

Criminal Responsibility of Perpetrators of Prepared Murder Based on Article 49 of The National Criminal Code (Law Number 1 of 2023)

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Abstract. *Study This study discusses the criminal liability of perpetrators of premeditated murder based on Article 459 of the National Criminal Code (KUHP Nasional) and the principles of Islamic criminal law, particularly the concepts of qisās and diyah. The focus of the study lies in the analysis of the elements of intent, planning, and the perpetrator's capacity to be responsible in both legal systems. The research method is normative-juridical with a doctrinal approach through the study of literature, legislation, and legal doctrine. The results of the study indicate that the National Criminal Code emphasizes the perpetrator's awareness and free will (mens rea), while Islamic criminal law emphasizes intention (al-qaṣd) as well as the perpetrator's moral and intellectual capacity. Both legal systems share the principle that criminal responsibility is personal and requires an evaluation of the perpetrator's awareness, intent, and capacity before sentencing. This study concludes that integrating humanitarian values, substantive justice, and moral-religious principles into criminal law enforcement can strengthen the legitimacy and effectiveness of national legal systems.*

Keywords: *Criminal liability; Islamic Criminal Law; Mens rea; National Criminal Code; Premeditated murder; Qisas, Diah.*

1. Introduction

Premeditated murder is the most serious crime because it attacks the fundamental human right, namely the right to life, and results in the loss of life that cannot be recovered and damages human values and social order.¹

In the National Criminal Code (Law No. 1 of 2023), premeditated murder is

¹Roxin, C. (2006). *Strafrecht Allgemeiner Teil*. Munich: CH Beck, p. 45–47.

regulated in Article 459 which emphasizes the element of *voorbbedachte raad* (planning), so that it not only assesses the consequences of the act, but also the intention, awareness, and mental processes of the perpetrator before committing the crime.²

Criminal liability in the National Criminal Code is based on the principle of "no crime without fault," which requires subjective culpability and the perpetrator's capacity to take responsibility. Proving this often requires circumstantial evidence, such as motive and sequence of events, thus requiring careful judgment.³

From an Islamic legal perspective, the concept of *al-mas'ūliyyah al-jinā'iyah* emphasizes that criminal responsibility is personal and can only be imposed if there is an element of intent (*al-qaṣd*) and the ability to be responsible (*al-ahliyyah*), which is in line with the concept of *mens rea* in the National Criminal Code.⁴

The correspondence between the National Criminal Code and Islamic law demonstrates the integration of the values of justice, humanity, and morality in modern Indonesian criminal law. Therefore, a study of Article 459 of the National Criminal Code is essential for a comprehensive understanding of criminal liability from a juridical, philosophical, and sociological perspective.

This research is compiled in a thesis proposal entitled "Criminal Responsibility of Premeditated Murder Perpetrators Based on Article 459 of the National Criminal Code (Law Number 1 of 2023)".

2. Research Methods

To ensure the accuracy and depth of analysis, this research is compiled using the following legal research methods:

1. Type of Research

This research is a normative legal study, focusing on the assessment of positive legal norms regarding the criminal responsibility of perpetrators of premeditated murder as stipulated in Article 459 of the National Criminal Code. This research examines the legal provisions, principles, and doctrines of criminal law without involving the collection of empirical data in the field.

2. Research Approach

The research methodology used in this study encompasses several

²Republic of Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code.

³Saleh, R. (1981). *Criminal acts and criminal responsibility*. Jakarta: Aksara Baru, pp. 75–77.

⁴Audah, AQ (1992). *Al-Tasyri' al-Jina'i al-Islami*. Cairo: Dar al-Kutub al-Arabi, p. 112–115.

complementary approaches. The statute approach examines the provisions of the National Criminal Code governing premeditated murder and criminal liability to understand the structure of norms and their regulations.⁵The conceptual approach is used to examine the concepts of error, intent (*dolus*), planning (*voorbedachte raad*), and criminal responsibility according to criminal law doctrine as the theoretical basis for analysis.⁶Furthermore, a case approach is carried out by examining relevant court decisions to see the application of norms in judicial practice.⁷In addition, a comparative approach is used in a limited way to compare the provisions on premeditated murder in the National Criminal Code with the old Criminal Code in order to see the shifts and developments in the provisions.⁸

