LEX JOURNAL
Kajian Hukum dan Keadilan
E-ISSN: 2580-9113
P-ISSN: 2581-2033
https://ejournal.unitomo.ac.id/index.php/hukum hello@reallygreatsite.com

LEX JOURNAL: KAJIAN HUKUM DAN KEADILAN

About the Journal

The Lex Journal: Kajian Hukum dan Keadilan (ISSN Print 2581-2033, ISSN Online 2580-9113) is a double-blind peer-reviewed law journal and scholarly journal with a national and international outlook, published by the Faculty of Law, University of Dr. Soetomo. Lex Journal is a scholarly publication exploring critical issues and developments in law and justice. The journal serves as a platform for academics, legal professionals, and researchers to share rigorous analyses, contemporary perspectives, and innovative research on various topics within the legal realm. These include but are not limited to constitutional law, criminal justice, human rights, international law, legal theory, and jurisprudence. The journal aims to foster scholarly dialogue on the role of law in promoting justice, protecting individual rights, and shaping public policy. Through articles, case studies, essays, and book reviews, Lex Journal seeks to contribute to the global discourse on legal reform, social justice, and the rule of law, making it a vital resource for those committed to advancing legal scholarship and practical application in the pursuit of a just society. Whether addressing contemporary legal challenges or historical legal frameworks, Lex Journal stands as a bridge between academic theory and practical law, encouraging readers to reflect on the evolving justice landscape. It is published thrice a year in March, July, and December. A related purpose is to provide a systematic review of key initiatives in the development of law and legal practice. The Lex Journal: Kajian Hukum & Keadilan publishes cutting-edge legal scholarship by both academics and legal practitioners. Established in 2017, the Journal is rooted in a desire to propose constructive, well-reasoned reforms across all areas of the law.

Journal Identity	Description
ID Submission: 11796	Published: 2026-03-09

Indexing

Google Scholar | Crossref | Dimensions | Accredited SINTA 4 | INDEX COPERNICUS INTERNATIONAL

Tersedia di online: http://ejournal.unitomo.ac.id/index.php/hukum
E-ISSN: 2580-9113
P-ISSN: 2581-2033
LEX JOURNAL: KAJIAN HUKUM & KEADILAN

Criminalization of Separatism in Law Number 5 of 2018 concerning Terrorism

Sriwiyono
Faculty of Law, University of Dr. Soetomo
Email: sriwiyono@gmail.com

Vieta Imelda Cornelis
Faculty of Law, University of Dr. Soetomo
Email: vieta.cornelis11@gmail.com

Sri Astutik
Faculty of Law, University of Dr. Soetomo
Email: sri.astutik@unitomo.ac.id

Noenik Soekorini
Faculty of Law, University of Dr. Soetomo
Email: noenik.soekorini@unitomo.ac.id

ABSTRACT

The enactment of Law Number 5 of 2018 concerning Terrorism marks a significant legislative development in Indonesian criminal law by formally criminalizing separatism through Articles 12A and 12B. Despite this regulatory advancement, the placement of separatism provisions within anti-terrorism legislation raises complex juridical questions regarding conceptual clarity, norm harmonization, and the balance between national security imperatives and constitutional human rights guarantees. This study examines two central issues: first, the regulatory framework governing the criminalization of separatism under Law No. 5 of 2018; and second, the juridical implications of such criminalization for the Indonesian criminal law system. Employing a normative juridical research method, this study applies three complementary approaches — statutory, conceptual, and historical — to analyze the relevant legal materials. The theoretical framework draws upon Sudarto's criminalization theory to evaluate the philosophical, sociological, and juridical justifications underlying Articles 12A and 12B, and Friedman's legal system theory to assess the broader systemic implications across the dimensions of legal structure, legal substance, and legal culture. The findings indicate that the criminalization of separatism substantially satisfies the requirements of Sudarto's theory, yet notable weaknesses persist in terms of definitional precision and inter-norm harmonization. The juridical implications encompass institutional specialization within the law enforcement structure, conceptual

Tersedia di online: http://ejournal.unitomo.ac.id/index.php/hukum
E-ISSN: 2580-9113
P-ISSN: 2581-2033
LEX JOURNAL: KAJIAN HUKUM & KEADILAN

hybridization of terrorism and separatism within the criminal law substance, and a cultural shift in balancing security protection with human rights within the criminal justice system. This study concludes that regulatory refinement through clearer conceptual elaboration and strengthened institutional capacity is essential to optimize the implementation of separatism criminalization within a democratic and just Indonesian criminal law framework.

Keywords: Criminalization, Criminal Law, Separatism, Terrorism, Legal System

1. INTRODUCTION

The integrity of the *Negara Kesatuan Republik Indonesia* (the Unitary State of the Republic of Indonesia) is not merely a constitutional aspiration — it is the foundational bedrock upon which the entire architecture of the Indonesian state rests. Article 1(1) of the *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (the 1945 Constitution) unambiguously declares that "the State of Indonesia shall be a unitary state in the form of a Republic," a provision widely understood as unamendable under Article 37(5), which prohibits any amendment that would alter the unitary form of the state. This constitutional entrenchment reflects a deliberate and irreversible political choice — one that has been repeatedly tested by the persistent challenge of separatist movements throughout Indonesia's post-independence history.

