

Order to Commit Premeditated Murder: Based on District Court Decision Number 1880/Pid.B/2021/PN.Tng

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ABSTRACT

Premeditated murder is governed by Article 340 of the Criminal Code, which defines it as murder that is carried out with prior planning and specifies the penalties associated with it. In this case, Matum Als Haji Bin (Alm) H. Maat is charged with premeditated murder for allegedly ordering two persons else to commit the act. The issue at hand is that the verdict issued by the Panel of Judges does not align with the severe penalties outlined in Article 340 of the Criminal Code. This study employs a descriptive-normative research method, analyzing the court's decision in relation to the provisions of Article 340. The findings indicate that the actions of the defendant have been proven to be unlawful, as the elements specified in Article 340 Jo with Article 55, paragraph (1) ke-1 of the Criminal Code, are fulfilled. Despite this, the Panel of Judges sentenced the defendant to only 2 years and 5 months in prison. According to Article 340, the appropriate punishment should have been the death penalty, life imprisonment, or a maximum of 20 years in prison. Therefore, the sentence handed down by the Panel of Judges is considered excessively lenient.

Keywords: Ordering to Commit Murder; Criminal Act; Premeditated Murder; Criminal Code.

I. INTRODUCTION

The Republic of Indonesia is a nation governed by the rule of law, meaning that all aspects of national, social, and state life are based on legal principles. Every citizen of Indonesia is entitled to fair legal certainty and equal treatment under the law. Laws are established to regulate human behavior, maintain order and justice, and prevent chaos (Asshiddiqie, 2011). It is the primary obligation of citizens to comply with existing laws and regulations, refraining from violating prohibitions or rules—these are recommendations

that every Indonesian citizen must follow. One area of law in Indonesia that pertains to law enforcement is criminal law, which falls under public law. In the context of criminal law, the subject of the law is an individual who acts against the state (Purwoleksono, 2014).

Criminal law is a fundamental part of the legal system in any country, providing a framework that enforces norms through the threat of criminal sanctions (Moeljatno, 2002). This area of law includes punishments that often result in significant suffering for those who violate it, making its penalties more severe compared to other types of laws. The imposition of suffering as punishment is a necessary aspect of ensuring that legal norms are duly respected and adhered to by the public. In Indonesia, criminal law is primarily regulated by the Criminal Code (KUHP), which is a remnant of the Dutch colonial era. The Criminal Code serves as a general legal framework, containing essential principles that underpin all criminal provisions established outside of this Code (Malau, 2023).

In society, human behavior can generally be categorized into two types: those who behave well and those who behave poorly. Consequently, it is common for harmful acts to occur between individuals (Muliadi, 2012). We often encounter good deeds overshadowed by crimes that violate societal rules. Every crime committed comes with consequences, as sanctions serve as punishments for such actions. Premeditated murder, specifically, refers to the intentional taking of another person's life, where the murderer has planned the time and method of the act to ensure its success and evade capture. In legal terms, premeditated murder is typically considered the most serious kind of murder, and those found guilty may face severe penalties, including the death sentence or life imprisonment (Dewi, 2020).

Premeditated murder, as defined in the Criminal Code, is addressed in Article 340. It states that "whoever intentionally and with prior planning takes the life of another person is subject to penalties for premeditated murder, which may include the death penalty, life imprisonment, or imprisonment for a specified period, with a maximum of twenty years." Legislators intended for premeditated murder to be a distinct form of aggravated murder. It is specified that "murder carried out with premeditation is punished as premeditated murder." (Hafid, 2015). This deliberate framing in Article 340 indicates that it is considered a stand-alone crime. Premeditated murder includes the act of murder as described in Article 338 of the Criminal Code, but it also adds the crucial element of premeditation. In comparison to the definitions in Article 338 and Article 339, premeditated murder is characterized by the existence of this premeditation element. The concept of premeditated murder necessitates that the perpetrator engages in a moment of calm reflection. Even a brief period of contemplation before or during the commission of the crime, where the individual realizes what they are doing, fulfills this requirement. Thus, it is sufficient for the perpetrator to have a short but deliberate moment to consider their actions (Pieter & Silambi, 2019).

