oriented towards an undermining or abolition of the free democratic basic order or an endangerment of the existence of the republic. The Basic Law did not ban any parties with Communism ideology. However, in 1956, The Federal Constitutional Court of Germany the German Communist Party unconstitutional since the latter conflicted with Article 21 the Basic Law. The Federal Constitutional Court of Germany prioritized rule of law principles and maximally protected democracy and the human rights (Aung, 2022). The ECHR rulings strengthened that verdict of The Federal Constitutional Court of Germany by stipulating that the German Communist Party was aimed at creating a socialist-communist system. It meant that this party would be aimed at launching a proletariat revolution and creating a proletariat dictatorship in order to become a dictatorial regime that would discriminate the citizens' basic rights.

Germany has a crime in regards to the act of disseminating Communism. Article 86 b German Penal Code bans a person from disseminating any symbols of political parties or organizations declared unconstitutional including any symbols showing the activities of the Socialist Nationalist

organization of the previous regime. What was meant by the symbol was the flag, coat of arms, uniforms and their parts, slogans and various forms of statements. That symbol includes such a similar symbol that it can be mistaken for a symbol of an unconstitutional organization or party or the Socialist Nationalist organization. That dissemination act should be perpetrated in public spaces but not confined to the territory of Germany itself. This crime is part of the crimes against the national safety chapter. Moreover, Article 130 (3) German Penal Code banned a person from denying or underestimating crimes against humanity committed during the era of the Socialist Nationalist regime. This crime is part of the crimes against public order. Articles 86 b and 130 (3) German Penal Code stipulated that the act shall be exempted if that act or statement is aimed at providing civic information, preventing any unconstitutional activities, encouraging the furtherance of art and science, researches and teachings, reporting the latest or historic events, or similar purposes.

c. Lessons from Hungary and Germany: Balancing the Protection of National Safety and Freedom of Expression in the Context of Anti-Communism Laws

Hungary and Germany have deep historic roots tracing back from their bitter experience under the Soviet Union's invasions and under the dictatorial Communist regimes from after the end of World Two to 1990. Those two countries have made their best efforts to restore their democratic political and legal systems. Communism is deemed to pose such a threat in the realization of a fully-fledged democracy that the ban, both in the Constitutions and in the Penal Codes, is a way taken to sever their relationship with the authoritarian past and to prevent the revival of a repressive regime. Due to those bitter experiences, Hungary and Germany have every reason to criminalize the act of disseminating Communism materials and symbols. There are two kinds of crimes here. First, the criminalization of the Communism material or symbol dissemination act is aimed at protecting the national safety, in this case the democratic values. The criminalization is justified during a transitional period from a dictatorial regime era to a democratically-elected government era. However, over time, this criminalization should be reconsidered especially when those conditions of the transition to democracy justifying the implementation of this policy have no longer existed (Fijalkowski, 2014). This ban serves as a tool aimed at cleaning up or preventing those former members or sympathizers of that communist party from occupying public office (Dixon & Landau, 2021). Second, the criminalization of the act of disseminating this Communism material or symbol is aimed at protecting the public interests. It is aimed at preventing the victims' memories of sufferings when they see symbols associated with the previous repressive regimes. In this context, this crime is interpreted as an incitement to perpetrate certain acts hurting the feelings of the victims of the atrocities of the Soviet Union or the dictatorial communist regimes. On the other hand, not only can the existence of this criminalization be aimed at protecting human dignity and various groups that have historically been oppressed and marginalized, but it can also serves as a tool to implement an ideology serving the interests of the majority (Dixon & Landau, 2021).

When criminalizing the act of disseminating the Communism symbol or material, we must base it on the definition of clear and present danger. In the case of Vajnai vs Hungary, ECHR provided a clear definition between freedom of expression and the protection of public order. The use or the dissemination of a symbol associated to Communism shows the presence of clear and present danger when that symbol is conveyed as a propaganda or incitement attempt to cause sufferings or to wreak havoc among the people. It means the existence of this Communism symbol dissemination crime must strictly be formulated and must not be open to a wide variety of interpretations

When protecting the interests of the national safety, the government may make a deeper invasion against the public interests and personal interests. ECHR uses a pressing need as its reason (Tsomidis, 2022). This is shown in the case of the German Communist Party v. Republic of

