



Juridical review of decision number 547/pid.b/2020/pn. Jap About murder with the element of intent

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ABSTRACT

The development of technology today encourages humans to follow the mindset and lifestyle to keep up with the times. Murder is one of the impacts of this development, in the Criminal Code murder is classified as a crime against life which is specifically regulated in Chapter XIX which consists of 13 articles. One of the cases is Decision Number 547/Pid.B/2020/PN. Jap in which the perpetrator committed murder intentionally. The problem formulation of this research is how the legal regulation of the crime of Murder with an element of intent in positive law in Indonesia and how the judge's consideration in decision no 547/Pid.B/2020/PN. Jap. About murder with the element of intent. The research method used in this research is normative juridical, data collection techniques are carried out by literature, the type of data used is secondary data, and the data analysis used in this research is descriptive qualitative. In Indonesian positive law, there are various considerations that are considered in assessing the crime of murder, such as the circumstances of the perpetrator, the motive, and the circumstances of the victim.

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1. Introduction

Technological sophistication is increasingly driving the development of human life (Jannah et al., 2023). Human life patterns and mindsets are increasingly encouraged to change quickly to keep up with the times. One of the impacts of this development is the development of crimes committed, both in terms of quantity and quality of crime (Laela & Adu, 2021). When looking at these developments, crime seems to be a common thing. People who commit crimes such as thieves, murderers, and others are social deviants because their actions harm others. The perpetrators of crime seem to show a decline and regression in morality so that the perpetrators seem not to be afraid of the punitive sanctions imposed (Dalia, 2022). The essence of this decline is that honesty, empathy and dedication in carrying out the law are becoming increasingly rare and expensive. Based on the provisions of the 1945 Constitution Article 1 paragraph (3) reads "The State of Indonesia is a state of law". Indonesia has a system of rules of

law that applies, namely a very broad and complex system of rules, which consists of legal elements, between one legal element and another are interconnected, mutually influencing and complementing each other. This means that everything related to the life of society, nation and state is regulated according to applicable law (Arrizal, 2020).

That everyone who is 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 aim to realize an orderly, prosperous and equitable life of the community, nation and State in order to achieve the State's goals as mandated in the preamble of the 1945 Constitution of the Republic of Indonesia (Marentek, 2019).

Criminal law is one part of the overall law that applies in society which organizes the basics and rules to determine which actions are prohibited accompanied by threats in the form of suffering for those who violate it (Hartono & Aprinisa, 2021). The rules regulate offenses 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 imposing criminal sanctions on those who violate the provisions of the criminal law itself, through law enforcement officials such as the Police, Prosecutors, Judges, and Correctional Institutions (Baharudin & Muchlisin, 2023).

Criminal Code (KUHP), one of the forms is murder. In the Criminal Code, murder is classified as a crime against life which is specifically regulated in Chapter XIX which consists of 13 articles, namely Articles 338 to 350 on crimes against life. Furthermore, crimes against life in the Criminal Code are classified into two groups, the first based on the element of guilt and the second based on the object (Duha, 2022).

One of the cases of intentional homicide contained in decision number 547/Pid.B/2020/PN. Jap, a defendant YUSAK FIRTAR TIRIS committed the crime of murder with intent. On Tuesday, February 25, 2020 at approximately 18.30 Wit at the South Sorong Student Dormitory Perumnas III Waena, Heram District, Jayapura City, the defendant YUSAK FIRTAR TIRIS and the victim NOVALITA KADIWARU (deceased) Based on the background description above, the problems in this study are as follows, namely How is the legal regulation of the crime of murder with an element of intent based on Articles 338 - 350 of the KHUP, what are the factors that cause the perpetrator to commit the crime of murder (Study of decision number 547/Pid. B/2020/PN. Jap) and how is the judge's consideration of the perpetrator of the crime of murder with the element of intent (Study of decision number 547/Pid.B/2020/PN. Jap) Jap. More specific regulations on punishment for perpetrators who commit the crime of Murder.