This study examines the decision made by the Panel of Judges at the Tangerang District Court in case number 1880/Pid.B/2021/PN.Tng. The court found that the defendant could be held accountable for his actions because he was aware of the consequences at the time of the offense and did not change his mind. Additionally, the defendant was in good health and capable of understanding the legal implications of his actions. The court also determined that there were no grounds for eliminating the criminal offense (Marpaung, 2010).

The appropriate punishment for perpetrators of premeditated murder is the death penalty, which is the most severe sanction available under the law. The Criminal Code outlines the regulations pertaining to the crime of murder, particularly in Articles 338 through 350. According to Article 340 of the Criminal Code (Marentek, 2019), the most serious offense in crimes against life is premeditated murder, with a maximum penalty of death and a minimum sentence of a specified period, up to a maximum of twenty years. However, in practice, this is not always enforced as prescribed by the law. The study of premeditated murder is a significant legal issue that requires thorough examination. Individuals who commit

murder bear criminal responsibility for their actions, and this responsibility must be addressed in accordance with the applicable legal provisions (Bassar, 1986).

The issue arises when the Tangerang District Court, which is responsible for resolving cases involving victims and perpetrators, fails to deliver the fair outcomes that are expected. Judges should carefully formulate and review legal norms alongside a sense of justice. However, in their decision-making, judges often neglect to give proper consideration to the sentences they impose, leading to errors that stem from a lack of thorough investigation and observation of each case. This deficiency can undermine the function of law within society. Achieving justice for all parties involved is a fundamental desire of the community. Therefore, judges must not solely rely on their personal perspectives but should also consider the views and norms of the broader society. Nonetheless, individual judges play an undeniable and significant role, which cannot be overlooked (Prodjodikoro, 2014).

The application of material criminal law in this premeditated murder case, as outlined in Article 340 of the Criminal Code, relies on various legal facts, including the statements regarding sanctions, expert testimonies, and the defendant's statements. The legal considerations applied by the judge in this case have incorporated some aspects of criminal law theory; however, there are notable weaknesses. Specifically, when imposing criminal sanctions, the judge must take into account both mitigating and aggravating factors for the defendant. It is unusual for a judicial decision to omit considerations regarding mitigating factors. In this case, the judge based their decision solely on aggravating factors. Therefore, the author aims to describe and analyze these issues further in the discussion below.

II. RESEARCH METHODS

This study employs a descriptive-normative research method to explain, analyze, and describe the conditions or phenomena related to the problem being investigated. It relies solely on examining library materials and secondary data. The objective of this research is to identify legal rules, principles, and doctrines that can help address the legal issues at hand. This research is grounded in applicable laws and regulations, serving as the foundation for problem-solving. It also seeks to analyze issues in light of relevant theories and literature. Data for the research is gathered by examining legal materials, which

include: (1) Primary legal materials: These are official documents such as laws and court decisions (Peter Mahmud Marzuki, 2014); (2) Secondary legal materials: These encompass all legal publications that are not official documents, including textbooks, legal dictionaries, legal journals, and commentaries on court decisions; (3) Tertiary legal materials: These are resources that provide explanations for primary and secondary legal materials, often accessed through internet media.

III. RESULTS AND DISCUSSION

1. Premeditated Murder According to Article 340 of the Criminal Code

The term "criminal act" is a translation of the Dutch phrase "Strafbaarfeit," which means "an act that can be punished." It refers to actions subject to criminal punishment because they violate criminal laws. A criminal act signifies a "violation of norms," or "normovertreding," which disrupts legal order. Punishment is necessary to maintain this order and protect public interests (Lamintang, 1983). Normovertreding encompasses attitudes, behaviors, or conduct that, when viewed externally, contradict the law. This violation establishes a connection with the offender, making them accountable for their actions and, consequently, guilty. Bambang Poernomo further asserts that the definition of criminal acts can be more comprehensively structured as follows: "A criminal act is an action prohibited by a criminal law regulation and is subject to punishment for anyone who violates that prohibition" (Poernomo, 1992).

