



## The Role of Motive Evidence in Premeditated Murder Cases

Muhammad Fikrillah; Amir Uddin; Rina Khairani Pancaningrum

Master of Law Studies Program, Faculty of Law, Universitas Mataram, Indonesia

E-mail: [muhammadfikrillah25@gmail.com](mailto:muhammadfikrillah25@gmail.com)

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### **Abstract**

The aim of this study is to investigate the role of proving motive in cases of premeditated murder, as well as to determine the significance of proving motive in such cases. This research falls under the category of normative legal research, employing a statutory approach, conceptual approach, and case approach. The findings of this study reveal that proving motive in premeditated murder serves three main functions. Firstly, it helps establish the involvement of individuals in criminal activities. Secondly, it assists in determining the elements of criminal liability. Lastly, it plays a crucial role in determining the severity of punishment. Consequently, proving motive holds a fundamental position in establishing criminal acts, particularly in cases of premeditated murder. The position of motive in premeditated murder necessitates the presentation of various arguments, as outlined in this thesis. One key argument is the essentiality and necessity of motive in proving the core offense of "intentionally" as stipulated in Article 340 of the premeditated murder statute.

**Keywords:** *Position; Motive; Premeditated Murder*

### **Introduction**

Crime is an integral aspect of societal existence and cannot be detached from the routine activities of individuals. Homicide, theft, sexual assault, deceit, and other comparable actions exemplify the ever-changing nature of social occurrences within a community (Soedjono, 1996). Crime, undoubtedly, is a manifestation of human behavior that has evolved alongside the progress of society, even though there exist numerous perspectives on its root causes (Atmasasmita, 1983). According to R. Soesilo, from a legal perspective, crime refers to an act or behavior that goes against the law. However, from a sociological standpoint, crime is seen as an act or behavior that disrupts the peace and harmony within a community (Bosu, 1982).

Murder is a crime that unfortunately happens frequently in society. Its impact is undeniably severe, as it deprives an individual of their fundamental right to life. The Constitution (UUD 1945) firmly

establishes that the right to life is an inherent human right that should never be compromised under any circumstances. Moreover, the consequences of murder extend beyond the loss of life. The victim's family often suffers a significant financial setback, especially if the victim was the main breadwinner. This loss of income can have a devastating effect on the family's stability and future prospects. Furthermore, the psychological trauma experienced by the victim's children cannot be overlooked. The emotional scars left behind by such a tragic event can have long-lasting effects on their well-being and development (Hariyanto, 2018).

Over the past four years, more than 3,000 lives have been tragically lost, as stated in a report by the National Police. These murders were driven by different motives, including robbery, romantic relationships, and various others. The data, sourced from the e-MP Robinopsnal Bareskrim Polri and accessed on Friday, January 13, 2023, reveals that the total number of murder victims between 2019 and 2022 amounted to 3,335 individuals. Notably, the majority of these unfortunate victims were male (Imany et al., 2023).

Criminology serves as an auxiliary discipline in the field of criminal law, enabling law enforcement officials to comprehensively examine criminal incidents. By delving beyond the superficial aspects of a crime, criminology aids in understanding the underlying factors or origins behind its occurrence. This includes analyzing the influence of individuals as well as the broader impact of social, cultural, political, and economic circumstances (Utari, 2012). In the realm of criminological research, it is widely acknowledged that every criminal act, including homicide, is typically driven by a motive or underlying factor. Consequently, a contentious issue among experts in criminal law revolves around the necessity of establishing the motive behind a murder.

The primary responsibility of proving a criminal case lies with the public prosecutor, whose duty is solely to establish the constituent elements of the offense. The constituent element, also known as "*bestanddeel delict*," is explicitly stated in the formulation of the offense. Hence, in order to determine whether the motive is an essential element of the offense in the context of murder, it is imperative to carefully examine the formulation of the offense. The Criminal Code outlines the constituent elements of premeditated murder as follows: (Hiraiej, 2016)

Article 340 reads: Any person who with deliberate intent and with premeditation takes the life of another person, shall, being guilty of manslaughter, be punished by capital punishment or life imprisonment or a maximum imprisonment of twenty years.

The offense of Article 340 comprises both subjective and objective elements. The subjective elements encompass the element of whoever, the element of intent, and the element of plan. On the other hand, the element of taking the life of another person is an objective element. It is important to note that the words "threatened with premeditated murder" do not constitute an element, but rather serve as an offense qualification or threat when the offense is committed. The punishment for this offense can range from death penalty to life imprisonment or a specific period of imprisonment, with a maximum duration of twenty years. The formulation of the offenses of murder and premeditated murder often sparks a debate regarding the necessity of proving motive.

In 2016, Jessika Kumala Wongso committed a premeditated murder against Mirna Shalihin, and in 2022, Ferdy Sambo committed a premeditated murder against Yosua. The trials for these two cases were prolonged due to various factors, one of which was the challenge of disclosing or providing evidence of motive. To shed light on this matter, the trial called upon several criminal law experts to elucidate the significance of proving motive in cases of murder and premeditated murder. The experts held differing opinions regarding the importance of proving motive in these two cases of murder.

Muhammad Arif Setiawan, an expert in criminal law from the Islamic University of Indonesia, emphasized the significance of establishing the motive in cases of premeditated murder. In his expert testimony during the trial against Brigadier Joshua, Setiawan highlighted that proving the motive is crucial as it sheds light on why an individual would commit such a heinous act. He further explained that the motive plays a pivotal role in determining the presence of evil intent (*mensrea*). Therefore, the purpose of establishing the motive is to provide evidence of the intention, which is a fundamental requirement for the elements of intent (*dolus*) as outlined in Articles 338 and 340.

According to the expert testimony of Professor Elwi Danil, a Criminal Law professor from Andalas University, in the murder case of Brigadier Joshua, it is crucial for the court to establish the motive behind the crime in order to understand the reason behind someone's decision to commit such an act. This is because the motive serves as the foundation for intention, which, if acted upon, leads to intentionality - a key element in the offenses of murder and premeditated murder. Professor Danil emphasizes that intent does not exist in isolation or materialize out of thin air; rather, it originates from the motive or background of the individual involved in the criminal act.

