

Legal Analysis of the Impact of Decisions on Premeditated Murder Criminal Cases on the Judicial Process in Indonesia Now and in the Future (Ferdy Sambo Cases)

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Abstract. *This study aims to analyze the legal impact of the decision on the criminal case of premeditated murder with the defendant Ferdy Sambo on the judicial process in Indonesia. The research uses a normative juridical approach, with descriptive analytical research specifications. Research problems are analyzed with the theory of legal certainty, the theory of Pancasila justice and the theory of Islamic justice. Based on the research, it was concluded: that all the defendants in the murder of Brigadier J. were sentenced by the panel of judges at the South Jakarta District Court, death penalty for Ferdy Sambo, 20 years in prison for Putri Candrawathi, 15 years in prison for Strong Maruf, 13 years in prison for Ricky Rizal Wibowo, and 1 year and 6 months in prison for Bharada E. The verdict is considered to capture the community's sense of justice. On the other hand, the National Police took concrete steps to clean up and maintain justice which shows that cultural, structural and instrumental reforms have been implemented as part of the continuation of Police Reform. It is hoped that these steps will improve the image and trust of the judiciary and the police in the community build future national security stability. This case is a lesson in the future, so that a similar judicial process in the future will be subject to a more appropriate article. In order to minimize the lack of accuracy of the articles used in court, the court can use expert witnesses from experts.*

Keywords: *Crime; Impact; Decision; Murder; Planned.*

1. Introduction

Indonesia as a constitutional state has been affirmed in the 1945 Constitution article 1 paragraph 3.¹ View This brings the consequence that the totality and complexity of Indonesian people's lives must be in line with existing legal principles. This view also provides direction and purpose that the law will limit the power of the State, so that office holders are not arbitrary in carrying out their duties as servants of the State. Likewise, the people are not arbitrary in carrying out their life activities, in order to avoid interference between interests. In that case, the concept of rule of law that is applied must be in line with the values that grow and develop in the life of Indonesian society.²

Indonesia as a country that was born in the 20th century adopted the concept of a legal state according to the principles of constitutionalism. This can be seen from the agreement (consensus) of the Indonesian people since the 1945 Constitution was established as the constitution of the Indonesian state. It is this agreement that in its development has transformed into common ideals which are also commonly called the state philosophy or *staatsidee* (ideals of the state).³

Based on the amended provisions of the 1945 Constitution, it is stated explicitly that the state of Indonesia is a state based on law. The principle of the rule of law in Indonesia does not directly refer to two different views or schools of law regarding the rule of law, namely the rule of law in the sense of *rechtsstaat* and the rule of law in the sense of the rule of law. However, the application of the principle of the rule of law of Indonesia is based on elements of the rule of law in general, namely efforts to protect human rights, separation or division of powers, implementation of people's sovereignty, administration of government based on applicable laws and regulations.⁴

¹ Government of Indonesia, "The 1945 Constitution of the Republic of Indonesia" (State Secretariat, Jakarta, 1945), article 1 paragraph 3.

² Junaedi, "Pancasila as a Philosophical System in the Application of the Concept of the Indonesian Law State," *Syntax Literate: Indonesian Scientific Journal* 3, no. 12 (2018): p. 97, <https://doi.org/10.36418/syntax-literate.v3i12.516>.

³ Ias Muhlashin, "State of Law, Democracy and Law Enforcement in Indonesia," *Journal of Al-Qadau: Islamic Justice and Family Law* 8, no. 1 (2021): p. 87, <https://doi.org/10.24252/al-qadau.v8i1.18114>.

⁴ Haposan Siallagan, "Application of the Principles of the Rule of Law in Indonesia," *Sosiohumanities* 18, no. 2 (2016): page 122, <https://doi.org/10.24198/sosiohumaniora.v18i2.9947>.

When there was a case of premeditated murder, with the mastermind behind the murder of a two-star police general named Ferdy Sambo, with the victim being a young man who served his family and was clean of reprehensible behavior named Nofriansyah Yosua Hutabarat, in order to fulfill the sense of justice for the victim, the death penalty was seen as proper reward. The death sentence against Ferdy Sambo is even more understandable because the perpetrator is a law enforcer who is supposed to protect society. The death penalty was even more understandable because Ferdy Sambo also tried to get rid of traces with a failed shooting action drama scenario.

It seems that there is no way for Arman Hanis, attorney Ferdy Sambo, his old friend since high school, to soften the hearts of the panel of judges. This is evident from the absence of mitigating circumstances that could reduce the sentence. Ferdy Sambo's crime could not be forgiven by the family of the victim Nofriansyah Yosua Hutabarat who lost a child who was the pride of the family. Even the Indonesian National Police, where Ferdy Sambo had a career for 28 years, agreed to the death penalty after being humiliated by the recipient of the Bintang Bhayangkara Pratama.⁵

The figure of Ferdy Sambo is increasingly complete as a public enemy after his case became a sensation throughout Indonesia. According to the National Police Criminal Information Center (Pusiknas) of the 714 murder cases handled by the Indonesian Police from January to November 2022, the premeditated murder of Brigadier J, so often referred to, is the case that has attracted the most public attention. Maybe if a survey were conducted, the majority of Indonesian people would agree with the death sentence for a 50-year-old man who just had a birthday on February 9. The death penalty for Ferdy Sambo will fulfill ancient justice that can be read in the pages of the Bible: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.⁶

The premeditated murder case involving the former Head of the Propam Division, Ferdy Sambo is being tried at the South Jakarta District Court. The progress of the trial caught the attention of the public and academics alike. This case involved police agencies, police officers, who happened to have the position of Kadiv Propam. Interestingly, the victim is a member of the police force so it

⁵ Monique Rijkers, "Ferdy Sambo's Death Sentence, New Criminal Code at stake," *Made For Minds*, February 14, 2023, <https://www.dw.com/id/>.