Indonesia's encounter with separatism is neither new nor abstract. Since the early years of independence, the state has confronted armed movements seeking territorial dismemberment: the *Republik Maluku Selatan* (South Maluku Republic) in 1950, the *Darul Islam/Tentara Islam Indonesia* (DI/TII) insurgency, the *Gerakan Aceh Merdeka* (Free Aceh Movement, GAM), and the *Organisasi Papua Merdeka* (Free Papua Organization, OPM). These movements, each distinct in ideology and grievance, share a singular consequence: they constitute direct and violent assaults on the constitutional order of the state. What was historically confined to armed insurgency has, in the contemporary era, undergone a fundamental transformation. Modern separatist movements increasingly exploit digital infrastructure — social media platforms,

encrypted communications, and international advocacy networks — to disseminate separatist ideology, mobilize supporters, and solicit external recognition. This convergence between separatism and technologically mediated radicalization renders traditional criminal law instruments manifestly inadequate.

This is the *das sein* — the legal reality as it existed: prior to the enactment of Law Number 5 of 2018 concerning Terrorism (*Undang-Undang Nomor 5 Tahun 2018 tentang Perubahan atas Undang-Undang Nomor 15 Tahun 2003 tentang Pemberantasan Tindak Pidana Terorisme*), the Indonesian criminal law framework addressed separatism primarily through the general provisions of Articles 106 to 108 of the *Kitab Undang-Undang Hukum Pidana* (Criminal Code, KUHP), which criminalize rebellion (*pemberontakan* and *makar*). These provisions, however, were never designed to address ideological separatism conducted through non-violent means, nor did they contemplate the digital propagation of separatist doctrine. Law Number 15 of 2003 on the Eradication of Terrorism, for its part, focused exclusively on acts of terrorism and made no express reference to separatism as a distinct criminalized category. The result was a significant *legal gap*: acts that threatened the territorial integrity of the state through ideological mobilization fell outside the clear reach of criminal sanction, violating the *asas kepastian hukum* (principle of legal certainty), which demands that prohibited conduct and its attendant sanctions be defined with sufficient precision in the law.

This is also the *das sollen* — what the law ought to provide: a comprehensive, precise, and proportionate criminal law framework that criminalizes separatism in both its violent and non-violent manifestations, without sacrificing the constitutional guarantees of freedom of expression enshrined in Article 28E(3) of the 1945 Constitution. The enactment of Law Number 5 of 2018 represents a direct legislative response to this imperative. Through Articles 12A and 12B, the legislature for the first time formally incorporated separatism into the anti-terrorism statute, thereby

establishing a distinct criminal category for what may be called "separatist terrorism." Article 12A criminalizes the use of violence or threats of violence with the intent to separate part of Indonesian territory, prescribing penalties ranging from five years' imprisonment to death. Article 12B, meanwhile, criminalizes the dissemination of separatist ideology through various media — written materials, public speech, banners, and digital platforms — punishable by up to seven years' imprisonment.

The steps taken by the Indonesian government prior to this legislative development are instructive. A series of counter-separatism measures had been pursued through non-criminal means, including the special autonomy regime for Aceh under Law Number 11 of 2006 and for Papua under Law Number 21 of 2001 (as amended by Law Number 2 of 2021), the deployment of security forces under various operational frameworks, and dialogue initiatives. Despite these efforts, the normative inadequacy of the existing criminal law framework persisted, compelling the legislature to resort to criminal law as the *ultimum remedium* (instrument of last resort) — consistent with the principle of subsidiarity (*asas subsidiaritas*), which holds that penal intervention is justified only where other means have proven insufficient. The enactment of Law Number 5 of 2018 thus reflects the application of both the *asas legalitas* (principle of legality), demanding that new and complex forms of separatism be expressly defined and penalized, and the *asas proporsionalitas* (principle of proportionality), requiring that the severity of sanctions correspond to the gravity of the offense.

Yet, as compelling as the legislative rationale may be, the criminalization of separatism under Law Number 5 of 2018 raises complex and unresolved juridical questions. The designation of the *Tentara Pembebasan Nasional Papua Barat* (TPNPB-OPM) as a terrorist organization in 2021 under this law has laid bare the profound tensions inherent in treating separatism as terrorism: divergent institutional responses between the Indonesian National Police (*Polri*) and the Indonesian National Armed Forces (*TNI*), disagreements over the activation of *Detasemen Khusus 88* (Special

Detachment 88), and continuing concerns about the *chilling effect* on legitimate political expression and human rights advocacy (Yunanto & Damayanti, 2024). These tensions are compounded by the absence of a statutory definition of "separatism" in Law Number 5 of 2018, the potential for norm overlap with existing KUHP provisions, and the risk that prosecutorial discretion under an imprecise statute may erode the *asas lex certa* — the requirement that criminal prohibitions be formulated with clarity and foreseeability (Galingging, 2023). Scholars working within the criminal law tradition have noted that the hybridization of separatism and terrorism as conceptual categories within a single statute generates normative ambiguity that undermines the coherence of the criminal law system as a whole (Butt, 2023).

It is against this backdrop that the present study examines two central questions: first, how has the criminalization of separatism been constructed within the framework of Law Number 5 of 2018; and second, what juridical implications does this criminalization carry for the Indonesian criminal law system. This study employs a normative juridical method, drawing on Sudarto's criminalization theory to evaluate Articles 12A and 12B, and Friedman's legal system theory to assess the systemic implications across the dimensions of legal structure, legal substance, and legal culture. The analysis proceeds from the conviction that a democratic *rechtsstaat* (constitutional state based on law) must not only be capable of defending its territorial integrity, but must do so in a manner that is legally precise, institutionally coherent, and respectful of fundamental rights — for it is in the quality of the law's restraint, no less than in its reach, that the legitimacy of criminalization ultimately resides.