According to Eddy O.S Hiariej, a criminal law professor at Gadjah Mada University, there is a different perspective on the matter. He refers to the opinion of Jan Remmelink, a former Attorney General of the Netherlands and a professor of criminal law, who argues that the motive in cases of murder and premeditated murder does not necessarily have to be proven. Hiariej supports this view by examining the history of the formation of the Criminal Code, as outlined in the *memorie van toelichting*. He explains that the legislator intentionally keeps the motive as far as possible from the formulation of the offense. Therefore, the obligation of the public prosecutor is solely to prove the elements of the offense itself. Hiariej suggests that those who argue for the necessity of proving the motive should revisit the historical context of the Criminal Code in the Netherlands.

In line with Eddy Hiariej, Masrukin Ruba'i asserts that motive should serve as the foundation for premeditated murder. Motive can serve as a tool to establish the occurrence of premeditated murder. However, Ruba'i agrees that it is not necessary for the public prosecutor to disclose and elaborate on the motive. What the public prosecutor must demonstrate is the presence of intent and other elements outlined in Article 340 of the Criminal Code. Nevertheless, in order to assess the existence of intent, it is crucial to establish motive as one of the instruments to prove the intentional element.

The presence of these different viewpoints indicates that the classification of murder and premeditated murder, as outlined in Articles 338 and 340, is characterized by ambiguity. The imprecise formulation of these offenses poses challenges for judges when it comes to imposing penalties. If the prosecution fails to establish the motive as an essential element of the crime of murder or premeditated murder, the defendant must be acquitted. Conversely, if the motive is not considered a requisite for these offenses, the burden of proving the defendant's motive does not fall upon the prosecution, enabling the judge to impose punishment without knowledge of the defendant's motive. This stands in contrast to the requirements for proving motive in cases of murder and premeditated murder as stipulated in the National Criminal Code.

By closely examining the construction of Article 54 paragraph 1 letter b in relation to the indictment guidelines, it becomes evident that the judge is under a strict obligation to take into account the motive and purpose behind the commission of a criminal offense. This crucial provision in Article 54 paragraph 1 undeniably entails that the motive must be uncovered and substantiated during the court proceedings, ultimately serving as a fundamental factor for the judge's decision in a murder case. The inclusion of Article 54 paragraph 1 letter b, which mandates judges to consider the perpetrator's motive, consequently necessitates the establishment of motive during the trial.

This research aims to investigate and analyze the role of motive proof in cases of premeditated murder, as well as the position of motive proof in relation to premeditated murder within the Criminal Code. By addressing the aforementioned issues surrounding the ambiguous nature of motive proof, this study seeks to shed light on its significance and implications in the context of premeditated murder.

## ***Method***

The normative juridical research method was employed in this study. The research specifications in this legal document are descriptive-analytical, which involves examining the laws and regulations pertaining to legal principles, legal theories, and expert opinions to address the researched issues. The approach methods utilized include the statutory approach, conceptual approach, and case approach.

The author relies on legal material sourced from literature to gather information on legal issues for the preparation of legal materials. This includes books, journals, papers, and other relevant sources. Primary legal materials consist of legislation, official records, and judicial decisions. On the other hand, secondary legal materials encompass publications on law that are not official documents, such as textbooks, legal dictionaries, legal journals, and commentaries on court decisions. For this research, the author utilizes secondary legal materials like literature books, legal journals, and writings on law. Tertiary legal materials provide guidance and explanations of primary and secondary legal materials, such as KBBI, legal dictionaries, and encyclopedias.

The study employs a legal material collection technique known as document studies, wherein legal materials are sought out and examined. These legal materials encompass primary, secondary, and tertiary sources, all of which must undergo a thorough evaluation to ensure their validity and reliability. To analyze these materials, the research utilizes legal interpretation, specifically systematic interpretation, which involves connecting different articles of the law. Once the legal materials have been collected, the next phase involves processing them through identification, categorization based on their hierarchical source, and conducting studies and analysis to address legal matters.

## ***Results and Discussion***

### **1. The Function of Establishing Motive in Premeditated Murder Cases**

#### **A. Motive for the Crime of Murder**

Murder, as an act, refers to the intentional killing of another individual. The term "killing" itself is defined as the action that leads to the death of a person. According to this definition, an act can be classified as murder if it ultimately results in the loss of life. In the English language, the term "murder" is often used interchangeably with "homicide." Webster's New World Dictionary of the American Language provides an explanation for the term "homicide," which is derived from two words: "homo," meaning a man or human, and "caedere," meaning to cut or kill. When these two words are combined, they form "homicide," which encompasses any act of one person killing another. In the field of criminology, particularly in Routine Activity Theory, it is asserted that every crime, including murder, must have a motive or underlying factor behind it (Hariyanto, 2018).

The term "motive" originates from the Latin word "movere," which means to move or to cause movement. It refers to the internal force within an organism that propels it to take action or acts as a driving force. Motivation, on the other hand, is a catalyst that stimulates an individual to engage in a specific activity. Consequently, motivation is often perceived as the impetus behind one's behavior. Every

action undertaken by an individual is typically instigated by a motivating factor. Hence, the driving force behind an individual's engagement in particular activities is commonly rooted in their desires. If an individual desires something, they are motivated to undertake specific actions in order to attain their desired outcome (Humris, 2014).

According to a recent report released by the National Police, the number of homicides in the past four years has exceeded 3,000. These murders have been committed for various reasons, including heartache and many others. The data used in the report was obtained from the e-MP Robinopsnal Bareskrim Polri and was accessed on Friday, January 13, 2023. The data reveals that between 2019 and 2022, a total of 3,335 individuals fell victim to murder. It is worth noting that the majority of these victims were male. What is particularly alarming is that nearly 80% of these murders, whether carried out by groups, hired killers, or individuals, were motivated by a desire for revenge, irritation, or heartache. On the other hand, the remaining 20% of cases had unknown motives as the perpetrators and victims were not acquainted, such as in instances of robbery.

