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Proving the Elements of Fault in the Accountability of the Perpetrator of the Crime of Premeditated Murder

Pembuktian Unsur Kesalahan Pertanggungjawaban Pelaku Tindak Pidana Pembunuhan Berencana

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Abstract The judicial process without primair evidence of the defendant Jessica Kumala alias Jessica Kumala Wongso alias Jess can be sentenced to criminal punishment by tracing a person's motive for committing a criminal offense that results in the loss of life of another person must be responsible for his actions as regulated by Article 340 of the Criminal Code. Normative juridical research using the deductive thinking method of objects analyzed with a qualitative approach, the research refers to the legal norms contained in the legislation. The basis of

consideration of the Panel of Judges in imposing punishment on the defendant of premeditated murder in the First Level Decision Number 777/Pid.B/2016/PN.Jkt.Pst. Judges have the right to accept or override the opinion of expert testimony, but it must be based on appropriate reasons, because in exercising their authority, judges must be truly responsible for the realization of truth and legal certainty. In terms of deciding a case, the judge's belief is very important. This is in accordance with the judge's decision in the Jessica case where the judge has his own view of the case where the judge's instinct is very important. The legal perspective on intentionality that results in the loss of life of others as the author has explained is that intent in criminal law is part of guilt. The intent of the perpetrator has a closer psychological connection to an act (which is prohibited) than negligence (*culpa*).

Keywords *Circumstantial Evidence; Jessica Kumala Wongso; Cyanide Coffee; Criminal Liability*

Abstrak Proses peradilan tanpa alat bukti primair terdakwa Jessica Kumala alias Jessica Kumala Wongso alias Jess dapat dijatuhi hukuman pidana dengan menelusuri motif seseorang untuk melakukan tindak pidana yang mengakibatkan hilangnya nyawa orang lain haruslah mempertanggungjawabkan perbuatannya sebagaimana yang telah diatur oleh Pasal 340 KUHP. Penelitian yuridis normatif dengan menggunakan metode berpikir deduktif objek yang dianalisis dengan pendekatan yang bersifat kualitatif penelitian mengacu pada norma-norma hukum yang terdapat dalam peraturan perundang-undangan. Dasar pertimbangan Majelis Hakim dalam menjatuhkannya pidana terhadap terdakwa pembunuhan berencana pada Putusan Tingkat Pertama Nomor 777/Pid.B/2016/PN.Jkt.Pst. Hakim berhak untuk menerima atau mengesampingkan pendapat dari keterangan ahli namun haruslah berdasarkan alasan yang tepat, karena dalam mempergunakan kewenangannya Hakim harus benar-benar bertanggung jawab demi terwujudnya kebenaran dan kepastian hukum. Dalam hal memutus suatu perkara, keyakinan Hakim amatlah penting. Hal ini sesuai dengan putusan Hakim dalam kasus Jessica di mana Hakim memiliki pandangan tersendiri terhadap kasus tersebut di mana naluri seorang Hakim amatlah penting. Perspektif Hukum terhadap kesengajaan yang mengakibatkan hilangnya nyawa orang lain sebagaimana yang telah penulis jelaskan yaitu kesengajaan dalam hukum pidana merupakan bagian dari kesalahan. Kesengajaan pelaku mempunyai hubungan kejiwaan yang lebih erat terhadap suatu tindakan (yang terlarang) dibanding dengan kealpaan (*culpa*).

Kata kunci *Bukti Tidak Langsung; Jessica Kumala Wongso; Kopi Sianida; Pertanggungjawaban Pidana*

A. Introduction

Premeditated murder according to Article 340 of the Criminal Code is a murder with premeditation, this crime is called murder with premeditation, between the onset of the intention to kill and the implementation there is still time for the perpetrator to calmly think about, for example, in what way this murder will be carried out. In several cases there have been many murders, both intentional and unintentional. One example is the murder case that occurred in 2016 in Central Jakarta which caught the attention of the Indonesian people. This tragic murder finally ended in the Central Jakarta District Court at the First Level Decision Number 777/Pid.B/2016/PN.Jkt.Pst., the Jakarta High Court at the Appeal Decision Number 393/Pid/2016/PT.Dki., and the Supreme Court Cassation Decision Number 498 K/Pid/2017, with the defendant Jessica Kumala alias Jessica Kumala Wongso alias Jess.¹

Central Jakarta District Court Decision Number 777/Pid.B/2016/PN.Jkt.Pst., Jakarta High Court on Appeal Decision Number 393/Pid/2016/PT.Dki., and Supreme Court Decision on Cassation Decision Number 498 K/Pid/2017, is a decision on behalf of the defendant Jessica Kumala Wongso who was sentenced by a judge to 20 years imprisonment for the crime of intentional and premeditated murder.

Premeditated murder is one type of murder which contains an aggravating element (*gequalificeerde doodslag*), namely the element of planning (*voorbedachte raad*). Murder with premeditation or abbreviated as premeditated murder is the most severe punishment of all forms of crimes against human life. The murder case of I Wayan Mirna Salihin is a criminal offense regulated in Article 340 of the Criminal Code. To determine whether a case can be convicted, it is necessary to see the elements of the article that regulates it.²

The subjective element in Article 340 of the Criminal Code, namely the first element intentionally, namely the loss of a person's life must be desired, must be the purpose of an act committed with the intention or purpose or intention to eliminate a person's life, the result of the loss of a person's life without intent or not the purpose or intention, cannot be declared as murder, so intentionally means having the intention or intention or purpose to eliminate a person's life.³

Responding to the plea of the defendant Jessica's legal counsel, even though the defendant did not feel remorse in the Mirna murder case, because according to the defendant he never felt that he had committed the act, this opinion was contradicted when the defendant's legal counsel in his plea said that if Indonesia

¹District Court Decision Number 777/Pid.B/2016/PN.Jkt.Pst., High Court Decision Number 393/Pid/2016/PT.Dki., Supreme Court Decision Number 498 K/Pid/2017.