2. RESEARCH METHOD

The methodological foundation of this study is *yuridis normatif* — normative juridical research — a mode of legal inquiry that is both the most appropriate and, in the context of criminal law scholarship, the most defensible choice for examining the

construction and systemic implications of a legislative enactment. Normative juridical research concentrates its analytical gaze on legal norms as they exist within the positive legal order: it interrogates the content, coherence, and consistency of law as written, rather than as practiced in the field. As an established tradition in Indonesian legal scholarship, this method proceeds from the premise that the resolution of a legal problem requires not empirical observation of social behavior, but rigorous doctrinal reasoning grounded in authoritative legal sources (Benard et al., 2023). The decision to adopt this method is not arbitrary — it is dictated by the very nature of the research questions. Both questions posed by this study — concerning the regulatory construction of Articles 12A and 12B of Law Number 5 of 2018, and the juridical implications of that construction for the Indonesian criminal law system — are fundamentally questions about norms, not about facts. They demand the tools of *legal reasoning*, systematic interpretation, and doctrinal analysis, rather than those of survey research or ethnographic inquiry.

Within this normative framework, three distinct but complementary legal research approaches are deployed, each calibrated specifically to the criminal law dimensions of the problem under study. The first is the *statute approach* (*pendekatan perundang-undangan*), which serves as the primary analytical instrument for examining the positive law governing separatism. This approach requires a systematic and hierarchical review of all relevant legislative materials, beginning with Article 1(1) and Article 37(5) of the *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* as the constitutional apex, descending through Articles 12A and 12B of Law Number 5 of 2018 as the central object of study, and situating those provisions within the broader criminal law architecture of the *Kitab Undang-Undang Hukum Pidana* (KUHP), including Articles 106 to 108 governing rebellion and *makar*. The statute approach is indispensable because it allows the researcher to map the normative landscape of separatism law with precision — identifying where the law is clear, where it is ambiguous, and where it

creates tension with other provisions of the criminal law system. Critically, this approach enables evaluation of the extent to which Articles 12A and 12B satisfy the *asas lex certa* — the fundamental requirement of criminal law that prohibited conduct be defined with sufficient clarity to guide both citizens and enforcement authorities.

The second approach is the *conceptual approach* (*pendekatan konseptual*), which operates at the theoretical level of legal doctrine. Rather than analyzing the positive text of statutory provisions alone, the conceptual approach excavates the underlying legal ideas, doctrines, and principles that give those provisions their meaning and justification. In this study, the conceptual approach is deployed in two distinct registers. At the level of criminalization, it draws upon Sudarto's criminalization theory to evaluate whether the decision to criminalize separatism satisfies the requisite philosophical, sociological, and juridical criteria — including the *asas subsidiaritas* (principle of subsidiarity as *ultimum remedium*) and the *asas proporsionalitas* (principle of proportionality). At the systemic level, it employs Friedman's legal system theory to assess the transformative implications of that criminalization for the three components of the criminal law system: *legal structure*, *legal substance*, and *legal culture*. The conceptual approach is essential precisely because legal norms do not interpret themselves; their meaning is only accessible through the doctrinal frameworks within which they are embedded (Zipursky, 2025). Without this conceptual lens, any analysis of Articles 12A and 12B risks descending into mere textual paraphrase rather than genuine legal scholarship.

The third approach is the *historical approach* (*pendekatan sejarah*), which situates the criminalization of separatism within the longue durée of Indonesian criminal law development. This approach traces the evolution of the legal response to separatism from the colonial-era provisions incorporated into the KUHP, through the general terrorism framework of Law Number 15 of 2003, to the express criminalization effected by Law Number 5 of 2018. The historical approach is not a concession to non-legal

analysis — it is, within the criminal law tradition, a recognized interpretive tool that reveals the *ratio legis* of a statutory provision: the legislative purpose and policy objectives that animated its enactment. Understanding why the legislature chose to embed separatism within an anti-terrorism statute, rather than within a standalone instrument or within the KUHP itself, requires engagement with the legislative history of Law Number 5 of 2018, including its *naskah akademik* (academic bill) and parliamentary deliberations. This historical dimension directly informs the assessment of norm coherence and systemic integration.

The legal materials used in this study are organized according to the classical tripartite taxonomy of Indonesian legal research. Primary legal materials comprise the 1945 Constitution, Law Number 5 of 2018, the KUHP, the *Kitab Undang-Undang Hukum Acara Pidana* (KUHAP), Law Number 15 of 2003, and relevant judicial decisions of Indonesian courts concerning separatism and terrorism. Secondary legal materials encompass scholarly monographs, accredited journal articles, and academic theses directly relevant to criminalization theory, criminal law reform, and legal system analysis. Tertiary legal materials — legal dictionaries and encyclopedias — provide definitional grounding for key concepts such as *separatisme*, *kriminalisasi*, and *ultimum remedium*.

The analysis of these materials proceeds through a qualitative normative technique. *Content analysis* (*analisis isi*) is applied to the text of Articles 12A and 12B to identify the formal elements of the offense, the structure of criminal liability, and the gradation of sanctions. This textual analysis is then enriched through four interpretive methods: grammatical interpretation, which determines the ordinary legal meaning of statutory terms; systematic interpretation, which reads individual provisions in light of the criminal law system as a whole; historical interpretation, which draws on legislative history to recover *ratio legis*; and teleological interpretation, which evaluates whether the provision serves its declared purpose. The synthesis of these interpretive methods —

constituting what Peter Mahmud Marzuki has described as rigorous *legal reasoning* — produces not merely a description of the law, but a critical and prescriptive assessment of its adequacy, coherence, and implications within the Indonesian criminal law system (Disemadi, 2022).