According to Van Hamel, the term "criminal" or "straf" in positive law refers to a specific form of suffering imposed by an authority authorized to administer criminal sentences on behalf of the state. This punishment is applied to individuals who violate legal regulations enforced by the state (Setiady, 2010). Similarly, Simons defines "criminal" or "straf" as the suffering associated with a violation of a legal norm, which is legally sanctioned through a judge's decision against a guilty individual (Lamintang, 1984). In this context, criminal punishment serves as a tool used by authorities, such as judges, to deter individuals from committing unjustifiable acts. The response from authorities may strip certain protections that the offender would typically enjoy regarding their life, freedom, or property, protections that would have remained intact had they not committed a crime. However, it is important to note that criminal punishment is not solely intended to inflict suffering on the offender or to deter them. It also

aims to facilitate the offender's reintegration into society, allowing them to resume a normal life (Irmawanti & Arief, 2021).

The act of murder refers to the deliberate taking of another person's life. In cases of murder (doodslag), the offender can face a maximum prison sentence of fifteen years, as outlined in Article 338 of the Criminal Code. If the murder was premeditated, it is classified as premeditated murder (moord), which carries a maximum penalty of twenty years in prison, life imprisonment, or even the death penalty, according to Article 340 of the Criminal Code (Hadikusuma, 2005). Murder is defined as an act that results in the loss of someone's life through the intentional act of taking that life. Articles 338 to 340 of the Criminal Code detail offenses related to murder, which is also referred to as "dead treason" or murder (doodslag) (Marpaung, 1999).

The crime of murder is defined in Article 338 of the Criminal Code. It states: "Whoever deliberately takes the life of another person will face a maximum imprisonment of fifteen years for murder." A person is considered to have committed murder intentionally if they intend the act, whether it be the behavior itself or the consequences that arise from it. However, it is also possible that the resulting consequences were not desired by the perpetrator. According to the current Criminal Code, the deliberate taking of another person's life is classified as "murder" (Lamintang, 1997).

The conclusion is that the concept of murder involves the deprivation, disappearance, or silencing of a person's life caused by others. Understanding this process requires a broad perspective that encompasses all factors contributing to the act of murder, both direct and indirect. The individual who commits the act is clearly the perpetrator; however, those who order the act, assist in its execution, or encourage it also share responsibility. All of these individuals are considered co-perpetrators in the crime.

The planned crime is regulated in Article 340 of the Criminal Code, which states: "Anyone who intentionally and with premeditation seeks to take the lives of others is punishable for planned murder with the death penalty, life imprisonment, or imprisonment for a minimum of twenty years." Planned murder involves the act of murder as defined in Article 338 of the Criminal Code, with the additional element of premeditation (Wiratama et al., 2023). Article 340 effectively encompasses all the elements of Article 338, with the added requirement of a prior plan. Because Article 340 reiterates the elements of Article 338, planned

murder can be viewed as a distinct category of murder. The requirement for premeditation essentially includes the following conditions: (a) making a decision in a calm state of mind, (b) allowing sufficient time to pass between the emergence of the intention and the act, and (c) carrying out the act in a calm environment (Sholihah, 2019).

Deciding to take a life should be considered in a calm atmosphere. A calm inner state is characterized by the absence of haste or suddenness, as well as a lack of forced or heightened emotions. Before making such a grave decision, one should reflect on the potential consequences and weigh the benefits and drawbacks. This level of thought and consideration can only occur when the individual is in a tranquil mood and environment. It is during this reflective process that one can deeply contemplate their final decision, even if the action itself is not immediately realized (Hafid, 2015).

There is a grace period between the emergence of a decision to kill and the actual implementation of that decision. This grace period is not defined by a specific length of time; rather, it is relative and depends on the circumstances or events at play (Hafid, 2015). It is important not to rush during this period, as hasty actions do not create a calm atmosphere. However, the grace period cannot be excessively long either, as an extended timeframe may obscure the relationship between the decision to kill and the act of murder itself. During this grace period, a connection still exists between the intent to commit murder and the act itself. This relationship can be observed through specific indicators: (a) the individual still has time to strengthen their resolve to kill, and (b) if the decision is firm, there is ample opportunity to consider how to eliminate evidence and avoid accountability, as well as the chance to devise a plan (Hafid, 2015).

