

## Legal Analysis of Criminal Responsibility for Perpetrators of Murder

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**Abstract.** *The purpose of this study is to determine the purpose of punishment and elements of the crime and how the criminal responsibility of the perpetrator of premeditated murder is reviewed from Article 340 of the Criminal Code. By using the normative legal research method, it is concluded: 1. The purpose of punishment according to the theory taken from criminal law experts is for retribution which is an absolute demand of morality against criminals who have harmed others with punishment, then the theory of purpose which is useful for prevention and education and the combined theory, which is a combination of the theory of retribution and the theory of purpose. In the Criminal Code there are 2 (two) types of elements, namely objective elements, namely concerning actions according to circumstances and subjective elements, namely concerning the inner side of the perpetrator, intentionally (dolus) and unintentionally (culpa). 2. Legally, the responsibility for the crime of premeditated murder is contained in Article 340 of the Criminal Code, punishable by death or life imprisonment or imprisonment for a maximum of twenty years. Distinguishing between murder (Article 338 of the Criminal Code) and premeditated murder can be seen in that ordinary murder is carried out instantly, whereas premeditated murder, the act of taking another person's life is carried out after there is an intention, then arranging a plan for how the murder will be carried out in free time when it can be estimated that the perpetrator can think calmly.*

**Keywords:** *Accountability; Criminal; Perpetrator; Premeditated.*

### 1. Introduction

Indonesia is a country of law that upholds the dignity of all people and guarantees the welfare of every citizen. Likewise, legal developments also develop along with problems that often arise in society. In addition to legal developments, education,

culture and technology also experience developments, but whether or not the community is aware that these developments do not always have a positive impact, but can also have a negative impact that leads to disasters. crime. called "Crime is part of community life, life and cannot be separated from the daily activities of society". Theft, rape, fraud, assault and the like show the social dynamics that occur in society, a form of community life.<sup>1</sup>

Legal awareness in society must start from the family environment, where the family is very important, because the family includes many siblings or family members such as father, mother, uncle, aunt, grandmother, grandfather, and others. When each family member is at war, it is important to prevent other family members from committing crimes against others and their own family members. The presence of criminal law in society is intended to provide a sense of security to individuals and groups in society in carrying out daily activities. The sense of security referred to in this case is a feeling of calm, not having to worry about threats or actions that can harm individuals in society. The losses mentioned are not only related to losses like us. civilly, but also include physical and mental losses.<sup>2</sup>.

Physical in this case includes the body which is also related to a person's life, soul in this case includes emotions or spiritual state.<sup>3</sup>A person may commit a crime because of internal and external motivation. Internal motivation comes from within a person, and external motivation comes from the environment or community where the perpetrator of the crime is located. The strongest factor that drives a person to commit a crime is the environmental factor and circumstances outside of him/her. Because crime can be learned in relation to society, by learning from criminals around a person and through the process of imitating others who have previously committed similar behavior.

An example of evil behavior due to imitating the form of crime of others is the news circulating in the media about the murder of Wayan Mirna Salihin by drinking coffee mixed with cyanide, which then reappeared in the mass media about an employee who had the heart to kill his colleague by putting poison into his friend's drink. Crime in this world cannot be eliminated but can be reduced so that society is more protected and feels safer. To prevent the occurrence of crimes in the form of premeditated murder, honest, brave, disciplined and broad-minded law enforcement officers are needed, as well as law enforcement officers who uphold justice and the supremacy of law.<sup>4</sup>.

Based on the provisions of the 1945 Constitution, Article 1 paragraph (3) states

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<sup>1</sup>Mien Rukwini, *Aspects of Criminal Law and Criminology*, PT. Alumni, Bandung, 2006, page 81.

<sup>2</sup>Zainab Ompu Jainah. (2009). *Victimology*. Depok: Raja Grafindo Persada, p. 11.