3. DISCUSSION

Regulation of the Criminalization of Separatism in Law Number 5 of 2018 concerning Terrorism

The regulation of separatism in the Indonesian criminal law system has undergone a protracted evolutionary journey, reflecting the state's dynamic response to ever-shifting patterns of secessionist threats across the archipelago. Before the enactment of Law Number 5 of 2018 (*UU No. 5 Tahun 2018*), Indonesian criminal law did not possess a single, coherent instrument dedicated to separatism. The *Kitab Undang-Undang Hukum Pidana* (KUHP), a relic of Dutch colonial administration, addressed crimes against state security in Articles 106 through 108 under the broad rubric of *makar*—rebellion and insurrection—yet its normative architecture was oriented toward the protection of the colonial sovereign rather than toward the territorial integrity of a sovereign republic. The inadequacy of such provisions in the face of modern secessionist movements is not merely a matter of historical observation; it reflects a structural deficit that compelled successive Indonesian governments to improvise legal responses without a firm legislative foundation.

In the post-independence period, the state confronted a series of armed secessionist uprisings, including the *Republik Maluku Selatan* (RMS), the *Darul Islam/Tentara Islam Indonesia* (DI/TII), the *Gerakan Aceh Merdeka* (GAM), and the *Organisasi Papua Merdeka* (OPM). The state's responses to these movements were characteristically reactive, relying heavily on emergency decrees, military operations, and *ad hoc* legal mechanisms that prioritized security outcomes over normative coherence. This approach persisted well into the New Order era, during which

separatism was managed primarily through executive and military instruments, with only marginal recourse to the criminal law system proper. The reformasi period inaugurated a paradigm shift: the decentralization agenda, the enactment of Special Autonomy Laws, and the heightened salience of human rights discourse collectively demanded that the state engage with separatism through a more principled legal framework rather than through coercive suppression alone.

The enactment of Law Number 15 of 2003 on the Eradication of Terrorism (*UU No. 15 Tahun 2003*) did not resolve this normative deficit. Although that law constituted a significant step in establishing a dedicated counter-terrorism architecture, it made no explicit provision for separatism as an independent category of criminal conduct. This created what scholars identify as a *legal gap* (*kesenjangan normatif*): separatism could be prosecuted only by imperfect analogy with general criminal provisions or by administrative designation of separatist actors as criminal groups, a practice illustrated most vividly by the contested labeling of the TPNPB-OPM in Papua. As Galingging observed, until 2021, the Indonesian government had never formally applied the Anti-Terrorism Law against OPM/KKB, reflecting a genuine legal uncertainty about whether separatist violence could be brought within the statute's reach without specific legislative authorization (Lianingsih et al., 2025). It was against this backdrop of historical fragmentation and normative incompleteness that *UU No. 5 Tahun 2018* emerged as a watershed moment in Indonesian criminal law.

The criminalization of separatism was achieved principally through two new provisions inserted into the terrorism statute by *UU No. 5 Tahun 2018*: Articles 12A and 12B. These provisions represent qualitatively distinct normative choices, each targeting a different dimension of secessionist conduct. Article 12A addresses violent separatism. Its formulation criminalizes any person who intentionally employs violence or threats of violence to create widespread terror or mass casualties—whether by depriving others of liberty, taking lives, destroying property, or damaging strategic vital objects, public

facilities, or international installations—with the *specific intent* (*dolus specialis*) to separate part of the territory from the *Negara Kesatuan Republik Indonesia* (NKRI) or to undermine state resilience. The prescribed sanctions range from five to twenty years' imprisonment, life imprisonment, or the death penalty.

This formulation reveals a deliberate and jurisprudentially significant choice: the legislature did not create a *sui generis* offense of separatism but instead defined violent separatism through the lens of pre-existing terrorism methodology, requiring the prosecution to establish both a terroristic *actus reus* and a separatist *mens rea*. The subjective element—the intent to dismember the state or erode its resilience—constitutes the defining feature that distinguishes Article 12A offenses from ordinary terrorism charges under the same statute. This bifurcation of purpose and method reflects a conscious legislative recognition that, as Simon Butt has observed with respect to Indonesian criminal law reform broadly, the state's concern with internal fragmentation has historically driven the expansion of criminal prohibitions beyond their conventional constitutional limits (Butt, 2023). The convergence of separatism and terrorism within a single normative instrument is, from the perspective of criminal law theory, an exercise in what comparative criminal law scholars term "hybrid criminalization"—the construction of an offense that borrows its actus reus from one category of crime and its special intent from another. This hybridization is not without its risks. The breadth of the objective elements in Article 12A—encompassing any act capable of generating widespread terror—means that the separatist intent becomes the decisive factor in distinguishing an ordinary act of terrorism from an Article 12A offense, placing an enormous burden on the prosecution to establish this *dolus specialis* with sufficient precision. The principle of *lex certa*, which demands normative clarity and foreseeability in criminal prohibition, is therefore implicated in any serious legal assessment of the provision.