⁶ Naomi E. Pasachoff and Robert J. Littman, *A Concise History of the Jewish People (Jews: Rowman & Littlefield, 2005)*, p. 64.

has an appeal to be discussed. The Law Faculty of Pasundan University watched together the trial of the verdict or verdict in the Ferdy Sambo case for the shooting of Brigadier Yosua Hutabarat. Watching together was developed on campus to analyze cases. Not only watching together, students are also sent to the field and the material obtained will be discussed in the classroom. After the trial of the decision, discussions will be held with students and lecturers.⁷

The case of Inspector General Ferdy Sambo which resulted in the loss of life of Brigadier Nofriansyah Yoshua Hutabarat alias Brigadier J has drawn public attention in Indonesia. Not only that, this case also received attention from abroad. Foreign media highlighted this case. Several media have been observed reviewing the case which named Inspector General Ferdy Sambo as a suspect in the premeditated murder.⁸

Ferdy Sambo legal case above is a legal reality in Indonesia, but these cases rarely occur in the trajectory of the history of homeland justice, therefore, the author is interested in exploring further about how the impact of the judiciary in Indonesia on the criminal case of premeditated murder with the defendant Ferdy Sambo.

2. Research Methods

The research approach uses normative juridical research methods, namely the type of legal research that is carried out by examining library materials or secondary data only, which according to Soerjono Soekanto the approach is carried out by examining library materials or secondary data as a basis for research by conducting a search of regulations and literature relating to the problem under study.⁹ The research specifications are analytical descriptive in nature, namely a method that functions to describe or give an overview of the object under study through data or samples that have been collected as they are.¹⁰ The type of data is in the form of secondary data originating from

⁷ Darwin Sijib, "Ferdy Sambo's Verdict Seizes Public Attention, University of Pasundan Holds Watch Together," *TribunJambi.Com*, February 13, 2023, <https://jambi.tribunnews.com/>.

⁸ DetikNews Team, "Drama Inspector General Ferdy Sambo That Grabs the Attention of Foreign Media," *DetikJabar*, 2023, <https://www.detik.com/jabar/>.

⁹ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Overview* (Jakarta: Rajawali Pers, 2015), page 64.

¹⁰ Louise Doyle et al., "An Overview of the Qualitative Descriptive Design within Nursing Research," *Journal of Research in Nursing* 25, no. 5 (2020): 445, <https://doi.org/10.1177/1744987119880234>.

legislation or legal materials, either primary, secondary or tertiary.¹¹ Data collection techniques use a mixed method of field data and literature. Processing data using qualitative analysis methods, then concluded with the inductive method.¹²

3. Results and Discussion

3.1. Judge's Decision on the Criminal Case of Premeditated Murder with Defendant Ferdy Sambo

All of the defendants in the premeditated murder case Nofriansyah Yosua Hutabarat alias Brigadier Yosua, have been sentenced by the Panel of Judges at the South Jakarta District Court. The verdicts were different from each other, and sparked mixed reactions from each side. On Monday (13/2/2023), the judge sentenced Ferdy Sambo to death in the premeditated murder case.¹³ Meanwhile, Ferdy Sambo's wife, Putri Candrawathi was sentenced to 20 years in prison.¹⁴

The presiding judge, Wahyu Iman Santosa, said that Sambo's actions had caused widespread commotion, and had tarnished the Polri institution, dragging many other members. The judge stated that there were no mitigating circumstances for Sambo's sentence. Sambo was also proven to have taken an action which resulted in the electronic system not working together. Ferdy Sambo was found guilty of violating Article 340 of the Criminal Code in conjunction with Article 55 paragraph 1 1st of the Criminal Code. Sambo was also found guilty of violating Article 49 in conjunction with Article 33 of Law Number 19 of 2016 concerning Information and Electronic Transactions in conjunction with Article 55 paragraph 1 1 of the Criminal Code. Chief Judge Wahyu Iman Santoso assessed that Putri was proven to have participated in the premeditated murder of Brigadier Yosua. This verdict

¹¹ Patrick Alexander Wachholz et al., "Mapping Research Conducted on Long-Term Care Facilities for Older People in Brazil: A Scoping Review," *International Journal of Environmental Research and Public Health* 18, no. 4 (2021): 1522, <https://doi.org/10.3390/ijerph18041522>.

¹² Hollis Haotian Chai et al., "A Concise Review on Qualitative Research in Dentistry," *International Journal of Environmental Research and Public Health* 18, no. 3 (2021): 1–13, <https://doi.org/10.3390/ijerph18030942>.

¹³ South Jakarta District Court, "SOUTH JAKARTA District Court Decision," Pub. L.No. Number 796/Pid.B/2022/PN JKT.SEL (2023).

¹⁴ South Jakarta District Court, "SOUTH JAKARTA District Court Decision," Pub. L.No. Number 797/Pid.B/2022/PN JKT.SEL (2023).

was also higher than the prosecutor's demand, namely eight years in prison.¹⁵

The South Jakarta District Court panel of judges handed down a 15-year prison sentence against Strong Maruf, one of the defendants in the premeditated murder case against Nofriansyah Yosua Hutabarat alias Brigadier Y.¹⁶ Chief Justice Wahyu Iman Santoso assessed that Strong Maruf had been proven legally and convincingly guilty of participating in the premeditated murder of Brigadier Yosua. Maruf's Strong Verdict was heavier than the demands of the Public Prosecutor (JPU), who charged him with 8 years in prison. Another defendant, Ricky Rizal Wibowo, was sentenced to 13 years in prison by the panel of judges. This sentence was also higher than the prosecutor's demands, namely 8 years in prison.¹⁷ Chief Judge Wahyu Iman Santosa said Ricky was actively involved in planning Joshua's murder. Of the five defendants in the premeditated murder case against Yosua, Richard Eliezer alias Bharada E, received the lowest sentence, namely 1 year and 6 months in prison.¹⁸ The verdict was read out by the Chairman of the Panel of Judges, Wahyu Iman Santoso.¹⁹

After the above decision, the case was then appealed to the High Court. The DKI Jakarta High Court confirmed one vote with the South Jakarta District Court (PN Jaksel) regarding the decision against Ferdy Sambo and three other defendants in the premeditated murder case Brigadier Nofriansyah Yosua Hutabarat or Brigadier J. Pakpahan said that formally the defendants' appeal was not rejected, but was not granted.²⁰

The verdict on the appeal of the four accused of premeditated murder against Nofriansyah Yosua Hutabarat or Brigadier J has been heard by the Panel of Judges at the DKI Jakarta High Court (PT). The four are the former Head of the Professional and Security Division (Kadiv Propam) of the National

¹⁵ Heru Haetami, "The Verdict for the Killers of Brigadier Yosua," KBR, February 13, 2023, <https://kbr.id/>.