Germany, ECHR thought that the danger was already present although there had not been any attempts made by the party members to change the democratic values. Of course that ECHR's thought had to be viewed from the perspective of European cold war in 1950-s and the position of a political party that could more powerfully influence the community. Unlike in the case of Vogt v Republic of Germany, ECHR saw the perpetrator's position as an academician in the context of Vogt's capacity, a junior high school teacher, and the situations and the conditions in 1995, after the fall of the Soviet Union and its satellite countries. It did not pose a serious danger; in fact, it was not proven that Vogt advocated communism both in the classroom and outside of school. ECHR applied a less strict standard of danger. In this case, when assessing a serious danger posing a threat to the national safety, ECHR took into account the speaker's capacity and the situational and conditional contexts when the speech was conveyed.

Hungary and Germany have made their best efforts to create a balance between the ban of the act of disseminating any Communism symbols or materials and one's need to actualize himself or herself and to seek the truth. Not only is the criminalization of the act of disseminating any Communism symbols and materials are exempt from the scientific development confined to the classrooms, but it is also exempt from the sake of art and history. This exemption is limited to the fact that the use of communist symbols and materials for the purposes of education, scientific development, art performances and exhibitions of galleries must take into account the obligation to protect the feelings of the victims of the atrocities in order not to create such sufferings due to those past bitter memories.

Therefore, there are several lessons to be learned from Hungary and Germany steeped in memories of suffering under the influence of the Soviet Union and the dictatorial communist regime. The existence of this memories on the sufferings resulting from atrocities made by the dictatorial regimes can be justified. However, that criminalization must be based on the clear and pressing danger. On the other hand, not only shall the exemption be from this crime on the purpose of scientific development, but it shall also be on the purpose of expressing and actualizing one's need and opening public spaces to discuss those events. The atrocities of the Soviet Union and the dictatorial communist regimes constitute such a sensitive issue that the victims' feelings must be taken into account as a kind of the protection of human dignity. Hungary, Poland, and Germany have made their best efforts to create a balance between the protection of the interests of the national safety and that of the public and personal interests.

4. Reevaluating the Criminalization of Communism Dissemination in Indonesia: The Political Offense Perspective and National Security Concerns

A crime against the state is part of the political crimes (Dodge & Pontell, 2021). In general, this crime is defined as any acts attacking the legal, historical, economic systems and the social tradition in the society or the social order resulting in a legal conflict. The perpetrator commits a political offense based on his or her political convictions and beliefs that the teachings that he adheres to in the social and state life are more appropriate than what currently exists, so he or she believes that the social and state life must be changed in order that they become ideal and just (Schafer, 1974). This change results in two losses, namely a democratic state's loss and the citizens' loss since an individual can no longer defend and exercise his or her fundamental rights within a well-functioning physical and political framework.

Articles 188 (1), (2) 189 Penal Code requires that the perpetrator be aimed at overthrowing the legitimate government. This act constitutes an act showing disloyalty or treachery against the state. Those two articles shows the position of the ban of the act of disseminating Communism/Marxism-Leninism as a political offense An ideological change can result in chaos on the social order and law and order of a country. This will pose a threat to that country's integrity and security. An act unlawfully replacing Pancasila as the national foundation with Communism/Marxism-Leninism will surely brought a change in the state's existing order and

function. It is worth reconsidering the placement of the Communism/Marxism-Leninism dissemination crime as a political offense since this is related to the global development towards Communism. The end of the cold war marked with the fall of the Soviet Union and the fall of Communism in 1990-s show that Communism is a failed ideology. Currently, only North Korea and Cuba are still maintaining Communism, and the fact is that both countries have failed to prosper their people especially economically (Holmes, 2009). It is worth noting that Communism poses a threat to and can replace Pancasila as the state's ideology, so it will potentially change the currently-existing state order.

Germany has solid grounds for identifying the Communism symbol and material dissemination crime as a crime against the national safety. Socially, Germans especially those living in the former East Germany have past trauma living under the occupation of the communist regime controlled by the Soviet Union. During the era of this regime, the people had no freedom and lived under an atmosphere of fear. After the fall of the Berlin Wall, East Germany left that dictatorial regime and joined West Germany and became a democratic country. Article 86 b German Penal Code is aimed at protecting democracy from the revival of any unconstitutional organizations. This article is aligned with The Basic Law aimed at protecting human dignity from a dictatorial regime and with the verdict of The Federal Constitutional Court of Germany on the German Communist Party.