<sup>3</sup>Amir Ilyas, *Principles of Criminal Law*, Yogyakarta, Mahakarya Rangkang Offset, 2012, p. 2

<sup>4</sup>Adami Chazawi. (2014). *Criminal Law Lessons Part 3: Trial and Accompaniment*. Jakarta: Rajawali Pers, p. 71

"The State of Indonesia is a state of law". This means that everything related to social, national and state life is regulated according to applicable laws. That everyone in the territory of Indonesia must be subject to the laws in force in Indonesia and no one can be immune to the law, and all actions must be based on and have consequences in accordance with the laws and regulations in the Republic of Indonesia, which aims to realize a life of society, nation and state that is orderly, prosperous and just in order to achieve the goals of the State as mandated in the opening of the 1945 Constitution of the Republic of Indonesia. This means that every citizen in the territory of Indonesia has the same position before the law. Anyone who violates the law will be subject to sanctions.<sup>5</sup>

Law is a rule that lives in society which has a regulatory and coercive nature. The law of life in society can force people to obey the rules of society and provide strict sanctions (in the form of punishment) against anyone who violates or disobeys them. The purpose of making laws is to ensure the continuity of balance in relations between members of society. Criminal law is one part of the overall law that applies in society which provides the basics and rules for determining which actions are prohibited and accompanied by threats of suffering for anyone who violates them. These regulations regulate violations and crimes against the public interest. Criminal law functions as a tool that regulates people's lives. The nature of criminal law itself can be enforced by providing criminal sanctions to those who violate the provisions of criminal law itself, through law enforcement officials such as police, prosecutors, judges and correctional institutions.

Until now, there are still many people who violate the applicable laws and regulations. The regulations violated by the community can be classified into civil, administrative, and criminal violations. The community, person, or legal entity that commits a crime or violation in the criminal field is called a criminal or criminal perpetrator. Crime is a behavior that is contrary to the values and norms that have been approved by written law.<sup>6</sup> Crimes that develop in society consist of various forms and types. In Indonesia, crimes are generally regulated in the second book of the Criminal Code (KUHP), one form of which is murder. In the Criminal Code, murder is classified as a crime against life, the regulation of which is specifically regulated in Chapter XIX of the Criminal Code which consists of 13 articles, namely Articles 338 to 350 concerning crimes against life. Furthermore, crimes against life in the Criminal Code are classified into two groups, the first based on the element of error and the second based on the object.

Premeditated murder or *moodis* is one form of crime against life regulated in Article 340 of the Criminal Code concerning premeditated murder. The crime of premeditated murder is a stand-alone crime as with the crime of ordinary murder regulated in Article 338 of the Criminal Code concerning ordinary murder. The formulation contained in the crime of premeditated murder is a repetition of the

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<sup>5</sup>Adami Chazawi. (2013). Crimes Against Body & Life. Jakarta: Rajawali Pers, p. 82

crime of murder in article 338 of the Criminal Code on ordinary murder, then added one more element, namely "with prior planning". This is different from aggravated murder as regulated in Article 339 of the Criminal Code which uses the definition of direct murder from the crime of murder. In general, the crimes contained in the Criminal Code are aimed at the legal subject "person", for example the subject of the crime in Article 340 of the Criminal Code on premeditated murder, namely "whoever". It is clear that "whoever" is meant is a person and this person is only one. In reality, crimes are not always committed by one person. Sometimes, a crime is also committed by two or more people to complete a crime. In the teachings of criminal law where a crime is committed by one or more people, each person carries out certain forms of actions, and from these behaviors a criminal act is born<sup>6</sup>.

The purpose of this research is so that the decision is taken fairly and objectively, in a trial that is open to the public, the Judge is obliged to make legal considerations that are used in sending his case in order to prevent subjectivity, where some of the considerations are aggravating and mitigating considerations.

