

The Formulation Policy of the Murder with Mutilations Crime

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Abstract

The type of murder committed by mutilation is a vicious crime. However, this type of crime has not been expressly regulated in the Criminal Code, so there are no guidelines for prosecutors in preparing charges against this type of crime. As a result, the decisions handed down by judges are also varied and sometimes do not fulfil a sense of justice. This study aims to reveal the regulation of murder with mutilation in Indonesian positive criminal law and to determine the future policy formulation regarding the crime of murder with mutilation. The research is normative by conducting a literature study. The data that has been obtained were analyzed qualitatively by describing. This research hopes that a particular article will be made in the Criminal Code regarding murder accompanied by mutilation.

Keywords

formulation policy; criminal; murder; mutilation



I. Introduction

The crime can happen anywhere, by Anyone, and in various ways. There are various crimes based on protected legal interests, such as crimes against life, body, property, good name, decency, and others (Chazawi, 2001). Systematic grouping of criminal acts chapter by chapter in the Criminal Code based on protected legal interests. To protect legal interests against State Security (Chapter I). To protect legal interests for the duties of the General Authority (Chapter VIII). To protect legal interests against personal property rights such as Theft (Chapter XXII), Embezzlement (Chapter XXIV), Extortion and Threats (Chapter XXIII), Etc (Chazawi, 2001).

Among the crimes mentioned above, crimes against crimes are classified as severe sanctions. In the Criminal Code, this crime is regulated in Chapter XIX (Articles 338 to 350) with the title attack on people's lives. An attack on life is an attack on another person. The legal interest that is protected and is the object of this crime is human life.

Crimes against life in the Criminal Code (KUHP) can be grouped on two bases, namely:

a. Based on the offence:

1. Crimes against life are committed intentionally (Article 338-350 of the Criminal Code).
2. Ordinary murder in its primary form (Article 338).
3. Murder is followed, accompanied, and preceded by another crime (Article 339).
4. Premeditated murder (Article 340).
5. The killing of a mother against her baby at or shortly after giving birth (Articles 341, 342, 343 of the Criminal Code).
6. Murder at the victim's request (Article 344 of the Criminal Code).
7. Suicide promotion and assistance (Article 345 of the Criminal Code).
8. Abortion and the killing of the womb (Articles 346, 347, 348, 349 of the Criminal Code).

b. Based on the object (protected legal interests):

1. Crimes against people's lives in general (Article 338, 339, 344, 345 of the Criminal Code).
2. Crimes against babies at or shortly after birth (Articles 341, 342, 343 of the Criminal Code).
3. Crimes against the life of a baby still in the mother's womb (fetus) (Articles 346, 347, 348, 349 of the Criminal Code) (Chazawi, 2001).

In the Draft Law on the Criminal Code (December 2012), criminal acts against life are regulated in the second book on Criminal Acts, especially in Chapter XXII with the title Criminal Acts against Lives which consists of the first part on Murder (Article 580-585) and the second part on Abortion (Articles 586-569).

The current Criminal Code and the Draft Criminal Code are not regulated murder accompanied by mutilation. Given that this type of crime occurs a lot and the level of cruelty is higher than ordinary murder, there should be provisions in a separate article in the Criminal Code with heavier sanctions than ordinary murder.

Here, there are three court decisions regarding the crime of murder with mutilation that the author obtained; it appears that the particles charged by the public prosecutor and the sanctions imposed by the judges vary according to the results of the investigation and investigation.

1. In court decision number 1147/Pid.B/2005/PN BKS

The Prosecutor's Indictment:

Primary: Article 340 in conjunction with Article 55, paragraph (1) to 1

Subsidiary: Article 338, in conjunction with Article 55, paragraphs (1) to 1

More subsidiary: Article 353 paragraph (3) Article 55 paragraph (1) to 1

More and more subsidiary: Article 351 paragraph (3) Article 55 paragraph (1) to 1

What is proven: Article 338, in conjunction with Article 55, paragraphs (1) to 1

Punishment: 8 years imprisonment.

2. In court decision number 571/Pid.B/2007/PN CBN

First:

Primary: Article 340

Subsidiary: Article 338 And Second: Article 363 paragraph (1) to 3

What is proven: Article 338 and Article 363, paragraphs (1) to 3

Sentence: 17 years imprisonment.

