

## **Legal Study of the Responsibility of Perpetrators of Femicide Crimes (Study of Decision Number 333/Pid.B/2022/PN Smg)**

**Leonard Sarimonang Simalango**

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail:  
[Leonardleo4899@gmail.com](mailto:Leonardleo4899@gmail.com)

**Abstract.** *This study aims to analyze future policies on the accountability of perpetrators of femicide in Indonesia; considerations of the panel of judges in sentencing perpetrators of femicide in Case Number 333/Pid.B/2022/PN Smg; and obstacles for the panel of judges in sentencing perpetrators of femicide in Case Number 333/Pid.B/2022/PN Smg and find solutions. This study uses a normative legal approach in the form of a conceptual approach, statute approach and comparative approach. The research data is in the form of primary, secondary and tertiary legal materials which are then analyzed qualitatively. Based on the study, it is concluded that (1) the regulation of future policies on the accountability of perpetrators of femicide in Indonesia is through regulations on the recognition of femicide as a special crime; regulations on increasing sentences for perpetrators of femicide; issuance of derivative regulations/implementing regulations; and strengthening collaboration with the TPKS Law and the PKDRT Law. (2) In sentencing the perpetrator of femicide in Case Number 333/Pid.B/2022/PN Smg, the panel of judges used legal, philosophical, and sociological considerations by considering aspects of retaliation, prevention, and justice. (3) The panel of judges in deciding on the sentence for the perpetrator of femicide encountered obstacles in achieving a balance between justice and legal certainty as idealized in Radbruch's theory, so that the decisions taken are not fully in accordance with the expected moral, social and legal demands. The solution to overcome these obstacles is the recognition of femicide in positive law in Indonesia; increasing access and quality of evidence by presenting expert sanctions in the field of gender-based violence; and developing responsive legal enforcement mechanisms.*

**Keywords:** *Accountability; Criminals; Femicide; Legal.*

### **1. Introduction**

Indonesia is a country based on law as regulated in Article 1 paragraph (3) of the 4th amendment to the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated to the 1945 Constitution of the Republic of Indonesia), meaning that all forms of individual behavior are based on applicable law.<sup>1</sup> Thus, the highest law is the power of the Republic of

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<sup>1</sup>Baharuddin, M., & Khisni, Akhmad. "Effectiveness of Pleidooi by The Supreme Of Criminal Murder". LDJ: Law Development Journal, Vol 2, No 2 (2020). p. 207, url:<https://jurnal.unissula.ac.id/index.php/ldj/article/view/11515/4552> accessed October 3, 2024

Master of Law, UNISSULA

Indonesia to protect all Indonesian people.<sup>2</sup> However, it cannot be denied that law enforcement is not an easy matter as can be observed so far, the large number of crimes that have occurred throughout Indonesia has become a challenge for law enforcers, especially in terms of deciding on the imposition of criminal sanctions.<sup>3</sup> Law enforcement efforts require cooperation and the role of law enforcers to ensure legal certainty and justice.<sup>4</sup> which is in one system and strives to combat crime (over coming of crime) and prevent crime (prevention of crime).<sup>5</sup>

Criminalization in Indonesia which has recently become increasingly rampant, one of which is murder or crimes against someone's life. Murder is an act of taking someone's life in a way that is against the law, or not against the law. The crime of murder in Indonesia is regulated in the Criminal Code (KUHP), especially in Book II Chapter XIX concerning Crimes Against Life, especially Article 338 of the Criminal Code, Article 339 of the Criminal Code with criminal penalties according to Article 340 of the Criminal Code and Article 344 of the Criminal Code. One type of murder that attracts attention is femicide, where in 2023, The National Commission on Violence Against Women delivered the 2023 Femicide Report and invited all parties to name the murder and death of women due to gender-based violence as femicide. The term femicide has only been part of the National Commission on Violence Against Women Annual Notes since 2017, the issue of femicide is not foreign to the National Commission on Violence Against Women. This is because the murder of women seems inevitable in conflict situations, including the May 1998 Tragedy which was the background to the birth of the National Commission on Violence Against Women. In the context of femicide, the murder of women cannot be seen as an ordinary murder, nor can we categorize all murders of women as femicide.<sup>6</sup>

Femicide occurs in almost all provinces in Indonesia, with the type of intimate femicide occupying the highest news coverage, namely murder committed by husbands, ex-husbands, boyfriends, ex-boyfriends or cohabiting partners, which reaches 67% of all reported femicide cases. The second high level of femicide is non-intimate femicide, which is carried out by neighbors, strangers, friends, seniors and public transportation drivers related to the motivation to commit the crime of sexual violence (TPKS) by the perpetrator against the victim, where the victim expresses rejection or fights back. Other types of femicide that occur are femicide by family members, femicide in the sex industry, femicide against people with disabilities, femicide in conflict areas and femicide with accusations of

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<sup>2</sup>Cipto. "Protection to the Victims of Domestic Violence Crime (Case Study in Kudus Police)". *JDH: Journal of Legal Sovereignty*, Vol 1, No 4, (2018). p. 928, url:<https://jurnal.unissula.ac.id/index.php/RH/article/view/4008> accessed October 3, 2024

