



JLPH: Journal of Law, Politic and Humanities

E-ISSN: 2962-2816
P-ISSN: 2747-1985<https://dinastires.org/JLPH> [✉ dinasti.info@gmail.com](mailto:dinasti.info@gmail.com) [☎ +62 811 7404 455](tel:+628117404455)DOI: <https://doi.org/10.38035/jlph.v5i5>
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Enforcement of Criminal Law Against Perpetrators of Criminal Acts of Attacking Vital Organs (Study of Decision Number: 59/Pid.B/2021/PN Lbh)

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Abstract: This research aims to analyze the proof of the element “intentionally” in the crime of taking the life of another person through an attack on the victim's vital organs. In cases such as murder and maltreatment causing death, the element of intent is a key element that must be proven, although it is often difficult to prove in practice. This research examines the application of jurisprudence Number 1/Yur/Pid/2018 and how this principle is applied in District Court Decision Number 59/Pid.B/2021/PN LBH. The method used is normative legal research with the approach of legislation, concepts, and cases. The results show that based on “Jurisprudence Number 1/Yur/Pid/2018” which states “The element of intentionally taking life is fulfilled if the perpetrator attacks the victim with tools, such as sharp weapons and firearms, in parts of the body where there are vital organs, such as the chest, abdomen and head”. In the verdict in criminal case number 59/Pid.B/2021/Pn Lbh, there was no unanimous consensus due to differences of opinion caused by the difficulty of proving the element of intent on the part of the Defendant, which in the end the Defendant was found legally and convincingly guilty of committing the crime of persecution.

Keyword: Assault, Vital Organ, Murder, Maltreatment

INTRODUCTION

Assault is an unlawful act that can cause physical injury to the victim (Sari, 2020). In addition, assault is a criminal act where the perpetrator intentionally inflicts fear, worry, anxiety of physical injury on another person. Assault can be committed with or without a weapon and can lead to physical violence and threats of violence against others. Therefore, the act of assault can result in criminal charges and criminal liability.

The act of attack is a crime against humanity according to the provisions of Article 6 letter c of the Charter of the International Military Tribunal, which states that “CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of

the country where perpetrated.” Which means that “crimes against humanity are crimes such as murder, extermination, enslavement, deportation, and other inhumane acts committed against a civilian population before or during war; or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”(Ashri, 2023).

In Indonesia, incidents related to the loss of a person's life continue to occur in various circumstances, and the victims can be adults, minors, women, or men. The loss of a person's life is often categorized as a case of murder or maltreatment causing death because, to be able to categorize someone as having committed the crime of murder, there must be an element of intent or will from the perpetrator (Simanjuntak, 2021).

In practise, it is difficult to prove the perpetrator's will or intent because only the perpetrator knows (Batas, 2016). Often, during the examination phase, the offender asserts that they merely carried out acts of persecution and harbored no intention of murder. Therefore, in sentencing and every stage of case examination, it is mandatory to consider the perpetrator's actions and behavior, as well as whether they have the intention to eliminate the victim's life.

The perpetrator's method of attack, the tools he used, and the location of the attack can all be taken into consideration. Because in accordance with the provisions of “Jurisprudence Number 1/Yur/Pid/2018,” the perpetrator who attacks the victim with certain tools and in certain parts where there are vital organs can fulfill the element of "intentionally”.

The criminal case in decision number 59/Pid.B/2021/PN Lbh, which convicted the defendant Sunario Sumitro alias Rio, is quite interesting to be discussed and studied more broadly. This is because the defendant Sunario Sumitro alias Rio, who repeatedly attacked the victim's vital organs until the victim died, was charged with the crime of maltreatment causing death because the Panel of Judges could not find the element of intent on the part of the defendant, but according to the Dissenting Opinion Judge, the actions of the defendant Sunario Sumitro alias Rio had fulfilled the element of intent because the defendant's conduct attacked the victim's vital organs and were carried out continually.