Regarding the time, in the time where there was an opportunity to think calmly about the profit and loss of the murder and so forth. Regarding the third requirement, in the form of the implementation of the murder was carried out in a calm inner atmosphere, even this third requirement was recognized by many people as the most important. It means that the mood in carrying out the murder is not in a hasty mood, high anger, excessive fear, and so forth (Hafid, 2015). Three elements/conditions with more plans as explained above, are cumulative and interconnected, an inseparable coincidence, because if it is separated/cut off, then there is no plan first. The

existence of an opinion that says that the element with the plan in advance is not a form of intent but is in the form of a way of forming intentional/opzet which has 3 conditions, namely: (1) the opzet is formed after planned first; (2) and after people plan (opzet) first, then the important thing is the way "opzet" is formed that must be in a calm state; (3) And in general, planning the implementation of "opzet" requires a rather long period of time. Paying attention to the understanding and conditions of the planned elements above, it seems that the process of forming is planned first (planning) is different with the formation of intentional (will) (Hafid, 2015).

2. The Relationship Between Causality Between the Perpetrators is Told to Do (Intellectual Dader) and The Perpetrators (Pleger) on The Realization of Criminal Acts

The teachings of causality focus on the relationship between cause and effect. In the context of material criminal acts, understanding this relationship is crucial. Causality is a principle that establishes a direct link between actions and their consequences, allowing us to grasp this connection without relying on external knowledge or interruptions from other information. Causality is particularly relevant when a criminal regulation does not explicitly address specific actions or criminal acts that are committed intentionally. Instead, it highlights the relationship between negligence (culpa) and the resulting consequences (Nizar & Sabardi, 2019).

The judge first establishes whether there is a causal relationship between an action and its consequences. The principles of causality determine accountability for an offense, as the consequences resulting from an action are essential elements of the offense itself. For example, in the case of murder, there cannot be a criminal act of murder without the resultant death (Nizar & Sabardi, 2019). Article 338 of the Criminal Code states: "Whoever deliberately takes the life of another shall be punished with a maximum imprisonment of fifteen years." Intent, or will, can be categorized into three types: intentional acts with a specific purpose, intentional acts with certainty, and intentional acts with possibilities. Actions committed accidentally can be defined as negligent. The theory of will holds that an act is considered intentional if the perpetrator both engages in the action and desires the resulting outcome of that criminal act (Utoyo et al., 2020).

The relationship between intellectuals (intellectual daders) and the perpetrators (pleger)

occurs, namely before the criminal act is carried out. Before the occurrence of a will, the beginning of the beginning of a criminal manifestation by the perpetrators who ordered to do (intellectual dader) with the perpetrators (pleger) is intention. Intention is interpreted as a deliberate goal that directs someone to commit a crime, prohibited by law or that can result in results that violate the law, understand the inner attitude of the perpetrator, only in the intention of the offender and the inner attitude can be determined based on a particular act carried out by the perpetrator. (Nender, 2023).

A meeting of minds refers to a mutual understanding between two parties who share a common intention to take someone's life. This concept is a part of one type of participation in a crime, specifically relating to how individuals may engage in criminal acts together. In this context, there is an agreement between the intellectual perpetrator (intellectual dader) and the actual perpetrator (pleger), where the intellectual perpetrator instructs or hires the perpetrator to commit the crime of taking another person's life (Pangaribuan, 2023). An intellectual perpetrator is typically someone who utilizes their education and professional experience in the planning and execution of a crime, leveraging their intellect for this purpose. By definition, an intellectual is a person who applies their intelligence to work, learn, create, and engage in thoughtful discussions about various ideas. On the other hand, the term "perpetrator" describes an individual who actively commits a crime, while "criminal responsibility" refers to the legal accountability of those individuals who engage in criminal acts (Marentek, 2019).

