

Legal Analysis of Judges' Considerations in Assessing The Element of Intention in The Criminal Act of Murder (Study of Decision Number 91/Pid.B/2024/PN Kln)

Fadhillah Zahwa Yusticia

Law Science, Faculty of Law and Politic Science, Universitas Muhammadiyah Surakarta

c100220355@student.ums.ac.id

Dr. Syaifuddin Zuhdi, S.HI., M.HI

Law Science, Faculty of Law and Politic Science, Universitas Muhammadiyah Surakarta

sz123@ums.ac.id

Abstract

The crime of murder is a severe crime against human life, expressly regulated in Article 338 of the Indonesian Criminal Code (KUHP). In criminal justice practice, proving the element of intent and the judge's considerations often involve analysis of evidence, including the testimony of forensic experts. This study analyzes the judge's considerations in Decision Number 91/Pid.B/2024/PN Kln, assessing the element of intent based on the testimony of forensic experts from the perspective of criminal law theory. This normative legal research uses a statutory and case-based approach. Data collection through literature studies includes regulations, court decisions, and legal literature, analyzed qualitatively. As a result, the panel of judges declared that all elements of Article 338 of the Criminal Code—whosoever, takes the life of another person, and intentionally—were fulfilled based on the testimony of witnesses, the defendant, and the *Visum et Repertum*. The element of intent was supported by the testimony of forensic experts regarding the cause of death, related to the theory of will (*wilstheorie*) and knowledge (*voorstellingstheorie*). The testimony of forensic experts plays a crucial role in strengthening the evidence of intent in murder.

Keywords: Murder; Judge's Considerations; Intentionality.

INTRODUCTION

Developments in the life of the nation and state in Indonesia as a whole currently show very significant changes. As a constitutional state, Indonesia emphasizes that all aspects of community life must always be based on laws that apply firmly and legally. In this case, criminal law is essentially a collection of written legal norms that regulate various prohibited actions, accompanied by the threat of sanctions for anyone who violates them. This is based on the principle that every individual who commits an act prohibited by law must be responsible for his actions. Therefore, the existence of a criminal liability for violations of prohibitions that have been clearly stipulated in statutory regulations is one of the main features of a criminal act, which also distinguishes it from other prohibitions that are not included in the group of criminal acts. (1)

Criminal law as a complete system of public law aims to protect legal interests in society by regulating various prohibited actions and determining penalties for anyone who violates these rules. (2) In the criminal law system in Indonesia, an act can only be subject to criminal sanctions if it completely and correctly fulfills the elements of a crime that have been clearly established. These elements include objective elements that are directly related to acts that are expressly prohibited by law, as well as subjective elements that are closely related to the defendant's guilt, whether in the form of intent (*dolus*) or negligence (*culpa*) in its form. Intention (*dolus*) is a condition in which a person consciously knows that his actions have the potential to cause consequences that are prohibited by law, but still continues the act by consciously accepting the possibility of these consequences. (3)

In a thorough legal study, the element of intent plays a very important role because it significantly influences the assessment of actions that have been carried out consciously by the perpetrator of the crime. As a concrete example in the crime of murder, if the perpetrator is proven to have had a clear intention to take the life of another person, then the element of intent is considered to have been fully fulfilled so that the perpetrator can be given a heavier sentence compared to actions carried out without any such intent at all. In addition, intent also has a close and deep relationship with criminal responsibility, where perpetrators who carry out their actions intentionally are seen as having a greater level of responsibility compared to perpetrators who carry out actions without any element of intent in their actions. (4)

Criminal law essentially has the primary function of regulating various acts expressly prohibited by law and providing strict sanctions to parties who intentionally violate it. In the Indonesian criminal law system, the principle of legality is a very important and fundamental basis,

namely that an act can only be punished if it has fulfilled the elements of a crime that are formulated expressly and clearly in legally applicable laws and regulations. Specifically, in this context, what is meant by the element of intent in law is the intention or will of a person to commit an act that is contrary to existing legal provisions. The crime of murder is regulated in Article 338 of the Criminal Code which states that "anyone who intentionally takes the life of another person, is threatened with murder with a maximum prison sentence of 15 years." Murder is a form of crime against life that is carried out intentionally to take the life of another person. In this case, the perpetrator commits an act or series of acts that directly result in the permanent death of another person. However, to be properly categorized as a crime of murder, the element of intent (*opzet*) of the perpetrator must specifically lead to the deliberate loss of another person's life.(5)

