

December 9<sup>th</sup> 2016



# The 2nd Proceeding "Indonesia Clean of Corruption in 2020"



"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



**IMAM AS SYAFEI BUILDING**  
Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

**UNISSULA PRESS**

ISBN. 978-602-1145-41-8

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# RECONSTRUCTION OF CRIMINAL SANCTIONS AGAINST CRIME OF ACTORS AND MURDER MURDER IN PLAN BASED ON VALUE OF JUSTICE CRIMINAL CODE

**Maria Marghareta Titiek Pudji Angesti Rahayu**

Student of Doctoral Program Faculty of Law Sultan Agung Islamic University

Email : [bosbleh@yahoo.com](mailto:bosbleh@yahoo.com)

**Teguh Prasetyo**

Faculty of Law Satya Wacana Christian University

Email : [prof.teguh.prasetyo@gmail.com](mailto:prof.teguh.prasetyo@gmail.com)

**Sri Endah Wahyuningsih**

Doctoral Program Faculty of Law Sultan Agung Islamic University

Email : [endahw@unissula.ac.id](mailto:endahw@unissula.ac.id)

## ABSTRACT

The increasing crime rate is influenced by several factors, from the nature of public welfare, until the little things like a matter of feelings. Indonesia as a country with dignity ensure the protection of the lives of every citizen, from being in the womb until the death. The results of this study were 1) In terms of Article 340 of the Criminal Code is a murder with the most severe criminal penalty, the death penalty. 2) The court's decision is considered to have a fair especially criminal sanctions imposed on the perpetrators, because it is actually the most disadvantaged in the event of a criminal offense is murder victim's family. 3) The murder plan to enter in the category of elements of murder which in the case of positive criminal law, Killing positive in the context of criminal law, categorized for the murder foreseen by the perpetrator, the murder because of persecution and murder due to negligence or neglect.

Keywords: Reconstruction of Criminal Sanctions, Against Perpetrators of the Crime of Murder, Value of Justice.

## 1. Introduction

### a. Background problem

Criminal act of murder that targeted the offender is the soul of a person's life that can not be replaced by anything and that deprivation is contrary to the Act Dasar1945 which reads: "Everyone has the right to live and to defend life and living". Judging from the book of the Law of Criminal hereinafter referred to as the Criminal Code, as soon as it is known that the legislators had intended to organize The provisions of criminal offenses directed against

the man's life in Book II of Chapter XIX of the Criminal Code consisting of thirteen chapters, from Article 338 to Article 350.<sup>1</sup>

Premeditated murder under Article 340 of the Criminal Code is an ordinary murder, such as Article 338 of the Criminal Code, but done with earlier planned. Planned in advance with the intent to kill arise with its implementation is still there due to the maker to calmly figure out a way how such a murder would take place. The difference between murder and murder is planned that the implementation of Article 338 of the killings were intended to be done immediately at the time of intent, am suspended execution of premeditated murder after the intention arose to set up a plan, how the murder would be undertaken. When viewed in terms of the rule of law in Indonesia, an appropriate punishment for the perpetrators of premeditated murder is the death penalty, the toughest sanctions that apply to a rule. The provisions of laws and regulations contained in the Code of Penal (Penal Code) to set one of them on felony murder as stated in Article 338 to Article 350. The threat of the toughest on crime against life is murder pursuant to Article 340 of the criminal Code, which states: "Whoever knowingly and with a plan in advance to hijack another person's life, is threatened by plans for murder, the death penalty or imprisonment for life or for a certain time, at least twenty years".

As this article clearly refers to the maximum penalty is death, and the lowest for a certain time, at least twenty years, but in reality it is not realized as any rules. The offense of premeditated murder, as well as the most important legal issues to be studied in depth. Based on the above, the researchers wanted to examine the reconstruction of Criminal Sanctions Against Perpetrators of the Crime of Murder and Homicide The Value-Based Planning Justice. **Reconstruction of criminal homicide and murder contained in Article 340 of the Criminal Code.**

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<sup>1</sup> P.A.F., Lamintang, *Theo Lamintang, Kejahatan Terhadap Nyawa, Tubuh, dan Kesehatan, Cetakan Kedua, Jakarta, Sinar Grafika, 2012, hlm 11*

## **b. problem formulation**

From the description above can be summarized as the following problems:

1. How criminal sanctions against the perpetrators of the crime of murder and manslaughter in the Criminal Code today?
2. Why does the application of criminal sanctions against the perpetrators of the crime of murder and murder is not fair?
3. How is the reconstruction of criminal sanctions against the perpetrators of the crime of murder and manslaughter based on values of justice?

## **2. Discussion**

**a. Overview Crime Murder by the Book of the Law of Criminal Law (Penal Code).**

The criminal act of murder or crimes against life in the Criminal Code broadly classified into two (2) categories: first by the elements of the offense, both by its object. Based on the elements of the offense of the crime of murder can be divided into two (2) types:

1. Crimes against life done intentionally (*dolus misdriyven*). This crime is set in the Second Book of Chapter XIX of the Criminal Code Article 338 to Article 350.
2. Crimes against the life that was accidental (*culpose misdriyven*). This criminal act is set in the Second Book of Chapter XXI of Article 359 of the Criminal Code.<sup>2</sup>

**b. Sanctions Crime Murder by the Book of the Law of Criminal Law (Penal Code).**

In the Criminal Code, the crime of murder is a serious crime. It can be seen from the penalty of the crime of murder form below:

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<sup>2</sup> *Wahyu Adnan, Kejahatan Terhadap Tubuh dan Nyawa, Bandung, Gunung Aksara, 2007*

1. The intentional killing, in the form of public or goods provided for in Article 338 Hup: "Any person who willfully depriving another person's life, is threatened because of the killing by imprisonment not exceeding fifteen years".

