

**Advocacy of Planned Murder from the Perspective of Positive Law and Islamic  
Criminal Law: Comparative Study of Old and New Criminal Code Based on Decision  
No. 413/PID.B/2013/PN.RHL**

**Caesaria Okta Wahyudiana**

Faculty of Law, Universitas Muhammadiyah Surakarta  
Email: [c100200232@student.ums.ac.id](mailto:c100200232@student.ums.ac.id)

**Kuswardani**

Faculty of Law, Universitas Muhammadiyah Surakarta  
Email: [kus283@ums.ac.id](mailto:kus283@ums.ac.id)

**ABSTRACT**

This study aims to examine how to encourage or persuade in the crime of premeditated murder in Decision No. 413/PID.B/2013/PN.RHL. The Criminal Code is something that can provide law enforcement to the community, which has now been formulated in the revision of the new Criminal Code, namely in Law No. 1 of 2023. This is the location of novelty in this research, where there is a comparison between the old Criminal Code and the new Criminal Code based on the relevant articles. The research method used is a normative method based on secondary data and literature data. The results of this study reveal that in the crime of premeditated murder based on Decision No. 413/PID.B/2013/PN.RHL the defendant is someone who persuades to carry out the crime of premeditated murder against the victim. In positive law to impose a verdict on the defendant, the panel of judges has considered according to juridical and non-juridical reviews. So that the application of the criminal sentence against the defendant is in accordance with Article 340 jo Article 55 paragraph 1 to 2 of the Criminal Code. Based on the perspective of Islamic criminal law, premeditated murder is punishable by *qisash* and *diyathah*. The perpetrator of the murder could have avoided the two penalties if the victim's family accepted the forgiveness of the perpetrator without filing any charges.

**Keywords:** Advocacy, Crime, Premeditated Murder, Islamic Criminal Law

**INTRODUCTION**

Premeditated murder is a heinous offense, for which the maximum penalty is twenty years, life, or death. This crime is defined as an aggravated form of murder. (1) Premeditated murder in positive law in Indonesia is contained in Article 340 of the Criminal Code, stipulating that every person is the target of a violation of the law. It is clear that refers to a person, and there is only one person. In reality, many people can commit crimes. As with manslaughter,

which is also prohibited by Article 338 of the Criminal Code. Premeditated murder is an independent crime. The definition of the criminal act of premeditated murder is the same as the definition of the criminal act of ordinary murder in Article 338 of the Criminal Code, the difference is that there is “prior planning”.(2) Along with the emergence of the new Criminal Code Article 458 Paragraph 1 of Law Number 1 Year 2023 “every person who takes the life of another person, shall be convicted of murder, punishable by fifteen years”. It is clear that there is conformity and no change between Article 338 of the old Criminal Code and Article 458 paragraph (1) of the new Criminal Code.

Article 55 Paragraph (1) number 2 of the Criminal Code as a person who moves another person to carry out his suggestion because he is influenced by the efforts of the persuader. According to this article, the criminal offense is committed by the initiator, persuader, and advocate, so the punishment is the same. The three conditions must be proven, namely the existence of the will of the perpetrator, the beginning of the implementation of the will, and the implementation is not solely due to the will of the perpetrator because he has encouraged others to commit murder and the murder is not carried out and must fulfill the element of attempt.(3) It is the same if referred to in Article 20 letter (d) in the new Criminal Code Law 1/2023 which states that “a person encourages others to commit a criminal offense by giving or promising something, abusing power or dignity, committing violence, using threats of violence, misleading, or by providing opportunities, facilities, or information.” Therefore, Article 55 Paragraph (1) number 2 of the old Criminal Code and Article 20 letter (d) of the new Criminal Code both regulate advocating or encouraging others to commit criminal acts.

The act of taking the life of another person is known as murder in Islamic criminal law. According to Islamic law, murder is considered a serious offense, especially if it is committed intentionally. Something called “intentional” or “premeditated” is seen from the whispers of the heart, and of course it is very difficult for others to know the contents of a person’s heart. However, one can tell if a person intentionally kills someone by looking at the medium he or she uses to take another person's life. However, the medium used to commit the murder also counts.(4)

The effectiveness of law enforcement against criminal acts of murder, whether premeditated or not, highlights the role of law enforcement agencies such as the police and prosecutors, in looking further into the material truth of an event in accordance with the

provisions of the article violated.(5) In order to reveal the true nature of the crime, the judge must place special emphasis on the legal conclusions he draws in order to convict the perpetrator. Because the characteristics of the two crimes are almost the same, the difference is that there is preparation. Distinguishing between premeditated murder and ordinary murder is very difficult when deciding what punishment to apply to the perpetrator. (6)

Based on the description above, this research aims to examine the Decision of the Rokan Hilir District Court Number. 413/PID.B/2013/PN.RHL regarding encouragement in the crime of premeditated murder from the perspective of positive law and Islamic criminal law in comparison with the old Criminal Code and the new Criminal Code. And the benefits of this writing are expected to explain to readers about the criminal act of premeditated murder and how the punishment must be served by the perpetrator.