METHOD

Legal research is a scientific activity based on certain methods, systematics and thoughts that have the aim of studying certain legal symptoms by analyzing, conducting an in-depth examination of legal facts and attempting a solution to the problems that arise in the symptoms concerned (Rahayu, 2020). The type of method in this research is normative legal research or often also referred to as legal research methods, applicable legal research studies, doctrinal legal research methods and pure legal research methods(Yanova et al., 2023).

This study aims to examine, review, and analyze the concept of imposing a criminal offense against a perpetrator who takes another person's life by attacking their vital organs, as well as the decision made by the Panel of Judges in "Decision Number 59/PID.B/2021/PN LBH."(Suyanto, 2023). This study employs three distinct research approaches: the statutory approach, the concept approach, and the case approach. Three types of library materials were used in this research:

1. Primary Legal Materials
 - a. Constitution of the Republic of Indonesia Year 1945;
 - b. Law Number 1 of 1946 Concerning Criminal Law Regulations;
 - c. Law of the Republic of Indonesia Number 1 Year 2023 on the Criminal Code;
 - d. Law No. 48 of 2009 on Judicial Power; and
 - e. Jurisprudence Number 1/Yur/Pid/2018.
2. Secondary Legal Materials

Secondary legal materials are legal materials that can support in analyzing and understanding primary legal materials. Secondary legal materials come from books, legal dictionaries, journals, articles related to the content of this research.

3. Tertiary Legal Materials

Tertiary legal material is a complement that has the nature of providing additional instructions or solutions to other legal materials. Tertiary legal materials come from various sources, including previous legal research that is closely related to the subject in this study (Disemadi, 2022)

The analysis used in this research uses prescriptive analysis. Prescriptive analysis is an analysis that has the aim of providing a description or formulating a problem based on existing facts (Muhaimin, 2020). This research is descriptive analytical by providing a relevant description of the nature or characteristics of a problem situation in the research that will be analyzed based on legal theory and the practice of implementing positive law concerning the problem in general (Nazir, 2014).

RESULTS AND DISCUSSION

Legal Arrangements for Perpetrators of Crimes Involving Vital Organs

Human organs are a collection of tissues that have a function. According to Lisa M.J. Lee, "Each organ provides function and performance, or human survival." (Mustinda, 2020). The human body requires five organs for survival, as the complete loss of any one of these organs leads to death (Priambodo, 2022). These organs are referred to as vital organs, namely organs that are needed to sustain human life, which consists of five organs, namely the brain, heart, liver, kidneys, and lungs.

In various events that have occurred in Indonesia and in other countries, the perpetrators of criminal acts that take the lives of others often target the vital organs of the victims because if the function of vital organs is not functioning properly, it will have fatal consequences so that it can facilitate and accelerate the death of the victim. To be able to charge the perpetrator with the crime of murder, it is necessary to find the element of intent or will to eliminate the victim's life from the perpetrator, because according to positive law in Indonesia, murder is defined as the death of the victim which is desired by the perpetrator. Therefore, the definition of murder is implicitly the death of the victim that contains the element of intent. If there is no element of "intent" in the perpetrator to take the life of another person, but the victim dies, then the act cannot be qualified as the crime of murder.

In numerous cases, the defendant, despite not intending to endanger the victim's life, confessed to his plan to mistreat the victim, leading to the defendant's conviction for the crime of maltreatment causing death. However, if we look at the defendant's attack on the victim, which caused the victim to die because he used a certain tool and was directed at a certain part of the body, it raises a legal question whether the defendant's attack can fulfill the element of "intent to take the life of the victim".

In this case, the Supreme Court ruled that the defendant possessed the will, deliberation, and intention to commit murder, as evidenced by the defendant's use of a specific tool to attack a vital part of the victim's body, potentially resulting in death. Therefore, the "Jurisprudence Rule of the Supreme Court Number 1/Yur/Pid/2018" asserts that the perpetrator satisfies the element of intentionally taking life when they attack the victim with tools, including sharp weapons and firearms, on vital organs such as the chest, abdomen, and head.

