



Research Paper

Analysis of Premeditated Murder Crime Cases (Case Study Decision Number 804/Pid/2020/PTSBY)

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ABSTRACT: The State of Indonesia as a constitutional state has a criminal law to provide a deterrent effect on crime and regulate the administration of social and state life. However, the application of criminal law is still not optimally implemented due to the incompatibility of court decisions with existing laws and regulations. The purpose of this research is to find out and analyze legal responsibility in the crime of premeditated murder in decision Number 804/Pid/2020/PTSBY and to analyze the legal considerations of judges in imposing sanctions on the crime of premeditated murder in decision Number 804/Pid/2020/PTSBY. This type of research is normative legal research with a statutory and case-based approach. The type of data used is descriptive qualitative data with sources of legal materials which include primary legal materials, namely Articles 338-340 of the Criminal Code (KUHP) and regulations regarding other murders, secondary legal materials, namely Articles 338-340 of the Criminal Code. Criminal law (KUHP) and regulations regarding other murders and tertiary legal materials, namely journals and books that are relevant to criminal law and murder. The data collection procedure was carried out by means of a literature study with the processing of legal materials through the editing, systematization and description stages. The legal material analysis method uses a qualitative descriptive method. The results of the study prove that the responsibility for the perpetrators of premeditated murder is regulated by Article 340 of the Criminal Code where a person who takes the life of another person is threatened with premeditated murder (moord), with death penalty or imprisonment for life or for a specified period of time, a maximum of 20 years. While the judge's considerations in the decision of the Court Case No. 804/Pid/2020/PTSBY is deemed appropriate by establishing the perpetrators guilty, but there is a discrepancy in the provision of sanctions for only 15 years which is not comparable to the complexity of cases of premeditated murder that hire contract killers.

Keywords: Mouth Premeditated Murder, Accountability, Judgment

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I. INTRODUCTION

Based on data from Digni states that the number of murder cases in Indonesia has actually decreased every year [1]. This is evidenced by the number of murder cases in 2020 which reached 898 people, which has decreased by 6.8% from 2019 with 964 cases. Murder is a form of human psychological deviation from normative rules and injures the moral values of society, so that prevention can be done through criminal law. The punishment given to the perpetrators of murder must be in accordance with the crimes committed because the criminal conviction in serial murder cases is not only punishable by death or life imprisonment, but also imprisonment for certain things because there are no standard provisions related to serial killings so that it can lead to criminal disparities [2].

As a constitutional state as stated in Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), everything must refer to the law [3]. The application of criminal law in the midst of society has certain interpretations because written criminal law is static and does not follow developments in people's lives so that it is rigid, does not easily follow the developments and progress of society, so that it can be said that law is always left behind. In addition, written law is applied after the law is formed and implemented. The formation of laws is considered very important, in accordance with the intent of the formation of certain norms that are formulated. Laws leave to the development of practice through

the interpretations of judges. Furthermore, the norms formulated in criminal law are brief and general in nature so that their meaning is often unclear, giving rise to various opinions in law from legal experts [2].

However, law enforcement, especially in murder cases, must continue to be applied fairly. The implementation of criminal law applied to murder cases is seen not only in how the perpetrator takes the victim's life, but also the impact that can be caused. Murder is a form of human psychological deviation from normative rules and injures the moral values of society, so that prevention can be done through criminal law. The punishment given to the perpetrators of murder must be in accordance with the crimes committed because the criminal conviction in serial murder cases is not only punishable by death or life imprisonment, but also imprisonment for certain things because there are no standard provisions related to serial killings so that it can lead to criminal disparities [2].

Lack of legal literacy makes people not aware that they have violated the rule of law [4]. One of the murder cases that occurred in Indonesia is the case of premeditated murder. Premeditated murder is the crime of taking the life of another human being, or killing, after a premeditated timing or method, with the aim of ensuring the success of the killing or to avoid arrest. Premeditated murder in law is generally the most serious type of murder, and the perpetrator is punishable by death. This is regulated in article 338 of the Criminal Code which reads as follows: "Anyone who deliberately kills another person's soul is punished for treason and death, with a maximum sentence of fifteen years". In decision Number 804/PID/2020/PTSBY it was explained that there would be a case of premeditated murder by hiring a contract killer. This case was caused by a feeling of revenge for the alleged witchcraft behavior committed by the victim against the death of the family of one of the perpetrators. The court judge in decision Number 804/PID/2020/PTSBY gave the witness a prison sentence of 15 years with a reduction in the prison term he had served. This is lighter than the demands of the public prosecutor which provides for a criminal sanction of 18 (eighteen) years imprisonment reduced while the Defendant is in custody with orders for the Defendant to remain detained.