2. The killing plan, set out in article 340 of the Criminal Code "Those who plan ahead and to seize other people's lives were threatened because of the murder plans (Noord), with the death penalty or imprisonment for life or for a certain time, at least twenty years";

3. The killing was not intentional. Governed by Article 359 of the Criminal Code "Whoever due to negligence causing death of another person shall be punishable with imprisonment not exceeding five years or imprisonment of one year"

#### c. Murder According to Islamic Criminal Law

The elements of the crime of murder in Islamic Law are:

1. Get rid of the human soul

2. The existence of the act, both active and passive act. The purpose of the act is the active act or behavior do so results in loss of human life, such as stab someone with a knife. The purpose of the act is not an act of passive or behavior do not do but because it results in loss of human life

3. Do to others, as if done by myself named suicide although forbidden by Islamic law but there is no threat of punishment in it, because the offender has no

#### d. Sanctions Crime Criminal Law Murder In Islam

Sanction of the crime of murder in the criminal law of Islam there are several types. By and large the penalty itself is made up of the principal penalty, sentence substitute and additional penalties. The ultimate punishment in criminal homicide is Qisas. When pardoned by the victim's family, the successor liability is blood-money and if sanctions Qisas or blood-money was also there will be forgiven ta'zir penalty and additional penalty in question is such as disinheritance.

Sentences handed down for each type of murder is also different, as follows:

a. Penalties intentional homicide

Anyway punishment is qisas or reply in kind. Referred to reply in kind are acts that lead to death, his punishment is death.

b. Penalties semi accidentally killing

The difference between the blood-money murder with murder *senagaja* semi deliberately located on the loading and payment terms. The murder *senagaja* blood-money charged to the offender himself and is paid in cash while the semi intentional murder, blood-money charged to the family of the perpetrator or *aqilah* and payment can be paid in installments over three years. Penalties expiation for accidental killing of a semi slave is set free and can be replaced by fasting for two consecutive months. If the punishment for their blood-money autumn pardon the offender will be punished *ta'zir* submitted to the competent judge in accordance with the act of the perpetrator. Additional penalties in the semi intentional homicide with additional penalties on intentional homicide, that is not inherited from the people he had killed.

c. The penalty for the offense of murder

The penalty imposed is the ultimate blood-money and expiation, this blood-money by Imam Shafi'i mukhaffafah classified in the blood-money, ie blood-money is commuted. Waivers can be seen from three aspects:

1. The obligation of payment is charged to *aqilah* (family) Payment can be paid in installments over three years

3. The composition of the blood-money is divided into five groups

a. 20 calves female, aged 1-2 years

b. 20 female cows that have large

c. 20 bulls that have large

d. 20 camels which were young, aged 3-4 years

e. 20 camels who are aged 4-5 years

While his successor liability is fasting. Mmenurut fuqoha there is no ta'zir in murder mistaken, this is due to two principal punishment, as well as the blood-money and expiation additional punishments deemed sufficient. This means that in Islamic law there are no restrictions to determine the blood-money ta'zir punishment when punishment is forgiven. It is if it is judged there is good to be together.<sup>3</sup>

### 3. Conclusion

1. Article 338 of the Criminal Code states "Whoever intentionally depriving another person's life, threatened, for murder, with a maximum imprisonment of fifteen years". While Article 340 of the Penal Code which states: "Whoever knowingly and with a plan in advance to hijack another person's life, is threatened by plans for murder, the death penalty or imprisonment for life or for a certain time, at least twenty years ".

The offenses in Article 340 of the Criminal Code states that the elements of murder are; subjective element, that is deliberate and premeditated, objective elements, that takes the lives of others. If the elements of the above have been met, and a principal knowingly and intentionally will be the emergence of a result but it does not cancel his intention, then it can be subject to Article 340 of the Criminal Code. Criminal threats to murder the heavier of the murder of existing Article 338 and 339 of the Criminal Code even a murder with a sentence of the heaviest, the death penalty, which sanctions the death penalty is not listed on the crimes against the lives of others, which is the basis weight this sentence is the lack of planning in advance. Also threatened with the death penalty, the offender can be convicted of premeditated murder is life in prison or during certain times of no longer than twenty years.

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<sup>3</sup> Abdul Qodir Audah, *Ensiklopedi Hukum Pidana Islam*, Bogor: PT.Kharisma Ilmu, hal.348-351

2. The court ruling is considered not just because in this case the victims, who suffer and adversely affected by a breach of criminal law usually only involved limited to testify as witnesses. In Islamic law clearly states that a person who kills the penalty is the appropriate punishment for his actions which the death penalty, with the exception of when the victim's family refused to forgive the offender then a blood-money / compensation of material and immaterial.

3. As previously explained, in terms of protection of victims, in particular the rights of victims to obtain blood-money / compensation from the offender, but in practice, this is rarely applied due to constraints in terms of victims late or do not report to the public prosecutor about demand compensation claim so that when the prosecutor read out the claim, the claim does not include the claim for damages. Moreover, the constraints that the length of the payment procedure claim compensation from the government to the victims, although the court ruling has determined that the victims should be given compensation, and usually only applied in certain types of crime (such as traffic accidents and ill-treatment).



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Wahyu Adnan, 2007. *Kejahatan Terhadap Tubuh dan Nyawa*, Bandung, Gunung Aksara.

### Perundang-undangan.

Bab XIX Buku II KUHP tentang Pembunuhan biasa/tidak direncanakan (Psl 338 KUHP)

Bab XIX Buku II KUHP tentang Pembunuhan diikuti, disertai atau didahului tindak pidana lain (Psl 339 KUHP)

Bab XIX Buku II KUHP tentang Pembunuhan berencana (Psl 340 KUHP)