Criminal Law Regulation Against Perpetrators of the Crime of Eliminating the Life of Another Person

A crime that occurs in society is an act against the law because it contradicts social norms, morals, a sense of justice, and the rights of others (Lubis et al., 2023). Despite the imposition of severe sanctions, crime persists in every country and can happen at any time, posing an

unsolvable problem to this day. According to Separovic's opinion, "There are two factors that cause crime, namely personal factors, including biological factors such as age, gender, mental state, etc., and psychological factors such as aggressiveness, carelessness, and alienation. In addition, there are situational factors such as conflict situations and place and time factors." (Abdullah, 2019).

The sociology of law categorizes crime into three views: anomie or strain, cultural deviation, and social control. In the view of anomie (absence of norms) or strain (strain), cultural deviation focuses on social forces (social forces) that cause people to carry out criminal activities or acts against the law. Meanwhile, social control theory explains that criminal behavior is part of human life (Abdullah, 2019).

The crime of taking the life of another person is one of the crimes that often occurs and has an impact on the destruction of the social order of the Indonesian nation. In Indonesia, cases of taking the life of another person are often sentenced under the article on murder or the article on persecution causing death. The crime of murder is the act of eliminating or depriving the life of another person. The crime of murder has been regulated in the "Provisions of Article 338 of the WVS Criminal Code or Law No. 1 of 1946 and Article 458 of Law No. 1 of 2023".

The article on maltreatment does not define maltreatment (Fadhilla & Nurhafifah, 2021). The definition of maltreatment is left to the judge's judgment to interpret the case being tried in accordance with the development of social and cultural values and the development of medical science. Therefore, the definition of maltreatment is not limited to physical maltreatment, and not all physical suffering is always defined as maltreatment. However, according to jurisprudence, "maltreatment means intentionally causing unpleasant feelings or suffering, pain, or injury." It is necessary to prove that the perpetrator intentionally inflicted pain on another person, caused injury to their body, or harmed their health in order to classify them as having committed maltreatment. Maltreatment is a crime against the body that can result in minor injuries, serious injuries, damage to health, and death. Furthermore, maltreatment leading to death refers to an act of maltreatment that results in the victim's death. The crime of maltreatment is regulated in "The provisions of Article 351 of the WVS Penal Code or Law No. 1 of 1946 and Article 466 of Law No. 1 of 2023."

Sanctions and legal basis regarding perpetrators who are proven to have intentionally taken the life of another person can be charged with murder in accordance with the provisions of "Article 338 of the WVS Criminal Code or Law No. 1 of 1946 and Article 458 paragraph (1) of Law No. 1 of 2023," which states that "Every person who takes the life of another person shall be punished for murder, with a maximum imprisonment of 15 (fifteen) years." Then "Article 339 of the WVS Criminal Code or Law No. 1 of 1946 and Article 458 paragraph (3) of Law No. 1 of 2023" states that "murder which is followed, accompanied, or preceded by a criminal act committed with the intent to prepare or facilitate its commission, or to release oneself or other participants from punishment in the event of being caught red-handed, or to ensure the possession of goods unlawfully obtained, shall be punished with life imprisonment or a maximum imprisonment of 20 (twenty) years." Meanwhile, premeditated murder in accordance with the provisions of "Article 340 of the WVS Criminal Code or Law No. 1 of 1946 and Article 459 of Law No. 1 of 2023" is subject to the death penalty or life imprisonment or imprisonment for a maximum of 20 (twenty) years.

The legal basis for perpetrators of assault is stipulated in "Article 351 of the Criminal Code (KUHP) WVS or Law Number 1 of 1946," which states that "(1) Assault is punishable by imprisonment for up to two years and eight months or a maximum fine of four thousand five hundred rupiahs..... (3) If it results in death, the offender shall be punished by imprisonment for up to seven years." Meanwhile, according to the provisions of "Article 466 of Law Number 1 of 2023," it is stated that "(1) Any person who commits an assault shall be sentenced to imprisonment for up to two years and six months or a maximum fine of category III..... (3) If the act referred to in paragraph (1) results in death, the offender shall be