Data on murder cases in Indonesia that occurred during the last two years can be seen in the number of murder cases in 2023 as many as 1,157 cases, in 2024 as many as 1,120 cases, and in 2025 from January to September as many as 787 cases. (6) Data on murder cases that occurred in Klaten according to the Supreme Court database in 2023 there was one murder case involving forensic experts in the evidence, in 2024 there were 3 murder cases involving forensic experts in the evidence. (7) In examining and deciding a case thoroughly, the Panel of Judges renders a verdict based on facts that are clearly and clearly revealed during the trial in a fair and transparent manner. The decision is based on legal considerations, namely formal and procedural legal aspects, as well as non-legal considerations that reflect a sense of justice that is alive and developing and widely accepted in the surrounding community. (8)

Conditions that occur in everyday practice often show a higher level of complexity when compared to the concepts explained theoretically in pure legal theory. Through a thorough and thorough study of this specific case, it is hoped that a clearer and more comprehensive understanding can be obtained regarding how the elements of the crime of murder are applied in real judicial practice, as well as how the judge's considerations play an active role in determining a final decision. This research not only has high relevance for academics and professional legal practitioners, but is also strategically important in increasing the understanding of the wider community regarding the legal process in murder cases, as well as providing a valuable contribution to efforts to continuously improve the criminal justice system as a whole. (9)

This research focuses on examining the judge's considerations in murder cases as outlined in Decision Number 91/Pid.B/2024/PN Kln. This research is directed at analyzing how judges assess the element of intent by considering evidence and examining its relevance to criminal law theory. Therefore, this research addresses the problem of analyzing judges' considerations in murder cases and assessing the element of intent from a criminal law perspective.

METHOD/IDEA

This research uses a specific normative legal research method. The normative approach in legal research focuses primarily on an in-depth study of laws and regulations, the opinions of credible legal experts, and court decisions that have direct relevance. This approach is used because it is able to provide a strong and solid theoretical foundation for researchers to understand in depth and interpret applicable legal norms effectively. (10) Norms do not only include positive law, but are based on rules established by government agencies and officials. (11)

Data collection was conducted through a literature review using primary, secondary, and tertiary legal materials. The primary legal materials included the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), and Court Decision No. 91/Pid.B/2024/PN Kln. All data were analyzed using qualitative methods with a conceptual and statutory approach to gain a comprehensive understanding of the research problem.

RESULTS AND DISCUSSION

A. Judge's Considerations in the Crime of Murder in Decision Number 91/Pid.B/2024/PN Kln.

The criminal justice process is essentially an important and fundamental part, essential and crucial in the effort to realize justice in real terms while providing a strong guarantee of legal certainty for every citizen who is fully subject to and bound by the laws and regulations in force in this country. The stages of examination, which include initial investigations, in-depth investigations, formal prosecutions, and the formal process of examining criminal cases in district courts, are a series of processes that are closely interrelated and cannot be separated from each other in the context of effective and sustainable law enforcement, especially in proving legal facts in court (*judex facti*) carefully. In this entire process as a whole, the judge has a very important role as a strong main pillar and also as the final and final place for justice seekers who require

absolute certainty. As an integral part of the judicial power that has full and absolute authority to receive, examine carefully, and ultimately decide a case firmly, the judge is required to be able to provide a fair, objective, and fully balanced decision for the parties who seek justice in court fairly. (12)

Based on the District Court Decision number 91/PID.B/2024/PN KLN, there are two considerations of the judge in the decision, namely:

1. Legal Considerations

The Criminal Code has regulated criminal sanctions for perpetrators of the crime of murder as stated in Article 338 of the Criminal Code which states that "anyone who intentionally takes the life of another person, for the purpose of murder, is threatened with a maximum imprisonment of fifteen years." Based on the demands officially submitted by the Public Prosecutor, the panel of judges then assessed and carefully and thoroughly considered various legal facts revealed during the trial process which was conducted fairly and transparently. This assessment was carried out by thoroughly examining the fulfillment of the elements of the crime as clearly formulated in the relevant article, namely as follows:

- a. Whosoever

What is meant by the element of "Whosoever" is every person without exception who is legally recognized as a legal subject and has rights and obligations attached to him. This element specifically refers to every person who is suspected of committing a crime and for whose actions can be held fully legally responsible, as long as the person concerned does not have a reason for exception or reason to eliminate the crime as clearly regulated in the legal provisions in force in the jurisdiction. (13) In this case the public prosecutor has presented a defendant named Suyadi alias Yadek Bin (late) Harso Sugiyono, and the judge in considering and assessing that the defendant has fulfilled the element of whosoever by carefully paying attention to the attitude, behavior, and procedures of the defendant in responding to and answering the questions asked, so that a clear conclusion is obtained that the defendant is a person who is physically and mentally healthy and has a complete mind and physical, so that he is able to bear rights and obligations in full.

According to the author's analysis, the element of "Whosoever" in Article 338 of the Criminal Code in Decision Number 91/Pid.B/2024/PN Kln if linked to the theory of criminal responsibility put forward by Van Hamel, basically criminal responsibility is a normal condition and reflects

psychological readiness in a person that enables the individual to have several important abilities. These abilities include the ability to understand the meaning and consequences of one's own actions, realize that the actions they do are wrong or even prohibited by the surrounding community, and have the ability to determine or control one's will or desire in carrying out certain actions. (14) In this case, a defendant named Suyadi alias Yadek Bin (Alm) Harso Sugiyono, the panel of judges assessed that the defendant was in full physical and mental health which can be seen from the attitude, behavior, and the way the defendant answered each question during the trial. Thus, the defendant Suyadi alias Yadek Bin (Alm) Harso Sugiyono meets the qualifications as a legal subject who can be subject to criminal responsibility so that the element of "whosoever" in Article 338 of the Criminal Code is declared fulfilled.

b. Taking the Lives of Others

What is meant by the element of "Taking Another Person's Life" is that this element means an act that results in the loss of a person's life, which is marked by the end of life or the separation of the person's soul and body. In the decision it is explained that the defendant committed repeated violence against the victim by hitting the back of the victim's head with a fist approximately 5 times, then taking a piece of brick and hitting the victim's head four times, and hitting the victim's face on the terrace floor which contained gravel and sand.

As a result of the series of violent acts, the victim Harto Sutarno died as evidenced by the *Visum et Repertum* Number R/028/VER-A/III/2024/RS Bhayangkara dated March 8, 2024, which stated that the victim suffered head injuries, bleeding inside the head, and brain swelling due to blunt force trauma which ultimately caused the victim's death. Based on the trial facts, the panel of judges concluded that the defendant's actions had a direct causal relationship with the victim's death, so that the element of "taking another person's life" in the provisions of Article 338 of the Criminal Code was declared fulfilled.

According to the author's analysis, the element of "taking another person's life" in Article 338 of the Criminal Code in Decision Number 91/Pid.B/2024/PN Kln has been fully fulfilled because the actions committed by the defendant clearly and clearly resulted in the permanent death of the victim. As stated by leading experts such as Hermien Hadiati Koeswadji, Soeharyo, Haryono Mintoroem, and Woeryaningsih, the element of "taking another person's life" can be declared fulfilled if the incident that occurred completely and comprehensively meets certain criteria. First, there is an active