## **RESEARCH METHOD**

This research uses a normative method in which the research is based on secondary data and literature data. By using a case study approach, namely by analyzing situations related to existing problems that have become permanent legal court decisions. All legal research is normative research or can also be called doctrinal. (7) Examining the regulations applicable to this paper is part of the statutory approach used in this research.

The literature study data collection method involves reading, analyzing, researching, and communicating information from books, research publications, and laws. The data analysis approach used is qualitative, meaning that the researcher's interpretation of the data collected for this legal research is combined with the analysis of the data itself. Therefore, the findings of this research are analytical and prescriptive. Furthermore, information obtained from legal documents will be guided, examined, and clarified in accordance with applicable regulations.

## **RESULTS AND DISCUSSION**

### **Premeditated Murder Based on the Positive Law Perspective Committed with the Element of Advocacy in the Decision of the Rokan Hilir District Court Number. 413/PID.B/2013/PN.RHL**

The planning of a murder necessitates the presence of an intention behind the crime. The act of murdering another individual with the intention of causing their death is a deliberate

act that requires careful planning. This includes organizing the timing, strategy, and technique of the murder to ensure its execution and making plans to avoid being caught.(8) According to positive law, premeditated murder is a criminal act that violates the ideals of a just and civilized humanity. Premeditated murder requires a strong motive to encourage a person to commit murder, adequate means and tools, a clever or very evil mind, and the right moment.(9)

The analysis presented in this study indicates that the defendant, Norman Ritonga, committed a criminal act in relation to Mr. Ben. The defendant himself is someone who encourages or persuades others to carry out criminal acts with the motive that the victim's child is suspected of being a mistress of the defendant's wife, when in fact this is not the case. Consequently, the defendant was subjected to an examination and a court hearing with the objective of demonstrating that his actions constituted a violation of the law.

Decision of the Rokan Hilir District Court case No. 413/PID.B/ 2013/PN.RHL, in accordance with the charges of the public prosecutor, the defendant was charged with the first alternative charge, namely Article 340 of the Indonesian Penal Code in conjunction with Article 55 paragraph (1) 2 of the Indonesian Penal Code and the second charge, Article 353 paragraph (3) in conjunction with Article 55 paragraph (1) 2 of the Indonesian Penal Code. In the first charge the defendant had fulfilled the elements, namely:

- a.) Whoever;
- b.) Advocates;
- c.) Intentionally;
- d.) With premeditation; and
- e.) To take the life of another person.

The defendant was found to be legally proven and guilty of the crime as outlined in the original indictment by the presiding judge, as all of the requirements set forth in the indictment had been met.

In this case, a comparison can be seen in the old Criminal Code and the new Criminal Code, namely Law No. 1 of 2023, as follows:

THE OLD CRIMINAL CODE	THE NEW CRIMINAL CODE (1/2023 LAW)

The crime of homicide is regulated in Article 338	The crime of homicide is regulated in Article 458 paragraph (1).
The crime of premeditated murder is regulated in Article 340	The crime of premeditated murder is regulated in Article 459
Advocating or mobilizing others to commit a criminal offense is regulated in Article 20 letter (d).	Encouraging or moving others to commit a criminal offense is regulated in Article 55 paragraph 1 number 2./99

Based on decision No. 413/PID.B/ 2013/PN.RHL, in the new Criminal Code Article 459 *“Anyone who intentionally or premeditatedly takes the life of another person is charged with premeditated murder and faces the death penalty or life imprisonment for a maximum of 20 years.”* while the old Criminal Code (Article 340) *“Anyone who kills another person intentionally and premeditatedly faces the possibility of being charged with premeditated murder, which carries a maximum penalty of 20 years, the death penalty, or life imprisonment.”* This shows clearly that Article 340 of the old Criminal Code and Article 459 of the new Criminal Code have not changed. (10)

In the case that occurred in Decision No. 413/PID.B/ 2013/PN.RHL is a criminal offense that was previously planned in Article 340 jo Article 55 Paragraph (1) to 2 of the Criminal Code which means that *“people are aware of what they are doing intentionally, especially when they are planning something and have considered what needs to be done. They also deliberately encourage others to take the action they are about to take by planning the time when others need to do it”*.(11)

In Decision Number. 413/PID.B/ 2013/PN.RHL the judge in deciding the defendant was given a prison sentence of seventeen years by considering, among others:

1. Juridical factors, where there are articles that regulate the prosecutor’s charges, witness and defendant testimony, and evidence.
2. Non-juridical factors, such as the elements that aggravate and mitigate the defendant.