sentenced to imprisonment for up to seven years.” Additionally, premeditated assault is punishable by up to four years of imprisonment, but if it results in death, the offender shall be sentenced to imprisonment for up to nine years, in accordance with the provisions of “Article 353 of the Criminal Code (KUHP) WVS or Law Number 1 of 1946 and Article 467 of Law Number 1 of 2023.” Furthermore, according to the provisions of “Article 354 of the Criminal Code (KUHP) WVS or Law Number 1 of 1946 and Article 468 of Law Number 1 of 2023,” it is stated that “(1) Any person who seriously injures another person shall be sentenced for aggravated assault to imprisonment for up to eight years..... (2) If the act referred to in paragraph (1) results in death, the offender shall be sentenced to imprisonment for up to ten years.” Premeditated aggravated assault, according to the provisions of “Article 355 of the Criminal Code (KUHP) WVS or Law Number 1 of 1946 and Article 469 of Law Number 1 of 2023,” states that “Any person who commits premeditated aggravated assault shall be sentenced to imprisonment for up to twelve years..... (2) If the criminal act referred to in paragraph (1) results in death, the offender shall be sentenced to imprisonment for up to fifteen years.”

Although the articles regulating the crime of murder do not explicitly include the element "intentionally," they implicitly and in practice contain the element of intentionality, which requires proof at every stage of the case's examination. Furthermore, the article governing the crime of maltreatment lacks the "intentionally" element, but, akin to the crime of murder, it incorporates the element of intentionality, necessitating proof at every stage of the case's examination.

In the provisions of “Elucidation of Article 458 and Elucidation of Article 466 of Law Number 1 Year 2023,” it is stated that “the element of intentionally is not included, because this has been regulated in Article 36 and Article 54 letter j in the context of criminal aggravation.” The court will prioritize considering the motive, manner, means, or attempt to kill, along with the consequences and impact of a murder on society.

The provisions of Article 36 of Law Number 1 Year 2023 provide a detailed explanation of criminal responsibility. Namely that “Every person can only be held accountable for criminal acts committed intentionally or due to negligence” and “punishable acts are criminal acts committed intentionally, while criminal acts committed due to negligence can be punished if expressly provided for in the legislation.” The article's provisions highlight the principle of no punishment without fault. Doctrinally, guilt can take the form of intentionality or negligence. Furthermore, the article's provisions mandate that "we must always consider every criminal offense in the legislation as intentional, and we must prove this element of intent at every stage of the case examination."

In sentencing guidelines according to the provisions of “Article 54 of Law Number 1 of 2023,” it is stated that “in sentencing, it is mandatory to consider the nature of the offender’s culpability, the motive and purpose of committing the crime, the offender’s mental state, whether the crime was premeditated or not, the method of committing the crime, the offender’s attitude and actions after committing the crime, the offender’s life history, social and economic conditions, the impact of the sentence on the offender’s future, the impact of the crime on the victim or the victim’s family, forgiveness from the victim and/or the victim’s family, and the values of law and justice prevailing in society.”

So, it can be concluded that although the provisions of the article on murder and the provisions of the article on persecution do not include the element of "intentionally," implicitly and in practice it is necessary to prove the element of intentionality in the perpetrator. The Panel of Judges at every stage of case examination needs to consider the motive, method, means, or effort to commit a criminal offense, as well as the consequences and impact of a criminal offense on society.

Application of Criminal Law Regulations Against Perpetrators of the Crime of Attacking Vital Organs Based on Decision Number 59/Pid.B/2021/PN Lbh

Chronology

On Monday, December 28, 2020, at approximately 12:00 WIT, an assault targeting the victim's vital organs occurred in the plantation owned by Ms. Hj. Rahmatang in Tanjung Jere Village, East Gane District, South Halmahera Regency. The incident began when the defendant, Sunario Sumitro alias Rio, rode a motorcycle to Ms. Hj. Rahmatang's plantation with the intent to check on his livestock. Upon arriving at the location, the defendant parked his motorcycle approximately 20 meters from where the victim, Ms. Bastia Arba, was gathering coconuts. The defendant immediately approached the victim and engaged in conversation with her. As the victim walked towards the logging company road in front of Ms. Hj. Rahmatang's plantation, about one meter away, the defendant followed from behind, carrying a piece of wood that he had cut down with his machete within the plantation area. The defendant then struck the left side of the victim's neck with the piece of wood, causing the victim to scream, and her head struck a coconut tree, causing her to fall to the ground in a seated position with a basket she was carrying and a machete in her hand. The defendant struck the victim's neck again, causing her to scream once more and collapse onto the ground. The defendant proceeded to strike the victim one more time on the chin. Afterward, the defendant moved the piece of wood he had used to strike the victim, along with the victim's belongings, to a location near the river.