According to the report provided by the e-MP Robinopsnal Bareskrim Polri, it is evident that the motives behind murder and premeditated murder predominantly stem from emotional distress and economic incentives. This assertion is further supported by the expert opinion of Reza Indragiri, a forensic psychology specialist, who suggests that these motives can be categorized into two distinct types: emotional and instrumental motives. Emotional motives are driven by personal feelings, such as heartbreak, which may lead to the intention of taking someone's life. On the other hand, instrumental motives are primarily focused on gaining specific advantages, such as control over property, popularity, concealing other crimes, or avoiding scandals and disgrace. These motives are unrelated to personal emotions or moods. In the context of a criminal case, particularly in cases of premeditated murder, the motive serves as a crucial factor in determining the level of involvement in the criminal act, establishing the defendant's criminal liability, and determining the severity of the punishment imposed upon the defendant.

## **B. The Function of Motive in Determining the Occurrence of Participation (Delneeming) in Criminal Offenses**

Participation is an act carried out collectively with the intention of committing a criminal offense. In accordance with the law outlined in Chapter V Book I of the Criminal Code, participation is not considered a criminal offense itself, but rather a provision that expands the scope of criminal liability. Eddy Hiariej argues that participation should be viewed as an extension of criminal liability rather than an independent offense. This argument is supported by several factors. Firstly, the chapter on participation is situated within book 1 of the Criminal Code, which deals with general provisions. Secondly, the chapter on participation focuses on determining who can be held criminally responsible, placing emphasis on the individual responsible for the act rather than the act itself. Lastly, when presenting a case, the public prosecutor must include articles on participation alongside other articles pertaining to specific crimes or offenses (Hiraiej, 2016).

Article 55 of the Criminal Code governs the concept of participation (*deelneming*), outlining the individuals who may be held liable as perpetrators (*dader*) or accomplices: (Amirudin, 2021)

### **a) Those Who Commit (*Daders*)**

Article 55 of the Criminal Code introduces the concept of perpetrators, referring to individuals whose actions fully satisfy the elements of the offense. Simons argues that the term "those who do" exclusively refers to the primary perpetrator, whereas Jonkers and Noyon contend that it encompasses both primary perpetrators and participant perpetrators. From the perspective of the criminal act, their punishment is viewed as that of perpetrators, while their peers perceive it as that of participant



perpetrators (*mede daders*). Consequently, it can be inferred that the term "those who commit" can apply to either a single individual, in which case it identifies the convicted person, or multiple individuals, allowing for a distinction between those actively involved in the act (Amirudin, 2021).

b) Those Who Ordered the Act (*Doen Plegen*)

In the form of participation, namely those who order to do (*doen plegen*), it is required that there are people who act as orderers (*manus domina*) and there are those who are ordered (*manus ministra*). The orderer does not perform an act but uses another person as an instrument to realize the criminal act, the orderer is convicted as the perpetrator while the person who is ordered is not convicted, this is because the person who is ordered is only a tool, therefore the person who is ordered must have qualifications as people who cannot be held criminally responsible, such as insane people, minors or due to coercion. In the *memorie van toelichting* (explanatory memory) of the Dutch Criminal Code, it is explained that a person who commits a criminal act (i) is someone who commits a criminal act but not personally, but through the mediation of another person, as a means of realizing the criminal act (Amirudin, 2021).

c) Those Who Participate in the Conduct (*Medeplegen*)

The third form of participation in criminal acts (*deelneming*) is (*medeplegen*). A participant offender is a person who participates in committing some or all of the elements of the offense. The difference between participation (*medeplegen*) and assistance (*Medeplegheid*) is that in participation between participants in criminal acts must have an agreement (meeting of minds) and real cooperation (*samenwerking*), while in criminal assistance the perpetrator only facilitates the realization of criminal acts without being based on agreement and real cooperation (Hiariej, 2014).

d) Those Who Suggest for Carrying Out (*Uitlokking*)

*Uitlokking*, in its literal interpretation, refers to a person who suggests or encourages, as well as the act of instructing someone to do something (*doenplegen*). In the context of *uitlokking* participation, there are multiple individuals involved, with each playing the role of both the person who suggests and the person who is suggested to. The individual who suggests is known as auctor *intellectualis*, while the individual who is suggested to is referred to as auctor *materialis*. The Criminal Code, specifically Article 55, paragraphs 1 and 2, provides a limited list of methods through which one can induce another person to commit a criminal act. These methods include giving or promising something, abusing power or authority, using violence, employing threats or deception, and providing opportunities, facilities, or information (Hiariej, 2014).

In relation to the aforementioned forms of participation, encompassing those who engage in the act, those who command others to act, those who actively participate, and those who promote participation, the author asserts that motive serves as a crucial factor that necessitates substantiation in order to ascertain the presence or absence of involvement in the criminal act, particularly in cases of commanding others to act and promoting participation. The role of motive in determining the existence of participation is evidently discernible.

### C. The Role of Motive in Determining Criminal Liability in Premeditated Murder

The issue of whether a person can be deemed criminally responsible on account of mental illness often brings up the question of who has the authority to determine if the suspect has a mental disorder, thereby necessitating the cessation of the investigation. In relation to this matter, the author contends that it is within the judge's jurisdiction to ascertain whether the defendant possesses a mental disorder that renders them incapable of being held criminally responsible. This assertion is grounded in the understanding that a mental disorder does not serve as a valid excuse for terminating the investigation, as stipulated in the Criminal Code.

There are several grounds for terminating an investigation as outlined in the Criminal Code. These include situations where the event in question does not constitute a criminal offense, when there is insufficient evidence to proceed, or when the suspect has passed away or the statute of limitations has expired. Additionally, the principle of *nebis in idem*, which prevents double jeopardy, can also lead to the termination of an investigation. However, even if the suspect is believed to have a mental disorder during the investigation stage, the process continues until the examination stage in court. This allows the judge to make a determination on the individual's responsibility for their actions by considering expert testimony, which is considered as one of the evidences in the Criminal Procedure Code.

In the realm of criminal law, an individual can only be found guilty of an offense if they have satisfied the necessary conditions of criminal responsibility. Regrettably, the Criminal Code fails to explicitly outline these conditions, leaving judges with the task of deciphering the intended meaning behind a particular article. To gain clarity on an article's formulation that lacks explicit explanation in the Criminal Code, judges must consult the "*memorie van toelichting*." This treatise or note provides comprehensive explanations, article by article, within the Criminal Code.