2. Method

This research will examine the main issues in accordance with the scope and identification of problems as mentioned above through a normative juridical approach (Simamora et al., 2020). Namely research conducted based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. The nature of the research conducted is descriptive analysis. This descriptive analysis research is a study that describes, examines, explains, and analyzes a legal regulation. The source of data in this study is to use secondary data, namely data or information obtained from the review of similar writings that have been done before, where as secondary data materials are mainly law books including theses, journals, theses, and dissertations that are in accordance with the research to be discussed, which include sources of legal material in one study divided into three categories: primary legal sources, secondary legal sources, and tertiary legal sources of data collection through literature studies, namely books, court decisions, journals (Eddy & Sahari, 2023).

Documents and other theoretical sources as the basis for solving the main problems in this study. The whole of the data is then used to obtain a theoretical basis in the form of positive legal material, the technique of collecting legal material in this study uses library research, where in using this technique the author collects data through literature studies, namely books,

court decisions, journals, documents and other theoretical sources as the basis for solving the main problems in this study. The whole of the data is then used to obtain a theoretical basis in the form of positive legal material. Data analysis is a breakdown of data into smaller components based on certain elements and structures. The data obtained is then analyzed qualitatively. Qualitatively analyzed material will be presented in the form of a description of the material selected and processed to reveal it is expected to provide a solution to the main problem in this study (Purwanto, 2022).

3. Analysis and Results

3.1. Legal Regulation on the Crime of Intentional Homicide in Indonesia

The crime of murder refers to the act of a person who intentionally takes the life of another person illegally (Sinaga, 2024). It is one of the most serious crimes in criminal law in almost all jurisdictions. Murder can be classified into various degrees, depending on the intent, circumstances, and other factors involved (Manuntung & Kep, 2019). For example, murder could be premeditated murder, second-degree murder, or manslaughter.

The first homicide is one that is intentionally and knowingly planned (Selly et al., 2023). Second murder is usually not premeditated, but is still committed intentionally and without probable cause, or occurs in situations where the perpetrator knows that his or her actions may result in the death of another person. Manslaughter usually involves actions that cause death without clear murderous intent, such as careless actions or negligence that result in someone's death (Faustina & Martoyo, 2022).

Legal systems in different countries have different definitions, penalties, and judicial procedures for murder cases. However, in general, murder is one of the most serious criminal offenses and is subject to severe penalties, including life imprisonment or the death penalty in some jurisdictions (Pratama, 2019). Voluntary manslaughter in Indonesia, as in other countries, is regulated by criminal law. Indonesian criminal law recognizes several types of intentional homicide, including murder as regulated in Articles 338 to 351 of the Criminal Code (KUHP).

Premeditated Murder (Article 340 of the Criminal Code), this is a murder that is carefully planned in advance. The perpetrator deliberately plans and carries out an action to kill another person (Marentek, 2019). Unplanned Murder (Article 338 of the Criminal Code), Unplanned murder occurs when the perpetrator does not plan the act beforehand, but then intentionally commits an act that results in the death of another person, Murder under Compulsion (Article 349 of the Criminal Code), This occurs when a person kills another person to protect themselves or others from a life-threatening threat. Murder by Police Officers (Article 351 of the Criminal Code), This is murder committed by police officers in the performance of their duties, under certain conditions stipulated in the law. Voluntary manslaughter in Indonesia is subject to severe criminal sanctions, including imprisonment or even the death penalty, depending on various factors such as the motive, circumstances, and intent of the perpetrator. The Indonesian legal system seeks to uphold justice and ensure that perpetrators of criminal offenses are punished in accordance with applicable legal provisions (Akbar et al., 2023).

In decision No. 547/Pid.B/2020/PN. Jap, which is being researched now, it can be concluded that there are elements of Murder without a Plan (Article 338 of the Criminal Code) or can also be said to be murder with an element of intent. Article 338 of the Criminal Code (Kitab Undang-Undang Hukum Pidana) regulates murder without a plan which reads "Whoever intentionally kills another person, will be punished for murder, unless the murder is committed under duress or there is a legal elimination of the life of another person.