Then the defendant returned to the location where the victim was lying and tore the shorts worn by the victim with the intention of having sexual intercourse with the victim. When the defendant saw that the victim was not moving, the defendant immediately checked the victim's breathing. However, at that time the victim was no longer breathing, so the defendant abandoned his intention to have sexual intercourse with the victim. Then the defendant dragged the victim's body towards a banana tree near where the victim was lying. The defendant cut down a banana tree using a machete, and the banana tree was cut into two pieces, which the defendant used to cover the victim's body. In addition to the banana tree fronds, the defendant also used banana leaves and coconut leaves to cover the victim's body.

Indictment of the Public Prosecutor

The Public Prosecutor in "Case No. 59/Pid.B/2021/PN Lbh" has charged the Defendant which is basically as follows:

1. Stating that the Defendant Sunario Sumitro alias Rio was legally and convincingly proven to have committed the crime of "Intentionally taking the life of another person due to the murder of the victim witness BASTIA ARBA". As stipulated in Article 338 of the Criminal Code as described in the Indictment of the Public Prosecutor.
2. To sentence the defendant, therefore, to 15 (Fifteen) years imprisonment, to be reduced while the defendant is in detention, with the order that the defendant shall remain in detention.
3. Determine the evidence, among others:
 - a. 1 (one) log with a length of 86cm
 - b. 1 (one) wooden handle machete with a length of 52cm
 - c. 1 (one) basket containing yellow sacks
 - d. 1 (one) coconut pry tool
 - e. 1 (one) blue sandal
 - f. 1 (one) piece of cream-colored women's underwear
 - g. 1 (one) piece of green bra women's underwear
 - h. 1 (one) piece of flower-patterned women's shorts
 - i. 1 (one) piece of torn black round neck t-shirt with the word "sprint" written on it
 - j. 1 (one) piece of machete with a 47cm wooden handle

- k. 1 (one) machete sheath made of wood 40 cm in size
 - l. 1 (one) piece of round neck shirt in white color and red color combination (To be Destroyed)
 - m. 1 (one) motorcycle brand Yamaha Jupiter MX police number DG 124 KA; (Returned to the defendant)
4. Determine that the defendant shall pay court costs in the amount of Rp. 2,000 (two thousand rupiah).

After conducting a deliberation session with various considerations, the Panel of Judges gave the following decision:

JUDGE:

- 1. Stating that the Defendant Sunario Sumitro alias Rio mentioned above, has been proven legally and convincingly guilty of committing the crime of maltreatment resulting in death;
- 2. Criminalizing the Defendant with imprisonment for 7 (seven) years;
- 3. Determining that the length of detention that has been served by the Defendant shall be deducted entirely from the punishment imposed;
- 4. Stipulate that the Defendant shall remain in detention;
- 5. Determine the evidence in the form of :
 - a. 1 (one) piece of wood with a length of 86 centimeters;
 - b. 1 (one) piece of wooden handle machete with a length of 52 centimeters;
 - c. 1 (one) basket containing a yellow sack;
 - d. 1 (one) coconut pry tool;
 - e. 1 (one) blue sandal;
 - f. 1 (one) piece of cream-colored women's underwear;
 - g. 1 (one) green colored bra;
 - h. 1 (one) piece of women's shorts with floral pattern;
 - i. 1 (one) round-necked and black-colored t-shirt that has been torn and reads "sprint";
 - j. 1 (one) wooden-handled machete with a length of 47 centimeters;
 - k. 1 (one) machete sheath made of wood measuring 40 centimeters;
 - l. 1 (one) white round-necked shirt with red color combination to be destroyed and evidence in the form of:
 - m. 1 (one) motorcycle branded Yamaha Jupiter MX with police number DG 124 KA to be returned to the Defendant;
 - n. Charged the Defendant to pay court costs in the amount of Rp2,000.00 (two thousand rupiah);
- 6. Charged the Defendant to pay court costs in the amount of Rp2,000.00 (two thousand rupiah).