<sup>3</sup>Danielli, R. "Analysis of Judge's Decision on Murder Case in Family Environment (Study in Sleman District Court)". *Jurnal Universitas Atma Jaya Yogyakarta*, Vol 1, No 1 (2016). P.1 url:<https://e-journal.uajy.ac.id/11154/1/Jurnal.pdf> accessed October 3, 2024

<sup>4</sup>Eka Rinda Wanto; Rakhmat Bowo Suharto; and Siti Rodhiyah Dwi Istinah. "The Capture Process in the Crime of Murder by A Special Team". *LDJ: Law Development Journal*, Vol 4, No 2 (2022).p.323 url:<https://jurnal.unissula.ac.id/index.php/ldj/article/view/23165/7153> accessed October 3, 2024

<sup>5</sup>Subarjo A., & Ma'ruf, Umar. "Mechanisms of Investigation Criminal Planning Involving Children as Performers". *LDJ: law Development Journal*, Vol 3, No 1 (2021), p. 162. url:<https://jurnal.unissula.ac.id/index.php/ldj/article/view/14860/5480> accessed October 3, 2024

<sup>6</sup> <https://komnasperempuan.go.id/siaran-pers-detail/> accessed October 3, 2024

Master of Law, UNISSULA

witchcraft. Third, the form of indirect femicide is suicide due to gender-based violence (gender-based violence-instigated suicide).<sup>7</sup>

One example of a case of intimate partner femicide is the murder of a student (Elisa) by her ex-boyfriend in Pandeglang Banten in 2023. This case is classified as femicide because it is a gender-based murder of women driven by superiority, dominance, misogyny towards women, power inequality, possessiveness and sadistic satisfaction. This also shows that separation does not guarantee that women are free from violence by their ex-partners because of the ego of masculinity. The incident occurred after the victim had a new partner/girlfriend so that an attitude of superiority and possessiveness emerged to the point of planning abuse and murder.<sup>8</sup>Then, there is also the case "Premeditated Murder and Violence Against Children Resulting in Death" which has been decided by the court through Decision Number 333/Pid.B/2022/PN Smg, where the perpetrator is the victim's lover and is also a therapist trusted by the victim to provide therapy to her child who has motor delay disorders.

Data from the National Commission on Violence Against Women's Notes in 2023 stated that intimate femicide or the murder of women and girls committed by their partners or ex-partners ranked highest with 109 cases or 67% of all femicide cases. The high number of femicide cases shows that protection for women is still far from expectations.<sup>9</sup>This is the sociological basis for the formation of legislation or policies related to femicide crimes in Indonesia that are important to be carried out immediately. The importance of legal policies related to femicide, apart from being seen from a sociological basis, can also be seen from its philosophical basis that efforts to eliminate criminal acts of violence against women are efforts to fulfill a sense of humanity as stated in the values of Pancasila. The existence of regulations on femicide in Indonesia must philosophically reflect the implementation of the values of Pancasila and the 1945 Constitution, namely protecting every citizen from violence, torture or treatment that degrades human dignity. In this case, crimes against women (femicide) are contrary to divine and humanitarian values and disrupt the security and peace of society.

The factual conditions of human rights protection and enforcement in Indonesia are still very concerning, especially the protection of women's rights. In fact, there are various legal regulations as a normative basis for protecting women and girls, including through the 1945 Constitution, the Criminal Code, the Criminal Procedure Code, Law Number 39 of 1999 concerning Human Rights, the Child Protection Law, the Law on the Elimination of Domestic Violence, to Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS).<sup>10</sup>The government passed the TPKS Law as a government response to address the high number of sexual violence cases that occur in Indonesia. However, there are no

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<sup>7</sup>ibid

<sup>8</sup><https://news.detik.com/berita/d-6564470/apa-itu-femisida-dikaitkan-di-kas-elisa-dikill-mantan-pakai-kloset> accessed October 3, 2024

<sup>9</sup>Yonna Beatrix Salamor; Ani Purwanti; & Nur Rochaeti. "Regulation on Femicide in Indonesian Criminal Law (Comparative Study of Human Rights Law and TPKS Law)". *Litigation Journal (e-Journal)*, Vol 25 No 1 (2024), p. 98. url:<https://journal.unpas.ac.id/index.php/litigation/article/view/12520> accessed October 3, 2024

<sup>10</sup>Munawwarah & Soponyono, Eko. "Sexual Harassment Criminal Law Policy In Criminal Law Revision Of Indonesian". *JDH: Jurnal Daulat Hukum*, Vol 2 No 3, (2019), p. 424. url: <https://jurnal.unissula.ac.id/index.php/RH/article/view/5674> accessed on October 3, 2024

Master of Law, UNISSULA

provisions that regulate femicide crimes in it. This is the basis for the importance of regulating femicide specifically as a normative basis in order to be able to provide protection to women from gender-based crimes.