²The Law Number 1 of 1946 concerning Criminal Law Regulations, Article 340.

³Siswantari Pratiwi, "Delik Penyertaan Dalam Kitab Undang-Undang Hukum Pidana (KUHP)," *Binamulia Hukum* 11, no. 1 (2023): hlm. 69, <https://doi.org/10.37893/jbh.v11i1.307>.

adopted the jury system as applied in the United States, then surely the defendant Jessica would be acquitted, This proves that the defendant's legal counsel has realized that the system in Indonesia is civil law, not common law, meaning that the Indonesian legal system does not adhere to the jury system as adopted in the United States, proving that the defendant's legal counsel and the defendant are actually very aware that the defendant has been proven guilty and will be sentenced in accordance with the legal considerations of the elements of the prosecutor's indictment.

One of the evidence regulated in Article 184 of the Criminal Procedure Code is evidence. Evidence is everything that has to do with an act, where the evidence can be used as evidentiary material to give rise to the judge's confidence in the truth of the existence of a criminal offense committed by the defendant. Evidence according to Pitlo is a method carried out by the party for facts and rights related to their interests. According to R. Subekti, what is meant by proving is convincing the judge of the truth of the arguments or arguments put forward in a dispute. According to R. Subekti, proof is an effort to convince the judge of the actual legal relationship between the parties in the case, in this case between the evidence and the criminal offense charged.⁴

As described above, judges in carrying out their duties to seek material truth are obliged to comply with the provisions regarding the evidence referred to in the law. The means of evidence referred to as stated in Article 184 of the Criminal Procedure Code are: witness testimony, expert testimony, letters, instructions, and testimony of the defendant.

Things that are generally known do not need to be proven. Things that are generally known are usually called *notoire feiten* (Article 184 paragraph (2) KUHP). Broadly speaking, *notoire feiten* is divided into 2 groups, the first is something or event that is generally known that an event is already so or should be so, while the second, is a fact or experience that has always and always resulted in such or always such a conclusion, when compared to the other 4 evidence in Article 184 of the Criminal Procedure Code, then this clue evidence is not a unanimous and stand-alone evidence, but rather a judge-made evidence.⁵

Based on the description and explanation above, the purpose of this study is to find out the judicial process without primair evidence the defendant Jessica Kumala alias Jessica Kumala Wongso alias Jess can be sentenced to criminal punishment.

B. Methods

This research was conducted with normative juridical research, library legal research conducted by examining library materials or secondary data. This research

⁴ R. Subekti, *Hukum Pembuktian* (Jakarta: Pradnya Paramita, 2010), hlm. 7.

⁵ The Law Number 8 of 1981 concerning Criminal Procedure.

was conducted in order to obtain materials in the form of theories, concepts, legal principles and legal regulations related to the subject matter.

The scope of this research will be carried out by drawing legal principles, which are carried out on written and unwritten positive laws.⁶ This research can be used to draw legal principles in interpreting laws and regulations. In addition, this research can also be used to find legal principles that are formulated both implicitly and explicitly.⁷

The data that has been obtained is then analyzed through a qualitative analysis approach, namely by observing the data obtained and connecting each data obtained with the provisions and legal principles related to the problem under study with inductive logic.⁸

C. Results and Discussion

On Thursday, October 27, 2016, the panel of judges at the Central Jakarta District Court sentenced the defendant Jessica Kumala Wongso to 20 years in prison. The panel of judges stated that Jessica Kumala Wongso, aka Jessica, was guilty of premeditated murder. Jessica is believed to be guilty of poisoning Mirna by putting 5 grams of cyanide poison. Jessica is said to have covered up her actions by placing 3 paper bags on table number 54.

The aforementioned decision is based on the overall facts and evidence revealed at trial, the Judge revealed the truth of the murder case against the victim Mirna. The Panel of Judges assessed and considered whether the evidence such as witness testimony, expert testimony, letters of instructions and testimony of the defendant as stipulated in Article 184 paragraph (1) of the Criminal Procedure Code, had a valid and legally acceptable evidentiary value. So that these facts are legally qualified to clearly and irrefutably reveal the event of premeditated murder as in the indictment of the Public Prosecutor Article 340 of the Criminal Code. The judge considered the testimony of the witnesses, that in the witness testimony, namely in accordance with what was heard, seen, experienced by himself in this incident, so that the testimony was interrelated between one testimony and another. So the Panel of Judges is of the opinion that as far as the testimony is relevant to this case, it is considered valid evidence.⁹

In terms of expert testimony, the Panel of Judges was of the opinion that in this case the victim died as a result of drinking Vietnamese ice coffee ordered by the defendant Jessica and to find out the cause of death of the victim requires accurate

⁶ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Cet. 2 (Jakarta: UI Press, 2019), hlm. 63.

⁷ Hartanto dan Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Rajawali Pers, 2018), hlm. 27-28.

⁸ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: RajaGrafindo Persada, 2012), hlm. 14.

⁹ CNN Indonesia, "FULL 5: Tuntutan Jaksa ... Berikut Ikhtisar Hasil Rekonstruksi & Keterangan Ahli," 2016, <https://www.youtube.com/watch?v=7SWy30MpAmc> diakses 2 Agustus 2022.

evidence. Because the evidence and letter evidence such as the post mortem etreperitum and other letters related to the death of the victim Mirna were in the hands of the Public Prosecutor as the State prosecutor, there was no counter-evidence owned by the defendant's legal counsel. When experts conduct scientific legal studies outside of evidence and evidence other than that owned by the Public Prosecutor, it overrides the opinions and expert testimony of the defendant's legal counsel.

Regarding the testimony of expert opinions related to the cyanide content in the body of the victim Mirna, according to the Panel of Judges to assess and debate the views of these experts is valid. However, it is the authority of the Panel of Judges to assess whether the expert opinion is accepted or rejected. In accordance with the provisions of Article 1 paragraph (9) of the Criminal Procedure Code, in accordance with Article 1 paragraph (28) of the Criminal Procedure Code, stating that the opinions of experts according to their special expertise are only needed by the Panel of Judges to shed light on criminal events for the benefit of this trial examination.