The Panel of Judges in "decision number 59/Pid.B/2021/Pn Lbh" by taking into account the legal facts revealed at trial directly chose the second alternative charge as stipulated in Article 351 paragraph (3) of the Criminal Code, the elements of which are as follows:

- 1. Whoever;
- 2. Intentionally committing maltreatment resulting in death.

Against these elements the Panel of Judges considered the following:

- 1. Whoever

Considering, that what is meant by a person is a human being or legal entity or corporation that can be held accountable for the acts committed;

Considering, that in the trial the Panel of Judges has examined the identity of a Defendant submitted by the Public Prosecutor named Sunario Sumitro alias Rio. From the examination of witnesses and the Defendant himself, it was found that the Defendant referred to by the Public Prosecutor in the indictment was the same as the identity stated in the indictment, therefore the Panel of Judges was of the view that there was no error in the

person who was presented as the Defendant in the trial (error in persona), thus the element of “whoever” had been fulfilled.

2. Intentionally committing maltreatment resulting in death

Considering, that according to the Jurisprudence, maltreatment is defined as intentionally causing unpleasant feelings or suffering, pain or injury;

Considering, that in order to be able to say that a person has committed maltreatment against another person, he must have intentionally inflicted pain on another person, caused bodily injury to another person, or harmed the health of another person;

Considering that in proving intent to deprive another person of life, from the point of view of its formation, there are three levels or gradia that must be proven, among others:

- a. The existence of stimulation/motive;
- b. The existence of will/intention;
- c. The existence of action.

Considering that when the levels as mentioned above are described, the stimulus or motive of the Defendant to deliberately eliminate the life of the victim was not revealed and illustrated in the trial, because the relationship between the Defendant and the Defendant's family with the victim and the victim's family never had a problem that caused the Defendant to have a grudge or retaliatory action to eliminate the life or at least injure the victim;

Considering, that to further explain the difference between taking the life of another person or murder and maltreatment resulting in death, in murder it is necessary to have a motive that causes the perpetrator to suddenly commit the act, but in maltreatment resulting in death, it is not necessary to prove the motive of the perpetrator but only see the result of the actions that the perpetrator has committed, namely the death of the victim;

Considering, that the will or intention of the Defendant to strike the victim with a piece of wood because the Defendant wanted to make the victim weak so that the Defendant could freely have intercourse with the victim is evidenced by the opportunity for the Defendant to choose a piece of wood as the tool used to strike the victim on the neck, instead of choosing a machete or a coconut pry tool that could easily be used as a tool to eliminate the victim's life at the time of the incident, even though these tools were within the reach of the Defendant's control;

Considering that after the Defendant knew that the victim had lost her life, the Defendant was known to have abandoned his intention to have sexual intercourse with the victim as evidenced by the actions of the Defendant who after pulling down the victim's pants and checking the victim's breathing using his finger in the nostril of the victim who was already dead, the Defendant pulled the victim's hand and moved the victim's body to another place so that it could be covered by banana leaves and coconut leaves;

Considering, that the Defendant's act of striking the victim on the neck can be categorized as maltreatment and not with the full intention of taking the victim's life, because the victim at that time was squatting and the first part of the body seen by the Defendant from an upper position was the victim's neck, the Panel of Judges is of the opinion that the Defendant's actions were rational and logical if he struck the victim on the neck, because the purpose of the Defendant's actions was to make the victim weak and helpless;

Considering, that based on the consideration of the above facts, it shows that the Defendant intended his actions and was able to imagine the consequences of his actions which hit the victim as a crime and the Defendant was able to realize his actions and indeed intended to mistreat the victim witness using a piece of wood, even though the Defendant did not intend to take the victim's life, the actus reus and mens rea have been fulfilled in this material offense without having to prove the defendant's desire for the death of the victim where the consequences of the defendant's actions actually resulted in the death of

the victim, thus the element “intentionally committing maltreatment resulting in death” has been fulfilled;

Considering, that because all elements of Article 351 paragraph (3) of the Criminal Code have been fulfilled, the Defendant must be declared legally and convincingly proven to have committed the crime as charged in the second alternative charge.