3. Data source

The data used in this study is secondary data obtained through library research, namely by examining various legal materials related to criminal liability in the crime of premeditated murder based on the National Criminal Code. The secondary data consists of primary legal materials in the form of Law Number 1 of 2023 concerning the Criminal Code, the Criminal Procedure Code, and court decisions related to the crime of premeditated murder.⁹In addition, this research also uses secondary legal materials in the form of criminal law books, scientific journals, previous research results, and the opinions of legal experts relevant to the research object.¹⁰Tertiary legal materials are used as support to provide guidance and explanations for primary and secondary legal materials, which include legal dictionaries, legal encyclopedias, and the Big Indonesian Dictionary.¹¹

4. Data collection technique

The data collection technique in this research was carried out through library research, namely by tracing, inventorying, identifying, and reviewing various legal materials related to the research object in a systematic and structured manner.¹²The legal materials were collected from primary, secondary, and

⁵Marzuki, PM (2021). *Legal research*. Jakarta: Kencana, pp. 133–135.

⁶Ibrahim, J. (2006). *Theory and methodology of normative legal research*. Malang: Bayumedia Publishing, pp. 302–304.

⁷Soekanto, S., & Mamudji, S. (2015). *Normative legal research: A brief review*. Jakarta: RajaGrafindo Persada, pp. 14–15.

⁸Rahardjo, S. (2009). *Legal Science*. Bandung: Citra Aditya Bakti, pp. 257–259.

⁹Republic of Indonesia, Law Number 1 of 2023 concerning the Criminal Code, State Gazette of the Republic of Indonesia 2023 Number 1.

¹⁰Barda Nawawi Arief, *Anthology of Criminal Law Policy*, (Jakarta: Kencana, 2016), p. 25.

¹¹Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review*, (Jakarta: RajaGrafindo Persada, 2018), p. 13.

¹²Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review*, (Jakarta: RajaGrafindo Persada, 2018), p. 21.

tertiary legal materials relevant to criminal liability in premeditated murder based on the National Criminal Code. In this process, researchers reviewed laws and regulations, court decisions, legal literature, scientific journals, previous research findings, and the doctrines of legal experts to obtain a comprehensive theoretical and conceptual foundation.¹³Next, all the data that has been collected is classified based on the main problem and then analyzed in a normative legal manner to answer the problem formulation in the research.¹⁴

5. Data Analysis Techniques

The data analysis technique in this study uses qualitative analysis, namely an analysis method carried out by systematically describing and interpreting data based on legal norms, legal theory, and legal principles related to the research object.¹⁵The data obtained through literature studies are then classified and structured according to the main research problem to be analyzed using deductive legal reasoning, namely drawing conclusions from general provisions to specific problems.¹⁶The analysis was conducted by connecting the normative provisions regarding the crime of premeditated murder in Article 459 of the National Criminal Code with the theory of criminal responsibility, the concept of error, the element of intent (*dolus*), and prior planning (*voorbedachte rade*), so that an argumentative, logical, and systematic conclusion was obtained regarding the basis for sentencing perpetrators of premeditated murder.¹⁷

3. Results and Discussion

3.1. Regulation of criminal liability for perpetrators of premeditated murder based on Article 459 of the National Criminal Code (Law Number 1 of 2023)

Premeditated murder is a crime against life that carries the highest level of culpability under criminal law because it is committed intentionally and with careful planning. The element of "premeditation" indicates a time lag between the emergence of the intention and the commission of the act, allowing the perpetrator to think rationally and reverse their intention, but still chooses to carry out the murder.

The provisions regarding premeditated murder are stipulated in Article 459 of the National Criminal Code (Law No. 1 of 2023), which stipulates that anyone who, with premeditation, takes the life of another person shall be punished by the death penalty, life imprisonment, or a maximum imprisonment of twenty

¹³Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2019), p. 181.

¹⁴Johnny Ibrahim, *Theory and Methodology of Normative Legal Research*, (Malang: Bayumedia Publishing, 2017), p. 296.

¹⁵Lexy J. Moleong, *Qualitative Research Methodology*, (Bandung: Remaja Rosdakarya, 2019), p. 6.

¹⁶Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2019), p. 89.

