



Analysis of Judges' Considerations in Cases of Murder Based on Infidelity

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Abstract

This study discusses the judge's consideration in deciding the criminal case of murder based on infidelity based on the judge's consideration of Article 338 of the Criminal Code Decision Number 88/Pid.B/2022/PN. The research uses normative juridical methods by examining primary and secondary legal materials. The results showed that the judge's consideration included both juridical and non-juridical aspects that influenced the final decision. The defendant is considered accountable for his actions, taking into account various factors such as the confession of guilt, the defendant's attitude in the trial, and previous legal experience. In addition, the defendant's actions and their impact on victims and society are also important factors in the judge's deliberations.

Keywords: Criminal Acts of Murder, Infidelity, Judge's Consideration, Article 338 of the Criminal Code,

1. Introduction

Indonesia, as a state of law, bases all aspects of human life and society on applicable laws and regulations. This concept places law as the main foothold in maintaining a just and just social order. Law does not simply stand as a separate entity, but grows and develops in the daily life of society. During this process, law affects society, and vice versa, the development of society also influences law.

Legal experts and theorists assert that the primary purpose of law is to serve the state and its people. The state aims to bring prosperity and happiness to its people, and the law is the means by which it achieves that end. Thus, the law has the duty to regulate the peaceful association of human life and uphold the principle of justice in society (Disantara, 2021). Theoretically, law is directed at creating fair conditions for all individuals in society (Tesón, 2017).

In the context of drafting and applying law, it is important to understand the sources of law on which it is based. Legal sources can be classified into two main categories, namely formal legal sources and material legal sources. Formal sources of law are written rules that formally regulate the laws in society. Meanwhile, the source of material law involves aspects such as history, art, sociology, and philosophy, which also have an important role in the development of law.

Legal doctrine distinguishes between material criminal law and formal criminal law. Material criminal law involves substantial aspects, including prohibited criminal acts, applicable general regulations, and penalties applicable to violations of law (Goncalves, 2012). On the other hand, formal criminal law regulates legal proceedings, namely how criminal proceedings should be conducted and determines the rules that must be observed in criminal law enforcement.

The phenomenon of murder is also inseparable from the social control of the community, both against the perpetrators and victims of murder so that it does not provide opportunities for the development of this crime. Along with the progress and development of people's lives, the series of murder crimes is increasing. Article 338 of the Criminal Code stipulates that whoever intentionally takes the life of another person shall be punished with murder with a maximum imprisonment of fifteen years (Beno et al., 2020). With the development of technology and the advancement of people's lives balanced by the level of education, morals, and ahlak religion no longer functions (Sukadana & Pangestika, 2023).

In this context, it is necessary to understand in detail the material criminal law and the formal criminal law. Material criminal law outlines the substance of a criminal act, including the elements that must be met to view an act

as a criminal offence. Meanwhile, formal criminal law is closely related to due process, regulating the steps that must be followed by law enforcement agencies in upholding justice. The increasing phenomenon of murder also demands changes and improvements in law enforcement to ensure justice is served, along with the evolution of technology and changes in society.

The theory of knowledge, imagination, and presumption taught by Frank in his work "Vorstellung und Wille in der Modernen Doluslehre" states that humans can only imagine or anticipate consequences or things that accompany them. Therefore, an effect or thing that accompanies an action cannot be said to be definitely desired by its maker. In this view, the will towards an act or effect and the things that accompany it can be directed by the maker. However, according to the theory of knowledge and imagination, the effect or accompanying things cannot be desired by the maker, so that intentionality is only focused on the action itself.

In addition, there is also a Combined Theory which explains that the purpose of punishment is more focused on retaliation and combines elements from absolute theory and relative theory. A court decision, as a judge's statement in an open court session, can be in the form of conviction or acquittal from lawsuits, in accordance with the provisions stipulated in the law. This phenomenon becomes evident in the law enforcement system in Indonesia, where imprisonment is often used as an excuse to achieve the purpose of punishment, which is to provide a deterrent effect to perpetrators of criminal acts.

By considering the context above, the author will try to formulate the main issues to be discussed in this paper, namely: "How is the consideration of the Ciamis District Court judge in deciding a murder case based on infidelity, as stated in the Ciamis District Court decision Number 88/Pid.B/2022/PN.?"

2. Research Methods

In this study, the approach method used is the normative juridical method, which is often referred to as doctrinal legal research or literature research. This method is carried out by referring to the law and theories that exist in the legal literature as the main source of research data.