Judge Dissenting Opinion

In the deliberation session a unanimous consensus could not be reached because Member Judge 2, Tito Santana Sinaga, S.H. dissented because proving which article should be used to punish the Defendant in the case a quo is indeed a complicated problem and has become a legal polemic so far because the elements between “Article 338 of the Criminal Code and Article 351 paragraph (3) of the Criminal Code” are similar, namely that both actions result in the death of a person, but there is a differentiating element, namely whether the Defendant intended to kill or only intended to persecute. The Dissenting Opinion Judge has the following considerations:

Considering that the Supreme Court has also understood this condition and provided its opinion regarding the criteria for an act to be classified as “intentionally taking another person’s life,” as stated in “Jurisprudence Number 1/Yur/Pid/2018,” which states that “the element of intentionally taking another person’s life is fulfilled if the perpetrator attacks the victim with a tool aimed at a part of the body containing vital organs, such as the chest, abdomen, or head”;

Considering that based on the legal facts revealed during the trial, the defendant in the a quo case struck the victim’s head three (3) times with a piece of wood, resulting in the victim’s death. The piece of wood used by the defendant falls under the category of a ‘tool,’ and the part of the body attacked by the defendant was the head, which contains vital organs. Therefore, the Dissenting Opinion of the judge holds that the defendant has fulfilled the element of ‘intentionally taking another person’s life,’ as referred to in “Supreme Court Jurisprudence Number 1/Yur/Pid/2018.”

Considering that the defendant's act of striking the victim’s neck with a piece of wood was due to the victim being in a squatting position and the neck was the first part of the body seen by the defendant from above, the Dissenting Opinion of the judge disagrees, as in standing, sitting, squatting, or even lying down, the head is smaller in size compared to the body. It is irrational and illogical for the defendant to have chosen the smaller head over larger body parts. Furthermore, based on the legal facts revealed during the trial, after the first strike, the defendant struck the victim again two more times, both aimed at the victim's head;

Considering that it must be emphasized that the defendant is a healthy male with physical strength greater than that of the victim, who was a woman. The Dissenting Opinion of the judge holds that if the defendant merely intended to incapacitate the victim, he could have struck another part of the body, such as the back, or should have stopped after the first strike to the neck, rather than adding two more strikes to the victim's head.

Considering that based on the visum et repertum, it was proven that bright red blood flowed from both the victim's right and left ears, and brown fluid discharged from both nostrils, the Dissenting Opinion of the judge holds that it is evident the defendant consciously attacked the victim’s head with brutality;

Considering that the defendant chose a piece of wood as the weapon to strike the victim’s neck and head, instead of selecting a machete or coconut scraper, the Dissenting Opinion of the judge is unaware of the defendant’s reasoning at that time. However, whether the defendant had chosen a machete, a coconut scraper, or even a stone, this does not alter the fact that the defendant used an instrument to strike a part of the body containing vital organs, as stipulated in "Supreme Court Jurisprudence Number 1/Yur/Pid/2018," since wood, machetes, and coconut scrapers all fall under the category of ‘instruments.’

Considering that the absence of a motive or reason as to why the defendant wanted to kill the victim, the Dissenting Opinion of the judge holds that the lack of a motive or reason for the defendant to kill the victim is not a valid reason to exempt the defendant from being charged under Article 338 of the Indonesian Penal Code, as Supreme Court Jurisprudence Number 1/Yur/Pid/2018 clearly stipulates that "the element of Article 338 of the Indonesian Penal Code, namely 'intentionally taking another person's life,' is fulfilled when the perpetrator attacks the victim with a tool aimed at a part of the body containing vital organs, such as the chest, abdomen, or head." Therefore, the Dissenting Opinion of the judge is convinced that the defendant has been lawfully and convincingly proven guilty of committing 'murder';

Considering that, since the defendant has been lawfully and convincingly proven guilty of committing 'murder,' the defendant must be sentenced to a criminal penalty, with the severity or leniency of the sentence based on the following considerations from the Dissenting Opinion of the judge.