In a trial, the Panel of Judges accepts expert testimony if the expert opinion is relevant to the subject matter. However, if it is irrelevant, the Panel of Judges may disregard the expert opinion. Because the judge is authorized to test the truth without having to contradict the expert opinion presented by the prosecutor and the defendant's legal counsel. So that expert testimony that has been heard in court can be used as one of the legal evidence to strengthen the truth of this case.

In the trial of this case, letter evidence was shown, namely the minutes of the case files and their attachments, including the pre-trial verdict on behalf of Jessica Kumala Wongso Number BB/117/II/2016 Direskrimum dated January 18, 2016, along with all the letters attached to it, which are official documents obtained legally and properly based on the law as stipulated in Article 133 paragraph (1) and (2) of the Criminal Procedure Code, Article 184 paragraph (1) letter (c) of the Criminal Procedure Code and Article 187 of the Criminal Procedure Code. To the extent that there is relevance to this case, it can be used as valid evidence to reveal the truth of this case.¹⁰

Regarding the absence of the cause of Mirna's death, the judge agreed with the toxicology and forensic experts to conduct an autopsy on the victim. However, if an autopsy is not performed, it is necessary to know the cause of Mirna's death, to reveal the truth of Mirna's death, which will be proven through the facts revealed at trial and will be explored whether the coffee contained sodium cyanide or not. If there is, then who should be suspected of putting poison in Mirna's coffee, which will finally be known whether there was sodium cyanide in Mirna's body that caused the victim to die.

¹⁰ *Ibid.*

Based on Article 188 paragraph (1) of the Criminal Procedure Code, what is meant by a clue is an act, event or situation whose correspondence either between one another or with the criminal act itself indicates that a criminal act has occurred and who the perpetrator is. These clues can be obtained from witness testimony, letters and testimony of the defendant. From the explanation that the evidence of clues is formed if there is a series of actions or circumstances that are mutually consistent between witness testimony, letters and testimony of the defendant, a criminal offense has occurred. From which the correspondence is finally known who the culprit is.

Whereas the CCTV footage questioned by the defendant's legal counsel is not suitable as circumstantial evidence in the trial of this case, the Panel of Judges is of the opinion that the CCTV at the Oliver Cafe was not deliberately intended for this case. However, in general, it was previously installed in the place that used to monitor every incident that occurred in the Oliver Cafe environment, so that the CCTV does not have to be controlled by the authorized official because it involves allegations that there has been tempering or insertion of videos and images on the CCTV. The digital experts were sworn in at the trial.

The statement of the defendant, Article 1 paragraph (15) of the Criminal Procedure Code, defines the defendant as a suspect who is charged, examined and tried in court. In accordance with Article 189 paragraph (3) of the Criminal Procedure Code, the statement of the defendant can only be used by himself. This shows that other evidence such as the testimony of the defendant, expert testimony, letters and instructions are of higher value than the testimony of the defendant. That is why, the Panel of Judges in every trial always reminded the defendant to be honest and not to lie in every answer submitted by the Public Prosecutor and the Judge related to criminal events that were committed, known and experienced by himself. Although the defendant Jessica has the right to deny, it does not mean that she should lie at will in the trial. All of the defendant's statements and attitudes in this trial process will be assessed and considered carefully and comprehensively by the Panel of Judges.

That if the statement made by the defendant does not match the evidence as stipulated in Article 184 paragraph (1) of the Criminal Procedure Code does not mean that the defendant must be released or acquitted from all charges of the public prosecutor. In relation to this case, the judge used the generalization theory or the individualization theory. These two theories are used to facilitate the disclosure of the fact that if a person dies after eating or drinking something that has been given arsenic or sodium cyanide, then based on the generalization theory it is the arsenic sodium cyanide that causes the death of a person. Meanwhile, according to the individualized theory, it must be further investigated what arsenic or sodium (NaCN) cyanide is in the food or drink and whether such content can cause death or there are other things that cause death.

That in the context of premeditated murder, sometimes there is not a single witness who saw the murder being committed. The defendant does not admit to his actions, in such cases it is necessary to find how formal and material proof is carried out, found in 3 ways, namely:¹¹

1. Formally, in the law of criminal evidence, in principle, it has the same and equal evidentiary value, with the exception of the evidence of the defendant's statement. Its value is lower than other evidence because Article 189 paragraph (3) of the Criminal Procedure Code states that the defendant's statement is only valid against himself. In the criminal context, judges are not absolutely bound to certain evidence;
2. Formally, there is no need for an eyewitness to see the incident, meaning that if a defendant uses cyanide poison to kill, the goods used to commit the crime and the poison is put into a drink, then there does not have to be an eyewitness who saw the poison put into the drink. To prove this, the public prosecutor and judge can use circumstantial evidence. For example, who ordered the drink to be in whose possession? Was there any suspicious movement when the person was in possession of the drink? If the above questions can be answered with certainty, either using evidence of witness testimony, expert testimony or other evidence as long as there is a correspondence with one another, it can give rise to confidence for the judge that he is the culprit; and
3. Materially, if the defendant does not want to admit his actions, then the judge can use the theory of intentionality that is objectified. Here the judge concludes from things that are born or objective standing hearing as long as the facts are evident and there is congruence between one piece of evidence and another, then objectively the perpetrator has intentionally committed the crime.