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In decision Number 804/PID/2020/PTSBY it was explained that there would be a case of premeditated murder by hiring a contract killer. This case was caused by a feeling of revenge for the alleged witchcraft behavior committed by the victim against the death of the family of one of the perpetrators. Judge 4 of the court in decision Number 804/PID/2020/PTSBY gave the witness a prison sentence of 15 years with a reduction in the prison term he had served. This is lighter than the demands of the public prosecutor which provides for a criminal sanction of 18 (eighteen) years imprisonment reduced while the Defendant is in custody with orders for the Defendant to remain detained.

The difference in the weight of the sanctions given by the judge and the demands of the public prosecutor is actually a common thing that occurs in trials. This was obtained due to a polite attitude and willingness to cooperate in resolving cases by the defendant or perpetrator. When compared with the applicable laws such as Article 340 of the Criminal Code regarding the case of Premeditated Murder which states

"Anyone who deliberately and with prior planning takes the life of another person, is threatened, because of premeditated murder (moord), with the death penalty or imprisonment for life or for a period of certain period, twenty years at the most." The existence of sanctions that aim to provide a deterrent effect on the perpetrators, instead get relief that is not substantial with the aim of providing the main witness. If this is allowed to happen, there is fear that it will weaken law enforcement in Indonesia. So based on the problems above, researchers will conduct a study on Analysis of Premeditated Murder Crimes (Case Study of Decision Number 804/Pid/2020/PTSBY).

The objectives that can be achieved after examining the problems of the crime of serial killings are: 1) To find out and analyze the legal responsibility in the crime of premeditated murder in decision Number 804/Pid/2020/PTSBY, and 2) To find out and analyze the legal considerations of judges in imposing sanctions on process of premeditated murder decision Number 804/Pid/2020/PTSBY.

II. LITERATURE REVIEWS

Murder

Murder is an activity carried out by someone and several people which results in someone and several people dying [5]. The criminal act of murder, in the Criminal Code, is included in crimes against life. Crimes against lives (misdrifventegenhetleven) are attacks on other people's lives [6]. Murder itself comes from the word *kill* which means to kill, to take away life. To kill means to make one die. Killer means a person or tool that kills and killing means

sacaseofkilling,actorthingtokill.Anactthatcanbesaid tobemurderisanactbyanyonewhodeliberatelytakesthe livesofotherpeople [7].

Criminal Act

Crime comes from a term known in Dutch criminal law, namely *strafbaarfeit*. Straf is defined as a crime or law,baar is defined as able or permissible and *feit* is defined as an act, event, violation and deed [8]. According to Lamintang that every crime in the Criminal Code can generally be broken down into 2 (two) types, namely subjective elements and objective elements [9]. Subjective elements are elements that are attached to the perpetrator or related to the perpetrator and include everything that is contained in his heart. Objective elements are elements that have to do with circumstances, namely circumstances in which the action of the actor must be carried out.

Legal Liability

Legal responsibility as a further consequence of carrying out a role, whether that role is a right and an obligation or a power. In general, legal responsibility is defined as an obligation to do something or behave in a certain way, not deviating from existing regulations. Meanwhile, Purbacaraka argues that legal responsibility originates or arises from the use of facilities in the exercise of each person's ability to exercise their rights or/and carry out their obligations. Every implementation of obligations and every use of rights, whether carried out inadequately or adequately, basically must still be accompanied by accountability, as well as the exercise of power [10].

Legal Considerations

Consideration of law is defined as a stage in which the panel of judges considers the facts revealed during the trial, starting from the indictment, demands, exceptions from the defendant connected with evidence that meets the formal and material requirements, which are submitted in evidence, *pledoi*. The legal considerations also included the articles of the legal regulations which were used as the basis for the decision [11]. The judge's consideration or *Ratio Decidendi* is the argument or reason used by the judge as a legal consideration which forms the basis before deciding a case.