¹⁶ South Jakarta District Court, "SOUTH JAKARTA District Court Decision," Pub. L.No. Number 800/Pid.B/2022/PN JKT.SEL (2023).

¹⁷ South Jakarta District Court, "SOUTH JAKARTA District Court Decision," Pub. L.No. Number 799/Pid.B/2022/PN JKT.SEL (2023).

¹⁸ South Jakarta District Court, "SOUTH JAKARTA District Court Decision," Pub. L.No. Number 798/Pid.B/2022/PN JKT.SEL (2023).

¹⁹ Haetami, "The Verdict For the Killers of Brigadier Joshua."

²⁰ Agnes Tahir Purba, "Regarding the Decision of Ferdy Sambo Cs, PT DKI Affirms One Voice with the South Jakarta District Court," Beritasatu.Com, April 13, 2023, <https://www.beritasatu.com/>.

Police, Ferdy Sambo; Sambo's wife, Princess Candrawathi; former Sambo adjutant, Ricky Rizal or Bripka RR; and household assistant (ART) and Sambo driver, Strong Ma'ruf. PT DKI Jakarta Panel of Judges decided to reject the appeal filed by the four defendants. This means that the sentences of Ferdy Sambo, Putri Candrawathi, Ricky Rizal, and Strong Ma'ruf are the same as those of the Panel of Judges at the South Jakarta District Court.

The PT DKI Jakarta Panel of Judges upheld the verdict handed down by the South Jakarta District Court against Ferdy Sambo. This means that Sambo is still sentenced to death. "Strengthening the decision of the South Jakarta District Court Number: 796/Pid.B/2022/PN.Jkt.Sel for which the appeal was requested," said Chief Judge Singgih Budi Prakoso in a trial at PT DKI Jakarta, Wednesday (12/4/2023) The PT DKI Jakarta Panel of Judges is of the view that the ultra petita handed down by the South Jakarta District Court Panel of Judges against Sambo is justified in criminal law. Ultra petita is the imposition of a decision by the Panel of Judges on a case that exceeds the demands put forward by the Public Prosecutor (JPU).²¹It is known that Ferdy Sambo's death sentence handed down by the South Jakarta District Court was higher than the prosecutor's demands that the former high-ranking National Police officer be sentenced to life imprisonment. "The high court judge is of the opinion that ultra petita is not well known in criminal procedural law or in criminal law.

Just like Sambo, Putri Candrawathi's sentence was upheld at the appeal level by the PT DKI Panel of Judges. Thus, Putri's sentence has not changed from the 20-year prison sentence as handed down by the Panel of Judges at the South Jakarta District Court. "Strengthening the decision of the South Jakarta district court Number: 797/Pid.B/2022/PN.Jkt.Sel dated 13 February 2023 which requested the appeal," said Chief Justice Ewit Soetriadi in a trial at PT DKI Jakarta, Wednesday (12/4 /2023).

Ricky Rizal's or Bripka RR's appeal was also rejected by PT DKI Jakarta. The panel of judges upheld the sentence handed down by the South Jakarta District Court against Ricky, namely 13 years in prison. "Strengthening the decision of the South Jakarta District Court Number:

²¹ H Sugiyono, H Suyanto, and S Suherman, "The Implementation of Ultra Petita Decisions in Civil Dispute," *International Journal of Multicultural and Multireligious Understanding* 7, no. 3 (2020): 133, <https://doi.org/10.18415/ijmmu.v7i3.1560>.

799/Pid.B/2022/PN.Jkt.Sel dated 14 February 2023 which requested the appeal," said Chief Judge Mulyanto in a trial at PT DKI Jakarta, Wednesday (12/4/ 2023). The South Jakarta District Court's verdict against former aide Ferdy Sambo was also heavier than the demands of the public prosecutor who had previously requested that he be sentenced to 8 years in prison.

Similar to the other three defendants, the appeal filed by Strong Ma'ruf was also rejected by the PT DKI Jakarta Panel of Judges. Thus, the household member as well as Ferdy Sambo's driver was still sentenced to 15 years in prison. "Strengthening the decision of the South Jakarta district court Number: 800/Pid.B/2022/PN.Jkt.Sel dated 14 February 2023 which requested the appeal," said Chief Judge Abdul Fattah in a trial at PT DKI Jakarta, Wednesday (12/4 / 2023). The 15-year prison sentence handed down by the South Jakarta District Court was also higher than the prosecutor's demands, which had previously asked for Strong to be sentenced to 8 years in prison.²²

In the opinion of the author, the verdict the criminal case of premeditated murder with the defendant Ferdy Sambo became clear after the evidence was presented at the trial so that legal certainty could apply to every citizen. Legal certainty is a product of law or more specifically of legislation. Positive law that regulates human interests in society must always be obeyed even though the positive law is unfair. Legal certainty in certain situations requires the following:²³ (1) There are clear or clear, consistent and accessible legal rules issued by state power; (2) Whereas the authorities (government) agencies apply these legal rules consistently and are also subject to and obedient to them; (3) Whereas the majority of citizens in principle agree with the contents and therefore adapt their behavior to these rules; (4) Whereas independent and impartial judges (judiciary) apply these legal rules consistently when they resolve legal disputes; And (5) That the court's decision is concretely implemented.

These five conditions indicate that legal certainty can be achieved if the legal substance is in accordance with the needs of the community. The rule of law that is able to create legal certainty is a law that is born from and reflects the culture of society. Legal certainty like this is called real legal certainty (realistic legal

²² Fitria Chusna Farisa, "Complete List of Ferdy Sambo et al's Appeal Decisions in the Brigadier J Case, All Rejected," Kompas.Com, April 14, 2023, <https://nasional.kompas.com/>.