3. In court decision number 2133/Pid.B/2006/PN BKS

Primary: Article 340

Subs: 338

More subsidiary: 354 paragraph (2)

More and more subsidiary: 351 paragraph (3)

Proven: Article 340

Sentence: 18 years imprisonment In these three cases, the defendant committed.

In these three cases, the defendant committed the crime of murder and mutilation. After going through a series of pieces of evidence from the Court's decision, the judge handed down a different verdict and sentence.

Many factors drive people to commit crimes. Criminologists have researched this subject. There are various reasons why people commit crimes. Among the theories put forward by criminologists are Body Types Theories, Psychological Theories, Sociological

Theories, Cultural Deviations theories, Social Control Theories, Labeling theories, Conflict Theories, and Radical (Critical) Theories.

Of course, there is a reason for mutilating victims who have been killed. Whatever the reason, it is still a crime. *Crime* is a very anti-social act that gets conscious opposition from the state to give suffering (punishment or action) (Bonger, 1995). According to Sudarto, the influence of criminal law can only occur in a society that knows about criminal sanctions. The intensity of the influence is not the same for all criminal acts. Against criminal acts that are considered by the community to be minor crimes, the threat of serious crimes is a control mechanism that is powerful enough to prevent such acts. However, the threat of a severe criminal offence will not mean much if it is not accompanied by the imposition of a heavy penalty (Sudarto, 1983).

In line with this, Barda Nawawi Arief said that crime prevention efforts had been carried out in various ways, but the results have not been satisfactory. One of the efforts to overcome crime is to use criminal law with criminal sanctions. However, this effort is still often questioned. The use of criminal law in dealing with crime to control anti-social acts against someone who violates the law is a social problem that has a significant legal dimension (Bakhri, 2009). Thus, the perpetrators of murder accompanied by mutilation should be given severe sanctions.

There are several studies on the crime of murder accompanied by mutilation that has been carried out. Such as Wahyu Ashadi Putra's research on the Urgency of Regulation on Mutilation in Law Enforcement against Violations of Criminal Law (Case Study: Court Decision No. 1147/Pid.B./2005/PN BKS). The results of this study, mutilation is not a criminal act but a method or motive that a person or group of people carries out in committing a crime against a person's life. Still, the act has fulfilled the elements of a criminal act and the punishment conditions. The threat of punishment for the perpetrators of this crime in the Criminal Code, namely Articles 338, 339, and 340, is considered sufficient. Still, if the crime is carried out continuously, this provision needs to be followed up. Law enforcers can give a heavier sentence to the defendant (Wahyu Ashadi Putra, 2008).

There is another research by Nanda Devita Putri on Judges' Considerations in Imposing Criminal Sanctions against Perpetrators of the Crime of Murder and Mutilation. The results of this study, the regulation of criminal sanctions for perpetrators of this crime has not been expressly regulated in the Criminal Code. Still, it uses Articles 338 and 340 of the Criminal Code (Putri, 2009).

Omar Abdurrahman's research on Juridical Analysis of the Accountability of Criminals of Mutilation is one of the references. According to the results of this study, the act of mutilation does not stand alone. Still, it is a follow-up action from previous criminal acts, ordinary murder, and premeditated murder. The Criminal Code has not regulated the crime of mutilation explicitly. The Public Prosecutor charged the perpetrator with articles relevant to the incident, such as Articles 338, 340, 181, and 365 paragraph (3) of the Criminal Code (Abdurrahman, 2010). In addition, there is another research by Mohammad Fadil Imran on Mutilation in Indonesia. According to the results of this study, there are various ways of carrying out murders accompanied by the cutting of the victim's body parts at different times and places (Imran, 2015).

II. Review of Literature

The term "policy" is taken from the term "policy" (English) or "politiek" (Dutch). Starting from these two foreign terms, "criminal law policy" can also be referred to as "criminal law politics". In foreign literature, the term "criminal law politics" is often known by various terms, including "penal policy", "criminal law policy", or "strafrechts politiek" (Arief, 2011). The definition of criminal law policy or politics can be seen in legal and criminal politics. According to Prof. Sudarto, Legal Politics are:

- a. Efforts to realize reasonable regulations by the circumstances and situations at a time.
- b. Through authorized bodies, policy from the state establishes the desired regulations that are expected to express what is contained in society and achieve what is aspired (Sudarto, 1983).