Previous research that examines femicide already exists but is still limited, including Salamor et al (2024) who studied the regulation of femicide in criminal law in Indonesia;<sup>11</sup> Joseph (2017) on femicide victims in Latin America.<sup>12</sup> Then Sabrina (2024) researched Indonesian women in the vortex of violence and the threat of femicide;<sup>13</sup> and Zulaichah (2022) researched femicide and legal sanctions in Indonesia.<sup>14</sup> These studies have fundamental differences with this study, namely the object of this study which focuses on the legal study of the responsibility of perpetrators of femicide crimes and uses a special object in the form of a court decision (Decision Number 333 / Pid.B / 2022 / PN Smg) so as to provide a detailed analysis related to the implementation of criminal law in court. While previous researchers tend to discuss femicide in general, both from a normative, phenomenological, or cross-regional study perspective. This difference shows that this study has a sharper focus on the aspect of criminal responsibility in the case of Decision Number 333 / Pid.B / 2022 / PN Smg so that it can provide new insights that are more specific in the context of Indonesian criminal law. Therefore, this study aims to analyze future policies regarding the responsibility of perpetrators of femicide crimes in Indonesia.

## 2. Research methods

### 2.1 Approach Method

The research method used is the Normative Juridical research method with a conceptual approach, statute approach and comparative approach.<sup>15</sup> The conceptual approach is used to build a concept to be used as a reference in this study, namely the criminal law policy on the crime of loss of life and violence resulting in death as a crime of femicide. In building the concept, the author is based on doctrines, legal principles and basic substances of national law, international law and criminal law, so that the author is able to analyze the problems to be studied. The author will use a statute approach because the statutory approach is able to study whether there is consistency between legislation. The researcher also uses a comparative approach to analyze by making comparisons with other countries such as Malaysia and America regarding the regulation of the responsibility of perpetrators of femicide.

### 2.2 Research Specifications

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<sup>11</sup>Yonna Beatrix Salamor; Ani Purwanti; & Nur Rochaeti. "Op Cit, p.1 .

<sup>12</sup>Joseph, Janice. "Victims of Femicide in Latin America: Legal and Criminal Justice Responses". TEMIDA, Vol 20, No 1 (2017), p.5  
url:[https://www.researchgate.net/publication/318558730\\_Victims\\_of\\_femicide\\_in\\_Latin\\_America\\_Legal\\_and\\_criminal\\_justice\\_responses/link/59701b87a6fdccc6c96c1bf6/download](https://www.researchgate.net/publication/318558730_Victims_of_femicide_in_Latin_America_Legal_and_criminal_justice_responses/link/59701b87a6fdccc6c96c1bf6/download) accessed October 3, 2024

<sup>13</sup>Sabrina, Dinda. "Indonesian Women in the Vortex of Violence and the Threat of Femicide". J-CEKI: Jurnal Cendekia Ilmiah. Vol 3 No. 6 (2024), p.7460 url:<https://journal-nusantara.com/index.php/J-CEKI/article/view/5646> accessed December 3, 2024

<sup>14</sup>Zulaichah, Siti. "Femicide and Legal Sanctions in Indonesia". Egalita: Journal of Gender Equality and Justice, Vol 17 No 1, 2022), p.1 url:<https://ejournal.uin-malang.ac.id/index.php/egalita/article/view/14171> accessed December 3, 2024

<sup>15</sup>Marzuki, PM, (2013). Legal Research. Jakarta: Kencana. p. 93

Master of Law, UNISSULA

This study uses analytical descriptive specifications, which aim to describe systematically and accurately the facts and characteristics of a particular region or population. This analytical descriptive study is used to describe and answer questions related to the accountability of perpetrators of femicide crimes in Indonesia, the judge's considerations when deciding case Number 333/Pid.B/2022/PN Smg and what are the obstacles for judges in deciding cases and ideal legal policies in the future.

### **2.3 Data Collection Method**

The technique of collecting data in the form of primary legal materials is carried out using legal documentary techniques (documentary research). Legal documentary techniques are data collection techniques through identification and review of legislation and official legal documents, then analyzed and formulated as the main legal materials in normative legal research (legal doctrine). While secondary legal materials are taken using the literature study method carried out through the stages of identifying data source libraries, identifying the required legal materials, and inventorying the required legal materials (data).

### **2.4 Data Analysis Methods**

The research data of this study includes primary, secondary and tertiary legal materials that have been collected by researchers through the legal inventory process and then classified to be analyzed in depth by exploring the principles, values and basic norms contained therein. The next step, researchers cross-check with other legislation to find synchronization or inconsistencies between the laws and regulations.<sup>16</sup>In analyzing normative legal data, there are stages, namely, first, secondary data and other positive legal data are formulated as legal principles, second, formulating the legal understanding related to the research problem, third, forming applicable legal standards related to the research problem and fourth, the legal constraints encountered are formulated in detail and clearly.

