



## Juridical review of the judge's decision exceeding the demands of the prosecutor in the case of the crime of premeditated murder of a police officer

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### ABSTRACT

The state must be present to provide justice for every citizen who has been deprived of his life. This study aims to review juridically how the Judge's decision Number 797/Pid.B/2022/PN.Jkt. The cell is related to the criminal act of premeditated murder against a member of the police where the sentence exceeds the prosecutor's demands. The type of research used in this research is normative legal research, with the Criminal Code as the primary legal material. The approach used is the statutory approach, the conceptual approach and the case approach. This study concludes that the crime of premeditated murder is regulated in Article 340 of the Criminal Code which carries a death penalty or life imprisonment or a maximum of 20 (twenty) years. In connection with the judge's considerations in the case study, it was explained that there were several things that were aggravating to the defendant PC as a co-perpetrator who actually became a key witness in this case. The defendant also convoluted and was not honest in giving testimony at trial, which made it difficult for the trial and instead positioned himself as a victim of abuse.

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### 1. Introduction

Indonesia as a constitutional state based on the mandate of Article 1 paragraph (3) of the 1945 Constitution must guarantee that all its people are equal before the law. The Indonesian government as the executor of the law is obliged to make the law without exception as written in Article 27 paragraph (1) of the 1945 Constitution. The government as in the sense of the ruler in the country of Indonesia must also maintain the mandate of the law to always uphold the human rights (HAM) of every citizen as mandated in Article 1 point 1 of Law Number 39 of 1999 which explains that human rights are rights inherent to humans as God's creatures and are His gifts that must be respected, upheld and protected by the state, and all elements within the territory. national sovereignty for the sake of honor, Criminal law is one of the existing legal systems in Indonesia to regulate the rights and obligations of fellow citizens with its coercive and binding

nature for all citizens without exception as the principle of criminal law which reads equality before the law. Every citizen is obliged to comply with the obligations and prohibitions contained in the positive law issued by the state (Lamintang 1996). One of the crimes that often occurs in the social life of society is murder as a crime against humanity which violates human rights because it results in the loss of human life forcibly, whether committed on purpose or negligence (Nugraha 2012).

The crime of murder has several types or qualifications, including the crime of ordinary murder as regulated in Article 338 of the Criminal Code which carries a maximum prison sentence of 15 (fifteen) years and the crime of premeditated murder as regulated in Article 340 of the Criminal Code which carries a death penalty or life imprisonment or a maximum of 20 (twenty) years (Moeljatno 2006). Regarding premeditated murder, the Criminal Code defines this crime as a typical form of murder that can be considered by judges in weighing the verdict on the perpetrator (Chazawi 2009), because murder was intended from the start to commit a crime, in contrast to ordinary murder which acts because of a moment's emotion (A. Hamzah 2010).

The public was shocked by the emergence of a murder case against a member of the National Police which involved several other members of the National Police as the perpetrators. A shootout occurred between one of the perpetrators, namely Bharadha E and the victim Brigadier J which was motivated by allegations of sexual harassment against the wife of FS as their leader in one of the Police divisions with the rank of Inspector General. The National Police announced that there was only a single perpetrator as the killer of the victim (Ronaldo 2022). However, during the trial it was revealed that the case was engineered by Inspector General FS as Bharada E and Brigadier J's superior.

Inspector General FS as an intellectual actor in this murder case was sentenced to death after previously being charged with life imprisonment. Other perpetrators who only acted as assistants such as Bripka RR were sentenced to 13 years in prison, KM was sentenced to 15 years in prison, and PC was sentenced to 20 years in prison. Whereas previously Bripka RR, KM, and PC were both charged with 8 years in prison (ANTARANTB 2023). Unlike Richard Eliezer, the executor was only given a light sentence of 1.5 years in prison because of his status as a justice collaborator in exposing this case (Kompas 2023).

## **2. Method**

The type of research used in this study is normative legal research, namely legal research whose object of study includes positive legal provisions based on literature studies. The legal materials used are the Criminal Code as the primary legal material and some literature such as journals and reference books related to the subject matter (Marzuki 2013). The approach used is the statutory approach (statute approach) which is carried out by examining laws with legal issues in research. This study also uses a conceptual approach by understanding legal concepts discovered by jurists through opinions and doctrines and a case approach, namely the criminal case approach (Ibrahim 2005),

## **3. Analysis and Results**

### **3.1. Accountability of the perpetrators of the crime of premeditated murder in positive law in Indonesia**

In the Criminal Code, the crime of murder has several types or qualifications, including the crime of murder regulated in Article 338 which carries a maximum prison sentence of 15 (fifteen) years and the crime of premeditated murder regulated in Article 340 which carries a death penalty or life imprisonment or a maximum of 20 (twenty) years (Moeljatno 2006). The crime of premeditated murder is classified as a serious crime with a maximum threat of death penalty. The former of the Old Criminal Code formulated this crime as a particularly aggravating form of murder (Chazawi 2009). The difference between these two types of crime is that there is an element of "plan" beforehand. Judging from the mental attitude of error, The AATHP (Asian