Tersedia di online: http://ejournal.unitomo.ac.id/index.php/hukum
E-ISSN: 2580-9113
P-ISSN: 2581-2033
LEX JOURNAL: KAJIAN HUKUM & KEADILAN

The scale of the penal response is equally noteworthy. The gradation of sanctions—ranging from a minimum of five years to the death penalty—represents, in the framework of Sudarto's criminalization theory, the legislature's assessment of the gravity of the social harm occasioned by violent separatism. Sudarto conceptualized penal policy as the rational selection of criminal law instruments in accordance with community values and normative justice (Akbar, 2023). Measured against this standard, the sanctions in Article 12A signal an institutional judgment that violent separatism—combining the terroristic disruption of public order with the existential threat of territorial disintegration—constitutes one of the gravest categories of offense cognizable under Indonesian law. The proportionality of this judgment, however, remains contested. The extremely wide sentencing range risks producing judicial disparities in the absence of adequate sentencing guidelines, a concern that resonates with broader critiques of Indonesian criminal law's systemic difficulty in achieving individualized sentencing that accords with both the gravity of the offense and the culpability of the offender.

Article 12B ventures into more legally contested terrain by criminalizing the deliberate dissemination of separatist ideas or ideology intended, or reasonably suspected to be intended, to separate part of the national territory from the NKRI or to weaken state resilience. The prohibited modalities of dissemination are enumerated exhaustively: written materials or images; public lectures, religious sermons, or expressions of opinion; banners or placards; internet and other electronic media; and any other medium accessible to third parties. The maximum prescribed sanction is seven years' imprisonment—a significantly lower ceiling than Article 12A, reflecting the legislature's recognition of the normatively distinct character of ideological as opposed to violent conduct.

The normative architecture of Article 12B is analytically richer and, from the perspective of criminal law theory, more provocative than its counterpart. The

subjective element—*kesengajaan* directed toward ideological dissemination with a separatist purpose—must be read against the background of the *generale preventie* rationale that undergirds much of Indonesian counter-terrorism law: the state seeks to extinguish the ideological preconditions of secessionist violence before such violence materializes. This preventive logic is consistent with Sudarto's requirement that criminalization be grounded in a *verifiable social harm*, since separatist ideology, in the Indonesian context, has demonstrably furnished the intellectual foundation for armed movements that have produced substantial casualties and social disruption over decades (Akbar, 2023). The criminalization of ideological expression nonetheless generates a tension with constitutional guarantees of freedom of speech and expression under Article 28E of the 1945 Constitution, a tension that the legislature addressed obliquely rather than directly. The provision's use of the phrase "or reasonably suspected to be intended" (*atau patut diduga ditujukan*) introduces a quasi-objective standard of liability that may, in practice, be applied to expressions of political opinion that fall far short of genuine ideological advocacy for territorial dismemberment.

The practical challenge posed by Article 12B is one of demarcation: the criminal law must draw a principled line between the criminalized expression of separatist ideology and the constitutionally protected articulation of political grievances, demands for decentralization, or critiques of state policy toward peripheral regions. The failure to draw this line clearly is not merely a problem of drafting technique; it raises the more fundamental question of whether the criminalization of ideological dissemination satisfies the principle of *ultimum remedium* that Sudarto identified as a central constraint on the legitimate use of penal sanctions. The *ultimum remedium* principle demands that criminal law be reserved for conduct for which non-penal responses are demonstrably inadequate. In the domain of separatist ideology, the state retains powerful non-penal instruments—political dialogue, autonomy arrangements, development investment, cultural recognition—and the question whether ideological

criminalization is truly a measure of last resort remains genuinely open. Yunanto and Damayanti's study of the labeling of TPNPB-OPM as a terrorist organization underscores this dilemma: the designation of armed separatists as terrorists produced institutional ambiguity rather than operational clarity, with law enforcement agencies disagreeing about the applicable legal framework (Yunanto & Damayanti, 2024).

The application of Sudarto's criminalization theory to Articles 12A and 12B yields a nuanced but ultimately persuasive assessment of the provisions' legitimacy, while simultaneously identifying areas of normative vulnerability. Sudarto identified three pillars on which a legitimate act of criminalization must rest: philosophical justification rooted in the fundamental values of the polity; sociological justification reflecting the empirical conditions and social interests of the community; and juridical justification grounding the criminalization in systemic consistency with the existing normative order.

The philosophical justification for criminalizing separatism is compelling and, arguably, conclusive. The NKRI form of state is constitutionalized in Article 37(5) of the 1945 Constitution as an unamendable *grundnorm*—a provision whose entrenchment signals the constitutional order's judgment that territorial unity is a foundational, non-negotiable value. Criminalizing conduct that directly threatens this value represents a logically consistent exercise of the state's penal power. The sociological justification is equally robust: Indonesia's experience of protracted armed separatist conflicts, producing cycles of violence, displacement, and institutional decay across Papua, Aceh, and the Maluku archipelago, furnishes ample empirical warrant for the legislature's judgment that separatism causes demonstrable, severe, and recurring social harm. As Butt observed in his analysis of Indonesian criminal law reform, the state's persistent concern with internal disintegration has driven repeated legislative expansions of criminal prohibitions in the security domain, reflecting deeply embedded sociological anxieties about national cohesion (Butt, 2023).