²³ Sidharta, *Morality of the Legal Profession: An Offering Framework* (Bandung: Refika Aditama, 2009), page 85.

certainty), which requires harmony between the state and the people in oriented and understanding the legal system.

According to the Pancasila justice theory, the 5th precept reads "Social justice for all the people of Indonesia". In Pancasila, the word fair is found in the second and fifth precepts. Fair human values and social justice contain a meaning that human nature as a cultured and natural creature must be fair in nature, namely fair in relation to oneself, fair to other human beings, fair to society, nation and state, fair to their environment and fair to God. Almighty. The consequences of the values of justice that must be realized include the following aspects:²⁴(1)Distributive justice, namely a relationship of justice between the state and its citizens, in the sense that it is the state that is obliged to fulfill justice in the form of dividing justice, in the form of welfare, assistance, subsidies and opportunities in living together based on rights and obligations;(2)Legal justice, namely a relationship of justice between citizens and the state and in this case it is the citizens who are obliged to fulfill justice in the form of obeying the laws and regulations that apply in the country; And(3)Commutative justice, namely a relationship of justice between one citizen and another on a reciprocal basis.²⁵

The judge's decision in the criminal case of premeditated murder with the defendant Ferdy Sambo as stated above is of course a form of these three justices.Fair human values and social justice can be obtained in this case where the suspect is assessed from the point of view of human nature as a cultured and natural creature who must be fair in nature, namely fair in relations with oneself, other people, society, the nation and the state, the environment, and before God.²⁶

Al-Qur'an as a form of revelation-based legislation proclaimed by Rasulullah in this justice explains clearly and beautifully. The justice offered is impartial justice, both for oneself and others, both for families and for others, but justice is based on truth. Examples of QS al-Maa-idah [5]: 8 and QS al-A'raaf [7]: 96), can be seen

²⁴ M. Agus Santoso, *Law, Moral & Justice A Study of Legal Philosophy* (Jakarta: Kencana, 2014), page 92.

²⁵ Yudi Alvisahrin, Eko Soponyono, and Umar Ma'ruf, "The Criminal Law Policy Regarding the Death Penalty in Renewing of Indonesian Criminal Law," *Law Development Journal* 4, no. 1 (2022), <https://doi.org/10.30659/ldj.4.1.170-181>.

²⁶ Umar Ma'ruf, "Legal Reconstruction Of Laws Regarding Human Rights Through Judicial Review to the Constitutional Court," *The 5th PROCEEDING " Legal Reconstruction in Indonesia, 2019*.

clearly, that justice (justice) will lead to piety, and piety will produce prosperity.²⁷ While justice is the embodiment of the attitude of serving and protecting humans both individually and collectively so that they feel comfortable with all kinds of interests that process around them.

If justice is not held hostage for the interests of the oppressor group (the oppressor), humans will surely feel free in life (free life). Thus, justice resulting from the application of these actions creates freedom (independence) for all citizens (society).²⁸ Thus, it can be drawn that the judge's decision in the criminal case of premeditated murder with the defendant Ferdy Sambo reflects this principle so that the public can feel the effects of justice in this case. This decision is very helpful for the Polri institution to build a positive image from a legal perspective.

3.2. Legal Analysis of the Impact of the Decision on the Criminal Case of Premeditated Murder with the Defendant Ferdy Sambo on the Judicial Process in Indonesia Now and in the Future

A criminal law expert from Trisakti University, Abdul Fickar Hadjar, assessed that the panel of judges at the South Jakarta District Court had caught the sense of justice in the community by sentencing Ferdy Sambo to death. According to him, the Panel of Judges was quite sensitive because this case attracted public attention. Judging from the incident, the relationship pattern that actually happened was that the person who became the victim was the one who took care of his family and himself on a daily basis, but was so heartless that he made a mistake, the verdict must be shot. According to him, this was felt by the judge, there was also disappointment in the community, and the judge caught it, and poured it into a decision.²⁹

The case of Brigadier J as the shooting victim of FS, the victim's supervisor and friend of the victim Brigadier RE, has become a 'wild ball' with the analysis and interpretation of several experts and observers with their respective versions. Thus, the profile and characteristics of these cases are no longer clear; cases of ordinary murder or premeditated murder. The issue

²⁷ M. Quraish Shihab, *Al-Qur'an Insights on Maudhu'i Interpretation of Various Problems of the Ummah* (Bandung: Mizan, 2014), p. 111.

²⁸ Muafani et al., "The Meaning of the Architectural Forms of the Borobudur Temple in an Islamic View," *Preamble: Journal of Islamic Studies* 6, no. 2 (2022): 211, <https://doi.org/10.14421/mjsi.62.2905>.

²⁹ Haetami, "The Verdict For the Killers of Brigadier Joshua."

of the legal status of case J has not yet been resolved, now Komnas HAM's conclusions have emerged after obtaining space to participate in uncovering the case. Since the beginning there has been a question, whether case J is an ordinary criminal offense referring to the Criminal Code and Criminal Procedure Code or later it will refer to Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts.

Komnas HAM's statement regarding the murder case of Brigadier J determined that there were human rights violations, among others; the right to life, the right to obtain justice (extra judicial killing), obstruction of justice. Komnas HAM has determined these violations in accordance with the articles that were violated in Law Number 39 of 1999.³⁰In the author's observation, Komnas HAM's recommendations are relevant to complementing the judge's considerations before making a decision on the perpetrators of J's murder, but cannot be considered in the process of proving a case in court. So that there is a common understanding of the meaning of gross human rights violations and distinguished from criminal violations. Including gross human rights violations according to Article 7 of Law Number 26 of 2000 includes: a. genocide crime and b. crimes against humanity.³¹

The crime against humanity as referred to in Article 7 letter b is one of the acts committed as part of a widespread or systematic attack, of which he knows that the attack is aimed directly at the civilian population, in the form of: a. murder, b. extermination, c. slavery, d. expulsion or forcible transfer of population, e. deprivation of liberty or deprivation of other physical freedom arbitrarily which violates (principles) the main provisions of international law, f. torture, g. rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or sterilization or other equivalent forms of sexual violence, h. persecution of a particular group or association based on political equality, race, nationality, ethnicity, culture, religion, gender or other reasons that have been universally recognized as prohibited under international law, i. enforced disappearance, or j. apartheid crimes.