In the decision of this case, the judge was of the opinion that the defendant Jessica was capable of taking responsibility for her actions as will be proven in the elements of the indictment below:¹²

1. The element of who has been proven legally and convincingly; and
2. The element of intentionally.

In criminal law, intent is a form of guilt, namely the relationship between the inner attitude of the defendant and the actions committed. The requirement for intentionality is to be aware and willed. From this deliberate element, the judge must be able to ascertain whether the defendant really knew and wanted what would happen and what the consequences would be. However, before committing the willed act referred to as the element of intent to commit a criminal act, the Panel of Judges was of the opinion that it is necessary to know what caused the crime to

¹¹ Salvadoris Pieter dan Erni Dwita Silambi, "Pembuktian Dalam Tindak Pidana Pembunuhan Berencana Ditinjau dari Kitab Undang-Undang Hukum Pidana," *Jurnal Restorative Justice* 3, no. 1 (2019): hlm. 76, <https://doi.org/10.35724/jrj.v3i1.1940>.

¹² *Ibid.*, hlm. 78.

be committed, which is referred to as the motive. According to the judges, although motive is not an element of the offense, it is also necessary to explore whether there are factors that cause the occurrence of a criminal offense, which is a criminological study.

Because without a motive, it is very difficult for someone to just commit a criminal act against another person, especially if the act is aimed at premeditated murder contained in Article 340 of the Criminal Code. Except for ordinary murder which is regulated in Article 338 of the Criminal Code, it can be done spontaneously to kill someone. In contrast to Article 340 of the Criminal Code, in premeditated murder there are three characters: 1) The perpetrator decides in a calm state; 2) There is a sufficient period of time for the termination and execution of the will; and 3) The execution of the will is carried out in a calm state.¹³

The existence of an act of murder, the judge will first reveal the motive or background of the criminal incident. It was known by Arief, Mirna's husband, witness Christy, witness Darmawan Salihin, who agreed with the testimony of the defendant that for approximately 8 months in 2015, especially in November, the defendant was depressed, liked to get drunk with alcohol, crashed into a nursing home in 2015, the defendant also repeatedly threatened to kill, wanted to commit suicide and was hospitalized because he tried to cut his hand.

At the time of her illness, the defendant Jessica said that if she wanted to kill, she could get a firearm and knew the right dose to kill. Based on the above facts, the Panel of Judges can assess that Jessica experienced emotional instability in the form of aggressiveness which was initially directed at herself by repeatedly wanting to kill herself and behaving by drinking excessive alcohol that could potentially injure others or crashing into nursing homes. Then there is behavior that likes to threaten other people. With the series of events above, the Panel of Judges was of the opinion that the arrival of the defendant Jessica to Indonesia was not for a vacation, but brought several problems and there was another purpose for her arrival.

The aforementioned is reinforced by the testimony of a forensic psychiatric expert, where the defendant has the potential to behave aggressively towards himself and others when under pressure. Therefore, the judge concluded that the cause or motive for the victim's death was an element of hurt or revenge. With the existence of a motive, before the criminal event occurred, the Panel of Judges will prove whether there was an element of intent related to Mirna's death or not.

The theory of intentionality is that from the consciousness of the will to commit a certain crime, a person who commits intentionally must have the will and know the consequences of the act.¹⁴ To link premeditated murder and the theory of

¹³ CNN Indonesia, "FULL 5: Tuntutan Jaksa ... Berikut Ikhtisar Hasil Rekonstruksi & Keterangan Ahli." *Op.cit.*

¹⁴ Neri Aslina dan Fithri Mehdini Addieningrum, "Akibat Hukum Pembunuhan yang Disengaja Studi Komparatif Hukum Pidana Islam dan Hukum Positif (KUHP)," *Addayyan* 17, no. 1 (2022): hlm. 36, <http://jurnalstaiibnusina.ac.id/index.php/AD/article/view/142>.

intent, the Panel of Judges used the generalization theory and the individualization theory. To find out about these two theories, we must look at the element of intent. The judges were of the opinion that the element of intentionality has been fulfilled legally and convincingly according to the law. The element of intentionality consists of:

1. The element of premeditation. This element is a continuation of the intentional element, which means that the intentional element will not be fulfilled if there is no prior planning as considered above. Intentionality and planning in Article 340 of the Criminal Code are shades of *dolus premeditatus*. If someone kills with poison, then the perpetrator already has an understanding related to the poison. The Panel of Judges is of the opinion that as evidence that the defendant had planned, there was careful awareness, a very short time strategy and as efficient as possible by utilizing the reunion event; and
2. The element of taking the life of another person. This element is the result of the intentional and premeditated element by the defendant Jessica Kumala Wongso. What is meant by taking the life of another person is to eliminate the life or soul of another person, so that he dies. Because the deprivation of another person's life can be done with careful planning, it is sufficient if the defendant thinks briefly before or at the time he commits the crime.

The judge was convinced that Mirna died from cyanide poisoning. The judge was of the opinion that based on the available evidence, Jessica was legally proven to have taken Mirna's life. The judges believed that it was the defendant who put the poison in Mirna's coffee on the basis that the coffee was under the supervision of the defendant for approximately 51 minutes. The judges considered that the defendant took advantage of the atmosphere by crying sincerely, but the judges believed that it was an act.

In the trial of this case, the judge rejected the entire defense read out by the defendant Jessica Kumala Wongso, especially since the defendant never regretted his actions because according to the defendant, he was not the one who put poison in Mirna's coffee. The judge argued that the defendant's attorney should have sought information on the defendant's strengths and weaknesses.

The Judge's consideration and assessment of the defense of the defendant's legal counsel for other than and the rest need not be considered again because various controversial expert opinions related to the cause of death of the victim Mirna have been considered in the elements of the offense before. Therefore, the request of the defense counsel that the defendant be acquitted of all charges or charges of the Public Prosecutor is rejected.