The juridical justification presents the most complex analytical terrain. The placement of separatism within the terrorism statute—rather than in a distinct legislative instrument or within the KUHP's chapter on crimes against state security—creates systemic implications that strain conventional categories of criminal law. By incorporating separatism into the terrorism framework, the legislature has made available the entire procedural architecture of the counter-terrorism system: extended pre-trial detention, specialized prosecution authorities, and enhanced investigative powers. The application of this machinery to ideological offenses under Article 12B in particular invites the concern, articulated in the comparative literature on the intersection of separatism and terrorism, that states systematically conflate political dissent with national security threats when the institutional architecture incentivizes such conflation (Ojo, 2024). The principle of *lex specialis derogat legi generali* provides formal justification for the new provisions' precedence over general KUHP offenses, but it does not resolve the deeper normative question of whether the conceptual hybridization of separatism and terrorism—two distinct categories of political violence with different historical, ideological, and organizational genealogies—produces a coherent and legally principled normative regime.

Juridical Implications of the Criminalization of Separatism on the Indonesian Criminal Law System

The criminalization of separatism through Articles 12A and 12B of Law Number 5 of 2018 (UU No. 5 Tahun 2018) has generated far-reaching and structurally transformative implications for the Indonesian criminal law system. These implications are not confined to the normative plane of legislative text; they operate at the level of institutional architecture, substantive criminal doctrine, and the legal culture within which criminal law is both practiced and perceived. Analyzing these three dimensions in sequence reveals that the criminalization of separatism has reshaped the Indonesian

criminal law system in ways that demand both scholarly attention and legislative vigilance.

At the level of criminal law structure, the most consequential implication of the criminalization of separatism is the mandatory extension of the specialized counter-terrorism institutional apparatus to a class of offenses that had previously been handled, however imperfectly, by general criminal law mechanisms. By embedding the separatism provisions within UU No. 5 Tahun 2018, the legislature subjected alleged separatist offenders to the entire procedural architecture of Indonesian counter-terrorism law. This means that the Detasemen Khusus 88 (Densus 88)—the National Police's specialized anti-terror unit—along with the Badan Nasional Penanggulangan Terorisme (BNPT) and the Badan Intelijen Negara (BIN), become the primary institutional actors responsible for investigating and prosecuting conduct that hitherto fell within the jurisdiction of ordinary criminal investigators. As Hasibuan and Tijow documented, this specialized counter-terrorism structure—encompassing Densus 88 for operational enforcement, BNPT for policy formulation, and the prosecutorial service for judicial proceedings—represents a structurally integrated response to crimes that transcend ordinary criminal categories (Hasibuan & Tijow, 2024). The application of this machinery to separatism is, structurally, a double-edged development: it brings institutional expertise and operational capacity to bear on a genuinely dangerous phenomenon, but it simultaneously exposes separatism cases to a set of procedural powers—including extended pre-trial detention under Article 28 of UU No. 5 Tahun 2018—that were calibrated for the investigative complexity of transnational terrorism rather than for the prosecution of ideological dissent or armed insurgency of a primarily domestic character.

The structural implication extends to the jurisdictional dimension of the criminal process. The legislation concentrates the trial of separatism cases, like terrorism cases, in specialized courts in Jakarta, creating a geographic and institutional centralisation

that may, in practice, attenuate the sensitivity of adjudication to the regional contexts in which separatist conduct characteristically occurs. The structural aggregation of the counter-terrorism apparatus around separatism charges thus implies a persistent risk of institutional overreach, particularly in cases arising from Papua and other peripheral regions where the boundary between political opposition and separatist conduct is empirically fluid and legally contested. This structural risk is not merely hypothetical: Rahmatunnisa's study of Indonesia's counter-terrorism deradicalization framework observed that Indonesia's counter-terrorism efforts remain fragmented and lack adequate inter-agency coordination, which compromises the proportionality and consistency of enforcement outcomes across cases of varying gravity (Rahmadi et al., 2025). The structural implications of the criminalization of separatism therefore demand attention not only to institutional capacity but to institutional restraint—to the design of procedural safeguards that prevent the misuse of specialized powers against forms of political expression that fall outside the properly criminal domain.

At the level of criminal law substance, the criminalization of separatism has generated a complex and in some respects unsettled normative landscape. The most analytically significant implication is the conceptual hybridization of separatism and terrorism within a single legislative instrument—a fusion that, as argued in the preceding section, has jurisprudential consequences that extend well beyond the interpretive challenges of individual provisions. By locating the separatism offense within the terrorism statute, the legislature has implicitly asserted that violent separatism and terrorism occupy a shared normative space defined by their common threat to public order and state integrity. This assertion is defensible as a matter of criminal policy, but it creates doctrinal instability at the margins, where the interpretive guidance needed to apply the dolus specialis elements of Articles 12A and 12B with consistent precision is largely absent from the statutory text itself. The absence of an operational definition of core concepts—what precisely constitutes "weakening state resilience" or

"separatist ideology" within the meaning of the provisions—means that prosecutorial and judicial interpretation carries an extraordinary degree of normative weight that is incompatible with the demands of the lex certa principle.

