

THE PREMEDITATED MURDER IN THE FAMILY: RECONSTRUCTION OF CRIMINAL WEIGHTING**Kartini Malarangan¹, Nurhayati², Vivi Nur Qalbi³**¹Tadulako UniversityJL. Soekarno Hatta Km. 9, Tondo, Palu, Sulawesi Tengah, 94148, Indonesia
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Abstract

The Premeditated murder is a crime that is considered as a serious crime. This study discusses how to apply criminal sanctions against perpetrators of premeditated murder by a husband against his wife? and how is the reconceptualization of the crime of premeditated murder in the family? This study uses a normative legal research method. The results showed the conclusion that based on the description of the sanctions and the defendant which was investigated by the author, the panel of judges based on the facts at trial judged that the defendant could be held accountable for his actions with the consideration that when the defendant committed his actions the defendant was aware and knew the consequences of his actions. So that the panel of judges imposed a life sentence for a crime intentionally and the plan in advance to take the lives of others and the persecution was appropriate. Reconceptualization of the weighting of the crime of murder should also be carried out in the context of reforming norms, namely by considering the victims of the murder, as in Japan, which gives weights based on the victim, if the victim of homicide and premeditated murder is a family lineage in the hierarchy and above.

Keywords: *Criminal; Penalty; Premeditated Murder; Reconstruction***INTRODUCTION**

Murder is an act to eliminate someone's life in a way that violates the law or not against the law. Of course, in killing someone's life or killing someone must be held accountable for their actions,

this is in the form of punishment which is usually called "being punished". So, someone who is convicted means that he carries out a punishment to account for his actions which are considered unfavorable and endanger the public interest. There are

also acts that result in destroying other people's property wholly or partially and using narcotics are all criminal acts that can be punished.¹

Premeditated murder in the Criminal Code regulated in article 340 is "anyone who intentionally and with premeditated plans takes the life of another person, is threatened with murder with a plan (moord), with a death penalty or imprisonment for life or for a certain time, a maximum of twenty years. year". The premeditated murder was intended by the legislators as a special aggravating form of murder, the formulation of which could be in the form of "premeditated murder which is punishable by premeditated murder". Formulating article 340 of the Criminal Code in this way, the legislators deliberately did so as an independent crime.

This premeditated murder has two elements, namely a subjective element and an objective element. Subjective elements, namely: intentionally, with a plan in advance. The objective element is the action (taking one's life), the object (the life of another). Premeditated murder is an ordinary murder like Article 338 of the Criminal Code, but is carried out with a pre-

meditated plan. Planning in advance (voorbedachte rade) is the same as between the intention to kill and its execution, there is still time for the maker to calmly think about, for example, how the murder will be carried out. The difference between murder and premeditated murder is that if the execution of the murder as referred to in Article 338 is carried out immediately when the intention arises, while the premeditated murder is suspended after the intention arises, in order to arrange the plan, how the murder will be carried out. The time gap between the intention to kill and the execution of the murder is still so free, so that the perpetrator can still think whether the killing was continued or canceled, or also planned how he carried out the murder.² The crime of murder, in the Criminal Code, is a crime against life. A crime against life (misdrijven tegen het leven) is an attack on the life of another person.³

Indonesia is a country based on law (rechtstaat), not based on mere power (machstaat). The explanation of Indonesia as a state of law is contained in Article 1 paragraph (3) of the 1945 Constitution

¹ R. Abdoel Djamali, S.H., 2013, *Pengantar Hukum Indonesia edisi revisi*, Jakarta : PT Raja Grafindo persada, hlm 172.

² R. Soesilo. *Kitab Undang-Undang Hukum Pidana (KUHP)*. Bogor: Politelia. 1995. Hlm 241

³ Adam Chazawi, *kejahatan terhadap nyawa*, Op.cit, hlm. 55

which emphasizes the concept of a state of law by stating that: "The State of Indonesia is a state of law". In the life of every living being, there must be a life cycle that begins with the processes of life starting from the process of conception, birth, life in the world, and ends with death. In the process, death has a great mystery that has not been discovered by science. In general, death is something that is feared by the wider community. However, this is not the case in medical and health circles. In the context of modern health, death is not always something that comes suddenly. Death can be legalized into something definite and the date of its occurrence can be determined.⁴ Meanwhile, murder which is intended to kill oneself in the law does not regulate the punishment because the perpetrator is the victim himself, so that the party who is required to be tried does not exist or in other words there is no perpetrator who is held accountable. People who do this act need to be questioned about their mental health. People who commit suicide are not punishable acts because people who commit suicide are considered to be mentally ill and cannot

be held accountable.⁵ In some cases there have been many homicides, both intentional and unintentional. One of the premeditated murder cases that occurred in Central Sulawesi (Kota Palu) on January 7, 2019. The murder took place very sadistically, the victim was helpless because the defendant stabbed a machete into the victim's right waist 1 time until the machete was stuck in the victim's body and the victim fell covered in blood and then the defendant pulled out the machete. This murder finally ended up in the Palu district court and was decided with a verdict number 133/Pid.B/2019/PN.Pal