2.1. Data Sources

This study used two types of data sources, namely:

- 1) **Primary Legal Materials:** The main source of data in the form of laws and regulations, court decisions, and other legal documents that have relevance to the object of research.
- 2) **Secondary Legal Materials:** Additional data sources that include books, writings, articles, and other legal documents that serve as support in analysis and discussion.

2.2. Data Collection Techniques

The data collection technique used in this study is a literature study. Because this research is normative law, literature study is the most appropriate method. Literature study involves inventorying and studying materials relevant to the object of research, including laws and regulations, books, writings, and other legal documents.

In the context of literature study, the author will explore and analyze legal theories, views of legal experts, and legal cases relevant to the problems raised in this study. The data obtained from these sources will be the basis for understanding and analyzing the judge's consideration of the Ciamis District Court in deciding murder cases involving infidelity, as stated in the Ciamis District Court decision Number 88/Pid.B/2022/PN.

3. Results and Discussion

In Dutch, the term "criminal offence" is referred to as "strafbaar feit," while in foreign languages it is known as "delic." Criminal offense refers to acts that can be criminally charged, and the perpetrator can be considered to have committed a crime. However, the Criminal Code (KUHP) does not provide an in-depth explanation of the term "strafbaar feit."

In the process of sentencing the defendant to imprisonment, the panel of judges conducts a thorough evaluation, including an assessment of the general indictment, an examination of the fulfillment of the elements of the indictment, and the identification of possible wrongdoing. In addition, the panel of judges also considered aggravating factors and reducing sentences. The purpose of this evaluation is to ensure that the defendant is held accountable for his actions as determined by the panel of judges.

According to Brown & Murphy, (2009), criminal acts have three main elements. First, the act is done by man. Second, the act must meet the formula stipulated in the law (formal requirements). Finally, the act must be unlawful (material requirement).

The existence of formal requirements refers to the principle of legality stated in Article 1 of the Criminal Code. Meanwhile, material conditions are important because these actions must be considered by society as actions that should not be done, because they can hinder the achievement of the social order desired by the community itself.

Moeljatno also pointed out that guilt and the ability to be responsible are not included as elements of a criminal act, because it can be considered as an implied thing of the perpetrator of the criminal act.

It is important to remember that criminal acts involve formal and material legal aspects, which include values and norms held by society. Therefore, an understanding of criminal acts must be carried out comprehensively to ensure that an act can be considered a criminal act.

In the context of Indonesian law, murder is defined in Article 339 of the Indonesian Penal Code. This article outlines a special form of murder that is considered more severe. There are two types of crimes that fall into the category of murder, namely ordinary murder and other crimes that are also included in the context of murder.

Premeditated murder has a more severe criminal threat than murder stipulated in Articles 338 and 339 of the Penal Code. It is characterized by the existence of the death penalty as a punishment that can be imposed. The death penalty in this context is the harshest form of punishment, where the perpetrator of the crime is declared to have lost his life. What makes this punishment so severe is the planning of the action in advance.

In addition to the death penalty, perpetrators of premeditated murder can also be sentenced to life imprisonment or in some cases, imprisonment for a certain time, the maximum of which is two years.

In the context of the act of taking the life of another person, there are three conditions that must be fulfilled according to Indonesian law:

- a) Existence of Deeds: Indicates that there are concrete actions taken by the perpetrator, which lead to the loss of another person's life.
- b) The Existence of a Death (Others): Affirms that the result of the act is the death of a person, not just serious injuries or injuries.
- c) Existence of Cause and Effect Relationship: Indicates that the act committed by the perpetrator directly caused the death of another person.

By understanding these three conditions, Indonesian law tries to provide a clear and fair foundation in dealing with murder cases, and ensure that the punishment is appropriate to the degree of guilt and objection.

3.1. Judge's Consideration in Deciding Murder Cases Based on Infidelity Based on the Judge's Consideration Article 338 of the Criminal Code Decision Number 88/Pid.B/2022/PN.

The judge's consideration is a very crucial element in making legal decisions, which must meet the principles of justice, truth, and benefit for all parties involved. Judges' rulings that are unfair, incorrect, or do not meet legal standards may be appealed or appealed to the High Court or Supreme Court.