The situation in Indonesia is different from that of Germany. It is true that in Indonesia in 1965, several Army Generals were tortured and killed, but there was a discussion on PKI as the mastermind behind those assassinations and events. On the other hand, in the 1965-1976 periods, many those deemed to be PKI's members and sympathizers were massacred and exiled without a trial process (Bedner & Arizona, 2019). The New Order government was a government a long way from democratic values; in fact, it was an authoritarian government (E. Aspinall and G. Fealy, 2010). Therefore, Law Number 27 of 1999 serving as the basis for the formulation of Article 188 and Article 189 Penal Code maintain the New Order's view taking advantage of Communism/Marxism-Leninism as a tool for maintaining the people's bad reminiscence on PKI's coup attempt and for restricting individual freedom and intellectual life.

Furthermore, we base our criticism on the Communism/Marxism-Leninism dissemination crime as a political offense on Indonesia's situation and condition after the fall of the New Order regime. The reform has freed Indonesia from a dictatorial regime. That freedom of expression is acknowledged by Indonesia's Constitution is supposed to show that Indonesia can accept various views shown in various discussions held in public spaces including views on Communism/Marxism-Leninism as long as those statements do not invade individual interests, the public interests and the interests of the national safety. It is important not to place the act of disseminating Communism/Marxism-Communism as a political offense and a crime against the national safety.

Furthermore, in regards to a crime against the national safety, especially terrorism, the government can conduct a pre-emptive act to prevent any serious danger in the future, so this enable the authorities to intervene and criminalize a person's act although he or she has not committed a crime yet (Donkin, 2014). It means that a criminal law intervention can be used against an act having not shown clear and present danger yet. When some people get together to discuss Communism/Marxism-Leninism, it can be deemed to be a crime although that discussion is not aimed at overthrowing the legitimate government. This action will silence freedom of speech.

When the act of disseminating Communism/Marxism-Leninism is aimed at replacing the state's ideology and overthrowing the legitimate government, that act constitutes treason. Treason is not always in the form of violence. For instance, any efforts to change the political course of the nation are a form of treason committed without violence (Sofian et al., 2020). One kind of treason is a violation against the legitimate or democratic government. The acts include the establishment

of and the participation in a prohibited organization or party with the aim of replacing the legitimate government (Ghanayim & Kremnitzer, 2016)

In treason, the legal interests to be protected are the running of a democratic government and the citizens' fundamental rights. These legal interests are broader than simply the interest of protecting Pancasila from other ideologies posing a threat to Pancasila. Indonesian Penal Code regulates treason against the legitimate government. Therefore, with that in mind, the provisions on the Communism/Marxism-Leninism dissemination crime should be integrated with those on treason. Reflecting on Hungarian and German laws, they criminalize the act of disseminating Communism with the aim of protecting the public interests. Events taking place in 1965 and after that year took the lives of many victims of both the families in PKI's September 30th movement and survivors accused of being PKI's members or sympathizers. This crime must be interpreted as a provocation or incitement by using materials or symbols of Communism/Marxism-Leninism hurting the victims so much that it will disturb public order. The provisions on the crime must rigidly be formulated and must not be open to a variety of interpretations. We think that the provisions of Article 188 (3), (4), (5) Penal Code show a rigid formulation, especially those on serious danger such as damage to personal property, riots, serious injuries, and deaths.

Therefore, that the act of disseminating Communism/Marxism-Leninism is placed under the crimes against the national safety was no longer in accordance with our current situations and conditions. Article 188 (1), (2) Article 189 is a reflection of an attempt to maintain the New Order's narratives on PKI's cruelty and an attempt to silence freedom of opinion. On the other hand, Article 188 (3), (4), (5) has legal interests such as protecting the victims and the victims' families from those 1965 painful events. This formulation meets the requirements of the existence of a serious danger serving as the limits for intervention to freedom of opinion.