act that directly results in a person's permanent death. Second, the act is carried out intentionally, fully and consciously, which means the perpetrator has a fully conscious intention or will to carry out an act that will definitely result in the victim's death. Third, the intention to kill someone arises and is realized immediately after the emergence of the will, thus indicating that the act was carried out without any hesitation or delay at all. Fourth, the act of taking another person's life is seen as a positive act, even though it can be done through actions that seem small or simple, because it still makes another person's life the main object of his actions. (15) From the criteria above, the defendant Suyadi alias Yadek Bin (Alm) Harso Sugiyono has fulfilled the act that caused someone's death, proven through the *visum et repertum* Number R/028/VER-A/III/2024/RS Bhayangkara dated March 8, 2024 which stated that the victim suffered head injuries, bleeding inside the head, and brain swelling due to blunt force trauma which ultimately caused death due to the defendant's actions in repeatedly committing violence against the victim by hitting the back of the victim's head using his fist about 5 times, then taking a piece of broken brick and hitting the victim's head 4 times, then hitting the victim's face against the terrace floor which contained gravel and sand. Thus, the element of "taking another person's life" in Article 338 of the Criminal Code has been fulfilled.

c. Deliberately

What is meant by the element of "intentionally" is the existence of a strong will and full and deep awareness of the perpetrator regarding the act that he did consciously and voluntarily. This means that a person who does an act intentionally must really want it and know clearly and definitely the consequences that may arise from his actions, so that the act can be legally accounted for as an act that can be threatened with severe and firm punishment. (16) In considering the element of "intentionally", the judge assessed that this element was fulfilled based on the facts revealed during the trial. The judge proved that the defendant committed repeated violence against the victim by targeting vital body parts including the head using his hands and bricks.

The act was carried out even though the victim Harto Sutarno did not put up any resistance. Furthermore, after the victim died, the defendant dragged the body of the victim Harto Sutarno and threw it into the water channel in front of his house along with the victim's bicycle to eliminate traces of his actions. The series of actions shows that the defendant Suyadi alias Yadek Bin (late) Harso Sugiyono knew the consequences of his actions and consciously wanted those consequences to occur, so the panel of judges concluded that the defendant's actions were carried out intentionally. In his

considerations, the judge also used the legal norm *Memorie van Toelichting* (MVT) which explains that an intentional act is an act that is desired and known by the defendant Suyadi alias Yadek Bin (late) Harso Sugiyono.

From the explanation, two theories of intent are known, namely the will theory (*wilstheorie*) which emphasizes the will of the defendant Suyadi als Yadek Bin (late) Harso Sugiyono to cause a result, and the knowledge theory (*voorstellingstheorie*) which emphasizes the knowledge of the defendant Suyadi als Yadek Bin (late) Harso Sugiyono that his actions will have certain consequences. Based on the theory and facts of the trial, namely the defendant hit the victim Harto Sutarno several times, hit the vital parts of the victim's body, did not stop his actions even though the victim Harto Sutarno did not resist, and tried to hide his actions after the victim Harto Sutarno died, the panel concluded that the defendant knew and intended the consequences of his actions, so that the element of "intentionally" was fulfilled.

According to the author's analysis, the element of "intentionally" in Article 338 of the Criminal Code in decision number 91/Pid.B/2024/PN Kln has been fulfilled because the actions carried out by the defendant show awareness and will towards the consequences arising from his actions. Where the defendant committed violence against the victim repeatedly and continued his actions even though the victim did not put up resistance. After the victim died, the defendant also dragged the victim's body and threw it into the water channel in front of his house along with the victim's bicycle with the aim of eliminating traces of his actions. This is in line with the opinion expressed by Satochid Kartanegara as accurately quoted by P. A. F. Lamintang, that intentionality (*opzet*) is the implementation of an action driven by a strong will or desire to act actively. In this case, intent indicates that the action was carried out consciously and with full awareness as a manifestation of the will of the individual who carried it out intentionally.⁽¹⁷⁾ Thus, the element of "intentionally" in Article 338 of the Criminal Code in decision number 91/Pid.B/2024/PN Kln has been fulfilled.

2. Non-Legal Considerations

- a. In imposing a fair sentence on the defendant, the panel of judges also carefully considered non-juridical aspects, namely circumstances that were aggravating or mitigating for the defendant as a whole.