The defendant has been proven legally and convincingly guilty of committing the crime of "premeditated murder and assault" as stated in the first primary and second cumulative indictments of the public prosecutor. The defendant was sentenced to life imprisonment in the trial Wednesday, 19 June 2019.⁶

Issue

1. How is the application of the criminal sanctions imposed by the judge against the perpetrators of premeditated murder by the husband against

⁴ Rahmat. (2022). Analisis Yuridis Euthanasia Di Tinjau Dari Hukum Pidana. *Tadulako Master Law Journal*, Vol 6 Issue 1, Februari 2022, 6(1), 96–107.

⁵ Eko Hariyanto, *Memahami Pembunuhan*, Jakarta: Kompas, 2014, hlm. 4-5

⁶ *Putusan Nomor 133/Pid.B/2019/PN.Pal*

the wife. Study of Decision Number 133/Pid.B/2019/PN.Pal?

2. How is the Reconstruction Analysis of the Crime of Murder in the Family?

DISCUSSION

Application of Criminal Sanctions Imposed by Judges Against Perpetrators of Premeditated Murder by Husbands Against Wives

In the verdict of this case, the defendant was 32 years old, and was charged with committing a crime under Article 340 of the Criminal Code and Article 351 paragraph (1) of the Criminal Code. During the process starting from the investigation, prosecution, and at the trial level, the defendant is detained in the state detention house.

On this charge, the panel of judges at the Palu District Court examined and tried the criminal case No 133/Pid.B/2019/PN.Pal.

In the decision of this case, after taking into account the statements of the witnesses and the testimony of the defendant at the trial as well as the evidence in this case which is in accordance with one another, the following facts were obtained:

Case Position

That he is the defendant STENLY YOHANES ADRIAN ALS STEN ALS STENLY on Monday, January 7, 2019 at Jalan Bian Kaca Kel. Tipo District. Ulu Jadi Palu City, precisely at the home of the DESI YANE victim's parents, or at least in a place that is still within the jurisdiction of the Palu District Court, which is authorized to examine and hear the case, commits a criminal act intentionally and premeditated to take the life of another person against the victim. DESI YANE.

Bahwa ia terdakwa STENLY YOHANES ADRIAN Als STEN Als STENLY pada hari Senin tanggal 07 Januari 2019 bertempat di Jalan Bian Piala Kel. Tipo Kec. Ulu Jadi Kota Palu tepatnya dirumah orang tua korban DESI YANE, atau setidaknya pada suatu tempat yang masih dalam daerah hukum Pengadilan Negeri Palu, yang berwenang memeriksa dan mengadili perkaranya, melakukan tindak pidana penganiayaan yang menyebabkan luka terhadap korban HERMAN NEFRITS MARIAHI.

The defendant's actions in carrying out murder and mistreatment according to the witnesses were carried out in a way that the defendant committed the murder, namely coming to the witness's house and

directly stabbing the victim DESIYANE in the right waist 1 time using a machete then the defendant chased the witness HERMAN NEFRITS MARIA and swung his machete towards the body of witness HERMAN and hit the back 1 time.

The defendant was brought before the trial based on the indictment which was cumulative, first, primary and second. Therefore, the judge in adjudicating this case first considers the first primary and second cumulative charges, namely committing an act as regulated and punishable by a criminal offense in Article 340 of the Criminal Code and 351 paragraph (1) of the Criminal Code whose elements are as follows:

1. Whoever Element
2. Purposely
3. Premeditated Taking the lives of others
4. Elements of doing persecution

Prosecutor's Claim

After hearing the reading of the criminal charges submitted by the Public Prosecutor, which are basically as follows:

1. To declare that the defendant STENLY YOHANES ADRIAN Als STEN Als STENLY is legally and convincingly proven guilty of committing a

criminal act as stipulated and is punishable by a criminal offense in Article 340 of the Criminal Code and Article 351 paragraph (1) of the Criminal Code as stated in the first Cumulative and Second Cumulative Indictment of the Public Prosecutor;

2. Sentencing the defendant STENLY YOHANES ADRIAN Als STEN Als STENLY with a life sentence and with an order that the defendant remains detained in the State Detention Center.