In the context of murder cases based on infidelity and based on Article 338 of the Criminal Code, the judge's consideration is very important. Such considerations include the analysis of the legal facts and the facts disclosed at trial, as well as the conduct of the defendant at trial.

The judge's consideration in decision Number 88/Pid.B/2022/PN. has been carefully prepared, with reference to applicable legal principles. The judge conducted an in-depth analysis of the available evidence, including evidence of infidelity on which the case was based. In addition, the behavior of the defendant in the trial is also part of the judge's consideration.

The result of this consideration is a verdict that is fair and understandable to all parties involved in the case. The ruling is impartial to either party, and this is important to maintain public confidence in the judicial system. Thus, the judge's decision creates legal certainty and justice for all parties involved in the case.

It is important to remember that the legal justice system has an appeals and cassation mechanism that allows parties who are dissatisfied with a judge's decision to appeal or cassation to a higher level. This is one way to ensure that every judge's decision has gone through a careful and trustworthy scrutiny process.

3.2. Judge's Consideration in Judgment

During the trial hearing, the panel of judges did not find any circumstances that could exempt the accused from criminal liability as stipulated in Articles 44 to 51 of the Criminal Code. Therefore, the Defendant can be held accountable for his guilt and must be sentenced in accordance with the verdict described below.

Against the criminal charges from the Public Prosecutor, the Defendant's Legal Counsel has also submitted a plea on March 27, 2022, which was read out in the court on March 27, 2022 (Hellgren & Kassin, 2022). In his defense, the defendant admitted his guilt and promised not to repeat his actions. The defendant also pleaded with the panel of judges to give a fair verdict.

The judge's consideration also considers circumstances that could mitigate the defendant's actions. On the other hand, because the Defendant has been found guilty, and so far the Defendant has been detained in accordance with Article 22 paragraph (4) Jo Article 197 paragraph (1) letter k of the Criminal Procedure Code, the period of arrest and detention of the Defendant will be deducted entirely from the length of the sentence imposed. In this case, the Defendant was sentenced in accordance with Article 222 of the Code of Criminal Procedure. Therefore, the defendant will also be charged a case fee the amount of which will be mentioned in the judgment.

In deciding the imprisonment of the defendant, the panel of judges considers various factors, including general charges, the fulfillment of the elements of the article charged, the absence of justification reasons, and aggravating and

mitigating matters. This decision has gone through a careful consideration process and is in accordance with applicable law.

The aforementioned considerations include juridical aspects, which are based on the legal facts revealed in the trial. The charges of the Public Prosecutor are also an important basis for examination at the trial, in accordance with Article 143 paragraph (2) of the Code of Criminal Procedure. The single charge in this case refers to the crime of murder based on infidelity based on the judge's consideration of article 338 of the Criminal Code.

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4. Conclusion

In this paper, we have discussed the importance of law in maintaining social order and justice in Indonesian society. Law is not only a separate entity, but also grows and develops along with the development of society. Law has the main objective to serve the state and its people by regulating social life fairly. In the context of drafting and applying law, we have discussed sources of law, including formal and material sources of law. Formal sources of law are written rules that govern law in society, while sources of material law include aspects such as history, art, sociology, and philosophy that also play an important role in the development of law.

We have also discussed the difference between material criminal law and formal criminal law. Material criminal law addresses the substance of a criminal act, including the elements that must be met to consider an act a violation of law. On the other hand, formal criminal law governs due process, i.e. how criminal procedures should be implemented and specifies the rules to be followed in criminal law enforcement.

In addition, this paper discusses the phenomenon of murder and the importance of social control over perpetrators and victims of murder. Murder is a very serious act in Indonesian criminal law, and the law has a big role to play in punishing perpetrators and ensuring justice is served. Furthermore, we have also explained the theory of knowledge, imagination, and prejudice taught by Frank in his work. This theory highlights the concept that human beings can only imagine or anticipate the consequences or things that accompany their actions. Therefore, the effect or thing that accompanies the action cannot be considered definitely desired by its maker.

Finally, this paper discusses the court process in cases of murder based on adultery, by detailing the judge's considerations in making decisions based on criminal law. The judge's judgment must meet the principles of fairness, truth, and benefit for all parties involved. Fair judges' decisions are key to maintaining public confidence in the justice system. Thus, this paper provides a deep understanding of various aspects of the law and judges' considerations in making decisions in cases of murder based on adultery. This shows the importance of justice and effective law enforcement in Indonesian society.

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