¹⁷Johnny Ibrahim, *Theory and Methodology of Normative Legal Research*, (Malang: Bayumedia Publishing, 2017), p. 393.

years. This provision reflects the state's maximum protection of the right to life as a fundamental human right.¹⁸

According to Barda Nawawi Arief, the element of planning shows a very serious quality of error because the perpetrator consciously used his mind to prepare the crime.¹⁹ Meanwhile, Eddy OS Hiariej explained that the existence of "cool reflection" places the perpetrator's intention in the form of *dolus directus*, namely the direct intention to take the victim's life.²⁰

Criminal liability for premeditated murder must remain based on the principle of "geen straf zonder schuld," meaning there is no punishment without fault. Therefore, the perpetrator can only be punished if he possesses the capacity to take responsibility (*toerekeningsvatbaarheid*), understands the unlawful nature of his actions, and is able to control his will.²¹

Sri Endah Wahyuningsih emphasized that the analysis of criminal responsibility must be carried out comprehensively by paying attention to the elements of the act (*actus reus*), mental attitude (*mens rea*), and the causal relationship between the act and the consequences it causes.²² In judicial practice, proving the element of planning is generally done through indirect evidence (circumstantial evidence), such as preparation of tools, communication before the incident, motives, and the perpetrator's behavior before and after the crime was committed.²³

From the perspective of criminal law policy, the threat of serious criminal penalties in Article 459 of the National Criminal Code not only functions as retaliation, but also as a means of general deterrence and protection for society.²⁴ However, the application of the death penalty or life imprisonment must be carried out selectively and proportionally while still paying attention to humanitarian values and human dignity.²⁵

From a religious perspective, the prohibition of premeditated murder aligns with the principle of the protection of human life (*hifz al-nafs*), one of the primary

¹⁸Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code, Article 459.

¹⁹Barda, NA (2011). *Criminal law policy: Developments in the drafting of the new Criminal Code*. Jakarta: Kencana, pp. 214–216.

²⁰Hiariej, EOS (2016). *Principles of criminal law*. Yogyakarta: Cahaya Atma Pustaka, pp. 187–190.

²¹Soponyono, E. (2020). *The doctrine of criminal responsibility in Indonesian criminal law*. Semarang: UNDIP Press, pp. 98–101.

²²Wahyuningsih, SE (2021). *Criminal law and the development of modern criminal responsibility*. Semarang: Unissula Press, pp. 132–136.

²³Khaira Ummah Journal. (2024). "Proving the element of planning in the crime of premeditated murder." *Khaira Ummah Journal*, 19(2), pp. 145–148.

²⁴Barda, NA (2011). *Criminal law policy: Developments in the drafting of the new Criminal Code*. Jakarta: Kencana, pp. 220–223.

²⁵Wahyuningsih, SE (2021). *Criminal law and the development of modern criminal responsibility*. Semarang: Unissula Press, pp. 140–143.

objectives of Islamic law: protecting human life. Therefore, Article 459 of the National Criminal Code reflects a balance between legal certainty, justice, and expediency in enforcing criminal law in Indonesia.²⁶

3.2. Papplication of the elements of intent and planning in determining the criminal responsibility of perpetrators of premeditated murder

Intention and planning are key elements in determining criminal liability for premeditated murder under Article 459 of the National Criminal Code. Intention (*opzet*) is understood as the perpetrator's mental attitude, consciously knowing and intending the outcome of the victim's death. In premeditated murder, the form of intention used is *dolus directus*, namely the direct intention to take the victim's life.²⁷

Article 459 of the National Criminal Code requires the element of "premeditation," indicating that the act was committed after a calm and rational process of thought. Premeditation does not have to be a written plan, but rather a sufficient time gap between the intention and the act's execution so that the perpetrator has the opportunity to consider their actions.²⁸

Barda Nawawi Arief emphasized that the element of planning indicates a more serious level of guilt than ordinary murder because the perpetrator continued to carry out the crime even though he had the opportunity to cancel his intention.²⁹ Meanwhile, Eko Soponyono stated that the existence of planning reflects the perpetrator's full control over his actions so that criminal responsibility can be imposed to the maximum.³⁰

In judicial practice, proving the elements of intent and planning is done through direct and indirect evidence (circumstantial evidence), such as preparation of tools, communication before the incident, motive, choice of time and place, and the perpetrator's behavior after the crime occurred.³¹ Therefore, the judge must thoroughly assess the perpetrator's mental process before making a decision.

The application of these elements must also comply with the principle of "*geen straf zonder schuld*," which states that there is no crime without fault. If the element of premeditation is not proven, the act cannot be classified as

²⁶Hiariej, EOS (2016). Principles of criminal law. Yogyakarta: Cahaya Atma Pustaka, pp. 201–203.

²⁷Hiariej, EOS (2016). Principles of criminal law. Yogyakarta: Cahaya Atma Pustaka, pp. 187–190.

²⁸Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code, Article 459.

²⁹Barda, NA (2011). Criminal law policy: Developments in the drafting of the new Criminal Code. Jakarta: Kencana, pp. 214–216.