However, in this case there were no matters that could alleviate the defendant.

According to the author, decision No. 413/PID.B/ 2013/PN.RHL in which the defendant was sentenced to seventeen years was not appropriate. If the defendant is sentenced to

seventeen years imprisonment while the prosecutor's recommendation is only sixteen years, it is not proportional to the victim who has lost his life, where the victim is the father of the person suspected of having an affair with the defendant's wife, so the victim is not at fault at all. In light of the defendant's role in persuading or encouraging the commission of the crime of premeditated murder with deliberate intent, resulting in the victim's death, it would have been more appropriate in this case for the defendant to receive a sentence commensurate with the gravity of his actions.

### Premeditated Murder Based on Islamic Criminal Law Perspective

Qishash in Arabic means, *مدلا دوقالب* signaling committing the same or following action in response to the spilling of blood. The perpetrator will be compensated for his actions, according to Islamic law, which defines *qisas*, or appropriate punishment. The type of crime committed determines the punishment, meaning that if there is someone who kills, it will be avenged by killing the person who killed the victim.(12) Thus, *qishas* is a punishment that can be imposed on the perpetrator of a crime based on the victim's previous actions.(13) Allah's decree of *qishas* was motivated by the harsh treatment of murderers by the Jahiliyyah society.(14) The heirs of the victim have the right to claim *qisas*. The existence of this right shows that the *qisas* punishment has a purpose.(15) This is stated in Q.S. Al-Baqarah/2: 178-179:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ ۚ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ ۚ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ۗ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ ۚ فَمَنْ اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ (178) وَلَكُمْ فِي الْقِصَاصِ حَيٰوةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ (179)

*And you who believe have (performed) qisas regarding the dead, as mentioned above. Sahaya: slave for slave, woman for woman, and free man for another free man. However, whoever gets his brother's forgiveness, must pay an honorable ransom (diat) and watch him closely. That alone is the kindness and comfort of your Lord. If he continues to transgress this limit after that, he will be severely punished.*(16)

Any act involving property or life that is prohibited under Islamic law is called *jinayat*. *Jinayat* has the authority to enforce traffic regulations, maintain order through acts of murder, injury, and other crimes. In contrast, illegal activities in Islamic criminal law are called *jarimah*.

Under Islamic criminal law, there are 3 (three) kinds of *jarimah*:

1. Ta'zir;
2. Qishosh diyat; and
3. Jarimah hudud

*Hudud* and *Takzir* crimes are two main categories that are divided based on several studies. The second version of this distinction stems from the assumption that hudud covers all criminal activities that are strictly regulated in the Qur'an and Hadith, including the nature of the criminal act and its legal consequences. As a result, the crime of qisash is considered to fall within the scope of hudud. Meanwhile, not all forms of criminal activity covered by hudud fall into the realm of *takzir*.<sup>(17)</sup> Therefore, Allah SWT forbids the act of murder. This is in accordance with the words of Allah SWT contained in Q.S. An-Nisa Verse 93:

وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعْنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا (93)

Based on the interpretation of the verse above, murder is a heinous act that ends a person's life. In addition to having the power to undermine the values of life that have been established by Allah SWT, murder also deprives someone of the right to life. This verse also makes it clear that *Jahannam* is the punishment for murder. <sup>(18)</sup>

According to the scholars, there are three types of murder: intentional murder (*qatl al-amd*), which is the intentional torture of another person with the aim of killing him; semi-intentional murder (*qatl syibh al-'amd*), which is the torture of someone who does not intend to kill him but results in death; and culpable homicide (*qatl al-khata'*), which is murder committed because of misconduct, wrong intention, or negligence.<sup>(19)</sup>

Intentional killing requires several conditions to be met, namely that the victim is initially alive, the perpetrator's actions cause the death of the victim, the death of the victim is the intended result, and the victim uses sharp, hard, and dangerous objects that can be fatal.<sup>(20)</sup> Intentional killing is a crime that occurs when all these conditions are met. Then, the specificity of *diyat* and its value is based on the hadith of the Prophet Muhammad that "If an innocent person is killed intentionally, the victim's family has the right to seek legal redress for the crime. If they wish, they can demand *diyat*. Whatever the victim's family demands in return for peace can be legally obtained, and that is what is emphasized to the murderer."<sup>(21)</sup>