Starting from this understanding, Prof. Sudarto further stated that implementing "criminal law politics" means holding elections to achieve the best results of criminal legislation to fulfil the requirements of justice and efficiency. On another occasion, he said that implementing "politics of criminal law" means "efforts to realize criminal laws and regulations that are by the circumstances and situations at a time and for the future (Sudarto, 1981).

Law enforcement (criminal), when viewed from the policy process, is essentially policy enforcement through several stages. First, the stage of law enforcement is abstract by the legislature. This stage can also be called the legislative stage. Legislative policy is a strategic stage because it determines the following stages. When criminal legislation is enacted, it will determine the direction to be directed with enacting the law. Second is the application stage, namely, applying criminal law by law enforcement officers from the Police to the Court. This second stage can also be called the judicial policy stage. The third is the execution stage, namely, the concrete implementation of criminal law by the criminal implementing apparatus. This stage can be called the executive or administrative policy stage (Teguh Prasetyo, 2010).

Viewed from a criminological perspective, the definition of *mutilation* is the separation of one body member from another due to unnatural causes. The purpose of this act is as a context for a crime to break the relationship between himself and the victim. The victim's identity is not identified for specific reasons (Meliala, 2003). Adrianus Meliala also said that mutilation is a crime by dismembering the victim's body. It was done to eliminate traces of the crime (Meliala, 2004).

One of the legal principles that must be contained in the content of the legislation is the principle of justice. Based on the Elucidation of Article 6 of Law number 12 of 2011 concerning the Establishment of Legislations, the principle of justice is that every material in the content of laws and regulations. It must reflect proportional justice for every citizen. Eva Achjani Zulfa argues that punishment is a confirmed/absolute consequence that must exist as a retaliation to the perpetrator of a crime. Criminal sanctions are described as giving suffering, and the officer can be declared a failure if this suffering is not felt by the convict (Zulfa, 2011). According to Hugo Grotius, the criteria for success from such a model are suffering or pain because crime is a form of compensation for crimes that have been committed (Schaefer, 1995).

III. Research Methods

The research was conducted in the odd semester of 2015/2016 as a workload that the author must fulfil. The research location is in Court to obtain a court decision on murder accompanied by mutilation. The legal materials used are primary, secondary, and tertiary legal materials. Primary legal materials are in the Criminal Code (KUHP), the 2012 Draft Criminal Code, Law number 12 of 2011, concerning the Establishment of Legislation. Secondary legal materials include books, journals, and articles, while tertiary legal materials are dictionaries.

This study was designed with the background, problems, research methods, and conclusions drawn. The data has been obtained were analyzed qualitatively by describing the results of the study in the form of sentences.

IV. Results and Discussion

4.1 The Regulation on the Murder Crime and Mutilation in Indonesia's Positive Criminal Law

Indonesia's positive criminal law consists of general and special criminal laws. General criminal law regulates general criminal acts. The source of the law is the Criminal Code (KUHP). Special criminal law regulates unique criminal acts not regulated in the Criminal Code. The source of the law is special criminal laws such as Law No. on the Eradication of Criminal Acts of Corruption, Law No. on Money Laundering, Law No. on Terrorism, and others.

The crime of murder is general and is regulated in the Criminal Code. In the Criminal Code, the crime of murder is a form of crime against life. A crime against life (*misdrijven tegen het leven*) is an attack on another person's life. This crime has protected legal interests, and the object is human life (*leven*). Crimes against life in the Criminal Code can be distinguished or grouped on two grounds, namely: (1) based on the element of error and (2) based on the object (life).

Based on offense, there are two groups of crimes against life, namely:

- a. Crimes against life committed intentionally (*dolus misdrijven*) are contained in Chapter XIX Articles 338 to 350.
- b. Crimes against life committed unintentionally (*culpose misdrijven*). They were included in Chapter XXI, specifically Article 359.

Based on the object (protected legal interests), crimes against life are intentionally divided into three types, namely:

1. In general, crimes against people's lives are contained in Articles 338, 339, 340, 344, 345.
2. Crimes against the baby's life at or shortly after birth are contained in Articles 341, 342, and 343.
3. Crimes against a baby's life in the mother's womb (fetus) are contained in Articles 346, 347, 348, and 349.24.