## 2. Research Methods

Legal Research is a scientific activity, based on certain methods, systematics and thoughts, which aims to study something or several certain legal phenomena, by analyzing them. In addition, an in-depth examination of the legal factors is also carried out, to then attempt a solution to the problems that arise in the relevant phenomena.<sup>7</sup>Legal research is a process of finding legal rules and legal doctrines to answer the legal issues faced.<sup>8</sup>

## 3. Results and Discussion

### 3.1. Criminal Responsibility for Perpetrators of Murder.

In general, the elements of responsibility are divided into 2, namely:

#### 1) Responsible Ability

The ability to be responsible can be understood as a normal or healthy state and rational ability to distinguish between right and wrong, or in other words, being able to know whether an act is legitimate or not and according to one's own conscience, being able to identify the act. In this context, there are at least two factors that determine the ability to bear responsibility, namely the reason factor

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<sup>6</sup>M. Choirul Anam and Muhammad Hafiz. (2015). Handling Hate Speech in the Framework of Human Rights. Bandung: Remadja Karya, p. 10.

<sup>7</sup>Soerjono Soekanto, Introduction to Legal Research, (Jakarta: Publisher of the University of Indonesia Press, 1986), p. 43

<sup>8</sup>Salim HS, Application of Legal Theory in Thesis and Dissertation Research, Jakarta: Rajawali Pers, 2014, p. 5

and will factor. Intelligence can distinguish between permissible and forbidden acts, while the will can regulate a person's behavior with an awareness of what is permissible and what is not.

The conditions for a person to be held criminally responsible according to GA Van Hamel are as follows:<sup>9</sup>

- a. A person's soul must be such that he understands or realizes the value of his actions.
- b. People must realize that their actions are prohibited according to social norms.
- c. People must be able to determine their will regarding their actions.

## 2) There Was an Error

The mistake is that the perpetrator of the crime can be blamed because from the perspective of society, he could have done something else if he did not want to do the act. A person can be said to have committed a crime if when committing a crime, from the perspective of society he can be blamed, therefore he does an act that is detrimental to society. can understand the meaning of the action and thus the action can be avoided.

To determine whether or not there is criminal responsibility, the perpetrator must have the "unlawful nature" of the crime, which is the most important characteristic of the crime. Regarding the nature of the unlawful act, if it is related to the psychological state (soul) of the person who committed the crime, it can be "intentional" (opzet) or due to "negligence" (culpa). However, most crimes are committed intentionally, not intentionally. It can be done because it is normal, namely doing something intentionally.

Crime is a term that is familiar in social life, basically the term crime is given to a certain type of human action or behavior that can be considered as an evil act. Actions or behavior that are considered and receive reactions that are not liked by society, are actions that are not allowed to appear in the midst of community life as well as the crime of murder. as regulated in Article 338 of the Criminal Code which reads "Anyone who intentionally takes the life of another person shall be punished for murder with a maximum imprisonment of 15 years." As well as in Article 340 of the Criminal Code concerning premeditated murder which reads "Anyone who intentionally and with prior planning takes the life of another person, is threatened because of premeditated murder, with the death penalty or

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<sup>9</sup>PAF Lamintang, Op. Cit, p. 397.

life imprisonment or for a certain period, a maximum of twenty years."<sup>10</sup>

Considering, Article 338 of the Criminal Code, Law Number 8 of 1981 concerning the Criminal Procedure Code, and other relevant regulations. The defendant can be held criminally responsible for a person, namely whether the person has a criminal reason to remove or not. The Criminal Code contains in Chapter I Book III the issue of removing or strengthening the application of criminal sanctions. The Panel of Judges is of the opinion that because the defendant has been legally and convincingly proven to have committed the crime and the act can be explained by the defendant, the defendant must be punished with a punishment that is commensurate with the error and fulfills the meaning of justice by considering interests, both in terms of prevention and the balance between protecting the community and protecting the interests of the defendant.

The basis of criminal responsibility is error, where the error can be intentional (opzet) or negligent (culpa). This shows that the basis for being held accountable for a person's actions is placed in the concept or basis of thought on whether or not the elements of the crime are proven. If the elements of the crime are proven, then the error is also proven and automatically punished, so that criminal responsibility is attached to the elements of the crime.