5. Academic Freedom and the Challenge of Disseminating Communism Ideology in Indonesia: Balancing Freedom of Thought and National Safety

Academic freedom serves as one of the main pillars of democracy and scientific development. This includes the academician's and college student's right to do a research, teach, study, and disseminate information without the intervention or control of any external parties including the government. In this context, not only is academic freedom is about freedom of speech or expression, but it is also about critical freedom of thought, challenging dogmas, and exploring ideas than may be popular and even considered controversial. When it is prohibited to disseminate a certain ideology, this will pose a threat to academic freedom.

In Indonesia, the ban of the act of disseminating Communism/Marxism-Leninism has posed a threat to academic freedom. According to Koalisi Indonesia untuk Kebebasan Akademik (KIKA), in the 2015-2016 period, coinciding with the commemoration of PKI's September 30th Movement, various discussions were disbanded, permits were not granted, books were confiscated, and publishing company offices were attacked. According to Lembaga Studi dan Advokasi Masyarakat (ELSAM), in 2019, many books on Marxism were seized in several big cities in Indonesia. The reason was that the books are accused of containing materials conflicting with Pancasila. Those perpetrators based their acts on Decree of the People's Consultative Assembly No. XXV/MPRS/1966 and Law Number 27 of 1999.

Decree of the Constitutional Court No. 6-13-20/PUU-VIII/2010 provides some considerations in relation to academic freedom. According to the Constitutional Court, disseminating books serving as a source of information is an effort to express one's stance and thoughts according to what he or she believes. The confiscation of a book and the ban of the circulation of a book must be conducted through a confiscation process based on a court order. When one's thoughts expressed in a book is deemed to be unlawful or to contain ideas conflicting with the existing norms, the confiscation shall only conducted by a court order. It means that the restriction of academic freedom contained in the form of a book shall only be conducted if it violates the law.

At present, after the Penal Code is passed, Article 188 and Article 189 will pose a threat to academic freedom. It is true that Article 188 (6) exempts the act of disseminating Communism/Marxism-Leninism with the aim of scientific development from a crime, but the nonrigid formulations of Article 188 and Article 189 Penal Code may be open to a variety of interpretations. Moreover, on the basis of protecting the interests of the national safety, they will be used to silence academic freedom, especially by a repressive regime trying to control or restrict the dissemination of a certain idea on the grounds that it conflicts with Pancasila and the national safety must be maintained.

It is worth noting such clear boundaries to protect academic freedom and to protect the national safety. Feinberg stated that there was a relation between teaching Communism and violence and a revolution. Every stage started from adding the number of the members, adding the power and waiting for momentum to go through the next stage. Therefore, criminal law intervention could not be conducted only during the preparatory stage without the presence of an actual act. That act had to be advanced enough towards the accomplishment of that desired result that served as the beginning of the consummation. The interests of the national safety might be higher than the public interests in an open discussion, but only to a dangerous degree (The Constitutional Court of Indonesia Decision Number 6-13-20/PUU-VIII/2010)

That Feinberg's view was in accordance with ECHR's consideration. In the case of Vogt v Republic of Germany, Mrs. Vogt's position as a teacher and a former member of the Communist Party did not pose a serious danger since Mrs. Vogt had not advocated Communism in her learning and teaching activities. Mrs. Vogt always based her attitude on the values that she adhered to. In the case of Vajnai v Hungary, the danger of the use of a symbol identified with a communist symbol did not exist yet since the symbol was used in the activity of a legitimate organization and in a peaceful mass rally. It means that, when assessing a serious danger posing a threat to the national safety, ECHR considers that those individuals' acts are still a long way to the initial stage of the consummation that can disturb the stability of the national safety.

A clear and present danger must meet two requirements, namely a statement in the form of a threat likely to be followed with a substantive crime and the presence of a real threat that is about to take place (Barnum, 2006). An academician discussing, criticizing and publishing thoughts on Communism/Marxism-Leninism will not pose a serious danger if his or her academic statement does not contain any third party's advocacy or provocation or incitement to damage personal or public properties, injure other people, take other people's lives and create a riot. When assessing that clear and present danger, we must take into account the capacity of that academician conveying that statement and the situation and the condition when that statement is conveyed. In a calm and peaceful social and political situation, the momentum required to launch a revolution will highly likely be more difficult to occur.