## **3. Results and Discussion**

### **3.1. Future Policy Arrangements on the Accountability of Femicide Perpetrators in Indonesia**

Femicide is a type of criminal act against women that is carried out directly or indirectly. The cause is due to differences in gender, layered power, with various emotional drives such as superior, dominant, hegemonic, aggressive, or misogynistic attitudes towards women. As a result of some of these attitudes, it can cause an excessive sense of ownership towards women, there is an imbalance in power relations between men and women, and the achievement of a sense or sadistic satisfaction.<sup>17</sup>

The upcoming policy setting on criminal liability for perpetrators of femicide crimes through the revision or amendment of the New Criminal Code aims to improve legal protection for victims of gender-based violence and ensure that femicide crimes are treated as serious crimes. According to the theory of justice in Islam, justice is one of the important teachings in Islam through its two main sources, the Qur'an and the Hadith. Allah and His Messenger

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<sup>16</sup>Suteki, & Taufani, Galang. (2018). *Legal Research Methodology*. Depok: PT. Raja Grafindo Persada, p. 267

<sup>17</sup> Pramudibyanto, Hascaryo. "The Role of Literature in Cultivating Women's Preventive Attitudes towards Femicide". *Anuva: Journal of Cultural Studies, Libraries and Information*, Vol 7 No 1 (2023), p.30  
url:<https://ejournal2.undip.ac.id/index.php/anuva/article/view/17082> accessed December 2, 2024

Master of Law, UNISSULA

always explain how important the meaning of justice is. Justice is a pillar for upholding a prosperous and prosperous society.

The upcoming policy setting on criminal liability for perpetrators of femicide through the revision or amendment of the new Criminal Code can be aligned with the concept of justice in Islam which prioritizes protection, justice, and responsibility to uphold the rights of victims and maintain the honor and welfare of women. Several important elements in the revision of the New Criminal Code as the upcoming policy setting, when viewed from the perspective of Islamic justice, include:

First, the recognition of femicide as a special crime as a mandate of justice. In Islam, upholding justice is a mandate that must be fulfilled by every individual and institution. Recognizing femicide as a special crime in the Criminal Code reflects the responsibility to protect women from gender-based crimes. The Qur'an emphasizes in Surah An-Nisa verse 58 that justice is a mandate that must be given to every individual. Therefore, classifying femicide as a separate crime is a form of justice for victims and their families and shows firmness in responding to this act of violence.

Second, the addition of a Special Article with the Elements of Justice (Al-'Adl) and Equality (Al-Musawah). In Islam, justice includes al-'adl (placing something according to its rights) and al-musawah (equality), where justice must be upheld regardless of a person's gender, social status, or background. The addition of a special article explaining the elements of femicide and protecting victims from gender-based violence will strengthen the principle of equality in law, where women as a vulnerable group receive equal and equal justice before the law.

Third, increasing the punishment for femicide perpetrators as a deterrent and prevention of crime. Islam recognizes the principle of qisas (equitable punishment) to provide a deterrent and preventive effect. Enforcing appropriate punishment for femicide perpetrators is an effort to prevent the recurrence of such crimes and create a sense of security in society. Increasing the punishment for perpetrators who have gender hatred motives is in line with the concept of qisas which teaches that punishment must have a positive impact, both as a form of fair retribution for the perpetrators and as an effort to prevent in society.

Fourth, protection for victims and their families based on maqasid sharia principles. Maqasid Syariah, or the aim of Islamic law, aims to protect religion, soul, lineage, mind and property. In this context, revising the Criminal Code to include protection for victims and their families is in line with Maqasid Syariah which emphasizes the importance of protecting life (hifz an-nafs) and honor (hifz al-ird). Guaranteeing the protection of victims' families is part of Islamic humanitarian principles which emphasize respect for the dignity and value of every life.

Fifth, synergy with other laws to harmonize social justice and balance (al-'adl). The principle of balance (al-'adl) in Islamic justice emphasizes the importance of maintaining balance in society through a mutually supportive legal system. The revision of the Criminal Code that synergizes with the Law on Sexual Violence (UU TPKS) and the Law on the Elimination of Domestic Violence (UU PKDRT) is in line with the values of Islamic justice that prioritize unity in efforts to protect and defend women's rights as part of social justice.

### **3.2. Considerations of the Panel of Judges in Sentencing Criminal Sentences for Perpetrators of Femicide in Case Number 333/Pid.B/2022/PN Smg**

The judge's considerations in deciding the criminal sentence for the perpetrator of the crime of femicide in Case Number 333/Pid.B/2022/PN Smg, include legal, philosophical, and sociological considerations, so that the decision is in accordance with applicable law and based on the facts revealed in court. These considerations are also in line with the theory of punishment, especially the aspects of retribution, the purpose of punishment, and justice.

According to the theory of retribution, the perpetrator of a crime must be punished in accordance with the mistake or crime he/she committed. In the case of femicide, the judge considers the perpetrator's actions as a serious violation of the right to life and dignity of women. This retribution is important as a recognition that acts of violence that result in loss of life are unacceptable and deserve a proportionate punishment. Through the aspect of retribution, the judge seeks to fulfill justice for the victim and her family.