Court Decision

In Article 1 number 11 of the Criminal Procedure Code it is stated that a court decision is "a judge's statement uttered in an open court session, which can be in the form of punishment or free from all lawsuits in and according to the method stipulated in this Law." The judge's decision or court decision is an important and necessary aspect of resolving a criminal case in order to obtain legal certainty about its status and to be able to prepare for the next steps, such as legal remedies.

III. RESEARCH METHODS

This type of research is normative legal research where legal research is carried out by examining literature or secondary data [12]. According to Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues at hand [13]. This research was investigated using library materials (secondary materials) or library law research which in general were aimed at research on legal principles, research on legal systematics, research on legal synchronization, research on legal history, and research on comparative law [14]. This research uses a statutory-based approach (*Statue Approach*) and case-based (*Case Approach*).

Legal materials which are the types and sources of supporting data used regarding the issue of serial killers, including: a) Primary legal materials in the form of Articles 338-340 of the Indonesian Criminal Code (KUHP) and regulations regarding other murders, b) Secondary legal materials in the form of studies Libraries include journals, books and other literature on cases of premeditated murder, and c) Tertiary legal materials in the form of journals and books relevant to criminal law and serial/planned killings.

Analysis of the data chosen by researchers to develop research is to use the documentation method, namely by collecting legal materials that are in accordance with research needs, processed, and presented by analyzing descriptively qualitatively and then comparing them with the opinions of experts or with laws and regulations which are used as a juridical basis [15].

IV. RESEARCH RESULTS AND DISCUSSION

Legal responsibility in the murder process in decision Number 804/Pid/2020/PTSBY

In legal liability based on unlawful acts (*onrechtmatigedaad*) it is based on the existence of legal relations, rights and obligations. The concept of an unlawful act in Indonesia is based on Article 1365 of the Civil Code which reads: Every act that violates the law and brings harm to another person obliges the person who caused the

loss because of his mistake to compensate for the loss, so that an act is said to be an unlawful act and can be held responsible for paying compensation if the following elements are met:

a) Deeds

The element of action as the first element can be classified into two parts, namely actions that are intentional (performed actively) and actions that are negligence (passive/not intending to do so).

b) Against the Law

An unlawful act is defined not only as an act that violates written norms, namely an act that is contrary to the legal obligations of the perpetrator and violates the subjective rights of others, but also an act that violates unwritten rules, namely the rules governing morality, propriety, thoroughness and prudence that a person should have in social life in society or towards the property of community members.

c) There is a loss

Article 1365 of the Civil Code determines the obligation of the perpetrator of an unlawful act to pay compensation. However, there are no further arrangements regarding the compensation. Article 1371 paragraph (2) of the Civil Code provides a safe guideline for this by stating that compensation is assessed according to the position and ability of both parties and according to circumstances.

In addition to the elements described above, Sudarto also mentions several aspects per criminal responsibility including: [16]

a) There is a criminal act committed by the maker

Criminal acts in Indonesia generally have an element of intent or *opzettelijk*, not an element of culpa. This relates to the fact that the person who deserves more punishment is the person who did this or committed a crime with an element of intent. Regarding the element of intentional misconduct, it does not need to be proven that the perpetrator knew that his actions were threatened by law, so it does not need to be proven that the actions committed by the perpetrators were "evil" acts.

b) There is an element of error in the form of intentional or negligence

Errors, which in foreign languages are called *schuld*, are the psychological state of a person related to the actions he has committed in such a way that based on these circumstances the perpetrator can be reproached for his actions [17]. The term error can be used in a psychological sense as well as in a normative sense. Psychological error is a real crime from a person, this psychological error is an error that is in a person, an error regarding what that person thinks and feels inside, this psychological error is difficult to prove because its form is not real, psychological error is difficult to prove because its form is not can be known. Meanwhile, a normative error is an error from another person's point of view regarding a person's actions. Normative mistakes are mistakes that are viewed from the point of view of criminal law norms, namely intentional mistakes and negligent mistakes.