Thus, Article 338 of the Criminal Code contains penalties for perpetrators of murder committed intentionally. However, there are exceptions if the murder is committed under duress or there is a legitimate elimination of the life of another person. In this case, the elimination of life is done in urgent circumstances to protect oneself or others, or perhaps in the course of legitimate law

enforcement duties. Involuntary manslaughter can be a serious concern in the criminal justice system as it involves the life of a person. Such cases often require careful investigation and proof to determine whether the killing occurred under duress or for other legitimate reasons (Sutoyo & Hasbi, 2024).

3.2. Judges' Considerations in Decision No. 547/Pid.B/2020/PN. Jap

It should be noted that in Indonesia the principle of freedom of judges is fully guaranteed in Law Number 48 of 2009 concerning Judicial Power, hereinafter referred to as the Judicial Power Law, where it is formulated that judicial power is an independent state power to administer justice in order to uphold law and justice. The principle of freedom of judges also includes freedom for judges in formulating legal considerations known as legal reasoning carried out by a judge in deciding a case. Judges are state officials who exercise judicial power as regulated in law. Judges are as referred to in Article 1 number 5, number 6, number 7 and number 9 of the Judicial Power Law.

Article 1 point 5, reads: Judges are judges of the Supreme Court and judges of the judicial bodies under it within the general judicial system, religious judicial system, military judicial system, state administrative judicial system, and judges of special courts within those judicial systems. Article 1 point 6 reads: Supreme Court Judges are judges of the Supreme Court. Article 1 point 7 reads: Constitutional Judges are judges of the Constitutional Court. Article 1 point 9 reads: Ad hoc judges are temporary judges who have expertise and experience in certain fields to examine, hear and decide on a case whose appointment is regulated by law.

Based on the Judicial Power Law Article 5 paragraph (1), judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society. This means that if there is a legal vacuum or the rules are unclear, then to overcome it a judge must have the ability and activeness to find the law (*recht vinding*). What is meant by *recht vinding* is the process of law formation by judges / other law enforcement officials in applying general regulations to concrete legal events and the results of legal discovery become the basis for making decisions (Haq et al., 2024). The judge's decision in making a decision in a court session can consider several aspects: The guilt of the perpetrator of the criminal offense; Motive and purpose of committing a criminal offense; Method of committing a criminal offense; Mental attitude of the perpetrator of the criminal offense; Life history and socio-economics.

Based on the verdict of murder case No. 547/Pid.B/2020/PN. Jap. That the perpetrator "YUSAK FIRTAR TIRIS" and the victim "NOVALITA KADIWARU" on Tuesday, February 25, 2020 at approximately 18.30. Wit, the defendant and the victim were arguing inside the room of the South Sorong Student Dormitory, then the victim was about to leave the room, then the defendant immediately struck the victim on the back 4 (four) times using his right hand in a fist, after that the defendant saw a black solid rubber stick on the cupboard, then the perpetrator took it, then the black rubber stick was held in his right hand and then struck repeatedly on the victim's calf, which the defendant did not remember which calf, until the victim fell to the ground.

Then the defendant used the stick to strike the victim 3 (three) times on the forehead until the victim lay motionless and unconscious. Seeing that the victim had fainted, the defendant removed and placed the stick on the floor, then the defendant left the room and called out to 2 (two) dormitory residents, namely Br. HEMMOR SALOSA and Br. ABDUL IBRAHIN URBON to find a taxi to take the victim to the hospital. The judge is authorized to examine, try and decide the criminal case on behalf of YUSAK FIRTAR TIRIS "Intentionally Causing the Death of

Another Person” and “Intentionally Committing Maltreatment Resulting in the Death of a Person” as well as the testimony of all witnesses to the judge during the decision on behalf of the witness ANSELMUS KADIWARU, witness HEMMOR SALOSA, witness ABDUL IBRAHIM URBON, witness DANIEL BEMEY, and witness ADITYA LAZUARDY BADILLA, confirmed the chronology of the story of the incident that caused the death of the person was NOVALITA KADIWARU and the perpetrator YUSAK FIRTAR TIRIS.