The judge's consideration in imposing a sentence also includes the aim of providing a deterrent effect as in the theory of the purpose of punishment. The punishment given does not only serve to punish the perpetrator but is also expected to be a warning to the community not to commit similar crimes. In addition, the purpose of punishment also includes the aspect of rehabilitation, namely by opening up opportunities for the perpetrator to improve themselves, if possible. In serious cases such as femicide, rehabilitation can be part of a long-term effort to prevent repeated behavior from the perpetrator or other potential perpetrators.

The aspect of justice is the core of the judge's consideration, where the decision taken must reflect justice for all parties involved, especially the victim and his family. The legal, philosophical, and sociological considerations in deciding this case show that the judge is trying to achieve comprehensive justice, both in terms of applicable law and in terms of humanity and social aspects. In the theory of punishment, justice is not only related to fair punishment but also considers the social and moral impact of the decision on the victim and society.

The crime of murder in the Criminal Code is also referred to as a crime against life. A crime against life is a crime committed in the form of an attack on the life of another person. The object of this crime is human life. Therefore, an act can be called a crime of murder if the victim is a human, not an animal or the like. In the act of taking the life of another person, there are 3 (three) conditions that must be met, namely a) There is a form of action; b) There is a death (of another person); c) There is a causal relationship between the act and death.

In premeditated murder as in the case of Case Number 333/Pid.B/2022/PN Smg, the Criminal Code provides the most severe criminal sanctions among other forms of murder, namely the death penalty or life imprisonment or for a certain period of time of up to twenty years as regulated in Article 340 of the Criminal Code. This planning factor is the

Master of Law, UNISSULA

basis for the severity of this punishment compared to other murders. There are 3 (three) conditions/elements of this prior planning, namely:<sup>18</sup>

a. Deciding on the will in a calm state of mind This means that when carrying out the will to kill, it is done in a calm state of mind. A calm state of mind is one that is not rushed or sudden, not in a state of duress and high emotion. Before deciding on the will to kill, it has been considered and thought about the advantages and disadvantages, risks, methods used, tools used and so on.

b. There is a sufficient amount of time since the emergence of the will until the execution of the will. This sufficient amount of time or grace period is relative, meaning it is not measured by a certain length of time, but rather depends on the prevailing concrete circumstances or events. In this grace period there is a relationship between the decision-making of the will and the execution of the will. This means that the perpetrator may still withdraw his will to kill, and there is time to think about what methods and tools he will use.

c. Execution of will (action) in a calm inner atmosphere. What this means is that when carrying out a murder, do not be in an atmosphere of haste, fear, threats, excessive emotions, and so on.

The Criminal Code does not view the perpetrator of murder based on whether or not there is a family relationship with the victim, but rather looks at the type of act that takes a life intentionally and premeditated or ordinary murder.

The murder case committed by the defendant in Decision Number 333/Pid.B/2022/PN Smg is premeditated murder. The crime of premeditated murder, which the legislators have referred to as moord, is regulated in Article 340 of the Criminal Code. Premeditated murder is a crime with the heaviest criminal threat compared to other murder crimes where the heaviest threat is the death penalty. This death penalty is not stated in crimes against other lives, the basis for the severity of this punishment is the existence of premeditation. In addition to being threatened with the death penalty, perpetrators of premeditated murder can also be sentenced to life imprisonment or for a certain period of time for a maximum of twenty years.

Based on the description above, it can be analyzed that positive Indonesian law only regulates the perpetrator's responsibility in the context of murder (Article 338) or premeditated murder (Article 340), without recognizing or specifically regulating the crime of femicide as a separate type of crime. The definition of premeditated murder in Islamic law is that a mukalaf intentionally and premeditatedly kills a person whose blood is protected (innocent), with a strong will that he must be killed by him. The word intentionally comes from the word "amida" or "amad". The Qur'an uses the word "muta'ami" which means intentionally.

The crime of murder in Islamic law has different opinions among scholars in categorizing it. Imam Malik only stipulates two types of murder, namely intentional murder and unintentional murder, this is because the Qur'an only mentions two types of murder,

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<sup>18</sup>Novel; A. and Anwar, Moh. "A Comparative Study of the Crime of Murder According to the Criminal Code (KUHP) and Islamic Law". Research Journal, Vol 1 No 1 (2016), p. 74  
url:<https://jurnal.umsu.ac.id/index.php/JPH/article/view/20741> accessed December 3, 2024



Master of Law, UNISSULA

namely intentional or unintentional. Semi-intentional murder is only mentioned in the Hadith. However, the Hadith that mentions semi-intentional murder is considered weak because its narration is mudhtharib.<sup>19</sup>

The murder case committed by the defendant in Decision Number 333/Pid.B/2022/PN Smg is a deliberate murder. Deliberate murder is an act of persecution against a person with the intention of taking his life. The intention here is in the form of deliberate action, deliberate in the target, and deliberate in terms of the tools used, the Qur'an and Sunnah prohibit deliberate murder with clear evidence<sup>20</sup>, namely as in QS al-Isra'/17: 33.