c) There is a manufacturer who is able to be responsible

The ability to be responsible is always related to the psychological state of the maker. This ability to be responsible is always associated with criminal responsibility, this is what makes the ability to be responsible one of the elements of criminal responsibility. The ability to be responsible is the basis for determining the punishment for the maker. This ability to be responsible must be proven whether or not the judge exists, because if someone is proven not to have the ability to be responsible this becomes the basis for the maker's irresponsibility, meaning that the person who committed the act cannot be punished for a crime.

d) No Excuses

In certain circumstances a person who commits a crime cannot take other actions besides committing a crime, even though this is not desired. So that with this action the perpetrator must attend legal channels. This is not avoided by the perpetrator even though it is not desired by himself. This was done by someone because of factors from outside themselves [18].

To determine the truth of the murder case in decision Number 804/PID/2020/PTSBY an analysis of the conditions of criminal responsibility can be carried out, namely:

a) Deeds

In decision Number 804/PID/2020/PTSBY it was proven that the Defendant Nito planned to kill the victim together with other defendants. The defendant Nito was proven to have collaborated with the defendant Emmat as a source of funding to hire contract killers to kill the victim. The Defendant's actions were carried out consciously and were not accidental, so it can be concluded that the case of premeditated murder in decision Number 804/PID/2020/PTSBY was proven to have committed an intentional violation of the law.

b) Against the Law

In decision Number 804/PID/2020/PTSBY it was proven that the Defendant Nito committed the premeditated murder of the victim consciously and not on purpose. This is included in unlawful acts, especially in Article 340 of the Criminal Code which reads "Anyone who deliberately and with prior planning takes the lives of other people, is threatened, because of premeditated murder (moord), with the death penalty or life imprisonment or for a certain period, at most 20 years". So it is proven that the case of premeditated murder in decision Number 804/PID/2020/PTSBY is proven to be against the law.

c) There is a loss

In decision Number 804/PID/2020/PTSBY it was proven that the Defendant committed premeditated murder of the Victim. This causes losses to the families left behind by the victims thus proving the aspect of loss in the murder case decision Number 804/PID/2020/PTSBY.

d) There is a causal relationship between errors and losses

In decision Number 804/PID/2020/PTSBY it was proven that the Defendant was guilty of premeditated murder of the Victim. Mistakes that occur are caused by planned acts of killing someone who are contrary to law. In addition, this action causes losses to the families left behind by the victims. So it can be concluded that the premeditated murder case in decision Number 804/PID/2020/PTSBY has fulfilled the causal relationship between error and loss.

Then based on the requirements of criminal law responsibility according to Sudarto the following analysis can be carried out: [16]

a) There is a criminal act committed by the manufacturer

In decision Number 804/PID/2020/PTSBY it can be proven that the Defendant violated Article 340 of the Criminal Code which reads "Anyone who intentionally and with premeditation takes the life of another person, is threatened, because of premeditated murder (moord), with death penalty or life imprisonment." live or for a certain time, a maximum of 20 years". So it is proven that the act of premeditated murder in decision Number 804/PID/2020/PTSBY is proven to be a crime.

b) There is an element of error in the form of intentional or negligence

In the decision Number 804/PID/2020/PTSBY it can be proven that the Defendant committed premeditated murder on the basis and was not accidental. This proves that there was an element of intentional error committed by the Defendant.

c) There is a manufacturer who is able to be responsible

In the decision Number 804/PID/2020/PTSBY it can be proven that the Defendant is fully responsible because he is the main actor who searched for and used contract killers. This proves that the Defendant Nito and other Defendants are responsible for this premeditated murder case.

d) There is no excuse for forgiveness

In decision Number 804/PID/2020/PTSBY it can be proven that the Defendant knowingly and deliberately committed premeditated murder against the victim due to feelings of revenge. This shows that no reason for forgiveness was given because the perpetrator completely committed an unlawful mistake in killing the victim.