³⁰Soponyono, E. (2020). The doctrine of criminal responsibility in Indonesian criminal law. Semarang: UNDIP Press, pp. 101–104.

³¹Khaira Ummah Journal. (2024). "Proving the elements of intent and planning in the crime of premeditated murder." *Khaira Ummah Journal*, 19(2), pp. 145–149.

premeditated murder, even if the victim dies.³²

From a criminal law policy perspective, the elements of intent and premeditation aim to ensure that severe punishments are only imposed on perpetrators with a high degree of culpability. Furthermore, from a religious perspective, intentional and premeditated murder contradicts the principle of *ḥifẓ al-nafs*, which places the protection of human life as the primary goal of law.³³ Thus, the application of the elements of intent and planning becomes an important basis in realizing justice, legal certainty, and community protection.

3.3. The conformity of the concept of criminal responsibility in Article 459 of the National Criminal Code with the principle of المسؤولية الجنائية (al-mas'ūliyyah al-jinā'iyah) in Islamic law

The concept of criminal responsibility in Article 459 of the National Criminal Code is in accordance with the principle of المسؤولية الجنائية (al-mas'ūliyyah al-jinā'iyah) in Islamic law, particularly regarding premeditated murder (القتل العمد). Both legal systems require a criminal act, intent, and the capacity to be responsible as the basis for punishment.³⁴

Article 459 of the National Criminal Code stipulates that premeditated murder is committed with the element of "premeditation," indicating conscious intent and the perpetrator's free will. In Islamic law, this is known as *al-qaṣd* (deliberation), which is an intention carried out with careful deliberation, making it a more serious offense than spontaneous murder.³⁵

Furthermore, Islamic law recognizes the concept of *al-ahliyyah*, which refers to a person's ability to understand and be accountable for their actions. This principle aligns with the National Criminal Code, which places the capacity to take responsibility as a prerequisite for sentencing. Mental disorders or coercion can eliminate criminal responsibility because the perpetrator is deemed to lack full control over their actions.³⁶

Both legal systems also emphasize the importance of proving both subjective and objective elements before sentencing. In the National Criminal Code, proof is provided through valid evidence, while Islamic law utilizes testimony (*syahādah*),

³²Wahyuningsih, SE (2021). Criminal law and the development of modern criminal responsibility. Semarang: Unissula Press, pp. 140–142.

³³Wahyuningsih, SE (2021). Criminal law and the development of modern criminal responsibility. Semarang: Unissula Press, pp. 150–152.

³⁴Audah, AQ (1992). *At-Tasyri' al-Jina'i al-Islami Muqaranan bil Qanun al-Wad'i*. Beirut: Dar Al-Kitab Al-Arabi, p. 112–115.

³⁵Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code, Article 459.

³⁶Audah, AQ (1992). *At-Tasyri' al-Jina'i al-Islami Muqaranan bil Qanun al-Wad'i*. Beirut: Dar Al-Kitab Al-Arabi, p. 221–225.

confession (iqrār), and strong indications (qarā'in).³⁷

Thus, Article 459 of the National Criminal Code is in harmony with the principle of al-mas'ūliyyah al-jinā'iyah in Islamic law, especially in the aspects of intent, ability to be responsible, protection of the soul (ḥifẓ al-naḥs), and proportionality of punishment.³⁸

4. Conclusion

Based on the research results, it can be concluded that premeditated murder in Article 459 of the National Criminal Code is a crime with the highest level of culpability because it is committed with intent (mens rea) and careful planning (premeditation) which indicates the perpetrator's rational reflection before committing the act. This provision emphasizes the protection of the right to life through the threat of severe punishment as a form of justice, community protection, and crime prevention. The elements of intent and planning are the main basis in determining criminal responsibility because they reflect the quality of the error, mental readiness, and control of the perpetrator's will. This concept is in line with the principle of al-mas'ūliyyah al-jinā'iyah in Islamic law which emphasizes the elements of action, intention (al-qasḍ), and the ability to be responsible (al-ahliyyah) as conditions for punishment. Despite differences in evidentiary mechanisms and procedural approaches, both legal systems place justice, proportionality, and the protection of human life (ḥifẓ al-naḥs) as the primary basis for applying criminal responsibility for premeditated murder (القتل العمد).

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³⁷Khaira Ummah Journal. (2024). "Proving criminal responsibility from the perspective of national criminal law and Islamic law." *Khaira Ummah Journal*, 19(3), pp. 155–159.

³⁸Barda, NA (2011). *Criminal law policy: Developments in the drafting of the new Criminal Code*. Jakarta: Kencana, pp. 214–216.

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