A person who can be held legally accountable must possess the ability to take responsibility for their actions, and there must be a clear mistake without any justification or excuse for those actions. According to criminal law, criminal responsibility or culpability is based on three conditions: (1) The ability to take responsibility or be accountable for one's actions; (2) The existence of an unlawful act, which reflects the psychological state of the perpetrator concerning their behavior, whether intentional or negligent; (3) The absence of any justification or reason that could eliminate criminal responsibility (Nurfaik-NIM, 2011). Intentional actions must be deliberate, meaning the individual must will the action and be aware of what they are doing. Actions that are not considered intentional include reflexive movements or defensive actions that occur without conscious control. In this

context, intention is defined as "willing and knowing" (willenswetens). This implies that a person who acts intentionally must both desire the action and understand its implications. Therefore, it can be stated that to act intentionally means to want and be cognizant of what one is doing. A person who commits an action deliberately intends for that action to occur and is aware of both the action itself and its potential consequences (Utoyo et al., 2020).

The term "doenpleger" refers to a specific form of participation in criminal activity, where one person orders another to commit a crime. In Criminal Law, the person who gives the order is typically called a "middellijkdader" or "mittelbartäter," which denotes a perpetrator who does not directly commit the crime but does so through someone else (Lamintang, 1997). There are two main characteristics that distinguish doenpleger from other forms of participation: (1) "Involvement of Multiple Parties": This concept involves at least two individuals. One serves as the intellectual actor, who orders the crime, while the other acts as the material actor, who actually carries out the crime at the behest of the intellectual actor. (2) "Legal Accountability": The material actor may not be held criminally responsible for the crime committed. This lack of criminal responsibility often arises from extenuating circumstances that provide grounds for legal forgiveness (Mahrus, 2012).

3. Judges' Opinion on the Case of Premeditated Murder

The chronology of the case that occurred which was then decided by the panel of judges, namely starting on September 18, 2021, at around 1:00 PM, Saprudin Als Apud used a motorbike to monitor the location of Armand Als Alex's house, then at around 5:30 PM, Kusnadi Dwi Handoko Als Bram together with Saprudin Als Apud were at the rented house to prepare for the execution of the murder of Armand Als Alex by being shot using a firearm obtained from Matum. Shortly after the Maghrib call to prayer, Kusnadi and Saprudin left for the Nurul Yaqin Mosque, which was about a 10-minute journey. Kusnadi got off his motorbike in an alley on the left side of the mosque, where he saw people praying. Meanwhile, Saprudin, riding his motorbike, entered a small alley leading to a grave. Kusnadi then went toward the narrow alley near the grave and hid there while watching the mosque. Saprudin exited the alley and approached the front of Armand's house. At around 6:10 PM, Kusnadi saw Armand, who was leaving the mosque to head home on Jalan Nean Saba, RT 02/RW 05,

KelurahanKunciran, Kecamatan Pinang, Kota Tangerang. Kusnadi quietly followed Armand, who was unaware of his presence. As Armand's children were about to enter the house, Kusnadi fired a single shot at Armand's right chest from a distance of about one meter. Armand fell and died from the gunshot wound.

Those who committed, ordered, and participated in the act intentionally and with prior planning took the life of another person. Their actions were brought to trial before a Panel of Judges. The Public Prosecutor charged the defendant, Matum Als Haji Bin (Alm) H. Maat, with "Ordering to Commit Premeditated Murder," as outlined in Article 340 of the Criminal Code, in conjunction with Article 55, paragraph (1), subparagraph 1 of the Criminal Code. Consequently, the court imposed a sentence of 4 (four) years in prison on the defendant, taking into account the time already served in temporary detention, with an order for the defendant to remain in custody.

The demands of the Public Prosecutor were addressed by the Panel of Judges in case Number 1880/Pid.B/2021/PN.Tng. It was determined that the defendant, Matum Als Haji Bin (Alm) H. Maat, was legally and convincingly guilty of ordering a premeditated murder, as outlined in Article 340 of the Criminal Code in conjunction with Article 55, paragraph (1), point 1 of the Criminal Code. In their ruling, the Panel of Judges at the Tangerang District Court sentenced him to 2 years and 5 months in prison, which is significantly lighter than the 4-year prison term requested by the Public Prosecutor. When determining the sentence, the Panel of Judges likely considered both aggravating and mitigating circumstances, as noted in the decision. However, the ruling primarily highlights only the mitigating factors that influenced the judges' considerations.