3. State the evidence in the form of:

- 1 (one) machete scabbard made of brown wood wrapped with duct tape with a length of approximately 35 cm
- 1 (one) black short-sleeved shirt that says FREE-ACT
- 1 (one) pair of jeans blue color
- 1 (one) sheet of orange bra
- 1 (one) piece of red and white short-sleeved shirt that has been torn off is confiscated for destruction
- Stipulates that the defendant pays court fees of IDR 2,000 (two thousand rupiah)

Verdict

After being examined, the judge judged that the elements in Article 340 of

the Criminal Code and 351 paragraph (1) of the Criminal Code have been fulfilled, then there is sufficient valid evidence according to the judge and convinces the judge that the defendant is guilty of committing the acts as charged to him in the first cumulative indictment. primary and second. Therefore, the judge stated that the defendant must be found guilty and sentenced to the following verdict:

JUDGE

1. To declare that the defendant STENLY YOHANES ADRIAN Als STEN Als STENLY has been legally and convincingly proven guilty of committing the crime of “premeditated murder and molestation” as stated in the first primary and second cumulative charges of the Public Prosecutor.
2. Sentencing the defendant in the form of imprisonment for life.
3. To stipulate that the accused remains in custody.
4. Determine the evidence in the form of
 - 1 (one) machete scabbard made of brown wood wrapped with duct tape with a length of approximately 35 cm
 - 1 (one) black short-sleeved shirt that says FREE-ACT- 1(Satu) lembar celana jeans ¾ warna biru

- 1(satu) lembar BH warna orange
 - 1(satu) lembar baju kaos lengan pendek warna merah putih yang sudah robek dirampas dan dimusnahkan
5. Sentencing the defendant to pay court fees of Rp. 2,000.00 (two thousand rupiah).

The judge's decision is the "crown" as well as the "peak" reflection of the values of justice; ultimate truth; human rights; mastery of law or facts in an established, qualified and factual manner, as well as a reflection of the ethics, mentality, and morality of the judge concerned.⁷ Based on the formulation of Article 1 paragraph (11) of the Criminal Procedure Code, there are three types of decisions, namely sentencing decisions, acquittal decisions and acquittal decisions⁸ Ibid, p. 137 7 all lawsuits. Of course, the panel of judges has criteria to be able to decide one of the three types of decisions.⁸

The judge's consideration in determining the premeditated elements in the murder charge

⁷ Lilik Mulyadi, 2010, Seraut Wajah Putusan Hakim dalam Hukum Acara Pidana Indonesia, Bandung: PT Citra Aditya Bakti, hlm.129

⁸ Tolib Effendi, 2014, Dasar Dasar Hukum Acara Pidana (Perkembangan dan Pembaharuannya Di Indonesia), Malang: Setara Press, hlm. 182

The panel of judges at the Palu District Court who examined and decided considered the following elements:

Ad.1. Element "Whoever"

What is meant by "anyone" is anyone who is seen as a legal subject and is considered capable of being legally responsible for his actions, in this case are the provisions of the article contained in the Criminal Code and other legislation.⁹

In this case the element of whoever is the person who is accused of having committed a criminal act, namely the defendant STENLY ADRIAN Als STEN Als STENLY This fact is justified by the defendant who in the examination at trial always explains well and smoothly and the defendant both when committing a crime, conducting an investigation or at the time of the trial, he is in good physical and mental health and is not mentally disturbed and there is no justification or excuse for the actions committed by the defendant, therefore all actions or actions carried out by the defendant can be accounted for to him. This shows that there is no disabled soul in his body and is not disturbed by illness, thus the defendant as a legal subject can be held accountable for

his actions, that thus the element of "whoever" has been fulfilled legally and convincingly.

Ad.2. The "Intentionally" Element

That what is meant by intention is that the defendant knowingly and knowingly the consequences of his actions will cause legal problems for him.¹⁰

That if it is related to the facts revealed at the trial in the form of statements from witnesses, letters, instructions and statements of the defendant, it is obtained that the defendant consciously and emotionally intentionally stabbed/stabbed the victim by using a machete towards the right waist of the victim DESIYANE as much as 1 (one) time until the machete was stuck in the victim's body and the victim fell down covered in blood and eventually died.

that thus the element of "Intentionally" has been fulfilled legally and convincingly

Ad.3. Elements of "By premeditated Taking the lives of others"

That in order to be accepted regarding the existence of "pre-planning" or "voorbedachte raad", a short or long period of time is required for calm considera-

⁹ Adami Chazawi, 2011, *Pelajaran Hukum Pidana Bagian 1*, P.T Raja Grafindo Persada, Jakarta, hlm 79

¹⁰ Marpaung, 2005, *Unsur-Unsur Perbuatan Yang Dapat Dihukum (Delik)*, Sinar Grafika, Jakarta

tion and calm reconsideration. The perpetrator must be able to convince himself of the meaning and consequences of his actions in an atmosphere that allows him to rethink his plans.¹¹