According to the author, the presence of a motive plays a crucial role in establishing the criminal responsibility of an individual. This is due to the fact that the first element of criminal responsibility, as outlined in the *memorie van toelichting*, necessitates the perpetrator's awareness of the intent or purpose behind their actions. The concept of intent and purpose implies that when an individual engages in criminal behavior, it must be driven by a motive. For instance, if A commits premeditated murder against B with the intention of gaining control over B's property, the motive behind A's actions is both the purpose and driving force for the crime. From a psychological perspective, the motive is synonymous with the underlying reason behind an individual's actions. Consequently, in psychological terms, this motive is referred to as an instrumental motive. The significance of motive in establishing criminal responsibility lies in the fact that, in principle, only individuals who are mentally ill lack a motive for committing a crime. Therefore, according to the author, motive holds a central position in determining whether or not an individual can be held criminally responsible.

#### **D. Motive Function in Determining the Severity of Criminal Sentencing**

According to Article 197 of the Criminal Procedure Code, if a judge issues a verdict of punishment, it is essential for the decision to include the aggravating and mitigating circumstances of the defendant. Failure to include these factors renders the verdict null and void. M. Yahya Harahap asserts that it is crucial to explicitly state the aggravating and mitigating circumstances of the defendant in the decision's description. This is of utmost importance as the severity of the punishment imposed on the defendant is intricately linked to the facts and circumstances that either worsen or alleviate their culpability (Harahap, 2002).

The regulation regarding the consideration of mitigating and aggravating reasons in the imposition of punishment is not clearly defined in the law. Mitigating or aggravating reasons are derived from the facts presented during the trial and are used as a basis for determining the severity of criminal penalties. According to Article 8 paragraph 2 of the Law on Judicial Power, judges are required to take into account aggravating and mitigating circumstances when making their decisions, which can be determined by assessing the defendant's character. Furthermore, Article 197 of the Criminal Procedure Code states that if a judge issues a conviction, the decision must include the aggravating and mitigating circumstances of the defendant. Failure to include this information renders the verdict null and void.

According to the author's investigation, the significance of taking into account mitigating or aggravating factors in cases of premeditated murder is limited. Consequently, judges heavily rely on motive as a fundamental factor when determining the extent of punishment. For instance, various

decisions made by judges in premeditated murder cases concerning aggravating and mitigating circumstances are outlined as follows:

Table 1. Aggravating Circumstances

Decision Number	Name of Defendant	Judge's Decision	Aggravating circumstances	Mitigating circumstances
25/Pid. B/218/PN Mtr	Suryaib Sidik	Thirteen years in prison	The defendant's actions disturb the public. The defendant's actions result in the death of a person.	The defendant admits to his actions. The defendant has never been sentenced before. The victim's family and the defendant have reached a settlement.
1474/Pid. B/2019/P N DPS	Rudianto	Sixteen years in prison	The defendant's actions resulted in the death of the victim. The defendant's actions disturbed the public.	The defendant regrets his actions. The defendant openly admits to his actions. The defendant has never been convicted.
520/Pid. B/2020/P N Mtr	Maliki	Seventeen years in prison	The defendant's actions resulted in the death of the victim.	The defendant behaves politely in the court. The defendant admits to and regrets his actions. The defendant has never been sentenced.
379/Pid.B/2021/PN Mtr	Ilham Alias Hil	Seventeen years in prison	The defendant's actions resulted in the death of the victim. The defendant does not acknowledge his actions. The defendant is being evasive.	The defendant has never been sentenced. The defendant behaves politely during the trial.
649/Pid.B/20 22/PN Mtr	Sulyadi Alias Samsul	Fourteen years in prison	The defendant's actions resulted in the death of the victim.	The defendant acknowledges and regrets his actions. The defendant has never been sentenced. Hopefully that the defendant can improve himself.



According to the information presented in the table, the judge took into account various factors when determining the sentence. The mitigating factors considered were the defendant's respectful behavior throughout the trial, the defendant's role as a provider for their family, the absence of any prior convictions, and the defendant's expression of remorse and commitment to not repeat the offense. On the other hand, the aggravating factors included the sadistic, cruel, and senseless nature of the defendant's actions, the occurrence of subsequent actions following the initial offense, and the profound grief inflicted upon the victim's family as a result of the defendant's actions.

Gustav Radbruch emphasizes justice as one of the key legal objectives. The judge's decision is greatly influenced by a sense of justice, aligning with the principle of *fiat justitia ruat cœlum*, which asserts that justice must prevail under all circumstances. However, the judge's consideration of the severity of punishment solely based on the absence of motive reflects a paradigm that focuses on actions (*daadstrafrecht*) rather than considering the individual (*dederstrafrecht*). This paradigm contradicts the modern criminal law paradigm and the approach of Indonesian criminal law, which emphasizes both the act and the person (*daaddederstrafrecht*). This is evident in Law Number 1 of 2023 (National Criminal Code), which mandates judges to take into account the motive of the offender when imposing punishment. Therefore, the author argues that it is challenging to claim that a decision reflects a sense of justice if the motive is not considered as a basis for punishment, as illustrated in the following example:

In one instance, A deliberately carried out a premeditated murder against B due to B's infidelity towards A's spouse. Conversely, in another scenario, C intentionally committed premeditated murder against D with the intention of acquiring the sum of five hundred million that D had stored in his residence, in order to host a drug-fueled gathering with acquaintances. Drawing from this portrayal, although A and C both engaged in criminal acts, their motivations behind these acts diverged significantly. A's murder was driven by the betrayal inflicted upon his wife by B, whereas C's murder was motivated by his desire to appropriate D's substantial wealth for the purpose of indulging in a drug-infused celebration alongside his friends.

In essence, if the judge fails to take into account the motive of the offender, it typically leads to the same sentencing outcome for both A and C, as they both committed the same criminal act. However, the author argues that even though their actions are identical, a just decision would entail a more severe punishment for C than A. This is because A's motive for the murder, which was provoked by B's infidelity towards his wife, falls under the concept of "Provocative victims" in victimology studies. On the other hand, C's motive stems from a malicious inner disposition, specifically, stealing D's money to indulge in a drug party with friends.