Agreement on Transboundary Haze Pollution) agreement consists of 32 Articles of Premeditated Murder which are regulated in Article 340 of the Criminal Code which states that "anyone who deliberately and with prior planning takes the life of another person, is threatened, because of premeditated murder (moord), with death penalty or life imprisonment or for a specified period, a maximum of twenty years" (HAM Ali 2005). The distinguishing element between the crime of murder and the crime of premeditated murder is the element "with advance planning." The meaning of the element of planning is not formulated in the Criminal Code, so that its meaning is obtained from the opinions of criminal law experts (doctrine) or judge's decisions (jurisprudence) regarding the crime of premeditated murder (A. Ali 2017).

According to Abidin & Hamza (2010), the crime of "planning" requires that between the intentional killing of another person and the intentional execution, there is time for the perpetrator of the offense to think calmly, for example, how to commit murder. Not much different from Hamzah's opinion above, Soesilo defines the notion of planning by stating that between the intention or intention to kill and the execution there is a time so that the perpetrator or maker can think calmly, for example in what way the murder will be committed. Premeditated murder requires the condition that the perpetrator has a calm mind even a short time before or when he is about to commit his act and the perpetrator is aware of what he is doing" (Moeljatno 2009).

The quality of the existence of a certain time in the planned crime is a matter of debate. Some criminal law experts relativize the quality of the length of time, however, the quality of the length of time for premeditated murder is limited, not too narrow and not too long (Moeljatno 2009). Soesilo gave certain terms of time, not being tight and not being too long. The most important thing is that within this length of time the perpetrator can think calmly about his actions. Likewise, Tresna states that there is no stipulation on how long it must be in effect between the moment the intention to commit the act arises and its implementation, but there must be time, as a vessel for the actor to use his calm mind to plan everything" (Tongat 2003). According to Chazawi (2001), the existence of a certain time in premeditated murder is relative, does not depend on the short time or the length of time, depending on the concrete circumstances at the time of the incident. Even so, the time gap is neither too narrow nor too long. The length of time is too narrow, indicating that the perpetrator does not have enough time to think and consider the will of his actions. Conversely, if a certain length of time is too long it will eliminate the relationship between the will and the implementation of the will. The length of time is too narrow, indicating that the perpetrator does not have enough time to think and consider the will of his actions. Conversely, if a certain length of time is too long it will eliminate the relationship between the will and the implementation of the will. The length of time is too narrow, indicating that the perpetrator does not have enough time to think and consider the will of his actions. Conversely, if a certain length of time is too long it will eliminate the relationship between the will and the implementation of the will.

It can be understood that in the crime of premeditated murder, the premeditated murder must fulfill the conditions of the plan, namely the existence of a decision of the will calmly and at a certain time which must have a close relationship with the murder he committed. These two conditions must be complemented by a third condition, namely the implementation of the will (action) in a calm atmosphere. It can be understood that premeditated murder must really be based on an element of "intentionalism". In the science of criminal law, intention is distinguished in 3 forms, namely 1) "intentional" as a goal; 2) "intentional" as a certainty, and 3) "intentional" as a possibility. These three forms of intent must really be materially proven through the testimony of various witnesses and expert witnesses as well as other clues during the trial.

This crime contains elements and qualifications, namely murder and criminal sanctions. This crime is also formulated materially by focusing on the consequences of loss of life and on how to eliminate that life. R. Soesilo explained that the planning had to be planned beforehand, creating the intention to kill with the implementation there is still time for the perpetrators to calmly think about how the murder should be carried out. This tempo should not be too narrow, but also should not be too long, the important thing is that the tempo is made by the perpetrator calmly

able to think about the fact that there is still a chance to cancel his intention to kill him, but he does not use this opportunity (Soesilo 2005).

Based on the explanation regarding the criminal act of premeditated murder accompanied by the elements that must be fulfilled, it is only natural that the premeditated murder regulated in Article 340 of the Criminal Code is more severe, which can be punishable by death or life imprisonment. Premeditated murder is different from ordinary murder because there is an element of intentional planning, in which the murder has been planned before it is carried out so that punishment is given to it. It is fitting that as a society living in a legal country, we are expected to understand more and not be blind to the law. By committing a crime with any motive, you will get the threat of punishment that follows.

### **3.2. Judge's Considerations in Giving Decisions that Exceed the Prosecutor's Demands in the Criminal Case of Premeditated Murder Against Police Members (Study of Decision Number 797/Pid.B/2022/PN.Jkt.Sel)**

In talking about criminal responsibility, it cannot be separated from one or two aspects which must be viewed with philosophical views. One of them is justice, so that the discussion on criminal accountability will provide clearer contours. Criminal responsibility as a matter of criminal law is intertwined with justice as a matter of philosophy (Lamintang 2000).