Based on the analysis of the theory of criminal responsibility, Criminal Responsibility for Perpetrators of Murder, the element of murder is to eliminate, this element is also covered by intent, meaning the perpetrator must intentionally want to, carry out the act of eliminating, and he must also know that his actions are aimed at eliminating another person's life. The Panel of Judges is of the opinion that because the defendant has been proven legally and convincingly to have committed the crime and the act can be explained by the defendant.

In accordance with the explanation above, both in theory and legal facts in the trial, the defendant MOH. NAJIB bin (Allm) WIGIYANTO must be responsible for the actions he has committed and the Panel of Judges stated that the Defendant was proven legally and convincingly guilty of committing the crime of "Murder" and the Panel of Judges sentenced the Defendant to 10 (ten) years in prison, determined that the period of detention that the Defendant had served was reduced in full from the length of the sentence imposed, and charged the defendant with court costs of Rp. 2,000.00 (two thousand rupiah).

### **3.2. Judge's Considerations in Handing Down Verdicts Against Murder Perpetrators.**

The judge's consideration is a basic judicial thought structure that aims to decide

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<sup>10</sup>Budi Setiawan, Anis Mashdurohaturun, Munsyarif Abdul Chalim, Investigation of the Perpetrators of Aggravated Murder in the Central Java Regional Police, Khaira Ummah Law Journal, Vol. 12. No. 4 December 2017, p. 2

a case based on evidence and facts found during the trial. Judicial review is regulated in the Criminal Code based on Article 197 paragraph (1) letter (d) of the Criminal Procedure Code: "Judicial review is a brief summary of the facts, details and tools. The evidence obtained during the examination in court proves that the defendant committed a crime.

A qualified judge's decision is a decision based on the judge's considerations in accordance with the facts recorded in the trial, the law and the judge's beliefs without interference from any party so that he can be held accountable professionally first. court. public. Merto kusumo said, a judge's decision is a statement by a judge who has the status of an official who has the authority based on the law in the form of a statement in the trial with the aim of ending the problem between the parties.

The theory of legal certainty is one of the objectives of law and legal certainty can be said to be part of the effort to achieve justice. Legal security itself has a real form, namely enforcement and respect for the law for an act regardless of who does it. Thanks to legal certainty, everyone can predict what they will experience if they take certain legal actions

Legal certainty is also needed to realize the principle of equality before the law without discrimination. From the word certainty has a meaning that is close to the principle of truth. This means, the word certain in legal terms is something that can be segmented firmly in formal law. With legal certainty, it will guarantee that someone can act in accordance with applicable laws and regulations and vice versa. Without legal certainty, someone cannot have standard regulations in carrying out a behavior. In line with this goal, Gustav Radbruch also explained that legal certainty is one of the goals of the law itself.

Based on Decision 62/ Pid.B/ 2023/ PN Smg, Declares that the Defendant Moch. Nazib Bin (Alm) Wigiyanto has been proven legally and convincingly guilty of committing the crime of "Murder", Considering, Article 338 of the Criminal Code, Law Number 8 of 1981 concerning the Criminal Procedure Code, and other relevant regulations.

The following are some considerations from the Panel of Judges:

1) Based on the Element of Whom, this element refers to the legal subject, namely anyone or every person who has rights and obligations and is capable and able to be responsible for his actions. Based on the facts revealed in the examination at the trial from the statements of witnesses and the defendant's confession that the perpetrator of this crime is the defendant MOH. NAJIB bin (Allm) WIGIYANTO with the identity as described above and during the examination process at the trial the defendant's condition was physically and mentally healthy so that the perpetrator of this crime can be responsible for his actions. Thus this element is proven and fulfilled.