Factors that aggravate the defendant:

- 1) The actions of the defendant Suyadi alias Yadek Bin (the late) Harso Sugiyono have caused deep sorrow for the victim's family, because the defendant's actions that caused the victim's death have caused immense suffering and sadness for the victim's family, especially the victim's heirs. The social and emotional impact of this crime is one of the judge's considerations in imposing an appropriate sentence.
- 2) The victim's family has also not apologized to the defendant Suyadi alias Yadek Bin (late) Harso Sugiyono, this shows that the actions of the defendant Suyadi alias Yadek Bin (late) Harso Sugiyono still cause social and psychological wounds for the victim's family so that this situation is considered a factor that aggravates the sentence of the defendant Suyadi alias Yadek Bin (late) Harso Sugiyono.

b. mitigating factors for the defendant:

- 1) The defendant Suyadi alias Yadek Bin (late) Harso Sugiyono openly admitted his actions in court, thereby facilitating the trial process and demonstrating the cooperative attitude of the defendant Suyadi alias Yadek Bin (late) Harso Sugiyono.
- 2) The defendant Suyadi alias Yadek Bin (late) Harso Sugiyono sincerely regretted his actions and promised not to repeat his actions in the future with certainty, this shows that he is aware of the mistakes he made and the possibility for the defendant Suyadi alias Yadek Bin (late) Harso Sugiyono to improve himself in the future.
- 3) The defendant Suyadi alias Yadek Bin (late) Harso Sugiyono has never served a previous sentence so the defendant Suyadi alias Yadek Bin (late) Harso Sugiyono is not classified as a recidivist.

These circumstances were taken into consideration by the judge in determining the severity of the sentence imposed on the defendant Suyadi alias Yadek Bin (late) Harso Sugiyono.

B. Judges Assess the Element of Intention by Considering the Testimony of Forensic Experts in the Light of Criminal Law Theory

In assessing whether the element of intent was met, the panel of judges not only looked at the defendant's actions, but also considered the forensic expert's testimony contained in the *Visum et Repertum* as written evidence presented to the court. The verdict stated that the victim suffered injuries due to violence using a blunt object to the head, which is a very important part of the

body, as explained in the results of the forensic examination. These injuries indicate that the violent act against the victim could have caused death in a very dangerous way. These forensic findings were then linked to the facts proven in court, namely that the defendant hit the victim several times with his hands and broken bricks, and hit the victim's head against a hard surface until the victim no longer tried to fight back. The forensic expert's evidence became the objective basis for the judge in assessing that the actions of the defendant Suyadi alias Yadek Bin (late) Harso Sugiyono caused the victim's death.

1. Theory of Will (*Wilstheorie*)

This theory states that a person can be said to act intentionally if the act he committed is truly based on the pure will or desire of the perpetrator himself personally. In other words, the element of intent is considered to have existed with certainty if the perpetrator has a firm will to carry out the elements of a criminal act as clearly formulated in the applicable law. (18) According to Von Lizst, the criteria for the will theory are the existence of the will to carry out an act, the existence of a strong desire to cause a certain result, the intention is directed at the act and the result, there is a relationship between the action and the desired result. (19) In the author's analysis, the panel of judges emphasized specifically on the existence of a clear will from the perpetrator in carrying out an act that can cause a specific result. The will theory views that an act can be said to have been carried out intentionally if the perpetrator really wanted to carry out the act along with the consequences that might arise from the act as a whole. (20) In this case, the judge linked this theory with evidence in the form of forensic expert testimony contained in the *Visum et Repertum* which explained that the victim suffered injuries due to blunt force trauma to the head which is a vital part of the human body. The results of the forensic examination showed that the injuries were caused by blunt impact and repeated violence which ultimately led to the victim's death.

The results of the forensic examination were then considered by the judge by considering the facts revealed at the trial, namely that the defendant Suyadi alias Yadek Bin (late) Harso Sugiyono repeatedly hit the victim's head using his hands and broke bricks and hit the victim's head against a hard surface. The forensic expert's testimony indicating serious injuries to vital parts of the victim's head strengthened the conclusion that the action had the potential to be fatal. Thus, through the linkage of the theory of will with scientific evidence from the forensic expert's

testimony, the panel of judges assessed that the defendant had the will to commit an act of violence that resulted in the death of the victim, so that the element of "intentionally" in the crime charged was declared fulfilled.