The implications for the harmonization of criminal norms within the Indonesian legal system are equally significant. The coexistence of Articles 12A and 12B with Articles 106 through 108 of the Kitab Undang-Undang Hukum Pidana (KUHP), which address crimes against state security through general provisions on rebellion (makar), creates a potential normative overlap that is resolved formally, but imperfectly, by the principle of lex specialis derogat legi generali. This principle directs that the more specific provision—Articles 12A and 12B—prevails over the general KUHP provisions in cases where the elements of both overlap. Yet, as Irfani observed in an analysis of norm conflict resolution in Indonesian law, the lex specialis principle encounters genuine limitations when two special norms of equal formal status are in conflict, requiring resort to the deeper—and analytically more demanding—doctrine of juridische specialiteit to determine the applicable norm (Irfani, 2020). The enactment of the new Criminal Code (Law Number 1 of 2023), which preserves and incorporates the counter-terrorism framework without modifying the separatism provisions, adds a further layer of normative complexity, since the new Code's general principles of criminal liability must now be reconciled with the specific provisions of UU No. 5 Tahun 2018 in any prosecution for separatism. Butt's analysis of the new Criminal Code's implications for Indonesian law is instructive here: the Code's failure to consolidate the disparate sources of Indonesian criminal law into a coherent national instrument means that the separatism provisions remain embedded in a fragmented normative architecture, with all the interpretive difficulties that fragmentation produces (Butt, 2023).

A further substantive implication concerns the proportionality of the penal response to ideological separatism under Article 12B. The provision's maximum

sanction of seven years' imprisonment for the dissemination of separatist ideas stands in immediate tension with Indonesia's obligations under the International Covenant on Civil and Political Rights (ICCPR), which permits restrictions on freedom of expression only when they are provided by law, serve a legitimate aim, and are demonstrably necessary and proportionate. The study published in Religio: Jurnal Studi Agama-agama examining the legitimacy of UU No. 5 Tahun 2018 found that the law's broad definitions of prohibited conduct—including the application of extended pre-trial detention to ideological offenses—generate delegitimization precisely because they appear inconsistent with fundamental human rights principles, producing public resistance that undermines the law's social authority (Riduan, 2024). This substantive tension is not merely a matter of international treaty compliance; it strikes at the internal coherence of the Indonesian criminal law system, which is constitutionally committed to both national unity and the protection of fundamental rights. The criminal law's claim to legitimacy depends on its capacity to navigate this tension through principled norm construction rather than through the subordination of rights protection to security imperatives.

The implications of the criminalization of separatism for criminal law culture—encompassing both the internal culture of law enforcement and adjudication, and the external culture of civic understanding and compliance—are perhaps the most consequential yet least tractable of the three dimensions. At the level of internal criminal law culture, the extension of counter-terrorism institutional norms to separatism conduct requires law enforcement actors to develop a refined capacity to distinguish between the genuinely criminal—conduct that satisfies the actus reus and mens rea requirements of Articles 12A or 12B with sufficient evidentiary clarity—and the constitutionally protected: criticism of state policy, advocacy for regional autonomy, or expressions of cultural and political identity that, however uncomfortable to national majorities, remain within the ambit of rights guaranteed by Articles 28E and 28F of the

1945 Constitution. The development of this capacity is, in practice, a cultural challenge as much as a technical one, requiring a normative reorientation of enforcement culture away from the security-first logic that has historically characterized the Indonesian state's approach to separatism.

The risk that this reorientation will fail, and that the criminalization of separatism will produce a chilling effect on constitutionally protected expression, is one that comparative and Indonesian criminal law scholars have identified as a structural vulnerability of broadly framed security legislation. Butt's analysis is particularly apposite: the new Criminal Code's provisions that hamper legitimate criticism of government actors illustrate a systemic tendency in Indonesian criminal law to draft offenses in terms broad enough to encompass conduct that ought, in a democratic legal order, to attract civil rather than criminal liability (Butt, 2023). Article 12B's quasi-objective standard—criminalizing dissemination that is "reasonably suspected" of serving a separatist purpose—multiplies this risk by making the criminality of expressive conduct turn on a probabilistic judicial inference rather than on proof of actual separatist intent. The practical result is that the provision may suppress precisely the political discourse—about autonomy, regional grievances, and national identity—that a democratic legal culture should actively encourage rather than deter.

At the level of external criminal law culture, the effectiveness of the criminalization of separatism depends critically on the degree to which affected communities perceive the law as legitimate and its application as just. The contested labeling of TPNPB-OPM as a terrorist organization in 2021—a decision whose legal foundation rests squarely on the provisions of UU No. 5 Tahun 2018—illustrates the fragility of this legitimacy in communities where the state's security apparatus is itself perceived as a source of rights violations rather than as their protector. Yunanto and Damayanti's findings on the institutional consequences of that designation demonstrate that the cultural resistance of affected communities substantially limits the deterrent and

preventive efficacy of the criminal law designation, independently of its formal legal validity (Yunanto & Damayanti, 2024). This finding has direct implications for the implementation of Articles 12A and 12B: criminal law norms that lack cultural legitimacy in the communities they regulate will be resisted, evaded, and delegitimized, reducing the practical effectiveness of criminalization regardless of the precision or severity of the statutory text.

The implementation challenges that flow from these structural, substantive, and cultural implications are systemic and interrelated. The absence of sentencing guidelines calibrated to the wide sanctioning range of Article 12A creates conditions for judicial disparity that erode legal certainty and public confidence in proportionate criminal justice. The absence of a definitional framework for key concepts in Article 12B creates prosecutorial and adjudicative uncertainty that incentivizes over-prosecution. And the failure to develop a robust public legal education program that clearly demarcates the boundary between criminal separatism and protected political expression perpetuates a culture of legal fear that is incompatible with the democratic aspirations embedded in Indonesia's constitutional order.