That according to the facts at trial, the defendant and the victim DESIYANE, who are husband and wife, and on Monday, January 7, 2019 at approximately 20.30 WIT, were located on Jalan Bian Kaca Kel. Tipo District. Ulu Jadi Palu City, precisely at the house of DESIYANE's parents' parents, the defendant came to the victim's parents' house and stabbed the victim DESIYANE in the right waist 1 (one) time using a machete then the defendant chased the witness HERMAN NEFRITS MARIA and swung his machete towards the body of witness HERMAN and hit the back 1 (one) time;

Considering that the defendant's actions were caused by jealousy of the victim witness HERMAN NEFRITS MARIAHI who was the victim of DESIYANE who was suspected by the defendant of having an affair with the defendant's wife (the victim);

Considering, that from the statements of the witnesses and connected to

the statements of the defendant, it can be seen that the way the defendant carried out his actions was that the defendant got out of the house using a Grand Max car to the house of the victim's parents DESIYANE, arrived at the victim's house the defendant sneaked in with the aim of seeing or monitoring what the victim and victim witness were doing, HERMAN NEFRITS MARIAHI, who was a man who the defendant suspected was the victim's affair, when he was next to the victim's house, the defendant climbed up the ladder on the back wall of the house then peeked through the house boards and saw the victim was sitting with his family members, namely victim witness HERMAN, witness JERLIN MASIA and the victim's parents where the defendant heard the victim's conversation that was conveyed to her parents, namely "I have met Stenli and Stenli don't want to ask for a divorce and Stenli whines asking to come back with me "then my parents orban said "there is an SMS on Stenli on the cellphone, there is no need to take care of divorce because there is no marriage certificate from the government so you can make changes to your own data" and then say again "then you don't have to take care of Stenli anymore" then the victim said to

¹¹ P.A.F. Lamintang, 2007, *Dasar-Dasar Hukum Pidana Indonesia*, Sinar Baru, Bandung, hal 204

his parents that he would leaving the city of Palu, hearing the conversation the defendant became angry and emotional and the defendant went to the Grand Max car which was parked not far from the victim's house to take a machete which the defendant had tucked under the car seat. The defendant then returned to the victim's parents' house by sneaking past the side of the house to the back of the victim's house and saw the victim who was in a standing position telling a story, then the defendant who was already in a state of anger and emotion immediately approached the victim and stabbed a machete towards the victim's right waist. as much as 1 (one) time until the machete was stuck in the victim's body and the victim fell down covered in blood then the defendant pulled the machete and chased the victim witness HERMAN NEFRITS MARIAHI who the defendant suspected of having an affair with the victim DESI YANE then the defendant swung his machete at the victim witness HERMAN NEFRITS MARIAHI and hit the victim. the back of the back 1 (one) time then the defendant ran away from the scene towards the river until it penetrated the beach then swam towards Buluri and

asked the residents to surrender themselves to the police station.

Considering, that based on letter evidence in the form of Visum Et Repertum Number: 353/35.01/TU & Hukm/RSU/2019 dated January 14, 2019 made by the ANUTAPURA General Hospital, PALU based on a request letter for Visum Et Repertum from the Palu Police on January 8, 2019 and later signed by dr. Siti Maslia who explained the results of the examination of a woman named DESIYANE.

Considering, that thus the element of “By premeditated taking the lives of others” has been fulfilled.

Considering, that because all elements of Article 340 of the Criminal Code have been fulfilled, the Defendant must be declared to have been legally and convincingly proven to have committed a criminal act as charged in the First Indictment of the Public Prosecutor.

Considering, that because the primary charge has been proven, the subsidiary indictment does not need to be considered anymore

Considering, that because the Defendant is being held and the detention of the Defendant is based on sufficient

grounds, it is necessary to determine that the Defendant remains in custody.

CLOSING

Conclusion

- 1) Application of criminal sanctions imposed by judges on perpetrators of premeditated murder in No: 133/Pid.B/2019/PN.Pal, namely the application of article 340 of the Criminal Code and Article 351 of the Criminal Code with the imposition of life imprisonment.
- 2) The judge's consideration before making the decision in the decision Number 133/Pid.B/2019/PN.Pal in the author's opinion is in accordance with the applicable legal rules as described by the previous author, namely based on at least two valid pieces of evidence, where in the case studied by the author, the evidence used by the judge was the testimony of the witness and the testimony of the defendant. Then then consider criminal responsibility, in this case the Panel of Judges

based on the facts that emerged at the trial judged that the defendant could be accounted for for the actions committed with the consideration that at the time he committed his actions the defendant was aware of the consequences, the perpetrator in carrying out his actions was in a state of healthy and capable to consider his actions. There is an element of being against the law, and there is no reason for the abolition of the crime

Suggestion

- 1) The author suggests that the application of criminal sanctions imposed by the judge on the decision being tried must really pay attention to the material elements of the decision.
- 2) So that law enforcers (judges) in deciding a case provide normative and non-normative considerations and pay attention to the elements of the criminal imposed on the defendant.

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