Based on Decision Number 413/PID.B/2013/PN.RHL, the defendant committed an act of intentional homicide, the defendant has been legally proven to have committed a criminal act by encouraging or inducing others to commit premeditated murder by striking the victim's neck using a blunt object so that it depressed the airway and the victim died. With the existence of *qisash* and *diyath*, it is hoped that it can provide a warning and anticipation for the community so that it is not easy to commit murder. Because a seventeen-year prison sentence for the defendant does not necessarily provide a deterrent effect. So in this case, especially *qisash* needs to be seen as a solution and continue to be enforced in order to get a sense of justice, especially for the families left behind.

Based on the perspective of Islamic criminal law, the consequence of this act of premeditated murder is *qisash* (revenge killing) if the victim's family does not forgive. If a family forgives intentional murder, then the perpetrator commits *diyath* (fine). There are 2 (two) kinds of *diyath*, including light *diyath* (*mukhaffafah*) and heavy *diyath* (*muqhalladzah*). This light *diyath* is accused of killing someone unintentionally, for a total of 20 bintu makha camels (females aged 1-2 years), 20 male Ibn Makha camels aged one and a half years, 20 female Bintu Labun camels aged 22-23, 20 hiqqah camels aged 3-4 years, and 30 *ja a'ah* camels aged 4-5 years.(22) For intentional killing, heavy *diyath* is given with the victim's forgiveness in exchange for 30 *hiqqah* camels aged 3-4 years, 30 *tadza'ah* camels aged 4-5 years, and 40 pregnant *khalifah* camels.(23) *Diyath* must be the personal property of the perpetrator and must be paid in cash.

However, the murderer may be spared the punishment of *qisas* or *diyath* if the victim's family freely accepts the forgiveness of the perpetrator without filing any charges.(24) Therefore, law enforcement must run because it is the judge who has the final decision and will make decisions only based on the evidence presented or the facts of the case in the trial.(25)

## CONCLUSION

Based on Decision No. 413/PID.B/2013/PN.RHL, the defendant was charged as a person who encouraged or induced another person to commit the crime of premeditated murder against the victim. As stipulated in Article 340 of the Criminal Code in conjunction with Article 55 paragraph (1) 2, the qualification of this article is described by the actions of the defendant deliberately encouraging others to commit acts that will be committed by planning in advance.

In reference to the recently enacted Criminal Code, Article 459 of Law No. 1 of 2023 outlines the crime of premeditated murder. This article demonstrates that the provisions of Article 340 of the previous Criminal Code and Article 459 of the new Criminal Code remain essentially unchanged. In Islamic criminal law, the primary punishment for intentional murder is qisash, which entails the death penalty. However, if the victim's family forgives the perpetrator, this punishment can be revoked, and instead, diyat, or a fine, can be imposed.

### REFERENCES

1. Iriyanto E, Halif H. Unsur Rencana Dalam Tindak Pidana Pembunuhan Berencana. *J Yudisial*. 2021;14(1):19.
2. Chazawi A. *Pelajaran Hukum Pidana Bagian 3: Percobaan dan Penyertaan*. Jakarta. Jakarta: Rajawali Pers;
3. Musriza M, Iqbal M. Tindak Pidana Menganjurkan Orang Lain Melakukan Pembunuhan. *Syiah Kuala Law J*. 2020;4(1):45–54.
4. Saroji MI. Pembunuhan Terencana Dalam Tinjauan Syariat Islam [Internet]. 2023 [cited 2024 Apr 21]. Available from: <https://islam.nu.or.id/syariah/hukum-pembunuhan-terencana-dalam-tinjauan-syariat-islam-St2hs>
5. Dirdjosisworo S. *Pengantar Ilmu Hukum*. Jakarta: Raja Grafindo Persada, 1983. Jakarta: Raja Grafindo Persada; 1983.
6. Mohamad HH, Sadam Alamsyah M, Antoni H. Problematika Dakwaan Tindak Pidana Pembunuhan Berencana Dengan Pembunuhan Biasa. 2023;1(2):53–69. Available from: <https://doi.org/10.59581/deposisi.v1i2.544>
7. Marzuki PM. *Penelitian Hukum*. Jakarta: Kencana Perdana Media; 2014.
8. Eka G, Cab J, Prameswari F, Juniar AT. Keberlakuan Pasal 100 Kitab Undang-Undang Hukum Pidana Nomor 1 Tahun 2023 dalam Studi Kasus Pembunuhan Berencana Brigadir Norfriansyah Yosua Hutabarat. *Harmon J Ilmu Sos Ilmu Hukum, dan Ilmu Ekon* No. 2023;1(1):32–9.
9. Wahyuni W. hukumonline. [cited 2024 Apr 21]. Pembunuhan dan pembunuhan Berencana. Available from: <https://www.hukumonline.com/berita/a/pembunuhan-dan-pembunuhan-berencana-lt62d68b0036f97/?page=2>