It is worth noting that academic freedom is not only confined to the lecture halls. At present, not only shall learning and discussions on Communism in Indonesia, the 1965 events, and violence against PKI's members and sympathizers take place in the lecture halls, but they shall also be discussed outside of school and through various social media channels. Various social media platforms play a crucial role in the process of a study, scientific development and the learning of history. Moreover, various art performances such as films also widely discuss the 1965 events. Those artworks are the results of a study and a thought worth protected as the people's learning process. Article 188 (6) Indonesian Penal Code stipulates that the dissemination of Communism/Marxism-Leninism for the purposes of teaching, examining, studying and analyzing things in educational and research institutions shall not constitute a crime. This provision is more restricted than that of Germany and Hungary that do not only restrict this exemption for the sake of learning in educational and research institutions but also for the purposes of arts, informational and historical developments to the people especially to teach about historical event resulting in the ban of certain activities conflicting with the Constitution.

Therefore, it is important to maintain academic freedom amidst the ban of the act of disseminating Communism/Marxism-Leninism. It is important to provide access to information and transparency on the 1965 events and to provide enough spaces for any discussions and critical and open studies on the Communism issues in Indonesia. Not only shall this freedom be conducted in educational and research institutions, but it shall also be conducted outside of school and through various social media platforms. This critical learning process is not aimed at serving individuals but is aimed at serving the broader public interests. Nevertheless, academic freedom is not absolute; there should be restrictions aimed especially at protecting the public interests and the interests of the national safety. Criminal law intervention should be employed if those discussions on Communism/Marxism-Leninism contain the third party's advocacy or provocation or incitement aimed at destroying private or public properties, injuring other people, taking the lives of other people, or creating a riot. Therefore, this restriction is aimed at both respecting academic freedom and protecting the public interests and the interests of the national safety, so this academic freedom may serve as a strong foundation for the democratic life in Indonesia.

D. Conclusion

It is no longer appropriate to classify the dissemination of Communism/Marxism-Leninism as a criminal act threatening national safety, as it was once considered. In today's global context, Communism/Marxism-Leninism is widely recognized as an ideology that has largely failed, and it no longer poses the same kind of threat that it might have in the past. The current formulation of Articles 188 and 189 of the Penal Code, which criminalize the dissemination of these ideologies, fails to reflect the realities of modern political thought. These provisions seem to be rooted in an outdated narrative from the New Order era, which focused on portraying the Indonesian Communist Party (PKI) as a significant threat to the nation. This narrative, in turn, served to maintain the political power of the ruling government at the time.

While the intention of these laws may have been to protect the public and safeguard the legal interests of victims and their families from harmful rhetoric, the broad and vague language of these articles opens the door to numerous interpretations. This creates a dangerous precedent where the laws may be used to suppress not just harmful speech, but also academic discourse. The legal text is so expansive that it risks infringing upon academic freedom, particularly in the context of critical discussions of Indonesia's historical events, such as the 1965 tragedy.

Article 188(6) of the Penal Code stipulates that the dissemination of Communism/Marxism-Leninism will not be considered a crime if it is aimed at scientific development within educational and research institutions. While this provision may seem to safeguard academic inquiry, it is insufficient and restrictive. Critical discussions, analyses, and educational processes are not confined solely to formal academic spaces. They occur in diverse public forums, such as seminars, public discussions, and especially on social media platforms, which have become central to modern discourse. The current laws, if applied rigidly, could prevent open and balanced academic discussions on sensitive issues like the 1965 events, thus stifling the critical examination necessary for the development of a more nuanced national history.

An overhaul of the current legal framework concerning the dissemination of Communism/Marxism-Leninism is essential. It is necessary to redefine what constitutes a "clear and present danger" in the context of this crime. Such a definition would help strike a better balance between the protection of academic freedom and the need to preserve national safety. The scope of the law should not be limited to scientific discourse within educational institutions alone, but should instead accommodate the evolving nature of knowledge sharing and public debate in various settings. Ultimately, these reforms should ensure that the law does not curtail intellectual freedom or hinder scholarly exploration, particularly on contentious historical events that remain vital to understanding Indonesia's past.

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