## **2. Examining the Role of Motive as Evidence in Cases of Premeditated Murder under the Criminal Law Code**

### **A. The Concept of Evidence**

In criminal cases, the purpose of proof is to uncover the material truth, which refers to the actual truth of the matter. Conversely, in civil cases, the objective of evidence is to establish formal truth, wherein the judge must adhere to the boundaries set by the litigants' claims. Therefore, in order to ascertain formal truth, the judge is required to provide sufficient proof based on a preponderance of evidence. On the other hand, when seeking material truth, the criminal judge must establish the occurrence of the event beyond any reasonable doubt (Ante, 2013).

The Indonesian criminal procedure law follows a negative system of evidence, known as the *negatief wettelijk bewijs theorie*, as stated in Article 183 of the Criminal Procedure Code. According to this provision, a Judge is prohibited from issuing a verdict unless there is sufficient conviction that a

criminal offense has indeed taken place and that the accused is responsible for its commission.

Based on the provisions of Article 184 Paragraph (1) of the Criminal Procedure Code, there are five types of valid evidence consisting of: (Rozi, 2018)

a) Witness Testimony (Rozi, 2018)

In relation to the restriction on testimonies as stipulated in Article 1 number 27 of the Criminal Procedure Code, it establishes that a witness is deemed qualified if they have personally witnessed, heard, or experienced the criminal incident in question. Conversely, as per Article 185 Paragraph (1) of the Criminal Procedure Code, witness testimonies are deemed legally valid only when presented during a court session. Referring to the hierarchical order of evidence outlined in Article 184 of the Criminal Procedure Code, witnesses hold the foremost and most significant position, thereby endowing their testimonies with substantial legal evidentiary weight in the process of proving criminal cases.

b) Expert Statement (Suharto, 1997)

Article 186 states that the testimony of an expert is what an expert state at a judicial hearing. However, according to the elucidation of Article 186 of the Criminal Procedure Code, this expert testimony can also be given at the time of examination by the investigator or public prosecutor as outlined in a form of report and made by remembering the oath at the time he asked for an office or job. If it is not given at the time of examination by the investigator or public prosecutor, the examination in court, is asked to provide information and recorded in the form of Minutes of Examination. The statement is given after he has taken an oath or promise before the judge.

c) Letter (Rocky Marbun, 2011)

Article 187 of the Criminal Procedure Code has determined what letters can be used as valid evidence, as follows:

- 1) Official documents, such as minutes and letters, are created by a duly authorized public official or in their presence. These documents provide information about events or circumstances that the official personally witnessed, heard, or experienced. They are accompanied by clear and compelling justifications for the information presented.
- 2) A letter that adheres to the stipulations outlined in laws and regulations, or a letter drafted by an official pertaining to matters falling under their administrative responsibilities, serves the purpose of substantiating a particular issue or situation.
- 3) An expert's certificate, which contains an opinion based on their specialized knowledge and expertise, is issued in response to an official request regarding a specific matter or situation.
- 4) Any other correspondence that holds validity solely when it pertains to the contents of other evidentiary tools

d) Clue (Rozi, 2018)

According to Article 188 paragraph (1) of the Criminal Procedure Code, a clue refers to an action, event, or situation that, due to its correlation either with one another or with the criminal act in question, signifies the occurrence of a criminal act and identifies the individual responsible for it. The lawmaker has imposed restrictions on the sources of clues, allowing them to be derived solely from

witness statements, written correspondence, and the defendant's testimony, while excluding expert testimonies from this category.

The judge is not obligated to adhere to all evidence unless the judge possesses faith in the veracity of the evidence, as is evident from these instructions. The judge's evaluation of the probative value of a piece of evidence in each specific circumstance is conducted judiciously and prudently, following a thorough and meticulous examination guided by their conscience.

#### e) Statement of the Accused (Rocky Marbun, 2011)

According to Article 189 of the Criminal Procedure Code, the defendant's statement refers to the account provided by the defendant in court regarding the actions they have committed or their personal knowledge and experiences. It is important to distinguish the defendant's statement from a confession, as the former can also include denials rather than admissions of guilt. Nevertheless, it is crucial to highlight that even if the defendant's statement is indeed a confession, it alone cannot expedite the entirety of the examination process in criminal procedure law.

Typically, it is commonly believed that once the defendant admits their guilt, there is no requirement for further evidence as they are automatically considered guilty. Nevertheless, the criminal justice system in Indonesia follows a legal framework of negative evidence, which highlights that a judge must rely on two pieces of evidence and their own conviction in order to reach a verdict. Consequently, the defendant's confession alone does not suffice to resolve the case promptly.

## B. Elements of the Crime of Premeditated Murder

Premeditated murder is a conventional form of murder, as defined by Article 338 of the Criminal Code, but it involves deliberate planning. Prior to the actual act of killing, there exists a period during which the perpetrator has the opportunity to calmly contemplate various aspects, such as the method by which the murder will be executed. This interval occurs between the emergence of the intention to kill and the actual implementation of the act (Pieter & Silambi, 2019)

The penalty for premeditated murder is harsher compared to the homicides described in Articles 338 and 339 of the Criminal Code. It is, in fact, the most severe form of homicide punishable by death. The death penalty is not applicable to other crimes against life, making premeditated murder stand out due to the presence of preplanning. Apart from the death penalty, individuals convicted of premeditated murder may also receive a life sentence or imprisonment for a specific duration of up to twenty years (Pieter & Silambi, 2019).

Determining the presence or absence of intent hinges on whether the perpetrator possesses knowledge or comprehension that their actions will result in certain outcomes. In order to establish whether the defendant was aware of an act or not, it is imperative to demonstrate two key elements. Firstly, the presence of a cause-and-effect relationship between motive and objective. Secondly, the presence of awareness regarding the consequences and the surrounding circumstances (Pieter & Silambi, 2019).

