



JLPH: Journal of Law, Politic and Humanities

E-ISSN: 2962-2816
P-ISSN: 2747-1985<https://dinastires.org/JLPH> dinasti.info@gmail.com +62 811 7404 455DOI: <https://doi.org/10.38035/jlph.v6i4>
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Comparison of Murder Criminal Law Based on Indonesia Criminal Law and Islandia Criminal Law

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Abstract: Murder in Indonesia is still rampant, over the past four years there has been an increase in murder in Indonesia. In the context of comparative countries, an interesting country to compare is Islandia, because Islandia is the country with the lowest murder crime rate in the world. Therefore, this legal research aims to determine the substance of the crime of murder based on the Criminal Law in Indonesia and the Islandia Criminal Law and to determine the criminal policy towards the crime of murder in Indonesia in the future. This research is a normative legal research using a statute approach, a comparative approach, and a conceptual approach. The legal materials used in writing this law are primary, secondary, and tertiary legal materials. Primary legal materials are in the form of the Indonesian Criminal Code and the Islandia penal code while secondary legal materials are in the form of journals, theses, books, the internet, and tertiary legal materials are in the form of the Big Indonesian Dictionary, the Legal Dictionary, and scientific reports related to criminal law and the crime of murder. The legal material collection technique used is library research, and the legal material analysis technique uses the deductive method.

Keyword: Crime, Murder, Criminal Code, Penal Code, Islandia

INTRODUCTION

Murder is a violation of the right to life, which every human being possesses. (Rizki Putri Praditnas, 2016) Murder is the process of eliminating, or taking, a person's life, by another person, whether directly or indirectly involved. (Junior Imanuel Marentek, 2019:5) Meanwhile, the crime of murder is the crime of taking another person's life, which is a form of human rights violation that fundamentally disrupts the peace and comfort of a person's life.

Murder remains rampant in Indonesia. According to data from the Indonesian National Police, there have been 4,754 murder cases recorded over the past four years. (Pusiknas Polri, 2026) In 2018, there were 1,025 cases. In 2019, there were 964 cases. In 2020, there were 862 cases. (Pusiknas Polri, 2026) In 2021, there were 1,076 cases. In 2022, there were 843 cases. The highest number of murder cases occurred in 2019 and 2021, while the lowest number of murder cases occurred in 2022.

Murder generally occurs for various reasons, such as robbery, romantic relationships, and old grudges. (Mulyani Rahayu & Ade Cici Rohayati, 2020) Murder has a devastating

impact on the victim's family. Negative impacts include emotional, physical, social, and economic consequences. The loss of a loved one can lead to emotional trauma and deep grief. Financially, the family can experience loss of income if the victim was the primary breadwinner.

Changes in family dynamics resulting from the death of a family member can significantly impact family dynamics, such as shifting roles and responsibilities. These negative impacts on the affected family can be long-lasting, and this is when the family needs support. (Mulyadi Alrianto Tajuddin & Imran Rusli Tarsan, 2019)

Regulations on the right to life are contained in Article 28A of the 1945 Constitution of the Republic of Indonesia, which essentially states that everyone has the right to live and defend their lives. Furthermore, the right to life is also contained in Article 4 of Law No. 39 of 1999 concerning Human Rights, which essentially states that the right to life is a human right that cannot be reduced under any circumstances and by anyone.

Meanwhile, in the Criminal Code, crimes against human life are contained in Articles 338 to 350. (Gusti Ayu Devi Laksmi, 2020) Countries around the world have regulations containing articles on the act of taking another person's life. In a comparative context, the regulation regarding the crime of murder that can be compared is Iceland. In Iceland, the regulation regarding the crime of murder is explained in detail in the Icelandic criminal code. Based on data from the Global Peace Index from the Institute of Economics and Peace for murder cases in 2023, Iceland was named the safest country in the world with the lowest crime rate in the world. In 2022, Iceland recorded a decrease in crime of up to 55%, with the crime rate showing only 5 people. The murder rate in Iceland tends to be lower than in Indonesia. Iceland has laws regarding the crime of murder.

The provisions regarding the crime of murder are regulated in Article 211 of the Icelandic Criminal Code which states "That anyone who intentionally kills another person, is threatened with a maximum prison sentence of 16 years or life imprisonment."

"Iceland does not apply the death penalty for criminal homicide, Iceland has a strong commitment to human rights". Iceland has a strong commitment to Human Rights, the right to life is stipulated in Law No. 62 of 1994 concerning Human Rights. (Gebi Purnama Sugesti, 2015) Iceland has laws protecting human rights, and people who receive international protection in Iceland also have positive experiences related to human rights.

Therefore, a comparative study of Indonesian and Icelandic criminal law is necessary to understand the substance of the crime of murder in each country. This is necessary to improve Indonesian criminal law, particularly regarding the criminal provisions for taking another person's life.