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ۗ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيهِ سُلْطَانًا فَلَا يَسْرِفُ فِي الْقَتْلِ ۗ إِنَّهُ كَانَ مَنْصُورًا

Meaning: "And do not kill a soul which Allah has forbidden (to kill), except for a righteous (reason) and whoever is killed unjustly, then We have indeed given power to his heir, but let not the heir go beyond the limits in killing. Indeed, he is a person who gets help.

Based on the verse above, it can be seen that Allah SWT forbids the act of killing. This is emphasized by the word "wala taqtulunnafs" which means a prohibition against anyone from taking the life of someone who is forbidden. Furthermore, there is the word "illaa bilhaq" which means except in a haq way (which is justified). From the meaning of the violation of the verse, we can take the understanding that there are two forms of murder, namely justified murder (al-Qatl bi al-Haq) is a form of murder ordered by Allah, therefore, the murder does not result in sin. For example, murder committed in war and killing people in order to carry out an execution by an executioner for a crime. While unjustified murder (qatl ghair al-Haq) is a form of murder that is forbidden by Allah and is a major sin. The perpetrator receives a certain punishment both in this world and in the hereafter.<sup>21</sup> Al-Mai'dah letter verse 32 states that:

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا ۚ وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا ۚ وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ بَعْدَ ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ ﴿٣٢﴾

Meaning: "Therefore We decreed (a law) for the Children of Israel: that whoever kills a human being, not in retaliation for another human being or for spreading corruption on earth, it is as if he has killed all mankind. And whoever saves the life of a human being, it is as if he has saved the life of all mankind. And verily Our messengers came to them with clear proofs, then many of them after that went beyond the bounds in spreading corruption on earth."

In Islamic law, responsibility is only differentiated between people who are still alive and those who are mukallaf, if someone has not reached the age of mukallaf or has not reached

<sup>19</sup>Ach. Op cit, p. 69.

<sup>20</sup>Hasan, Hamzah., (2016). Islamic Criminal Law. Makasar: Alauddin University Press, p. 110.

<sup>21</sup>Saleh, Hasan. (2008). Study of Prophetic Fiqh and Contemporary Fiqh. Jakarta: Rajawali Pers, p.425

Master of Law, UNISSULA

puberty, then the law does not impose any burden on them, Islamic law also does not impose the law on people who are in a state of compulsion or forced, nor on people who lose their minds due to unintentional causes such as taking the life of another person.

In Islamic Criminal Law, Islamic jurisprudence scholars divide criminal acts or jarimah into three types based on the severity of the sanctions or punishments received by the perpetrator, namely: (1) hudud jarimah, namely acts that violate the law whose type and threat of sanctions or punishments are determined by the text, namely had punishment (the right of Allah); (2) Qisâsh Diyat jarimah, namely acts that are threatened with sanctions or punishments of qisâsh or diyat; and (3) Ta'zir jarimah, namely giving a lesson, meaning a jarimah that is threatened with ta'zir law, namely sanctions other than had and qisâsh diyat.

The premeditated murder case in the Decision Number 333/Pid.B/2022/PN Smg case is part of a murder that was carried out in a planned and deliberate manner, so it falls into the category of Qisâsh Diyat Crime. Qisâsh Diyat is a crime that is threatened with the punishment of qisâsh or diyat. Both qisâsh and diyat are both punishments that have been determined by sharia.

Intentional murder in Islamic law is regulated in the Qur'an, Surah Al Baqarah, verses 178-179, namely:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَى  
بِالْأُنثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدَاءُ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ  
مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنْ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ ﴿١٧٩﴾

Meaning: "O you who believe! retaliation is prescribed for you in the matter of the slain; the free for the free, and the slave for the slave, and the female for the female; but if any remission is made to any one by his (aggrieved) brother, then (the demand for the bloodwit) should be made according to usage, and payment should be made to him in a good manner; this is an alleviation from your Lord and a mercy; so whoever exceeds the limit after this, he shall have a painful chastisement (178). And there is life for you in the retaliation, O men of understanding, that you may guard your-selves (against evil) (179)."

Islamic criminal law provides a criminal sanction for intentional murder in the form of qishas, which is the same punishment as the act that has been committed, therefore the act is murder, the perpetrator will also receive a criminal sanction in retaliation in the form of being killed or sentenced to death. However, in Islamic criminal law, there is forgiveness for the actions committed by the perpetrator from the victim's family. This forgiveness can reduce the punishment for the perpetrator, where the perpetrator should have received a qishas punishment, but because of the forgiveness from the victim's family, the perpetrator can be freed from the qishas punishment and replaced by paying diyat to the victim's family or guardian. The guardian is the person who has the right to demand revenge, namely the heirs of the victim. This guardian has the right to demand that the perpetrator be punished, not the ruler (government). The government's job is only to catch the murderer. Therefore, the decision is entirely left to the victim's guardian. According to Imam Malik, the person

Master of Law, UNISSULA

who has the right to demand qishas or forgive him is ashabul bi nafsih, namely the person closest to the victim. Meanwhile, according to Imam Abu Hanifah, Imam Syafi'i and Imam Ahmad, the most entitled person is all male or female heirs. Regarding the size of the diyat, it is explained in the Hadith of HR Tirmidhi and Ibn Majah, which means:

“Whoever kills (an innocent person) intentionally (and with premeditation), then his affair is with the family of the murdered person, if they wish, to demand the law of revenge for killing; and if they wish, they demand diyat, namely (paying) thirty hiqqah (three-year-old female camels entering their fourth year) and thirty jadza'ah (camels entering their fifth year) and forty khalifah (pregnant camels) and, whatever they demand from the murderer in return for peace, then it (the reward) is for them, and that is to emphasize him”.