Moreover, the necessity for the second component of intentionality lies in the volition (*willens*). As per Simons, intentionality refers to the volition that is aimed at accomplishing the action specified in the legislation. In order to establish whether the defendant had the intention (*willens*) to commit the act or not, two aspects need to be proven. Firstly, there should be a correlation between the motive behind the action and the desired outcome. Secondly, there must exist a causal connection between the motive to act and the objective to be attained (Pieter & Silambi, 2019). In relation to the element of intent, there is what

is known as the pattern of intent. The patterns of intent include intent as intention, intent as possibility and intent as certainty. The explanation is as follows:

Firstly, intentionality, in its essence, refers to the deliberate act committed by the perpetrator, where the desired outcome is the ultimate goal. This goal is driven by the perpetrator's intentions, and it is crucial to establish a clear connection between motive, action, and effect in order to prove intentionality. For instance, let us consider the case of Y, who wanted to eliminate Z due to Z's involvement in an extramarital affair with Y's wife. Y, while Z was walking alone on a desolate road, struck the back of Z's head with a stone until Z succumbed to death. In this scenario, Y's motive is evidently driven by Z's affair with his wife. Y's deliberate action of repeatedly striking the back of Z's head until his demise serves as both the intended action and the desired outcome (Hiariej, 2014).

Second, intentionality as a possibility (*opzet met zekerheidsbewustzijn*) of an act that causes undesirable consequences, but a necessity to achieve the goal. Willfulness with conscious certainty is when the perpetrator does not aim to achieve the result that is the basis of the criminal act, but the perpetrator knows very well that the result will definitely follow the act (Moeljatno, 2002). Thomas Alexander Keith, a man hailing from Bremerhaven, Germany, became the epitome of intentionality as certainty in a notable incident that transpired in 1875. This incident, famously referred to as Thomas van Bremerhaven, serves as a classic illustration of intentionality (Hiariej, 2014).

The case commenced when Thomas dispatched a crate of dynamite to be loaded onto a vessel. The arrangement was made for the crate of dynamite to detonate eight days into the voyage from Bremerhaven to New York, and Thomas insured the crate in Southhampton, England. Thomas' objective was to receive compensation. However, due to a lack of caution, when the crate was being lifted onto the ship in Bremerhaven, it toppled over and triggered a catastrophic explosion. This unfortunate event resulted in the loss of 83 lives and caused injuries to 50 others. Thomas's intention was to cause the ship to explode in order to obtain insurance premiums. Although the deaths resulting from the explosion were not Thomas's intended outcome, they were an inevitable consequence. The German High Court deemed Thomas's deliberate and certain mental attitude towards blowing up the ship at the expense of human lives to be willful (Hiariej, 2014).

Furthermore, the concept of intentionality with awareness of the possibility, also known as *dolus eventualis*, comes into play. This notion suggests that when an action is carried out or a desired outcome is achieved, it is acknowledged that there exists a potential for another consequence to emerge (Lamintang, 1986). The Hoorn tart case in the Netherlands, which is frequently cited in literature, serves as an illustrative example of intentionality. This case revolves around an individual in Amsterdam who expressed dissatisfaction with the market officer in the town of Hoorn. In an act of malicious intent, the person proceeded to contaminate the tarts they purchased in Haarlem on September 28, 1910, with rat poison. Subsequently, these poisoned pastries were dispatched from Amsterdam to Hoorn on September 29, 1990, and delivered to the Market Mantri (Hiariej, 2014).

Premeditated murder is not much different from ordinary murder which is regulated in Article 338 of the Criminal Code, the thing that distinguishes it from Article 338 lies in the element of the plan, which is meant by the element of the plan in Article 340 according to Adami Chazawi has the following conditions: (Chazawi, 2001)

#### 1) Deciding the Will in a Calm Atmosphere

When making the decision to end someone's life, it is crucial to be in a composed state of mind. A composed mental state refers to an atmosphere that is neither rushed nor sluggish, and is devoid of any external pressure or heightened emotional state. Prior to committing the act, the perpetrator takes the

necessary steps to prepare and carefully contemplate their actions. They also consider the potential consequences, weighing the potential gains and losses. Moreover, maintaining a calm situation implies that the perpetrator does not immediately carry out the act, but rather allows ample time for thoughtful planning and strategizing.

## 2) There Is Sufficient Time Available from the Inception of the Will to the Execution of the Will

There exists a significant interval of time between the cessation of one's volitional intent and the actual implementation of that intent. This temporal span is not determined by the duration the perpetrator contemplates their actions, but rather by the unfolding circumstances. If the time for contemplation is insufficient, the perpetrator may not have the opportunity to thoroughly consider all aspects in accordance with their volition. A hurried environment deprives the actor of a composed atmosphere. The time gap between the cessation of one's intent and its execution serves several purposes.

Firstly, it allows the perpetrator to potentially retract their intention to commit murder. Secondly, if the perpetrator's will has already solidified into a unanimous decision, this time period provides an opportunity to strategize the execution of their intent. For instance, they can devise methods to eliminate any evidence or procure necessary tools (such as sharp or blunt objects) to facilitate the realization of their intentions. Additionally, the perpetrator can contemplate an alibi to avoid arousing suspicion

## 3) Execution of Will in a Calm State

The most crucial requirement for the third condition is the execution of murder in a serene mental state. This implies that the act of murder should not be rushed, driven by intense anger or excessive fear, and the perpetrator should carry out their actions willingly and without any external pressure. However, it is essential that this willingness stems from the perpetrator's genuine inner disposition. These three conditions are interconnected and cannot be separated from one another. If any of these conditions are not fulfilled, then the elements of premeditated murder cannot be established.

## C. The Position of Motive Evidence in the Crime of Premeditated Murder

The author takes the stance that motive in the construction of Article 340 must be proven, sparking a debate on whether it is necessary to do so. The following arguments support this position: First: According to the Big Indonesian Dictionary, a motive is an impulse that arises in a person consciously or unconsciously to perform an action with a specific purpose. In the context of crime, it can be concluded that a motive is the driving factor for someone to commit a crime or criminal offense.