METHOD

This research is a normative legal study using statutory, comparative, and conceptual approaches. This approach is used to analyze and compare the provisions of the crime of murder in Indonesian and Icelandic criminal law.

The legal materials used consist of primary, secondary, and tertiary legal materials obtained through library research. The analysis of the legal materials is conducted deductively to draw conclusions from general norms to the specific issues studied.

RESULTS AND DISCUSSION

The Substance of the Crime of Murder in Indonesia and Islandia Criminal Law

Murder is one of the most serious crimes under criminal law because it directly violates the most fundamental human right, the right to life. From a criminal law perspective, murder is not only seen as the act of taking another person's life, but also as a violation of the rule of law and the humanitarian values upheld in a country. (Rizki Putri Praditnas, 2016)

In Indonesian criminal law, the provisions regarding the crime of murder are systematically regulated in the Criminal Code (KUHP), specifically in Book II Chapter XIX concerning crimes against life, namely Articles 338 to 350. (Kitab Undang-Undang Hukum Pidana (KUHP), Pasal 338–350) These provisions classify the crime of murder into several forms, including ordinary murder (Article 338), aggravated murder (Article 339), premeditated murder (Article 340), infanticide by the mother (Articles 341–342), as well as other special forms such as euthanasia and encouraging suicide. (Besse Muqita Rijal Mentari, 2020)

These detailed regulations demonstrate that Indonesian criminal law adopts a differentiated crime approach, distinguishing between types of murder based on specific elements such as intent, method, and circumstances surrounding the act. This aims to ensure proportionality in sentencing and ensure substantive justice for both the perpetrator and the victim. (Barda Nawawi Arief, 2011:6)

Legally, the elements of the crime of murder in Indonesian criminal law consist of subjective and objective elements. The subjective element relates to intent (*dolus*), known in the doctrine as *willens en wetens*, meaning the perpetrator intended and knew the consequences of their actions. (Djisman Samosir & Timbul Andes Samosir, 2022:43) This intent is a crucial element because it determines the form of criminal responsibility. Meanwhile, the objective element encompasses the act of taking another person's life, which can be proven through a causal relationship between the perpetrator's actions and the resulting consequences.

Furthermore, the Indonesian criminal justice system, which adheres to the civil law tradition, places the principle of legality as its primary principle, as stipulated in Article 1 paragraph (1) of the Criminal Code. (Gebi Purnama Sugesti, 2015:3) This means that an act can only be punished if it has been previously regulated in statutory regulations. This provides legal certainty while limiting the state's authority to impose criminal sanctions.

On the other hand, the provisions for murder in Icelandic criminal law are also included in the civil law system, but have distinct characteristics. Provisions regarding murder are regulated in the Icelandic Criminal Code, specifically in Chapter XXIII, Articles 211 through 216. Article 211 stipulates that anyone who intentionally takes the life of another person is subject to a maximum prison sentence of 16 years or life imprisonment.

Unlike Indonesia, Icelandic criminal law does not categorize murder in such detail. However, it does contain provisions for certain forms, such as infanticide, murder on demand, assisted suicide, and negligent homicide. (Gebi Purnama Sugesti, 2015:3) This simpler definition demonstrates that Icelandic criminal law places greater emphasis on the essence of the act, namely the loss of life due to the perpetrator's actions.

One of the key characteristics of Icelandic criminal law is its strong focus on human rights protection. This is reflected in the absence of the death penalty in its penal system, even for murder. (Ade Maman Suherman, 2017:57) This approach is based on the principle that the right to life is an inalienable right under any circumstances, and therefore the state is not permitted to deprive it through criminal mechanisms.

When compared, there are several similarities between Indonesian and Icelandic criminal law in regulating the crime of murder. First, both countries qualify murder as a crime against human life with serious legal consequences. Second, both require an element of intent as a basis for criminal responsibility. Third, both Indonesia and Iceland adhere to a civil law system that emphasizes legal codification.

However, there are also significant differences. Indonesian criminal law tends to be more complex and detailed in classifying the crime of murder, allowing for more specific differentiation in sentencing. In contrast, Icelandic criminal law is simpler and places less emphasis on classification and more on the substance of the act and the protection of human rights.

Furthermore, differences are also evident in the orientation of punishment. Indonesian criminal law still allows for the death penalty in certain cases (albeit limited), while Iceland firmly rejects its application. This demonstrates a paradigm shift between the two countries: Indonesia maintains a repressive approach to some extent, while Iceland prioritizes a more humanistic and rehabilitative approach.

Thus, this comparison demonstrates that despite similarities in the regulatory framework, there are differences in the approach and orientation of criminal law between Indonesia and Iceland. These differences can serve as evaluation material for reforming Indonesian criminal law, particularly in efforts to create a legal system that not only provides certainty and justice but also upholds humanitarian values and human rights.