2) That in the Explanatory Memorandum (MvT Ned. WvS Year 1886) which gives the meaning to the Criminal Code, that intentionally (opzet) means de (bewuste) richting van den wil op een bepaald misdrijf. (meaning: a conscious will aimed at committing a certain crime). According to this explanation, "intentionally" (opzet) is the same as willens en wetens (willed and known).

3) Considering, that according to Zainal, there are 3 forms of intent, as follows:<sup>11</sup>

- a. intentionally as intended (opzet als oogmerk);
- b. intentionally with awareness of certainty (opzet met bewustheid van zekerheid of noodzakelijkheid), and;
- c. deliberately with awareness of the possibilities (opzet met waarsshijnlijkheidsbewustzijn).

4) That the element of murder is to eliminate, this element is also covered by intent, meaning the perpetrator must intentionally want to do the act of eliminating, and he must also know that his action is aimed at eliminating another person's life. In carrying out the act of eliminating another person's life, there are 3 conditions that must be met, namely:

- a. The existence of a form of action;
- b. There is a death of another person;
- c. There is a causal relationship (casual verband) between actions and the result of the death of another person.

1) Considering, that thus the element of intentionally taking another person's life has been fulfilled and proven;

2) Considering that during the trial no legal justification or excuse was found that could eliminate the criminal charges against the Defendant, then with the Public Prosecutor's charges proven, the Defendant must be declared guilty and for his mistake the Defendant must be punished with a just and appropriate punishment;

3) Considering, that because the Defendant will be punished, the Defendant is also burdened with paying court costs;

4) Considering that during the examination of the case the Defendant was arrested and detained, the period of arrest and detention he has undergone must be deducted in full from the sentence imposed;

5) Considering, that in order to prevent the Defendant from avoiding the implementation of this decision, the detention imposed on him must be

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<sup>11</sup>Zainal Abidin, Farid, HA I, Criminal Law I, Jakarta. Sinar Grafika, 2008.

maintained;

6) Considering, that the status of the evidence in this case will be determined as per the order below;

7) Considering, that before the sentence is imposed, the Panel of Judges deems it necessary to consider both aggravating and non-aggravating factors.

The aggravating factors for the defendant are as follows:

1) The Defendant's actions have taken the life of another person, namely the victim RISAL ANGGRIAWAN alias KACANG.

2) The defendant has been convicted of assault based on Semarang District Court Decision Number: 776/Pid.B/2018/PN.Smg dated January 9, 2019 and sentenced to 1 (one) year in prison.

Matters that the panel of judges considered mitigating:

1) The defendant was polite during the trial;

2) The defendant was frank in court, and felt guilty and regretted his actions.

The fulfillment of the concept of the Theory of Legal Certainty can be ensured based on the fulfillment of all elements of intentionally taking the life of another person has been fulfilled and proven, considering, Article 338 of the Criminal Code, Law Number 8 of 1981 concerning the Criminal Procedure Code, and other regulations related to this matter, the Panel of Judges obtained the conviction, then the Defendant must be declared to have been proven legally and convincingly to have committed the crime of Murder.

#### **4. Conclusion**

Both in theory and legal facts in the trial that the defendant MOH. NAJIB bin (Allm) WIGIYANTO must be responsible for the actions he has committed and the Panel of Judges stated that the Defendant was proven legally and convincingly guilty of committing the crime of "Murder" and the Panel of Judges sentenced the Defendant to 10 (ten) years in prison, determined that the period of detention that the Defendant had served was reduced in full from the length of the sentence imposed, and charged the defendant with court costs of Rp. 2,000.00 (two thousand rupiah). The fulfillment of the concept of the Theory of Legal Certainty can be ensured based on the fulfillment of all elements of intentionally taking the life of another person has been fulfilled and proven, considering, Article 338 of the Criminal Code, Law Number 8 of 1981 concerning the Criminal Procedure Code, and other regulations related to this matter, the Panel of Judges obtained the conviction, then the Defendant must be declared to have been proven legally and convincingly to have committed the crime of Murder.

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