Second: In the context of criminal law proof, the public prosecutor's obligation is to establish the *bestandeel delict* or the elements of the article contained in the formulation of the offense. The elements of Article 340 consist of subjective and objective components. The subjective elements include the element of whoever, the element of intent, and the element of plan, while the element of taking the life of another person is an objective element. The words "threatened with premeditated murder," in the form of death penalty or life imprisonment or during a certain time with a maximum imprisonment of twenty years, are not elements but an offense qualification or a threat when the offense is fulfilled.

Third: One of the *bestandeel* (elements of the article) of Article 340 is "intentionally." The author agrees with criminal law experts who state that the need or importance of motive is proven to establish the element of "intentionally." Intentionality, as per *memorie van toelichting*, requires the presence of will (*willens*) and knowledge (*weetens*). To prove the presence or absence of the defendant's will, the motive is a fundamental aspect to be demonstrated. In principle, the will to commit a criminal offense does not stand alone but originates from the motive. In other words, the motive gives birth to the will to commit a



criminal offense. If the motive is not proven, then the question arises: how to determine whether there is a will from the defendant or not? Thus, it is challenging to refute the argument that the motive holds a vital position in proving the will (*willens*), which is a requirement of intent (*dolus*).

Fourth: In the doctrine of criminal law, if an offense formulation includes the terms "intentionally" or "knowing," it encompasses all three shades of intentionality: intention, certainty, and possibility. Regarding the construction of Article 340, where the legislator formulates guilt with the term "intentionally," the public prosecutor must establish each of these three shades of intent. If the trial reveals that the defendant indeed intended the death of the victim, then proving intentionality as a possibility and certainty becomes unnecessary since both patterns of intent require that the consequences are unintended by the defendant. Consequently, the prosecution's task is solely to prove intent. In criminal law doctrine, intent necessitates the full realization of motive, action, and result, which must be proven during the trial.

Fifth: The significance of motive lies in determining the defendant's criminal responsibility. Generally, individuals with mental disorders and culpable offenses commit crimes without a motive. Hence, one of the initial elements of criminal responsibility, according to *memorie van toelichting*, mandates that the perpetrator be aware of the intent or purpose of their actions. The phrase "intent and purpose" implies that when committing a criminal act, it must be motivated. For instance, if A commits premeditated murder against B to control B's property, controlling B's property serves as both the purpose and motive for A's actions. In psychology, such a motive is known as an instrumental motive. Proving the motive is crucial in determining the perpetrator's criminal responsibility.

Sixth: Considering the theory of evidence and legal certainty as analytical tools, proving the motive is fundamentally important. The theory of evidence in criminal cases, stipulated in Article 183 of the Criminal Procedure Code as the *negatief wettelijk bewijs theorie*, requires the judge not to impose a sentence unless based on two valid pieces of evidence that have convinced them. The author contends that without proving the motive, it is challenging for the judge to be convinced that the defendant acted "intentionally," a crucial element in Article 340. The requirement of intentionality fundamentally depends on the existence of will (*willens*), and to determine the presence or absence of the defendant's will, the motive must be proven. In essence, there exists a strong causal relationship between motive and will. Failing to prove the motive during trial may lead to doubts regarding the proven or unproven status of the element of intent, potentially resulting in the judge erroneously sentencing an innocent person. Conversely, proving the motive definitively establishes the element of "intent" and precludes any argument to the contrary.

Seventh: The primary argument against proving motive is based on the perspective of Eddy Hiariej, who cited Jan Remelink, asserting that, historically, the legislator intentionally kept the motive distant from the formulation of the offense under Article 340 of the Criminal Code. Consequently, the motive is considered unnecessary to be proven by the public prosecutor. In response to this view, it is crucial to note that legal interpretation in legal science is facultative. Various types of interpretation, such as grammatical, historical, systematic, sociological, futuristic, etc., are not binding on the judge. Therefore, the judge has the liberty to choose the interpretation that informs their understanding of the charged article. Moreover, Article 54 letter b of the national Criminal Code explicitly mandates judges to take the motive into account when imposing punishment. Hence, if the argumentation for proving motive relies on the interpretation method, the futuristic interpretation method dictates that the public prosecutor must indeed establish the motive.

Eighth: In enforcing the law, law enforcement agencies should align with the evolving paradigm of modern criminal law and Indonesian criminal law politics, emphasizing the *daad dedersrafecht* concept. This concept necessitates the criminal justice system, including the police, prosecutors, and



courts, to consider both the person and the act (*daad dederstrafecht*) when examining or processing a person suspected of committing a criminal offense. A process that excludes exploring and proving the motive exhibits a paradigm solely oriented towards actions (*daad strafecht*). According to the author, to render a just decision, it is imperative to also consider the person's aspect (*deder strafecht*), including the motive for committing a criminal offense. Proving the motive is essential in determining the severity of the punishment to be imposed on the defendant.

Ninth: The author's arguments regarding the importance or necessity of proving motive, particularly in establishing the element of guilt such as intent (*dolus*), gain additional strength from several court decisions that can serve as precedents for other judges deciding similar cases. Some notable court decisions supporting these arguments are as follows:

1. Decision number 215/Pid.B/2021/PN.Mgl, concerning the case of defendant Mahat Bin Karim, who faced charges from the public prosecutor for the primary offense under Article 340 and the subsidiary offense under Article 338. The elements of Article 340 include whoever, intent, premeditation, and causing the death of another person. Meanwhile, the elements of Article 338 comprise whoever, intent, and causing the death of another person. In the judge's deliberation, specifically concerning the proof of intent in Article 340, it is explicitly stated that:
  - a) Considering that intentionality refers to committing an act driven by a desire to do or not do anything prohibited or mandated by law. In Indonesian criminal law, the term "intentionality" arises from a translation of "*opzet*."
  - b) Based on the legal facts revealed during the trial, the defendant's motive for carrying out the assault against the victim was triggered by resentment towards the victim, who had killed the defendant's brother.
2. Decision number 379/Pid.B/2021/PN Mtr, regarding the case of defendant Ilham Alias Hil, who faced charges from the public prosecutor with alternative charges. The elements of Article 340 encompass whoever, intent, premeditation, and causing the death of another person. Meanwhile, the elements of Article 338 include whoever, intent, and causing the death of another person. In the judge's consideration, specifically regarding the proof of intent in Article 340, it is explicitly stated that:
  - a) Considering that intentionality means wanting and knowing. When related to a specific action, intentionally implies knowing and wanting to realize the action. The perpetrator, with intent, possesses the will and awareness to cause certain consequences, as regulated by legislation and driven by the fulfillment of passion or motive
  - b) Considering that the defendant stabbed the victim due to resentment over a motorcycle pawn obtained by the victim, specifically a Yamaha Jupiter Z motorcycle.
3. Decision number 1474/Pid.B/2019/PN Dps, was issued on behalf of the defendant Rudianto, who faced alternative charges brought by the public prosecutor. The charges included violating Article 340 of the Criminal Code or alternatively, violating Article 338 of the Criminal Code. The elements of Article 340 encompass the involvement of a person, intent, premeditation, and the act of taking another person's life. On the other hand, the elements of Article 338 consist of the involvement of a person, intent, and the act of taking another person's life. In the judge's decision, particular attention was given to proving the element of intent in Article 340. It was explicitly stated that:

- a) In assessing the intentional element, it is crucial to establish whether the defendant had full knowledge and intention of the consequences of their actions. Additionally, it is important to understand the motive behind the defendant's commission of the crime. Without a motive, it would be challenging for the defendant to engage in a criminal act, especially one involving premeditated murder as described in Article 340, which has three distinct characteristics. Firstly, the perpetrator makes a deliberate decision while in a calm state. Secondly, there is a significant time gap between the formation of the intention and its execution. Lastly, the execution of the intention is carried out in a composed manner
  - b) Based on the facts presented during the trial, the judge concluded that the defendant's motive for committing the act against the victim, who happened to be his wife, was due to the emotional pain caused by his wife's infidelity
4. Decision number 77/Pid.B/2013/PN Bul, pertains to the case of Adrianto IS Manan alias Maner, who has been charged by the public prosecutor with an alternative subsidiary charge. The first charge is for violating Article 340 of the Criminal Code, while the second charge is for violating Article 338 of the Criminal Code. The elements of Article 340 include the act of intentionally taking the life of another person, with premeditation and intent. On the other hand, the elements of Article 338 consist of the act of intentionally taking the life of another person, with intent. In the judge's consideration of the decision, regarding the element of intent in Article 340, it is clearly stated that:
- a) Considering, intentional or deliberate action refers to a situation where a person consciously intends to commit a criminal offense. It is necessary for the person to have the intention behind their actions and be fully aware of the consequences
  - b) Considering that the defendant and the victim had a dispute regarding the election results for the position of Mopu Village Chief. The victim was elected in 2013, but the defendant was dissatisfied with the outcome due to allegations of the victim using a fake diploma during the nomination process. However, the defendant's report and objection were not addressed by the sub-district government and Buol Police. Based on these facts, the panel of judges believes that it is evident and clear that the defendant had the motive and intention to kill the victim
5. Decision number 863/Pid.B/2015/PN Dps, concerning the case of the defendant Margaret Christina Megawe, alias Tely, who faced charges from the public prosecutor with alternative subsidiary charges. Firstly, violating Article 340 of the Criminal Code, or secondly, violating Article 338 of the Criminal Code. The elements of Article 340 include whoever, intent, premeditation, and causing the death of another person. The elements of Article 338 consist of whoever, intent, and depriving another person of life. In the judge's consideration, specifically regarding the proof of intent in Article 340, it is explicitly stated that:
- a) Considering that to establish guilt in a criminal offense, including murder, the element of intent (*opzet*) is required, meaning there must be a connection between the inner attitude of the perpetrator (*mens rea*) and the form of the action and its consequences (*actus reus*). Furthermore, the *memoria van toelichting* explains that punishment should be imposed on those who willingly and knowingly commit prohibited acts. Concerning the occurrence of a criminal offense, especially the crime of taking a person's life, theoretically, it is certain that a mentally healthy person must have a motivation for such an act, whether it be personal problems, business, economics, or infidelity.

- b) Based on the trial facts, the defendant committed the acts against the victim out of economic motives. At that time, the defendant was facing financial difficulties and could no longer care for the victim, who was her adopted daughter. Hence, the desire to take the life of the victim emerge.

The author's description of various decisions indicates that when examining the evidence of intent, the judge initially clarifies the role of motive, which is closely linked to the intention to commit a criminal act. Consequently, the proof of intent, as demonstrated in these decisions, cannot be detached from the motive, which serves as the catalyst for someone to commit premeditated murder. Stated differently, the inability to establish the motive during the trial results in the failure to prove the element of intent as outlined in Article 340 of the Criminal Code

### **Conclusion**

Based on the problem formulation and the author's discussion in the preceding chapter, the following conclusions can be derived: 1. The proof of motive in the case of premeditated murder serves three functions, namely, determining the involvement in a criminal act, establishing the elements of criminal liability, and determining the severity of punishment. Therefore, the proof of motive holds a crucial position in establishing criminal acts, particularly in cases of premeditated murder. 2. The significance or necessity of proving motive is supported by various arguments presented by the author. A very fundamental argument, the importance or necessity of motive is proven in order to prove the *bestandeel* (core offense) "intentionally" in the construction of Article 340 of the crime of premeditated murder.

In order to ensure a fair implementation of law enforcement in the future, it is imperative for law enforcement officials at all levels, from the investigation stage to the court examination stage, to thoroughly investigate and establish the motives behind criminal acts. This is due to the significant role that motives play in determining the level of involvement in criminal activities, establishing the elements of criminal responsibility, and determining the severity of punishment for the accused.

The author's research highlights the crucial role of motives in proving criminal cases, as mentioned earlier. To address the ongoing debates among scholars and legal practitioners regarding the evidentiary significance of motives, it is recommended that the legislator revises the formulation of Article 340, which pertains to the core offense of "intentionally," to "with intent." In the realm of criminal law doctrine, when the legislator employs the phrase "with intent" in defining the offense, it necessitates the presentation of evidence demonstrating a deliberate pattern of intent. This pattern of intent requires a comprehensive understanding and substantiation of the interplay between motivation, action, and consequences during the trial proceedings.

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