Future Criminal Policy on Murder Crimes in Indonesia

Criminal policy is an integral part of social policy, aiming to protect society from crime through various means, both penal and non-penal. (Marc Ancel, 1965:5) In the context of murder, criminal policy plays a strategic role because this crime not only causes harm to the individual victim but also has a broad impact on social order and the community's sense of security. Therefore, criminal policy must be designed comprehensively and oriented towards effective crime prevention.

To date, Indonesia's criminal law policy for handling murder has been dominated by a repressive penal approach. This is reflected in the severity of the penalties in the Criminal Code, including long-term imprisonment and the death penalty under certain circumstances. This repressive approach is based on the theory of retributive justice and deterrence, which assume that severe punishment can have a deterrent effect on both the perpetrator and society. (Andi Hamzah, 2010:27)

However, a repressive approach alone has proven ineffective in significantly reducing crime rates, including murder. This is because crime is influenced not only by individual factors but also by structural factors such as economic conditions, social environment, education, and weak social control within society. (Soerjono Soekanto, 2014:8) Therefore, a criminal policy that focuses solely on punishment without addressing the underlying causes of crime will struggle to achieve its intended goals.

In the development of modern criminal law, a new paradigm has emerged that emphasizes the importance of an integral approach to criminal policy, namely by combining penal and non-penal approaches. (Muladi & Barda Nawawi Arief, 2010:89) The non-penal approach encompasses various crime prevention efforts, such as improving community welfare, moral and legal education, and strengthening social institutions. This approach aims to reduce criminogenic factors that can lead someone to commit murder.

The reform of Indonesian criminal law through Law No. 1 of 2023 concerning the Criminal Code demonstrates an effort to accommodate this paradigm. The New Criminal Code prioritizes a balance between the interests of perpetrators, victims, and society and begins to integrate the concept of restorative justice into the criminal justice system. This demonstrates that Indonesian criminal policy is shifting from a purely repressive approach to a more humane and just one. (Andrew Ashworth, 2009:16)

Restorative justice in the context of murder does have limitations in its application, given the serious nature of the crime and the inability to fully recover. (Undang-Undang Nomor 1 Tahun 2023 tentang KUHP) Nevertheless, this approach remains relevant in terms of restoring social relationships, providing space for the victim's family to seek justice, and encouraging moral accountability for the perpetrator. Thus, restorative justice can complement the criminal justice system, not completely replace it.

Compared to Iceland, the criminal justice system implemented demonstrates a stronger focus on human rights protection. Iceland does not implement the death penalty and places

greater emphasis on a rehabilitative and reintegrative penal system. This approach is based on the belief that the primary purpose of punishment is not merely to punish but also to reform offenders so they can return to being productive members of society.

Furthermore, Iceland's legal system places significant emphasis on crime prevention through comprehensive social policies, such as welfare guarantees, equitable education, and a robust social system. This demonstrates that success in combating crime depends not only on criminal law but also on overall social policy.

Based on this comparison, Indonesia can draw important lessons for formulating future criminal policy. First, a balance is needed between repressive and preventive approaches in addressing the crime of murder. Second, strengthening non-penal policies that target the causal factors of crime is necessary. Third, it is crucial to integrate human rights values into the criminal justice system, without neglecting the interests of justice for victims.

Thus, the future direction of criminal policy regarding murder in Indonesia must be directed toward a more comprehensive, integrative, and substantive justice-oriented system. This policy aims not only to punish the perpetrator, but also to prevent crime, protect victims, and create balance in community life.

CONCLUSION

1. The crime of murder is a crime committed by attacking another person's life. To prove whether someone has committed a crime or not, the elements of the article must first be proven to determine whether they have been met. Indonesia and Iceland essentially share similarities in their elements, including the element of "whoever" (intentionally) and "taking life." "Whoever is the perpetrator or subject of the crime" (intentionally) means the act must be deliberate, while "taking life" relates to the loss of life due to the killing. Furthermore, there are differences regarding the substance of the act, particularly in the article on negligent homicide.
2. Of the six articles on the crime of murder in Iceland, there is a new element implemented in Icelandic legal norms that does not exist in Indonesia. Iceland does not apply premeditated murder. All acts of murder resulting in death are subject to punishment under Article 212 of the Icelandic Criminal Code. Secondly, Iceland categorizes murder due to negligence within the homicide law, whereas in Indonesia, it is not regulated by the law on intentional homicide but falls under the category of "taking life due to negligence." The third is the substance of Article 216 concerning the murder of an unborn child. It is interesting to see that Iceland has made many types of criminal acts fall into one article. We can also consider adopting this by Indonesian law because it will be easier and more efficient than having many articles and making people confused in understanding them.

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