The defendant has been legally and convincingly proven to have committed the crime of premeditated murder as stated in the single charge of Article 340 of the Criminal Code. The judge did not find anything that eliminated the defendant's guilt,

either excuse or justification, so the defendant must be found guilty and sentenced in accordance with his actions. Matters that aggravate the defendant are:

1. The defendant's actions caused the death of the victim I Wayan Mirna Salihin;
2. The defendant's actions were heinous and sadistic, which were committed against the defendant's friend;
3. The defendant never regretted what he had done; and
4. The defendant did not confess to his own actions.¹⁵

The mitigating circumstances are that the defendant is still young and is expected to improve himself in the future. Based on the aforementioned considerations, the judge issued the following decision:

1. Stating that the defendant Jessica Kumala Wongso has been proven legally and convincingly guilty of the crime of premeditated murder;
2. To sentence the aforementioned defendant to 20 years imprisonment;
3. Determine that the period of arrest and detention served by the defendant shall be deducted in full from the sentence imposed on him;
4. Determine that the defendant remains in custody;
5. Determining that evidence numbers 1-18 are confiscated for destruction. Numbers 19-29 remain attached to the case file. Number 30 is returned to witness Arief Sumarko, 31-45 is returned to Oliver Cafe through witness Dewi Siagian; and
6. Charged the defendant to pay court costs of IDR 5,000.¹⁶

In giving a verdict, the Central Jakarta District Court Judge used circumstantial evidence in the case of the premeditated murder of the victim Mirna, namely CCTV footage, witness testimony and expert testimony in the trial and found Jessica Kumala Wongso guilty of committing premeditated murder of I Wayan Mirna Salihin.

Materially, if the defendant does not want to confess as long as the facts are proven and in accordance with each other, then objectively the defendant committed the act. Objectively, the defendant intentionally committed the crime against the victim and fulfilled the elements charged by the public prosecutor.

Consideration of the Judges of the District Court, Central Jakarta in trying and deciding the case of premeditated murder, the Judge decided that the defendant, Jessica, was guilty of the death of her friend I Wayan Mirna Salihin. The verdict determined by the Panel of Judges was 20 years in prison, this is in accordance with the demands of the Public Prosecutor.

In the consideration of the Panel of Judges, the 3 existing evidences regulated in the Criminal Procedure Code are valid, where the CCTV evidence that has been questioned by the legal counsel team is refuted by the Panel of Judges. The judges

¹⁵ Salvadoris Pieter dan Erni Dwita Silambi, "Pembuktian Dalam Tindak Pidana Pembunuhan Berencana Ditinjau dari Kitab Undang-Undang Hukum Pidana," *Op.cit.*, hlm. 77.

¹⁶ *Ibid.*

considered that CCTV can be valid evidence as long as it is in accordance with witness testimony and can be used as valid evidence. Moreover, the use of CCTV to reveal a criminal offense has often been carried out by law enforcers and is regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions.

In the decision, the judge disagreed with the testimony of criminal expert Mudzakir regarding the autopsy contained in the National Police Chief's regulation. The judge considered that the autopsy obligation was in the Chief of Police regulation, which is hierarchically positioned far below the Criminal Procedure Code. Although no autopsy was performed on the victim's body, it does not mean that the cause of death cannot be found.

The judge emphasized that in this case, it is not necessary to have an eyewitness who saw someone commit a criminal act. The judge can obtain circumstantial evidence. The suspicion that the Oliver Cafe may have committed the murder was also explained by the judge using logic. For the judges, if the Oliver Café had planned the murder, the remaining Vietnamese iced coffee would have been thrown away. This means that the cyanide was already in the Vietnamese iced coffee before the investigators conducted their examination.¹⁷

The panel of judges explained when the defendant Jessica put the poison into the Vietnamese iced coffee belonging to the victim Mirna, actually only the defendant Jessica herself can know, which was when she placed 3 paper bags on table number 54 (the judge saw according to the CCTV footage). The judge recounted one by one the events that had been carried out by the defendant Jessica, starting from being the first person to arrive at the Grand Mall Indonesia, then buying hand washing soap, ordering a drink and at the same time buying drinks for her friends and placing 3 paper bags on table number 54. According to the Panel of Judges, what the defendant did was very unusual, especially in buying soap for his friends to wash their hands. Meanwhile, when viewed from their age it is not appropriate to give gifts such as hand washing soap. The panel considered that some of Jessica's actions were not like ordinary people. Such as paying the bill in advance. The judge assumed that the purpose of paying in advance was so that the defendant Jessica could leave the location quickly.¹⁸

The judge found that the elements of Article 340 of the Criminal Code had been fulfilled. Where the requirements for intentionality are knowing and willing, where the defendant Jessica has fully understood what will happen to the victim for her actions, there is a time lag between intention and action, and the action is carried out calmly. Jessica developed a reunion scenario to further her intentions. Then the defendant Jessica arrived first with the reason that she was afraid of being stuck in

¹⁷ CNN Indonesia, "FULL 5: Tuntutan Jaksa ... Berikut Ikhtisar Hasil Rekonstruksi & Keterangan Ahli." *Op.cit.*

¹⁸ *Ibid.*

traffic, looked for a seating position that was far from the reach of CCTV and moved to a seat that was covered by ornamental plants.

The Panel of Judges explained during the trial that the motive for the defendant Jessica to commit premeditated murder against her own best friend was due to hurt feelings. The judge was of the opinion that motive is not included in the elements of the offense in Article 340 of the Criminal Code, but it is also necessary to know the cause of a criminal offense. This is because, without a motive, it is very difficult for someone to commit a criminal act against another person, especially in premeditated murder. In this case, the judge clearly saw Jessica's motive in committing premeditated murder.¹⁹

In a criminal offense, there are elements (actions) where the actions cause consequences caused by a person's behavior. However, not all of these actions can be categorized as criminal acts, unless they have been regulated in advance by law.

The main function of a judge is to give a decision on the case submitted to him, where in criminal cases, it cannot be separated from the negative evidence system (*negative wetterlijke*), which in principle determines that a right or event or error is considered proven, in addition to the existence of evidence according to the law, it is also determined by the judge's belief based on good moral integrity.²⁰

Based on the explanation above, in a criminal case, the judge in determining whether a person is guilty or not guilty, it is very important to look at the elements of the offense, not to see what the purpose of a person committing a criminal offense is. If the elements in the formulation of the offense are fulfilled, then whatever reason a person commits a criminal offense is not needed, but the judge can decide that a person is guilty of committing a criminal offense because the elements of the criminal offense have been fulfilled in accordance with the formulation of the applicable law.