In reviewing this case, the Panel of Judges at the Tangerang District Court has determined, based on the considerations outlined above, that the sentence imposed, as stated in the verdict, is fair and justified in light of the defendant's guilt. The Panel notes that the Public Prosecutor charged the defendant with an alternative charge, and after considering the legal facts, the Panel has chosen to apply the first alternative charge as stipulated in Article 340 of the Criminal Code in conjunction with Article 55, paragraph (1) 1 of the Criminal Code. Therefore, the Tangerang District Court declares that the defendant, Matum Als Haji Bin (Alm) H. Maat, has been proven legally and convincingly guilty of ordering premeditated

murder. The defendant is sentenced to imprisonment for 2 years and 5 months.

The opinion of the Panel of Judges at the Tangerang District Court clarified that the actions of the defendant, Matum Als Haji Bin (Alm) H. Maat, constituted legal acts that could also be classified as criminal acts, fulfilling both objective and subjective elements. The crime was fundamentally related to a mistake made by an individual in the course of committing the offense. For a mistake to be acknowledged, there must be a clear connection between the circumstances and the actions that led to the blame, which must be intentional. Those who directly committed the act are obviously considered the perpetrators of murder. This includes not only the individual who carried out the act but also those who ordered, participated in, encouraged, or assisted in the act; all of these individuals are collectively regarded as perpetrators of a criminal offense(Hilipito, 2016).

The intention behind premeditated murder in this case involves careful planning and deliberation prior to committing the act. This means that the crime was thought out well in advance, conducted in a calm manner, and involved a clear assessment of what would be done, with a period of time between the intention to kill and the actual execution of the act. This preparation includes selecting the tools or instruments used in the murder. According to the Panel of Judges at the Tangerang District Court, such an act is punishable under Article 340 of the Criminal Code in conjunction with Article 55, paragraph 1, point 1 of the Criminal Code. The Judge determined that the Defendant, H. Matum, was guilty based on trial facts and the records of the examination, which indicated that he was aware of his actions both during the commission of the crime and when delivering his statement in court. The defendant acted with full awareness of the consequences of his actions, based on the principle of "presumption iures de iure," which asserts that everyone is presumed to know the law. Thus, those who engage in legal actions must be cognizant of their behavior and the nature of their acts.

Individuals who commit, order, or participate in a criminal act can be subject to Article 55 of the Criminal Code, which states: "Those who, by giving or promising something, abusing power or dignity, using violence, threats, or misleading someone, or by providing opportunities, means, or information to encourage others to commit the act." In this context, Defendant Matum has been found guilty of committing a criminal act, specifically as someone who does, orders, and

participates in the crime. This act has been established as unlawful because the criteria outlined in Article 340 of the Criminal Code, in conjunction with Article 55, paragraph (1), point 1 of the Criminal Code, have been met. Considering the sentence for premeditated murder in this case, the Panel of Judges has determined a prison sentence of 2 years and 5 months. However, according to Article 340 of the Criminal Code, an appropriate sentence for premeditated murder could be the death penalty, life imprisonment, or a fixed term of up to 20 years in prison. Thus, the Panel of Judges concluded that the imposed sentence was excessively lenient.

IV. CONCLUSION

The application of material criminal law by the Panel of Judges to the perpetrator of premeditated murder underscores that the defendant has been proven legally and convincingly guilty of committing a crime under Article 340 of the Criminal Code. This conclusion aligns with the Public Prosecutor's indictment and is supported by the facts presented during the trial, the evidence submitted by the Public Prosecutor, and the defendant's statements. The court has determined that the defendant is both physically and mentally healthy, which indicates the defendant is capable of being held responsible for his actions. However, the verdict issued by the judge does not adhere to Article 340 of the Criminal Code. This article prescribes very severe penalties for premeditated murder, including the death penalty, life imprisonment, or a maximum sentence of twenty years. Therefore, it is essential that sanctions imposed on individuals who have committed crimes reflect the severity of their actions. The losses suffered by the victim, both in material and immaterial terms, must be addressed. This approach is vital to ensure that the punishment serves as a deterrent, preventing the perpetrator from repeating such actions in the future.

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