The existence of evidence in the case of premeditated murder in decision Number 804/PID/2020/PTSBY shows that this case is truly proven to be a criminal case and the defendant deserves to be punished. In decision Number 804/PID/2020/PTSBY, the defendant was found guilty so that he was sentenced to imprisonment for 15 (fifteen) years by stipulating that the period of arrest and detention that the Defendant had served was deducted in full from the sentence handed down. Based on the results of the study of the suitability of the regulations with the Court case decision Number 804/Pid/2020/PTSBY it can be concluded that several conclusions answer the formulation of the problem, namely:

- a. The responsibility for the perpetrators of premeditated murder is regulated by Article 340 of the Criminal Code where a person who takes the life of another person, is threatened, for murder with a plan (moord), with the death penalty or imprisonment for life or for a certain time, a maximum of 20 years
- b. The judge's considerations in the decision of the Court case No. 804/Pid/2020/PTSBY is seen as appropriate by establishing the perpetrators guilty, but there is a discrepancy in the provision of sanctions for only 15 years which is not comparable to the complexity of cases of premeditated murder that hire contract killers.

Judge's legal considerations in imposing sanctions on the murder process decision Number 804/Pid/2020/PTSBY

Legal considerations are a method or method used by judges in making decisions based on judicial power and must adhere to the legal principle *nullum delictum nulla poena sine praevia lege* (no offense, no crime without prior regulations) (Moeljatno 1993). The judge's legal considerations in making a decision must reflect a sense of justice, namely not only based on juridical considerations but also sociological considerations, which lead to the background of the crime. The judge in examining a case also requires evidence, where the results of the evidence are used as material for consideration in deciding the case.

Proof is the most important stage in the examination at trial. Proof aims to obtain certainty that the proposed event/fact actually occurred, in order to obtain a correct and fair judge's decision. The judge cannot pass a decision before it becomes clear to him that the event/fact actually happened, that is, the truth is proven, so that a legal relationship between the parties appears (Arto 2004).

In decision Number 804/PID/2020/PTSBY regarding the case of premeditated murder, it was determined that the defendant was legally and convincingly proven guilty of committing the crime: "Participating in the Commitment of Premeditated Murder" as in the Public Prosecutor's First Primary Alternative Indictment. In addition to the chronology of events, to determine the guilt or guilt of the accused for the crime of premeditated murder, it is also supported by evidence, namely: a) 1 (one) projectile, 1 (one) brownish yellow Muslim dress, b) 1 (one) pair of underwear gray color, and c) 1 (one) yellowish brown sarong, used for cases on behalf of Defendant Emmat Then the determination of the case was also strengthened from the results of *Visum et Repertum* Number: IFRS.18.004 from BIDDOKKES POLDA JATIM, April 30 2018 against murder victim.

Based on the results of the Criminalistic Laboratory Examination of Evidence One black bullet Surabaya Branch Lab Number: 7537/BSF/2019, August 8 2019. The results obtained were that evidence number 036/2019/BSF was a 38 inch caliber bullet which was shot (product) of a 38-inch short-barreled firearm with a fluted barrel turning to the right.

If an analysis is carried out on the results of the Court's decision No. 804/Pid/2020/PTSBY which imposes a prison sentence of 15 years 9 months it can be seen that the judge's decision was right by imposing a prison sentence based on Article 340 of the Criminal Code which reads "Anyone who intentionally and with prior planning takes the lives of other people, is threatened, because murder with premeditation (*moord*), with capital punishment or imprisonment for life or for a specified period of time, a maximum of 20 years". The results of the judge's analysis with consideration of evidence, witness statements, the defendant's statement has strong legal force before establishing or passing a decision on the perpetrator of a crime.

V. CONCLUSION

Based on the results of the study of the suitability of the regulations with the court case decision Number 804/Pid/2020/PTSBY it can be concluded that several conclusions answer the formulation of the problem, namely: 1) The responsibility for the perpetrator of premeditated murder is regulated by Article 340 of the Criminal Code where a person who takes the life of another person, is threatened, because murder with a plan (*moord*), with capital punishment or imprisonment for life or for a certain time, a maximum of 20 years, and 2) Judge's consideration in the decision of the Court case No. 804/Pid/2020/PTSBY is seen as appropriate by establishing the perpetrators guilty, but there is a discrepancy in the provision of sanctions for only 15 years which is not comparable to the complexity of cases of premeditated murder that hire contract killers.

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