To determine whether a person is guilty or not, it must refer to the formulation of the law or the formulation of the offense of each article relating to the criminal offense. In this case, the crime of murder must refer to the elements in Articles 338, 339, and 340 of the Criminal Code.

In the case of the criminal act of taking the life of another person, it must fulfill the requirements in the offense, where the act causes the death of another person and there is a cause and effect relationship (*causal verband*) between the act and the result of the death of another person. However, in the crime of murder, ordinary murder and premeditated murder are distinguished. As in Articles 338, 339, and 340 of the Criminal Code, there are different elements of offense formulation. In Article 338 of the Criminal Code, the elements of the offense formulation are the

¹⁹ Salvadoris Pieter dan Erni Dwita Silambi, "Pembuktian Dalam Tindak Pidana Pembunuhan Berencana Ditinjau dari Kitab Undang-Undang Hukum Pidana," *Op.cit.*, hlm. 78.

²⁰ J Johari, "Kebenaran Materil Dalam Kajian Hukum Pidana," *REUSAM: Jurnal Ilmu Hukum* 8, no. 2 (2021): hlm. 19, <https://doi.org/10.29103/reusam.v8i2.3811>.

objective element, namely the act that eliminates the life of another person and the subjective element is the element of intentionally which means in committing the crime of murder. Article 339 of the Criminal Code has an objective element of murder followed by a criminal offense.²¹

Regarding valid evidence and evidence, it will be guided by the law of criminal procedure which regulates valid evidence and evidence according to applicable law. And judges in considering decisions in criminal cases must explore, follow and understand legal values and a sense of justice in society.

During the trial of this case, the judge considered the theory of evidence that is often used in deciding criminal cases. There are three theories, namely the theory of proof based solely on the judge's belief (*conviction intime*), the theory of proof based on the judge's belief within certain limits for logical reasons (*conviction raisonnee*), the theory of proof based solely on the means of proof referred to by the law positively (*positive wettelijk bewijstheorie*), and the theory of proof based on the judge's belief arising from the evidence in the law negatively (*negatief wettelijk bewijstheorie*).²²

In terms of sentencing, judges in deciding cases must be based on the theory of evidence. One of the ratio decidendi theories, this theory is based on a fundamental philosophical foundation, which considers all aspects related to the subject matter being tried and then looks for laws and regulations that are relevant to the subject matter being tried as a legal basis for the decision, and the judge's consideration must be based on clear motivation to uphold the law and provide justice for the litigants.²³

The imposition of punishment by the judge against the perpetrator of a criminal offense must basically consider all aspects of the goal, namely as follows:²⁴

1. As an effort to protect the community from the threat of a crime committed by the perpetrator;
2. As a repressive effort so that the imposition of punishment makes the perpetrators deterrent and will not commit criminal acts in the future;
3. As a preventive effort so that the wider community does not commit criminal acts as committed by the perpetrator; and
4. Preparing the community mentally in responding to a crime and the perpetrator of the crime, so that in time the perpetrator of the crime can be accepted in the society.

²¹ Junio Imanuel Marentek, "Pertanggungjawaban Pidana Pelaku Tindak Pidana Pembunuhan Berencana Ditinjau dari Pasal 340 KUHP," *Lex Crimen* 8, no. 11 (2019): hlm. 88, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/27953>.

²² Bastianto Nugroho, "Peranan Alat Bukti Dalam Perkara Pidana Dalam Putusan Hakim Menurut KUHP," *Yuridika* 32, no. 1 (2017): hlm. 18, <https://doi.org/10.20473/ydk.v32i1.4780>.

²³ *Ibid.*

²⁴ Salvadoris Pieter dan Erni Dwita Silambi, "Pembuktian Dalam Tindak Pidana Pembunuhan Berencana Ditinjau dari Kitab Undang-Undang Hukum Pidana," hlm. 76.

Therefore, judges in deciding a criminal case must have a sense of justice, wisdom, accuracy, accuracy, thoroughness, so that with all of that it will produce a good and just decision.

In this case it is clear that the Public Prosecutor and the Panel of Judges considered the motive for the defendant Jessica to commit premeditated murder. It is clear that the Public Prosecutor and the Panel of Judges read out the reasons for looking for motives in this case to see the purpose of a defendant committing premeditated murder. The Panel of Judges took into account all the evidence presented in the trial, namely so that there is relevance between one piece of evidence and another in order to see the pattern of motives for murder in this case.

The researcher also believes that in terms of the Panel of Judges and the public prosecutor proving the motive in this case in order to properly reveal the criminal act and the proof of this criminal case is one of the strategies for the Public Prosecutor to convince the Panel of Judges that the defendant is guilty and the defendant's actions meet the subjective elements of the criminal offense.

In the theory of fault does not require motive in criminal liability, this can be seen in criminal liability there are three elements that must be met, namely: (a) Ability to be responsible, which means that in criminal responsibility there must be the ability to distinguish between good and bad actions, in accordance with the law and against the law (reason factor) and the ability to determine his will according to the realization of the good and bad of the action (feeling/will factor); (b) Deliberation (*dolus*) and Negligence (*culpa*), which means that in the theory of deliberate intent is a will directed at the realization of the act as formulated in the wet (elements of the offense in the law); and (c) Reasons for the elimination of punishment, which means that in the reasons for the elimination of punishment there are 2, namely: the reason for the unaccountability of a person that lies within the person and the reason for the unaccountability of a person that lies outside the person.²⁵

In criminal cases, motive is used to explain why someone commits a criminal offense. Motive is different from intent. Intent is one of the elements found in almost all criminal offenses. However, motive is usually not an element of a criminal offense. The prosecution in a criminal case does not need to prove that the defendant had a motive in committing the crime. Motive is generally proven by the prosecution to further convince the judge that the defendant is guilty.²⁶

However, the researcher argues that if the element of guilt has been fulfilled, then a defendant can be punished in accordance with the applicable law regardless of the motive for the defendant to commit a criminal offense. Thus, the researcher

²⁵ Junio Imanuel Marentek, "Pertanggungjawaban Pidana Pelaku Tindak Pidana Pembunuhan Berencana Ditinjau dari Pasal 340 KUHP," *Op.cit.*, hlm. 90.