Considering that the judge is of the opinion that the defendant is a cold-blooded and sadistic individual, as after killing the victim, the defendant then moved the victim's body to another location and carefully covered it with banana leaves, fronds, and coconut leaves to prevent it from being found. Not only that, but the defendant also joined the search team organized by the victim's family and the village authorities, though the defendant consistently avoided the location where the victim's body was hidden, resulting in the victim's body being discovered only the following day;

Considering that after the victim's body was found, the defendant still showed no remorse, even participating in the religious gathering and funeral for the victim, and continued to live and work as usual without any sense of guilt for nearly six (6) months.

Considering the aforementioned circumstances, the judge agrees with the prosecutor's demands, and according to the Dissenting Opinion, the defendant is sentenced to fifteen (15) years of imprisonment.

The Inconsistency of the Judge in Not Applying the Criminal Murder Charge in Decision Number 59/Pid.B/2021/Pn. Lbh

The judgment of the panel of judges represents the final resolution of a case under examination and trial (Putri & Rusdiana, 2023). The panel's decision is crucial and has a significant impact on justice and the enforcement of law in Indonesia. In rendering a judgment, the panel of judges must consider numerous factors in accordance with the sentencing guidelines outlined in the applicable laws and regulations in Indonesia. An erroneous decision by the panel of judges would be highly detrimental and would certainly contradict the principles of justice.

One common case that often involves errors in the application of charges is that of taking another's life. In practice, it is frequently observed that a defendant who actually commits murder is convicted of assault resulting in death. The penal sanctions for murder and assault causing death differ significantly, making the judge's role in considering all matters presented during the trial critically important.

In "Decision Number 59/Pid.B/2021/Pn Lbh," the panel of judges ruled that the defendant was proven to have committed the crime of assault resulting in death, based on the consideration that no element of intent was found within the defendant. The rationale was that the defendant's intention in striking the victim with a piece of wood was to incapacitate the victim to facilitate the defendant's ability to engage in sexual intercourse with the victim without resistance.

In the dissenting opinion regarding the case at hand, the judge expressed the view that the defendant was proven to have committed murder, taking into account various considerations, as follows:

1. The dissenting judge referenced "Jurisprudence Number 1/Yur/Pid/2018," which states that "the element of intentionally taking another's life is satisfied if the perpetrator attacks the victim with a weapon, such as a sharp object or firearm, to parts of the body that contain vital organs, such as the chest, abdomen, and head."
2. Consideration of how the defendant committed the crime, including the use of a weapon to attack the victim, the specific parts of the victim targeted, and the multiple assaults carried out by the defendant.
3. Evidence from the forensic examination (*visum et repertum*); and
4. The demeanor and actions of the perpetrator following the commission of the crime.

CONCLUSION

In proving and applying which article should be used to punish the Defendant in the case of taking the life of another person is a complicated problem and has become a legal polemic so far because the elements between the articles on murder and persecution causing death are similar, where the two acts both result in the loss of a person's life, but there is a differentiating element, namely whether the Defendant intends to kill or only intends to persecute. Therefore, "Supreme Court Jurisprudence number 1/Yur/Pid/2018" states that "The element of intentionally taking life is fulfilled if the perpetrator attacks the victim with tools, such as sharp weapons and firearms, in parts of the body where there are vital organs, such as the chest, abdomen and head". In the verdict in criminal case number 59/Pid.B/2021/Pn Lbh, there was no unanimous consensus due to differences of opinion caused by the difficulty of proving the element of intent on the part of the Defendant, which in the end the Defendant was found legally and convincingly guilty of committing the crime of persecution.

Law enforcers, especially the Panel of Judges, Public Prosecutors and Legal Counsel, should take into account various things in accordance with the legal facts revealed at trial and sentencing guidelines. This is so that the perpetrators of criminal acts can be held accountable for their actions in accordance with the provisions of the applicable regulations.

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