2. *Voorstellingstheorie*

Based on this theory, intention is defined as a person's ability to imagine or be clearly aware of the possible consequences that arise from his actions directly. In this view, the perpetrator does not always want these consequences to occur absolutely, but he knows or at least can accurately estimate that his actions have the potential to cause certain possible consequences.(18) According to Moeljatno, the indicators of the theory of knowledge are that the perpetrator consciously knows that his actions can cause certain specific consequences, the perpetrator clearly understands that the actions he has carried out are contrary to the law or norms that apply in society in general, the perpetrator is aware of the real risks of the actions he has carried out against the victim directly, and the perpetrator continues to carry out these actions even though he knows the possible consequences that can arise from his actions. (21) In this case, the author analyzes that the panel of judges assessed the element of intent based on the theory of knowledge (*voorstellingstheorie*) by emphasizing the perpetrator's knowledge or awareness of the consequences that may arise from his actions. The theory of knowledge views that intentionality is not only seen from the perpetrator's willingness to carry out an action consciously, but also from the perpetrator's awareness that the action has a clear potential to potentially cause certain consequences. (22) In other words, the perpetrator knows or is at least aware of the consequences that may arise from the actions he has carried out. (9) In this case, the judge links the theory of knowledge with evidence in the form of forensic expert testimony contained in the *Visum et Repertum* Number R/028/VER-A/III/2024/RS Bhayangkara dated March 8, 2024, which explains that the victim suffered serious injuries caused by violence from a blunt object directly to the head, which is a vital part of the human body, and these injuries were the cause of the victim's death. Based on the results of the forensic examination, the judge assessed that the violence carried out by the defendant against the victim's head had the potential to cause fatal consequences.

The trial evidence showed that the defendant repeatedly struck the victim's head with his hands, broke bricks, and slammed his head against a hard surface. The forensic expert's medical findings, which indicated serious injuries to vital parts of the victim's head, strengthened the judge's belief that the outcome of his death was not unpredictable. Based on these considerations, the judge

concluded that at the time of his actions, the defendant knew, or at least was aware, that the violence inflicted on vital parts of the victim's body had the potential to cause death.

Thus, the panel of judges linked the theory of intent in criminal law with evidence from forensic expert testimony. The results of the *Visum et Repertum* showing wounds on the victim's vital head became an objective basis supporting the conclusion that the defendant's actions were not just ordinary spontaneous actions, but actions carried out with awareness of the consequences that occurred. Therefore, based on the relationship between the theory of intent that the judge considered, the facts of the defendant's actions, as well as evidence in the form of a post-mortem examination and witness testimony, the panel of judges concluded that the element of intent in the crime of murder in Decision Number 91/Pid.B/2024/Pn Kln as regulated in Article 338 of the Criminal Code has been fulfilled.

CLOSING

Based on the analysis of Decision Number 91/Pid.B/2024/PN Kln, it can be concluded that the panel of judges stated that the defendant was legally and convincingly proven to have committed a crime of murder as regulated in Article 338 of the Criminal Code because all elements of the offense, namely whosoever intentionally takes the life of another person, have been fulfilled, so that the judge's legal reasoning are considered in accordance with the provisions of Article 338 of the Criminal Code. In deciding the case, the judge used legal considerations based on valid evidence in the form of witness statements, the defendant's statement, and the *Visum et Repertum* which explained the cause of the victim's death due to blunt force trauma to the head, as well as considering non-legal aspects in the form of aggravating and mitigating circumstances for the defendant. Furthermore, in assessing the element of intent, the judge took into account the opinion of a forensic expert who clearly stated that the victim's death was caused by a head wound that caused internal bleeding and brain swelling due to blunt force trauma, thus strengthening the causal relationship between the defendant's actions and the victim's death. This assessment is also based on the concept of intent in *Memorie van Toelichting* (MVT) which states that intent is an act that is desired and known by the perpetrator and is linked to the theory of will (*wilstheorie*) and the theory of knowledge (*voorstellingstheorie*), so that based on the trial facts and the testimony of forensic experts, the judge concluded that the defendant knew and intended the consequences of his actions.

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