²⁶ Andi Hamzah, *Delik-Delik Tertentu (Speciale Delicten) di Dalam KUHP (Edisi Kedua)* (Jakarta: Sinar Grafika, 2015), hlm. 53.

argues that in this case the motive is irrelevant in criminal liability where the element of guilt has been fulfilled, then the defendant can be sentenced.

There is an opinion that motive is irrelevant or motive does not need to be proven, this is based on the fact that motive is not an element contained in a criminal offense. Motive is only used in the judicial process where the judge will assess whether the defendant has a motive or not. And the motive is only for consideration in imposing the severity of the punishment to be imposed on a defendant and the motive is only to convince the Panel of Judges that it is true that the defendant has committed a criminal offense.

Edward O.S. Hiariej, argues that to reveal the case of premeditated murder, the motive of the perpetrator is not required, because the search for evidence is more important than just looking for the motive of the perpetrator. The phrase premeditation in Article 340 of the Criminal Code is intended in the context of legal theory, called intent for a specific purpose. Edward O.S. Hiariej said that premeditated murder requires careful thought, which must be proven.²⁷

Regarding the presence and absence of motive is not important in the trial. In accordance with the results of the researcher's interview with a criminal law expert as well as an expert witness on criminal law in this cyanide coffee premeditated murder case, Mudzakir argued that:

*"This way of proving the motive in the case of murder is called a subjective crime. Subjective, which means the psychology of the person to determine the person as a target, is a subjective murder, because not everyone is killed. If the crime of murder is usually choosing the person to be the target is very subjective. The target person in killing and committing a crime is what is called a motive..."*²⁸

In the interview, Mudzakir also explained that in criminal law, what is meant by objective and subjective elements, namely:

*"The objective element is the element of the act that is legalized by the perpetrator. The element of the act is where the fulfillment of the elements in a criminal offense, while the subjective element is an element that lies in the perpetrator of the crime which includes guilt, responsibility and legal subjects, so that the motive will make a criminal case become transparent (Article 339 of the Criminal Code)..."*²⁹

With the results of the researcher's interview with Mudzakir, it is clear that this criminal expert is of the opinion that all criminal acts of murder, both ordinary murder and premeditated murder, must have a motive. Motive according to him is something that is important in revealing the intent and purpose of a person in killing or committing a criminal offense. He argues that a person cannot commit a criminal

²⁷ Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2016), hlm. 40.

²⁸ Mudzakir, Interview Results on May 23, 2017 at the Faculty of Law, Universitas Islam Indonesia, Yogyakarta.

²⁹ *Ibid.*

offense if there is no motive in that every criminal act of murder that occurs must have its own motive, if the motive cannot be proven then a defendant must be released from all legal charges.

In contrast to Mudzakir's opinion, Edward O.S. Hiariej, argues in Dandapala, "Kritik Merupakan Bukti Cinta Masyarakat Kepada Mahkamah Agung," on the article entitled "Motif, Kesengajaan dan Berencana Dalam Hukum Pidana," In this article, Edward O.S. Hiariej argues that the doctrine of causality in criminal law does not require a motive, where the doctrine of causality is very important for material offenses that emphasize consequences and not actions or behavior. He also argues that murder in this case including premeditated murder is a material offense because what is actually prohibited in the crime of murder is the result of death.³⁰

In the explanation above, it is clear that Edward O.S. Hiariej argues that motive is not necessary in a criminal offense and motive does not need to be proven in a criminal offense, motive is only used when the judge considers the severity and lightness in imposing a verdict.

In the journal article "The Irrelevance of Motive and The Rule of Law," Eldar and Laist argue that motive is the reason or mental condition that drives someone to commit a criminal offense. Or in other words, motive is the reason behind the reason for action.³¹ An example of the distinction between motive and intentionality can also be seen in the following illustration: on a road, a person (A) intentionally pushes another person (B) to the side of the road and suffers injuries. It was later discovered that (A) pushed (B) because (A) saw a car speeding towards (B) and would have been hit if (B) had not moved out of the way.

In the illustration above, the element of intentionality appears in the action of (A) who deliberately pushes (B). But there is also another aspect, namely the motive or background of (A) pushing (B), namely the desire to prevent (B) from being hit by a car. In this case, the motive of a criminal offender, whether it is a good or bad motive, is irrelevant to determining criminal liability. This view is based on the assumption that considering the motive of the perpetrator to determine criminal liability will cause difficulties and uncertainties.³²

Although motive is considered irrelevant to determine the criminal responsibility of the perpetrator, in practice it can be considered by the prosecutor to determine the severity of the charges and by the judge to determine the severity of the punishment. Historically, the idea that motive does not need to be considered to determine the criminal responsibility of an offender was emphasized by Cesare Beccaria who said that if the motive of each offender must be considered to

³⁰ Edward O.S. Hiariej, "Kritik Merupakan Bukti Cinta Masyarakat Kepada Mahkamah Agung: Motif, Kesengajaan dan Berencana Dalam Hukum Pidana," *Dandapala: Penjaga Keadilan, Vol II/Edisi 3/Juni-Agustus 2016*, 2016.

³¹ Shachar Eldar dan Elkana Laist, "The Irrelevance of Motive and the Rule of Law," *New Criminal Law Review* 20, no. 3 (2017): hlm. 433, <https://doi.org/10.1525/nclr.2017.20.3.433>.