Meanwhile, the crime of genocide as referred to in Article 7 letter a is any act committed with the intent to destroy or annihilate all or part of a national,

³⁰ Republic of Indonesia, "Law (UU) No. 39 of 1999 concerning Human Rights," Pub. L.No. LN. 1999/No. 165, TLN NO. 3886, LL State Secretariat: 29 PAGE (1999).

³¹ Republic of Indonesia, "Law (UU) No. 26 of 2000 concerning the Human Rights Court," Pub. L.No. LN. 2000/No. 208, TLN NO. 4026, LL State Secretariat : 18 PAGE (2000).

racial, ethnic or religious group by: a. kill group members, b. causing serious physical or mental suffering to group members, c. creates living conditions for the group which will result in their physical destruction in whole or in part, d. imposing measures aimed at preventing births within the group, or e. forcibly transferring children from certain groups to other groups.

Referring to the scope of gross human rights violations in Law Number 26 of 2000 it is clear that the case of J's murder does not include serious human rights violations. This is due to two things; First, gross human rights violations must aim to suppress or eradicate civilians committed by state organs, and human rights violations are systematic and widespread. Questions arise regarding Komnas HAM's participation in the case, was it to find criminal violations or gross human rights violations? Apparently not for gross human rights violations, on the grounds that there were no state organs and victims of the civilian population, except for individuals and were carried out by a superior against his subordinates.

In addition, the background of various motives is even unclear and certain. However, in examining the Brigadier J case, Komnas HAM, at the request of the National Police Chief, was involved and even proactively discovered the incident and helped determine who the perpetrators and co-participants were in the murder of Brigadier J by FS. In various news reports it is clear that the role of the National Commission on Human Rights appears to be carrying out an investigative function which is only justified for gross human rights violations, not for ordinary crimes. If Komnas HAM's statement refers to Law Number 39 of 1999 concerning Human Rights, this institution has made a mistake because based on the Law a quo it only functions to carry out human rights recitation, research, counseling, monitoring and mediation, not an investigative function as ordered by Law Number 26 of 2000 about the Human Rights Court.³²

Komnas HAM has been very bold in disclosing the results of the investigation by the National Police Headquarters Team--not Komnas HAM's findings--which the suspect FS shot J (the victim). This attitude is diametrically opposed to the provisions of Article 17 of Law Number 14 of 2008 concerning Freedom of Public Information. In Article 17 Chapter V Excluded

³² Republic of Indonesia.

Information,³³it is stated that every public agency is obliged to open access for every public information requester to obtain public information, except:

- a. Public information which, if disclosed and provided to the applicant for public information, may hinder the law enforcement process, namely information which may, among other things:
 1. impede the process of investigation and investigation of a crime,
 2. reveal the identity of the informant, reporter, witness, and/or victim who knowing the existence of a crime,
 3. disclosing criminal intelligence data and plans related to the prevention and handling of all forms of transnational crime.

The crime of genocide as referred to in Article 7 letter a is any act committed with the intent to destroy or annihilate all or part of a national, racial, ethnic or religious group by:

- a. kill group members,
- b. causing serious physical or mental suffering to group members,
- c. creates living conditions for the group which will result in their physical destruction in whole or in part,
- d. imposing measures aimed at preventing births within the group,
- or e. forcibly transferring children from certain groups to other groups.

Referring to the scope of gross human rights violations in Law Number 26 of 2000³⁴it is clear that the case of J's murder does not constitute a gross violation of human rights. This is due to two things; First, gross human rights violations must aim to suppress or eradicate civilians committed by state organs, and human rights violations are systematic and widespread. Questions arise regarding Komnas HAM's participation in the case, was it to find criminal violations or gross human rights violations? Apparently not for gross human rights violations, on the grounds that there were no state organs and victims of the civilian population, except for individuals and were carried out by a superior against his subordinates. In addition, the background of various motives is even unclear and certain. However, in examining the case of Brigadier J,

In various news reports it is clear that the role of the National Commission on Human Rights appears to be carrying out an investigative function which is only justified for gross human rights violations, not for ordinary crimes. If Komnas HAM's statement refers to Law Number 39 of 1999 concerning

³³ Republic of Indonesia, "Law (UU) No. 14 of 2008 concerning Public Information Disclosure," Pub. L.No. LN.2008/NO.61, TLN NO.4846, LL SETNEG : 35 HLM (2008), Article 17 Chapter V.

³⁴ Republic of Indonesia, Law (UU) No. 26 of 2000 concerning the Human Rights Court.

Human Rights, this institution has made a mistake because based on the Law a quo it only functions to carry out human rights recitation, research, counseling, monitoring and mediation, not an investigative function as ordered by Law Number 26 of 2000 about the Human Rights Court.

Violation of the provisions of Article 17 is subject to imprisonment and fines as stated in the provisions of Article 54 (1) any person who intentionally and without rights accesses and or obtains and or provides information that is exempt as regulated in Article 17 letter a, letter b, letter d, letter f, letter g, letter h, letter i, and letter j shall be subject to imprisonment for a maximum of 2 (two) years and a maximum fine of IDR 10,000,000 (ten million rupiah). (2) Everyone who intentionally and without rights accesses and or obtains and or provides information that is exempt as regulated in Article 17 letter c and letter e, shall be punished with imprisonment for a maximum of 3 (three) years and a fine of up to IDR 20. 000,000 (twenty million rupiah). Article 55 "Anyone who deliberately makes public information that is untrue or misleading and causes harm to other people shall be punished with imprisonment for a maximum of 1 (one) year and or a fine of up to IDR 5,000,000 (five million rupiahs). Article 156 "Any violation that is subject to criminal sanctions in this law and is also punishable by criminal sanctions in other specific laws, what applies are criminal sanctions from said more specific laws.