The element of “Whoever” means anyone as a sub-law, both women and men, who is capable of being held legally accountable for it, and based on the facts of the trial the defendant admitted his name YUSAK FIRTAR TIRIS as the identity in the indictment of the public prosecutor, so there was no wrong person / error in persona, and the defendant was physically and mentally healthy and legally responsible, and in the defendant there were no excuses or justifications that could eliminate the punishment; Thus the element of “Whoever” has been proven legally and convincingly according to the law.

Element of Intentionally Intentionally means an act committed by a person, in this case the defendant, consciously, meaning that each of his actions the defendant should know and understand that the act of beating the victim using clenched hands and a dead rubber stick, repeatedly with full force to the victim's head and face could cause the death of the victim, Whereas the brain is known to contain vital organs, the defendant struck the victim using a clenched fist 4 (four) times on the victim's back and also struck the victim using a dead rubber stick repeatedly on the victim's face, forehead, head and calf, causing the victim to lose consciousness and eventually die in accordance with the Visum Et Repertum from Dian Harapan Waena Hospital no. 26/Ext/Sekre/etc: 26/Ext/Sekre/III/2020 dated March 14, 2020 signed by Doctor Novita Tamara where the victim was brought to the emergency room of Dian Harapan Waena Hospital in an unconscious condition, irregular blood pressure, pulse was not palpable spontaneous breathing was absent (deceased); thus the element “intentionally” has been proven legally and convincingly according to the law.

The element of eliminating the life of another person Based on the legal facts in court, it is true that as a result of the defendant's multiple beatings on the victim's head, the victim died. according to the Visum Et Repertum from the Dian Harapan Waena Hospital no: 26/Ext/Sekre/III/2020 dated March 14, 2020 signed by Doctor Novita Tamara where the victim was brought to the emergency room of Dian Harapan Waena Hospital in an unconscious condition, irregular blood pressure, no pulse, no spontaneous breathing (deceased); Thus the element of eliminating the life of another person has been proven legally and convincingly according to the law.

In addition, the Haikim may not attribute the punishment to a single person unless it is assessed with a minimum of two pieces of evidence to establish that the bailiff's act of benair-benair punishment was committed. benair terjaidi dain baihwai terdaikwailaih yaing bersailaih melaikukainnyai kliausai “baihwai suaitu tindaik pidainai benair-benair terjaidi” before kliausai “baihwai terdaikwailaih yaing bersailaih melaikukainnyai”, Majelis Haikim believes that the elements of the criminal act are considered after considering the objective elements and subjective elements of the structural norm that constitute the elements of the criminal act.

4. Conclusion

In Indonesia, the crime of intentional homicide is regulated in the Criminal Code (KUHP). The article that regulates murder is Article 338 of the Criminal Code. The following is the regulation: Article 338 of the Criminal Code: Any person who with deliberate intent kills another person

shall, being guilty of murder, be punished by life imprisonment or a term of imprisonment of not less than five years and not more than twenty years. In addition, in Indonesian positive law, there are various considerations that are taken into account in assessing the crime of murder, such as the circumstances of the perpetrator, the motive, and the circumstances of the victim. This can influence the court's decision regarding the punishment given. The Indonesian legal system also pays attention to sentence mitigation, where there is a possibility that the sentence imposed can be lighter if there are mitigating reasons. For example, if the perpetrator committed the murder in a compulsion to defend themselves or others, or if there was an overwhelming emotional state or distress that influenced the perpetrator's actions. Indonesian courts also consider due process and human rights in determining the punishment for the crime of murder: The judge's consideration in decision no 547/Pid.B/2020/PN. Jap. Regarding murder with the element of intent, that the defendant on behalf of YUSAK FIRTAR TIRIS "With the intent to kill".

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