³² *Ibid.*

determine his criminal responsibility, it would be like applying different criminal laws to each offender, because each offender may have different motives.³³

Motive can be interpreted as the power that moves a person to do or behave, have intentions and commit criminal acts in accordance with what has been desired and has a goal to be achieved. However, the motive in this case will be used by law enforcers (in this case judges) to make one of the basic considerations of judges in imposing criminal sanctions in accordance with applicable regulations. Motive is also a drive that exists within a person and that drive is realized in action. These actions usually violate the applicable regulations. If someone does something, then the motivation is a condition that exists in a person related to the factors in moving someone to do this. Motive is used to explain why a person commits a criminal offense. Motive is different from intent. Intent is one of the elements found in almost all criminal offenses. However, motive is usually not an element of a criminal offense. The prosecution in a criminal case does not need to prove that the defendant had a motive in committing the crime. Motive is generally proven by the prosecution to further convince the judge that the defendant is guilty.³⁴

With what has been explained above, the researcher believes that in a criminal offense, the most important thing is the existence of evidence and if the elements of the criminal offense have been fulfilled then a defendant can be sentenced. However, in this case it must be remembered that in the principle of guilt, where there must be a law that has determined the criminal act, then a defendant can be held accountable by looking at the elements of ability to be responsible, intent (*dolus*) and negligence (*culpa*) and the existence of reasons for criminal erasure. Meanwhile, the motive itself is only for consideration for judges to determine the severity of the punishment to be imposed on the defendant.

Researchers in this case agree with what has been explained by Edward O.S. Hiariej. In terms of motives that are often said or questioned by some people and law enforcers themselves, according to researchers that the motive in a criminal act is only something that can be used to convince the judges that the defendant has really committed a criminal offense and with consideration of the motive the judge can consider the severity or lightness of a criminal decision to be imposed. Not to prove or disprove an act. For example, someone who is hungry commits a criminal offense because he is forced to do so (someone steals and is caught by the owner of the house, so as not to be caught by law enforcement, the thief kills the owner of the house). It is different from the case of someone who steals because he is jealous or wants to own his neighbor's property, even though the person who stole has a lot of property too.

³³ *Ibid.*, hlm. 436.

³⁴ Junio Imanuel Marentek, "Pertanggungjawaban Pidana Pelaku Tindak Pidana Pembunuhan Berencana Ditinjau dari Pasal 340 KUHP," *Op.cit.*, hlm. 90.

In cases such as those described above, the things or motives that we want to see are the patterns in the criminal act of a defendant committing a criminal offense. Because by knowing the motive of a defendant in committing a criminal offense, it will be known the reasons or things that encourage a person to commit a criminal offense whether based on malicious intent or not, so that the judge will be sure in considering the severity of the punishment to be imposed.

The motive view of criminal law is that the motive of the perpetrator, whether good or bad, is irrelevant to the implementation of criminal responsibility. This view is based on the assumption that considering the motive of the perpetrator will cause difficulties in the application of punishment. The argument to support the opinion that motive does not need to be proven or considered is the argument that explicitly motive is not mentioned as one of the elements of a criminal offense.³⁵

The relationship between motive and the elements of a criminal act, where if the motive is proven by looking at the defendant's behavior, there are several behaviors/actions that are carried out for reasons and there are behaviors that are caused by motives. For example, in intentional murder, there must be a motive. Where there is a deliberate loss of life of another person. For example, the married man (A) had an affair with the young woman (B). With the result of the relationship between si (A) and si (B), eventually si (B) became pregnant. So si (A) wants to kill si (B) because he wants to hold si (A) accountable, while si (A) already has a wife. Because si (A) was afraid of being found out by his wife, si (A) killed si (B). This was done because the motive was to escape accountability to (B).

Another example of murder committed in self-defense is: the house of (A) is robbed by a group of people. In addition to robbing, these people also wanted to persecute si (A). In self-defense, si (A) fought back and attacked the robbers, resulting in the deaths of si (B) and si (C). In this case, si (A) did not have a motive to kill si (B) and si (C), but in order to protect himself as well as an overwhelming mental shock, si (A) did so because if si (A) did not do so, the victim would be si (A) himself.

Basically, the motive in criminal acts has a relationship with the elements of criminal acts. In this case, the motive can be included in the subjective element. Because motive is a will that moves humans to behave, so that in committing a criminal act, a person already has this motive. In committing the act, the perpetrator has certain goals. Motive can also be interpreted as something that encourages the perpetrator to commit a criminal offense. It must be noted, that in the trial process it is not important to prove the motive. Because the motive is used to explain the cause of a defendant committing a criminal offense. Motive is different from intent.

Intentionality is one of the elements found in almost all criminal offenses. However, motive is not an element of a criminal offense. The prosecution in a

³⁵ Shachar Eldar dan Elkana Laist, "The Irrelevance of Motive and the Rule of Law," *Op.cit.*, hlm. 433.

criminal case does not need to prove that the defendant had a motive in committing the crime. Motive is generally proven by the prosecution to convince the Judge that the act committed was based on a certain intention "evil or not evil". If the intention was malicious, a severe punishment will be imposed, while if the intention was not malicious, the defendant can be acquitted of all charges.

D. Conclusion

The way the judge explores criminal facts/events to complete the truth of the event even though it does not violate the criminal act in Article 183 and Article 184 of the Criminal Procedure Code regarding the judge's belief in the case of Jessica Kumala Wongso alias Jess can be sentenced to criminal punishment by tracing a person's motive for committing a criminal act that results in the loss of life of another person as described is the most influential thing, namely internal factors and external factors. Based on the study of criminology, the things that influence a person to commit a criminal offense are divided into several theories, namely: classical theory, neo-classical theory, cartographic/geographic theory, socialist theory, typological theory, lambroso theory, mental tester theory, psychiatric theory, sociological theory and bio-sociological theory. From all of the above, a person who commits a criminal offense that results in the loss of life of another person must be held accountable for his actions as regulated by Article 340 of the Criminal Code.

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