4. CONCLUSION

The criminalization of separatism in Articles 12A and 12B of *UU No. 5 Tahun 2018* constitutes a historically significant and normatively ambitious reform of the Indonesian criminal law system. By filling the *legal gap* that had long hampered the state's capacity to address secessionist threats through principled legal instruments, the legislature accomplished a genuine advance in criminal law architecture. Assessed through Sudarto's criminalization theory, the provisions satisfy the philosophical and sociological requirements of legitimate criminalization with considerable force, rooted as they are in the constitutional protection of territorial unity and in Indonesia's lived experience of destructive separatist violence. The juridical dimension of the criminalization, however, reveals structural tensions that warrant sustained scholarly

and legislative attention: the conceptual hybridization of separatism with terrorism, the breadth of the objective elements in Article 12A, the quasi-objective liability standard in Article 12B, and the risk of a *chilling effect* on constitutionally protected political expression all represent normative challenges that the current formulation has not fully resolved. These challenges are not fatal to the provisions' legitimacy, but they underscore the imperative that their implementation be guided by principled *lex certa* standards, a robust proportionality analysis, and an institutional commitment to preserving the *ultimum remedium* character of criminal law in the regulation of political life.

The juridical implications of the criminalization of separatism in *UU No. 5 Tahun 2018* for the Indonesian criminal law system are profound, systemic, and in several respects unresolved. At the structural level, the integration of separatism into the counter-terrorism institutional apparatus has expanded the reach and capacity of specialized enforcement, but has simultaneously created risks of procedural overreach and institutional insensitivity to the regional and political specificities of secessionist conduct. At the substantive level, the hybridization of separatism and terrorism has created doctrinal instabilities in norm harmonization, produced tensions with constitutional rights guarantees, and left critical definitional questions unresolved in the statutory text—gaps that only principled and consistent judicial interpretation can adequately fill. At the cultural level, the criminalization of separatism risks generating a *chilling effect* on protected political expression and undermining the community legitimacy upon which effective criminal law ultimately depends, particularly in the peripheral regions where secessionist tensions are most acute. Taken together, these implications make a compelling case not for the repeal of the separatism provisions, but for their legislative refinement—through the elaboration of clearer conceptual definitions, the development of proportionate sentencing guidelines, and the institutional reinforcement of human rights safeguards—so that the criminalization of

separatism fulfills its constitutional purpose without sacrificing the democratic values that distinguish a *rechtsstaat* from a security state.

4. REFERENCES

Akbar, M. F. (2023). The urgency of law reforms on economic crimes in Indonesia. *Cogent Social Sciences*, *9*(1). https://doi.org/10.1080/23311886.2023.2175487

Benard, S., Tembo, M., Msiska, U., Nsoma, P., & Chadza, M. (2023). Non-Industrial Sugarcane Value Chain Analysis in Zombwe Extension Planning Area, Mzimba North, Malawi. *International Journal of Membrane Science and Technology*, *10*(2), 2971–2981. https://doi.org/10.15379/ijmst.v10i2.3036

Butt, S. (2023). Indonesia's new Criminal Code: indigenising and democratising Indonesian criminal law? *Griffith Law Review*, *32*(2), 190–214. https://doi.org/10.1080/10383441.2023.2243772

Disemadi, H. S. (2022). Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies. *Journal of Judicial Review*, *24*(2), 289–304. https://doi.org/10.37253/jjr.v24i2.7280

Galingging, R. (2023). Legal and Political Implications of Designating the Free Papua Movement as a Terrorist Organization. *International Journal of Business, Economics, and Social Development*, *4*(3), 197–203. https://doi.org/10.46336/ijbesd.v4i3.452

Hasibuan, H., & Tijow, L. M. (2024). The Government's Role in Enforcing the Law Against Perpetrators of Terrorism. *Journal of Law and Sustainable Development*, *12*(1), e3145. https://doi.org/10.55908/sdgs.v12i1.3146

Irfani, N. (2020). Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, Problematika, dan Penggunaannya dalam Penalaran dan Argumentasi Hukum. *Jurnal Legislasi Indonesia*, *16*(3), 305–325. https://doi.org/10.54629/jli.v17i3.711

Lianingsih, N., Irman, D., & Nurnisaa, N. (2025). The Impact of the Digital Economy on Employment and Workforce Structure in Indonesia. *International Journal of Business, Economics, and Social Development*, *6*(1), 139–145. https://doi.org/10.46336/ijbesd.v6i1.889

Ojo, J. S. (2024). Transforming Pacifists into Warmongers? Separatist Movement, State Repression, and the Politics of Framing Terrorism in Nigeria: Evidence from IPOB and Yoruba Nation's Freedom Frontiers. *Journal of Applied Security Research*, *19*(3), 377–412. https://doi.org/10.1080/19361610.2023.2189867

Rahmadi, A., Karjoko, L., & Hartiwiningsih, H. (2025). The Price of Corruption on

State Losses Policy. *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 479–502. https://doi.org/10.24090/volksgeist.v8i2.14813

Riduan, I. M. (2024). Unraveling Legitimacy: A Critical Examination of Anti-Terror Legislation in Indonesia. *Religió Jurnal Studi Agama-Agama*, *14*(1), 22–43. https://doi.org/10.15642/religio.v14i1.2580

Yunanto, S., & Damayanti, A. (2024). The politics of labeling TNPPB-OPM as terrorist: Explanation, process, and implications. *Asian Journal of Comparative Politics*, *10*(1), 75–92. https://journals.sagepub.com/doi/full/10.1177/20578911241231998

Zipursky, B. C. (2025). The Long Arc of Legality: Hobbes, Kelsen, Hart David Dyzenhaus. *Canadian Journal of Law & Jurisprudence*, *38*(1), 281–289. https://doi.org/10.1017/cjlj.2024.12