10. Htpa A, Carera F, Falihah FN, Santoso YP. Perbandingan Pelaksanaan Pidana Mati Dalam KUHP 1946 dan Nomor 1 Tahun 2023. 2024;17(01):21–30.
11. Febriansyah, Kusbianto AZ. ANALISIS HUKUM MENGENAI SANKSI PIDANA PENJARA SEUMUR HIDUP TERHADAP PELAKU TINDAK PIDANA PEMBUNUHAN BERENCANA. J dharmawangsa. 2021;15(3):397–404.
12. Nawawi R. Hukuman Pidana Mati bagi Pelaku Tindak Pidana Pembunuhan Berencana dalam Tafsir Ibn 'Asyur, al-Tahrir wa al-Tanwir. Al-Manar J Kaji Alquran dan Hadis. 2023;9(2):145–57.
13. Sari AP. Pemberian Grasi dan Maaf dalam Bingkai Kajian Teoritik Tindak Pidana Pembunuhan (Studi Komparatif Hukum Positif dan Hukum Islam). Al-Ahkam J Ilmu Syari'ah dan Huk. 2020;5(1):73–90.
14. N. J. Coulson. A History of Islamic Law. Edinburgh: Edinburgh University Press; 1964.
15. Nilam Sari D. Implementasi Hukuman Qisas Sebagai Tujuan Hukum Dalam Al-Qur'an. Muslim Herit. 2020;5(2):286.
16. Yulianto NAS, Kasim NM, Kasim EI. Eksistensi Hukuman Mati terhadap Kasus Pembunuhan Perspektif Hukum Pidana Indonesia dan Hukum Islam. Al-Mizan. 2023;19(1):21–38.
17. Sinulingga R, Sugiharto R. Studi Komparasi Sanksi Pidana Pembunuhan dalam Kitab Undang-Undang Hukum Pidana (KUHP) dengan Hukum Islam dalam Rangka Pembaharuan Hukum Pidana. Sultan Agung Fundam Res J. 2020;1(1):31–41.
18. Wulandari A. Tinjauan Hukum Pidana Islam Terhadap Tindak Pidana Pembunuhan Berencana Dalam Kitab Undang-Undang Hukum Pidana. J Al-Hakim J Ilm Mahasiswa, Stud Syariah, Huk dan Filantr. 2020;2(1):16–26.
19. Sudarti S. Hukum Qisahah Diyat: Sebuah Alternatif Hukuman Bagi Pelaku Kejahatan Pembunuhan Berencana di Indonesia. YUDISIA J Pemikir Huk dan Huk Islam. 2021;12(1):35.
20. Hasna Haifa Nabilah SS. Pandangan Hukum Islam terhadap Kasus Pembunuhan Bos Galon di Semarang. Isti`dal J Stud Huk Islam. 2023;10(1).
21. P.A.F. Lamintang. Dasar-Dasar Hukum Pidana Indonesia. Bandung: Citra Aditya Bakti; 2011.

22. Hanif Hawari. detikHikmah. 2023 [cited 2024 Apr 21]. Diyat: Pengertian, Faktor, Jenis dan Hikmahnya. Available from: <https://www.detik.com/hikmah/khazanah/d-7090974/diyat-pengertian-faktor-jenis-dan-hikmahnya>
23. M. Nurul & Musyarofah. Fiqi Jinayah. Jakarta; 2016. 7 p.
24. Iqbal S, Hamdani H, Yusrizal Y. Analisis Perbandingan Hukuman Terhadap Tindak Pidana Pembunuhan Berdasarkan Kitab Undang-Undang Hukum Pidana Dan Hukum Islam. SulohJurnal Fak Huk Univ Malikussaleh. 2022;10(1):113.
25. Kepolisian P, Masyarakat B, Kepolisian P, Dan B, Dalam M, Narkotika P, et al. 1 , 2 , 3 1. 9(2):93–110.