The amount of Diyat that must be paid is 100 camels, with the following specifications: Thirty hiqqah (three-year-old female camels entering their fourth year); Thirty jadza'ah (camels entering their fifth year or already adults); Forty khalifah (pregnant camels). In the diyat for intentional murder, there is diyat mughallazah (heavy diyat), which is a heavier diyat, this diyat payment is only taken from the perpetrator's property and must be paid in cash. Payment of diyat should be requested properly, for example by not pressing the killer if he is not yet able to pay it, and the killer should also pay properly, for example by not delaying payment if he is already able to pay it. In addition, it is also not permissible to demand payment of diyat that exceeds the limit that has been determined as mentioned above.

Abu Hanifah is of the opinion that deliberate murder if forgiven by his family, is not required to pay a predetermined amount of diyat but depends on the agreement of the victim's family, with the perpetrator, and what has been agreed upon by both parties must be paid in cash from the murderer's own property. Abu Hanifah's opinion is based on the fact that the amount of diyat replacement is not clearly stated in the Quran. However, if the victim's family gives forgiveness for free, namely absolute forgiveness to the perpetrator from the victim's family without demanding any punishment, then the perpetrator of the murder can be free from the punishment of qishas or diyat.<sup>22</sup>

Based on the description above, it can be analyzed that in Islamic law, the responsibility of the perpetrators of femicide has several forms of sanctions that are distinguished based on the type of murder, namely intentional murder (qatl al-amd), semi-intentional (qatl syibh al-amd), and unintentional (qatl al-khata') which then have different implications for the legal responsibility of the perpetrators. Sanctions for perpetrators of femicide according to Islamic law consist of 3, namely Qishahs, diyat and free forgiveness.

*Qisas* (Retribution in kind), is a punishment that is in accordance with the principle of "life for life". If a deliberate murder occurs, the punishment of qishash can be imposed on the perpetrator. However, the final decision regarding qishash is not entirely in the hands of the state or legal authorities, but in the hands of the victim's family. If the victim's family demands the punishment of qishash, the perpetrator can be sentenced to death as revenge. Diyat (Compensation in the form of property). The victim's family also has the option to forgive the perpetrator and accept diyat, which is compensation or compensation in the form of property paid by the perpetrator to the victim's family. Diyat is a form of

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<sup>22</sup>Ach. Op. Cit, p. 73.

Master of Law, UNISSULA

forgiveness carried out by the victim's family as a substitute for the death penalty, and the amount is regulated in Islamic law. Free forgiveness. In Islamic law, forgiveness from the victim's family can be given free of charge, without the perpetrator having to pay diyat. If the victim's family chooses to forgive the perpetrator unconditionally, the perpetrator can be free from all sanctions, including the punishment of qishash and the obligation to pay diyat.

Islamic law provides flexibility for the victim's family in determining the sanctions received by the perpetrator of the crime of femicide. The victim's family can choose to demand qisas punishment, receive diyat, or even forgive the perpetrator completely without any compensation. However, this decision must still be made within the framework of justice and the principles that have been determined in Islamic law. The possibility of forgiveness shows the aspect of mercy and forgiveness in Islamic criminal law, where even though murder is a serious crime, the door to forgiveness and reconciliation remains open if the victim's family wishes.

### **3.3. Obstacles of the Panel of Judges in Determining Criminal Sentences for Perpetrators of Femicide in Case Number 333/Pid.B/2022/PN Smg and Its Solutions**

Judges in deciding murder cases generally cannot be separated from internal and external obstacles. Internal obstacles are in the form of compassion from the Judge himself while external obstacles come from the defendant's changing statements.<sup>23</sup> Obstacles for judges in deciding criminal penalties for perpetrators of femicide crimes according to theory. The three basic values of Gustav Radbruch can be analyzed in terms of justice and legal certainty.<sup>24</sup> According to Radbruch, justice and legal certainty are fundamental values that must be present in every legal decision. Radbruch's theory places justice as the main value in law, which aims to ensure that every individual gets the rights they deserve. Obstacles in deciding cases of femicide, such as the lack of specific recognition of femicide in national law, limits judges from fully considering justice for victims and their families. Without this recognition, judges find it difficult to impose sanctions that reflect the seriousness and context of gender-based crimes, and victims' rights are not fully recognized.