What must be understood regarding criminal liability is that criminal liability can only occur if a person has previously committed a criminal act. A person may not be held criminally responsible if he does not commit the crime. Regarding the person who committed the act and then was sentenced to a sentence, depending on whether in committing the act the person made a mistake. A person cannot be held criminally responsible without first having committed a criminal act. This is because it is unfair if suddenly someone has to be responsible for an action, while he himself did not commit the action.

Based on the South Jakarta District Court Decision Number 797/Pid.B/2022/PN.Jkt.Sel., the Panel of Judges stated that Defendant Bharada E had been legally and convincingly proven guilty of committing the crime of participating in premeditated murder as stipulated in Article 340 of the Criminal Code jo. Article 55 paragraph (1) 1st of the Criminal Code and other provisions of the relevant laws and regulations as well as the Criminal Procedure Code. The Panel of Judges sentenced him to imprisonment for 20 (twenty) years. The verdict of the Panel of Judges was heavier and very different from the demands of the Public Prosecutor who wanted Defendant PC to be sentenced to 8 (eight) years in prison. The perpetrator was charged with the Primary Indictment which stated that the defendant's actions were a criminal act as stipulated and punishable by crime in Article 340 of the Criminal Code jo. Article 55 paragraph (1) 1st of the Criminal Code and the Subsidiary indictment which states that the actions of the defendant constitute a criminal offense as stipulated and punishable by punishment in Article 338 of the Criminal Code jo. Article 55 paragraph (1) 1st of the Criminal Code.

The judge considered that the defendant PC had fulfilled the 5 elements in the primary indictment, namely the element "whoever", the element "intentionally", the element "with advance planning", and the element "taking the lives of other people". There was one more element that weighed on the defendant, namely the element of "doing, ordering to do, or participating in doing" because this incident started with the defendant's confession that he felt harassed by the chronological victim who said it was not proven at trial and had manipulated this case. Therefore, the position of the defendant as the party ordering to commit a heinous act is the same as the title of intellectual actor held by her husband Inspector General FS as the mastermind behind this premeditated murder with one of the charges being obstruction of justice in relation to this premeditated murder case. namely eliminating CCTV evidence in order to support the fabrication of the case that was prepared by the defendant PC and her husband Inspector General FS who were sentenced to death. This is corroborated by the opinion of a Criminal Law Expert from Trisakti University, Abdul Fickar Hadjar (2023) who emphasized that Article 55 paragraph (1) 1 of the Criminal Code for the PC defendant is the same as the main actor because his role is very large in realizing the goal of killing a human being by planning.

The Panel of Judges also said in their considerations that there were several things that were aggravating to the defendant PC as a co-perpetrator who was actually a key witness in this case. The defendant as the wife of a police officer with the rank of general with the position of Head of the Propam Division as well as the Central Executive of Bhayangkari as General Treasurer should have been able to set an example for other Bhayangkari members as husband's companion so that the defendant was considered to have tarnished the good name of the Bhayangkari organization. The defendant also convoluted and was not honest in giving testimony at trial, which made it difficult for the trial and instead positioned himself as a victim of abuse. The defendant's act of covering up a consensus by manipulating this case actually had a bigger impact and caused huge losses to various parties, including dozens of members of the National Police who were investigated and made 6 police officers suspects as a result of the attempt to manipulate this case. Even PC's appeal was also rejected by the PT DKI Jakarta Judge where his decision upheld the South Jakarta District Court's decision because there was no basis that could lighten his actions.

#### **4. Conclusion**

The crime of premeditated murder is regulated in Article 340 of the Criminal Code which carries a death penalty or life imprisonment or a maximum of 20 (twenty) years. The elements of the crime of premeditated murder must fulfill the planning requirements, namely the existence of a decision of will in a calm manner and a certain time which must have a close relationship with the murder committed, as well as the execution of the will (action) in a calm atmosphere. In connection with the judge's considerations in the case study, it was explained that there were several things that were aggravating to the defendant PC as a co-perpetrator who actually became a key witness in this case. The defendant as the wife of a police officer with the rank of general with the position of Head of the Propam Division as well as the Central Executive of Bhayangkari as General Treasurer should be able to set an example for other Bhayangkari members as husband's companion so that the defendant is considered to have tarnished the good name of the Bhayangkari organization. The defendant also convoluted and was not honest in giving testimony at trial, which made it difficult for the trial and instead positioned himself as a victim of abuse. The defendant's act of covering up a consensus by manipulating this case actually had a bigger impact and caused huge losses to various parties, including dozens of members of the National Police who were investigated and made 6 police officers suspects as a result of the attempt to manipulate this case.

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