In relation to the UU KIP above, the parties involved in the case can submit a criminal complaint report or sue for compensation against the perpetrators of the above crimes. Even if the National Commission on Human Rights did things that were contrary to the approval or approval of the National Police, these actions still constituted a violation of the human rights of others. Parties involved in the case and feel that their legal interests have been harmed can submit a complaint report to the police.

Public criticism of the handling of the case by Brigadier J alias Nofriansyah Yoshua Hutabarat emerged since the South Jakarta Police announced it three days after the incident. The demand for accountability in handling this case cannot be stopped. National Police Chief Gen. Pol. Listyo Sigit Prabowo quickly took strategic steps. One point to continue the Polri Reform agenda leads to optimism. The death of Brigadier J is not an ordinary event. Because the incident occurred at the house of the Head of the Professional and

Security Division (Propam) Inspector General Pol. Freddy Sambo. This has the potential to cause a conflict of interest in the investigation process. From the start, this potential must be anticipated. If conflicts of interest are not properly minimized, "misleading" may occur in the continuation of the case examination. In the long run it will have an impact on strengthening public suspicion and distrust of the Polri institution.

However, the National Police Chief quickly took a stand that adhered to the principles of responsibility, transparency and independence. This commitment was evident when the independent Special Team (Timsus) was formed to carry out investigations and investigations into the Brigadier J case. The National Police Chief actively involved other "stakeholders" to strengthen investigations such as the National Human Rights Commission (Komnas HAM) and the National Police Commission (Kopolnas).). In the context of continuing the Polri Reform agenda, this commitment targets directly the aspects of cultural reform that have been set out in the Polri Reform priority agenda since 2021. On the other hand, in the handling of the Brigadier J case,

Within the framework above, at least the National Police Chief has shown a commitment to Police Reform in four strategic steps.³⁵First, the National Police periodically conveys the latest information on developments to the public regarding the handling of the investigation into the Brigadier J case. Community input in this case is an important matter and is taken into account in making decisions by the National Police Chief, including the decision to remove a number of police officers. The commitment to openness is not only related to Polri institutions, but also related to the performance of investigations carried out by Polri on its members. This openness step has great meaning for the community. They witnessed and monitored the handling of this case, how law and justice were upheld within the Police.

Second, the National Police Chief firmly removed 10 strategic positions in the Propam Polri Division, including removing the Inspector General of Police. Ferdy Sambo (Kadiv Propam) and was replaced by Inspector General of Police. Syahardianto. A total of 25 other members of the National Police

³⁵ Friski Koday et al., "The Ferdy Sambo Case," Paper, 2022, pp 9-10, Pharmacy Study Program, Faculty of Mathematics and Natural Sciences, University of Sam Ratulangi.

who were considered to be obstructing the investigation were investigated and threatened with criminal proceedings. The 25 members of the National Police consist of three one-star police generals, five people with the rank of Kombes (Great Commissioner), three people with the rank of AKBP (Adjunct Police Chief Commissioner), two people with the rank of Kompol (Police Commissioner), seven Pama (First Officer), five people from NCO, and Tamtama. It is undeniable that the aim of removing a number of Polri officials is to minimize conflicts of interest in case investigations and investigations. The application of the principle of independence and minimizing conflicts of interest are two things that should be included in the investigation process. This dismissal can be broadly interpreted as the enforcement of the Code of Ethics within the Polri itself.

Third, the National Police Chief allowed the re-autopsy of Brigadier J's body in Jambi to find out more clearly the cause of death. As evidenced by the re-autopsy, it was clearly revealed that the victim died as a result of a gunshot wound and non-gunshot wounds. This clarity can guide a more objective investigation process. Apart from demands from the deceased's family, this re-autopsy can be interpreted as a form of upholding the principle of transparency or openness. That in the investigation of cases everything must be bright and nothing should be covered up. The authority attached to police officials cannot be abused and under supervision.

Fourth, the National Police Chief always conveys that the evidence carried out to seek material truth for a crime must be based on "crime scientific investigation" (CSI) or scientific-based investigation as an effort to strengthen evidence in handling criminal cases, including in the case of the death of Brigadier J. CSI is an investigative approach method by prioritizing various scientific disciplines to uncover a crime case. By using the CSI method, the suspect's confession is placed last in the evidence to be submitted to court because the CSI method focuses on analysis involving various scientific disciplines that can reveal a crime.³⁶

The four strategic steps taken by the National Police Chief have at least succeeded in accelerating the performance of the National Police so that

³⁶ VK Groshevaya, "Legal Regulation of the Use of Scientific and Technical Means When Solving Crimes by Employees of the Criminal Investigation Department in Donbass in 1918–1953," *Juridical Journal of Samara University* 8, no. 1 (2022): p. 65, <https://doi.org/10.18287/2542-047x-2022-8-1-65-75>.

they are able to find the suspect Bharada E and continue further investigations of other members of the National Police. Progress in this investigation would have been difficult to achieve without the strategic steps taken by the National Police Chief. The four steps above show that cultural, structural and instrumental reforms have been implemented as part of the continuation of Police Reform. In the midst of declining public trust in the Police, it is hoped that these appropriate steps will again improve the image of the Police in society. The National Police Chief wants to show consistency in work by upholding the principles set out in the law. This kind of commitment is needed to build national security stability in the future. We need to build optimism that the baton for Police Reform is held by the right actors and are able to translate the public's will in the security sector.

According to the author's opinion, this step is a good progress in the context of law enforcement in the judicial environment in Indonesia. However, in the future the judicial process in Indonesia will increase courage in law enforcement efforts within the law enforcement environment, both the Polri institution and the judicial environment in Indonesia. However, legal proceedings criminal case of premeditated murder with the defendant Ferdy Sambostill has a weak side, because the use of the article used should be the article that is suspected against him is Article 340 subsidiary 338 juncto Article 55 paragraph 2, not article 1. This was because of Ferdy According to the author, Sambo is not an actor, but rather an intellectual actor.