From the articles above, three articles are relevant to the crime of murder accompanied by mutilation, namely Articles 338, 339, and 340:

- a) Article 338 concerning a murder in the main form, whoever deliberately takes another person's life shall be punished for murder with a maximum imprisonment of 15 years.

- b) Article 339 concerning murder followed, accompanied, or preceded by another crime. Murder is followed, accompanied, or preceded by another criminal act. It is carried out to prepare or facilitate its implementation, prevent themselves or other participants from being caught red-handed, or ensure control of the objects obtained illegally and shall be punished with imprisonment. Life imprisonment or temporary imprisonment, not exceeding 20 years.
- c) Article 340 on premeditated murder. Whoever deliberately and with deliberate plans to kill another person is sentenced for premeditated murder, with capital punishment or imprisonment for life or a maximum of 20 years for a certain period.

From these three articles, it appears that no element of a criminal act explicitly mentions "accompanied by mutilation". In Article 339, there is an element of being followed and accompanied by other criminal acts. Still, it is not called the form of "other criminal acts." In law enforcement, the public prosecutor, in compiling his indictment, can use Articles 338, 339, or 340. Still, the elements of criminal acts in these articles are not by the criminal events that occurred, namely that cutting the body of a victim who has been killed eliminates traces. In Article 340, there is an element of planning even though the perpetrators of mutilating do not always plan the act of cutting the victim; it could be because of panic, and suddenly the desire to cut the victim's body arises. Article 338 can be used to trap the defendant, but with the act of mutilation, which shows the cruel nature of the defendant, the punishment for him should be heavier than 15 years.

4.2 The Future Policy Formulation on the Murder Crime and Mutilation

A different legal basis is needed from the criminal provisions described above, which regulate murder accompanied by mutilation. There should be a particular article in which there is an element of the crime of mutilation. To meet these needs, it is necessary to pay attention to legal politics. Legal politics is a part of Legal Science that studies and examines changes. It must be made to legal rules and or legal provisions. It the currently in effect to meet the needs of social life (Soehino, 2010)—considering that the crime of murder and mutilation is classified as a crime whose cruelty is higher than ordinary murder as regulated in Article 338 of the Criminal Code, a new, more appropriate provision is needed.

In line with the fulfilment of this need, the next step is to formulate a criminal law policy (penal policy). According to Marc Ancel, Penal Policy is a science and an art that ultimately has a practical purpose of enabling favourable legal regulations to be formulated better and providing guidance to legislators and courts that applicable laws and lawmakers. The organizers or implementers of court decisions (Arief, 2011).

As a means to carry out repressive measures, the presence of a new provision for the crime of murder with mutilation is highly anticipated. In the 2012 Draft Criminal Code, the provisions regarding murder are still the same as the current Criminal Code, regulated in Articles 580 and 581. Article 580:

- a. Anyone who takes another person's life shall be sentenced to murder and punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years.
- b. If the crime referred to in paragraph (1) is committed against the mother, father, wife, husband, or child, the penalty can be increased by 1/3 (one-third).
- c. Murder is followed, accompanied, or preceded by a criminal act. It is carried out to prepare or facilitate its implementation. It is free oneself or other participants from the crime in the event of being caught red-handed, or to ensure control of the goods

obtained illegally, shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years.

Article 581 reads, "Anyone who premeditatedly takes the life of another, is threatened with premeditated murder, is sentenced to death or life imprisonment or a minimum of 5 (five) years and a maximum of 20 (twenty) years. "

From the two articles, it is not clear that there is an element of "accompanied by cutting the body of the victim who has been killed". According to the author, law enforcers, starting from the Police in investigating, prosecutors in preparing indictments, and judges in making their decisions, can carry out their duties by the legal events. There must be a reasonable legal basis as well.

V. Conclusion

The crime of murder with mutilation has not yet been regulated in the Indonesian Positive Criminal Law. The current Criminal Code (KUHP) only regulates murder in its primary form (Article 338), murder followed, accompanied, or preceded by another criminal act (Article 339), and murder with a plan (Article 340). In these articles, there is no element "accompanied by cutting the body of the victim who has been killed" or what is known as mutilation. The expected formulation of the policy in the future regarding the crime of murder and mutilation is the creation of a particular article on this matter as a legal basis for law enforcement.

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