Legal certainty according to Radbruch means there is clarity and consistency in implementation of law. When femicide has not been specifically regulated in national criminal law, judges do not have definite guidelines to decide this case properly. The lack of clear rules regarding femicide can lead to inconsistencies in decisions and reduce legal certainty for all parties, including victims and the wider community. Overall, these obstacles prevent judges from achieving a balance between justice and legal certainty as idealized in Radbruch's theory, so that the decisions taken are not fully in accordance with the moral, social, and legal demands expected in femicide cases. Therefore, there is an urgent need for legal reform that includes explicit recognition of femicide in national law.

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<sup>23</sup> Beno; Gunarto; & Kusriyah, Sri. "Implementation of Fully Required Elements in the Crime of Planning Murder (Case Study in Blora State Court)". JDH: Journal of Legal Sovereignty, Vol 3 No 1 (2020), p. 115  
url:<https://media.neliti.com/media/publications/324318-implementation-of-fully-required-element-b433cc9d.pdf> accessed October 3, 2024

<sup>24</sup> Afdhali, Dino Rizka & Syahuri, Taufiqurrohman. "The Ideality of Law Enforcement Reviewed from the Perspective of the Theory of Legal Objectives". Collegium Studiosum Journal, Vol. 6 No. 2 (2023), p.556  
url:<https://ejournal.stih-awanglong.ac.id/index.php/csi/article/view/1078> accessed December 3, 2024

Master of Law, UNISSULA

In the context of femicide, the main obstacle lies in the lack of legal recognition of femicide as a specific crime, which can hinder the achievement of justice for victims. The absence of specific regulations also affects certainty law because there are no clear guidelines for judges to assess and decide gender-motivated cases, which can ultimately disrupt consistency in decisions. From the perspective of Islamic justice, the obstacles faced by judges in deciding criminal penalties for perpetrators of femicide crimes can be seen from several angles that are contrary to the principles of justice and protection of human dignity. Justice in Islam emphasizes the importance of protection for individuals, respect for women's rights, and fair treatment in every case of crime. These obstacles can be analyzed with the theory of justice in Islam as follows:

First, the absence of specific recognition of femicide in the law. The principle of justice in Islam demands that every form of crime must be recognized and handled according to its seriousness to protect the rights and dignity of the victim. The absence of recognition of femicide as a special crime leaves judges without a clear legal basis in determining the appropriate punishment, which can ultimately disrupt the principles of justice and protection for women as a vulnerable group.

Second, the limited evidence that points to gender-based motives. In Islam, decisions must be made based on strong evidence (*bayyina*) and fairness. Obstacles in accessing or presenting evidence that emphasizes gender-based motives prevent judges from understanding the roots of femicide crimes in their entirety, so that justice cannot be optimally upheld in accordance with Islamic values that emphasize the importance of protecting life and honor (*hifz an-nafs* and *hifz al-ird*).

Third, the lack of support from expert witnesses in the field of gender-based violence. In the Islamic justice system, testimony from experts or competent people is highly recommended to reach the fairest decision. Without the support of expert witnesses who understand gender-based violence, judges may have difficulty understanding the patterns and impacts of violence rooted in gender discrimination, making it difficult for victims to achieve justice in accordance with Islamic teachings that prioritize comprehensive justice.

Fourth, rigid legal interpretation without considering gender-based motives. The principle of justice in Islam requires a deep understanding of the context of the crime. Obstacles in the form of rigid legal interpretation, without considering gender background, prevent judges from understanding the difference between general crimes and femicide, so that the decisions taken have the potential to ignore women's rights and the values of social justice that are highly respected in Islam.

Overall, these obstacles interfere with the achievement of holistic justice in accordance with Islamic values that emphasize protection, substantive justice, and respect for victims' rights. This is because from an Islamic perspective, justice does not only involve the formal application of the law, but also ensuring that every individual, especially victims, gets their rights and their dignity is protected.

#### **4. Conclusion**

Based on the results of the research and discussion, it can be concluded that the future policy arrangements regarding the accountability of perpetrators of femicide in Indonesia, including: through regulations on the recognition of femicide as a special crime; regulations

Master of Law, UNISSULA

on increasing sentences for perpetrators of femicide; issuance of derivative regulations/implementing regulations; and strengthening collaboration with the TPKS Law and the PKDRT Law. The considerations of the Panel of Judges in deciding the criminal sentence for perpetrators of femicide in Case Number 333/Pid.B/2022/PN Smg include legal, philosophical, and sociological considerations, so that the decision is in accordance with applicable law and based on the facts revealed in court. The judge's considerations are in accordance with the objectives of criminalization, namely by considering aspects of retaliation, prevention, and justice. Obstacles that prevent judges from achieving a balance between justice and legal certainty in cases Case Number 333/Pid.B/2022/PN Smg as idealized in Radbruch's theory, so that the decisions taken are not fully in accordance with the moral, social, and legal demands expected in femicide cases. Likewise, in the Islamic perspective, justice is not only about the formal application of the law, but also ensuring that every individual, especially the victim, gets their rights and their dignity is protected. The solution to overcome these obstacles is the recognition of femicide in positive law in Indonesia; increasing access and quality of evidence by presenting expert sanctions in the field of gender-based violence; and developing responsive legal enforcement mechanisms.

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Master of Law, UNISSULA

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