As previously stated, the determination of Ferdy Sambo as a suspect in the murder case of Nopryansah Yosua Hutabarat alias Brigadier J was carried out after the National Police Chief and a special team held a case on Tuesday, 9 August 2022. In this case, new facts have been found that there was no shooting incident. between Brigadier J and Bharada E. The actual incident that was revealed when the case was held was that Bharada E received an order from Ferdy Sambo to shoot Brigadier J. Of the six people who were at the TKP, four of them have been named suspects. Besides Ferdy Sambo, they are Bharada E, Brigadier Ricky and Kuwat. Ferdy, Ricky and Kuwat were charged with the same article, namely: Article 340 of the Criminal Code concerning premeditated murder a subsidiary of Article 338 of the Criminal Code concerning intentional killing in conjunction with Articles 55 and 56 of the Criminal Code. Bharada E was charged with Article 338 in conjunction with Articles 55 and 56 of the Criminal Code.

The incident involving Ferdy Sambo led to him being charged with Article 340 subsidiary Article 338 juncto Article 55 and Article 56 of the Criminal Code with a maximum penalty of death penalty, life imprisonment and 20 years in prison. Ferdy Sambo was charged with the same article as the one that was imposed on Brigadier Ricky Rizal alias Brigadier RR, his wife's aide, Putri Candrawathi. The purpose of the subsidiary article that ensnares Ferdy Sambo is defined as a substitute if the main thing does not occur, such as imprisonment as a substitute for a fine if the convict or suspect cannot pay it.³⁷

This subsidiary article can be seen in the sentence given to Ferdy Sambo. Ferdy Sambo was charged with Article 340 of the Criminal Code concerning premeditated murder as the primary article. The primary article of uni is a subsidiary of article 338 Juncto articles 55 and 56 of the Criminal Code concerning murder. Quoting the Criminal Code, article 340 of the Criminal Code contained in CHAPTER XIX concerning Crimes Against Life or Premeditated Murder reads "Anyone who intentionally and with premeditation takes the life of another person will be threatened with premeditated murder, with a death penalty. or imprisonment for life or for a specified period of time, a maximum of twenty years."³⁸

Meanwhile, the subsidiary article that ensnared Ferdy Sambo was article 338 of the Criminal Code contained in Chapter XIX of the Criminal Code concerning Crimes Against Life. The article reads, "Anyone who intentionally takes the lives of other people, is threatened with murder with a maximum imprisonment of 15 years." Meanwhile, the words of articles 55 and 56 of the Criminal Code are contained in Chapter V concerning Participation in Criminal Acts as follows. Article 55 of the Criminal Code which consists of 2 paragraphs reads: Paragraph (1) A suspect who is convicted as a perpetrator of a crime:(a)Those who do, who order to do, and who participate in doing the deed; And(b)Those who, by giving or promising something, by abusing power or dignity, by violence, threats or misdirection, or by giving opportunities, means or information, deliberately encourage other people to take action. Paragraph (2) Against advocates in criminal acts, only actions that are intentionally recommended are taken into account along with their consequences.

³⁷ KBBI, "Big Indonesian Dictionary (KBBI) Online," 2023, <https://kbbi.web.id/>.

³⁸ Republic of Indonesia, "The Criminal Code" (2021), article 340 of the Criminal Code as contained in CHAPTER XIX.

Article 56 of the Criminal Code A person is convicted as an accomplice of a crime:1.Those who deliberately provide assistance when a crime is committed; And, 2Those who deliberately provide opportunities, means or information to commit crimes. In this way, it is clear that Ferdy Sambo was sentenced to life imprisonment or a maximum of 20 years in accordance with Article 340 of the Criminal Code, a subsidiary of Article 338 Juncto Articles 55 and 56 of the Criminal Code. With Ferdy Sambo being ensnared by article 340 of the Criminal Code, he was threatened with the death penalty. In the judge's decision, Fredi Sambo was finally sentenced to Article 340 subsidiary 338 juncto Article 55 paragraph article 1. This,According to Prof. Eko Suponyono it was not quite right, the person concerned should have been charged withArticle 340 subsidiary 338 juncto Article 55 paragraph article 1, considering his capacity as an advocate, not as a perpetrator.³⁹

A similar opinion was conveyed by one of the judges in Wonosobo district, Dr. Ikhwan Qomari, that in the verdict used by the judge in charge of trying the criminal case of premeditated murder with the defendant FerdySambostill not quite right, because the suspect should have been charged with Article 340 subsidiary 338 juncto Article 55 paragraph 2, not Article 1. His argument was Ferdy's positionSambo is not only the perpetrator of the murder, but has a central role in orchestrating the premeditated murder case.⁴⁰

This argument was echoed by a Wonosobo district attorney, Margo Lelono, that Ferdy Sambo devised a murder plan that led to the execution of Brigadier J. After going through various dynamics in the process of investigating the murder of Brigadier Nofriansyah Yoshua Hutabarat (J). According to him specifically, Ferdy Sambo's role includes five components:⁴¹(1)Ferdy Sambo ordered and scenario eventsas ifhappenincidentshootout at the scene; (2)Ferdy Sambo fabricated, changed, or disinformation several things related to the case; (3) Ferdy Sambo ordered to take CCTV Vital in an effort to erase traces of the case; (4) Ferdy Sambo used Brigadier J's weapon to shoot at the wall; (5)Ferdy Sambo took part in shooting

³⁹ Eko Suponyono, "Results of an Interview Regarding the Articles Used as Arguments for the Judge's Decision in the Premeditated Murder Case with the Defendant Fredi Sambo," Interview with a Criminal Law Expert, 2023.

⁴⁰ Ikhwan Qomari, ""Results of an Interview Regarding the Articles Used as Arguments for the Judge's Decision in the Premeditated Murder Case with the Defendant Fredi Sambo,"" Interview with Judges in Wonosobo Regency, 2023.

⁴¹ Margo Lelono, "Results of Interview About Fredy Sambo's Role in the Case of the Premeditated Murder of Brigadier Yoshua," Interview with Advocate Wonosobo, 2023.

Joshua twice; (6) Ferdy Sambo promised IDR 1 billion to Bharada E after shooting Joshua.

This exposure can be understood, that the legal process criminal case of premeditated murder with the defendant Ferdy Sambo indeed it has shown the seriousness of law enforcement in judicial institutions in Indonesia, but there are still gaps where the articles used by judges to ensnare perpetrators are not quite right. This will serve as a lesson for the future, so that a similar judicial process in the future will be subject to a more appropriate article. In order to minimize the inaccuracy of the articles used in the justice system, the court can use expert witnesses from experts.

According to the author's opinion, the criminal case of premeditated murder with the defendant Ferdy Sambo is a starting point for the justice system in Indonesia, both now and in the future, how law enforcement agencies are also not immune from the law. This is an important lesson for law enforcement institutions to carry out legal awareness in their internal and external areas. This incident is certainly in accordance with the spirit of cleaning up the area of law enforcement in Indonesia which is echoed by law enforcement leaders who can increase public confidence in law enforcement in Indonesia.

This is in accordance with the theory of legal certainty, where it is the implementation of the law in accordance with its sound so that people can ensure that the law is implemented.⁴² In understanding the value of legal certainty, what must be considered is that this value has a close relationship with positive legal instruments and the role of the state in actualizing it in positive law.⁴³ Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a rule that must be obeyed.

According to the Pancasila justice theory, the 5th precept reads "Social justice for all the people of Indonesia". By social justice, it is meant that the entire

⁴² Abdurrohman Al Asy'ari and Robingun Suyud El Syam, "Women's Leadership According to the Qur'an (Comparative Study of Tafsir As-Sya'rawi and Shafwatut At-Tafasir Surah An-Naml Verses 29-33," *Journal of Education, Social Science, And Religion* 8, no. 1 (2022): 245, <https://doi.org/10.53565/pssa.v8i1.500>.

⁴³ E. Fernando M. Manullang, *Reaching for Justice with Justice: An Overview of Natural Law and the Antinomy of Values* (Jakarta: Kompas Media Nusantara, 2007), p. 95.

community enjoys justice, or does not experience injustice. Social justice means that the structures of people's life processes in the political, economic, social, cultural and ideological fields are arranged in such a way that justice is achieved.⁴⁴

Pancasila as a national ideology can provide fundamental provisions for the establishment of a legal system in Indonesia, namely:⁴⁵ (1) The legal system was developed based on Pancasila values as its source. Thus Pancasila does not adhere to positivism and legal relativism. The regulation of people's life finally gets its basic meaning and aspirations based on the Pancasila orientation which yearns for a humane, just and prosperous life atmosphere; (2) The legal system shows its meaning, insofar as it embodies justice. Thus the law is not merely a tool of power, not legitimacy to carry out exploitation which can constitute injustice itself. Law is not synonymous with justice, but aims to realize it for the benefit of the people; (3) The legal system has a function to maintain the dynamics of the nation's life. Thus the function of law in maintaining public order is not realized solely in maintaining the status quo, but in opening up the possibility of progress which is reflected in the process of change and renewal. Thus the law also needs to provide a future perspective; (4) The legal system guarantees the process of self-realization for the citizens of the nation within development process. Community development needs to be directed, so as not to fall into alienation, technocracy, or dependency.

Based on these provisions, justice is an intersubjective understanding which basically must be reflected in every legal arrangement. From here, the impact of the decision on the criminal case of premeditated murder with the accused Ferdy Sambo on the judicial process in Indonesia at present and in the future according to the Pancasila theory is a reflection of justice in the Pancasila precepts.

Al-Qur'an as the main Islamic rule demands justice for oneself (individual); both when speaking, writing or behaving, both physically and mentally.⁴⁶In the Al-Qur'an one can find discussions about the principles of justice, from the issue of

⁴⁴ Kurniawan Hendratno and Umar Ma'ruf, "Law Enforcement Against Telecommunication Crimes in the Legal Area of the Central Java Regional Police," *Khaira Ummah Law Journal* 17, no. 4 (2017).

⁴⁵ Surajiyo, "Justice in the Pancasila Legal System," *IKRA-ITH HUMANIORA: Journal of Social and Humanities* 2, no. 3 (2018): pp 26-27.

⁴⁶ Robingun Suyud El-Syam, "Al-Qur'an as a Source of Renewal of Human Civilization," *Manarul Qur'an: Scientific Journal of Islamic Studies* 19, no. 2 (2019): 75, <https://doi.org/10.32699/mq.v19i2.1604>.

monotheism to beliefs about the day of resurrection, from prophetic issues (nubuwwah, prophetic) to leadership, from individual issues to societal issues (social-ummah). . This is of course a very beautiful guide, because the concept of justice is a prerequisite for the creation of personal perfection (insān kāmil), societal welfare standards, and at the same time the closest way to happiness in the hereafter.⁴⁷

Therefore the impact of the decision on the criminal case of premeditated murder with the defendant Ferdy Sambo on the judicial process in Indonesia at present and in the future according to Islamic law is a concrete form of a just judicial process which can increase legal awareness. Islam invites its adherents to comply with religious rules and government regulations. The upholding of justice cultivates human beings to act fairly in various contexts in the reality of their lives.

4. Conclusion

After discussing and analyzed, the study concluded that all of the defendants in the murder of Brigadier J. were sentenced by the Panel of Judges at the South Jakarta District Court differently, death penalty for Ferdy Sambo, 20 years in prison for Putri Candrawathi, 15 years in prison for Strong Maruf, 13 years in prison for Ricky Rizal Wibowo, and 1 year and 6 months imprisonment for Bharada E. The decision was considered to capture the sense of justice in society. On the other hand, the National Police took concrete steps to clean up and maintain justice which shows that cultural, structural and instrumental reforms have been implemented as part of the continuation of Police Reform. It is hoped that these steps will improve the image and trust of the judiciary and the police in the community build future national security stability. This case is a lesson in the future, so that a similar judicial process in the future will be subject to a more appropriate article. In order to minimize the lack of accuracy of the articles used in court, the court can use expert witnesses from experts.

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