

Responsibility of Perpetrators of Murder with Same-Sex Romance Motive (Study of Decision Number: 64/Pid.B/2022/PN. Kot)

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ABSTRACT

Background. It is hoped that the judge will give a severe criminal verdict against the perpetrators of the crime of murder in order to have a deterrent effect on the perpetrators of the crime.

Purpose. Gambling is a prohibited act as stipulated in Article 303 of the Criminal Code, 303 bis of the Criminal Code, and Article 27 paragraph (2) of the Law on information and electronic transactions. In verdict number 233/Pid.B/2022/Pn.Cbd the author found a discrepancy in the application of the article, so the problem in this study is "How is the application of the law of online gambling in verdict number 232/Pid.B/2022/Pn.Cbd?".

Method. This research uses normative juridical types contained in laws and court decisions, as well as legal norms that exist in society.

Results. The consideration of the judge in the verdict of the murder case with same-sex romance motive considers the criminal elements in the indictment, considers the justification and excuse as the basis for removing criminal liability for the defendant and considers the aggravating and mitigating circumstances by stating that the defendant has been legally and convincingly proven guilty of committing the crime of participating in premeditated murder as charged in the first alternative primair indictment of the Public Prosecutor and imposing a sentence on the Defendant therefore with imprisonment for 17 (seventeen) years.

Conclusion. The conclusion of this research is the accountability of the perpetrator of the crime of murder with the motive of same-sex romance is the ability of the defendant to be accountable for his actions through the mechanism of the criminal justice process to decide the criminal penalty for the defendant.

KEYWORDS

Criminal Liability, Criminal, Judge's Consideration

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INTRODUCTION

Deviant behavior can be defined as an attitude or behavior shown consciously or unconsciously to a person or society (Tüfekci dkk., 2021). This behavior is contrary to the norms accepted by some members of society. Social deviation or deviant behavior is the behavior of citizens of society that is considered normal and contrary to the prevailing social rules and norms.

Deviant behavior seems to be increasingly common in Indonesian society, especially sexual deviations such as homosexuality (Badji dkk., 2022). The existence of the homosexual



community in human life lasts a long time, its presence is in the midst of human life, both hidden and overt. Its presence seems to be ignored by the surrounding community (Ferreira dkk., 2022). One of the causes of the rampant development of homosexuality in society is Even though homosexual behavior itself is very contrary to the morals and values of any religion in the world (Bhat dkk., 2020). As a result, homosexual behavior has become a social disease that is difficult to treat.

Homosexual is a term for people who are personally, emotionally or sexually attracted to people of the same sex. If the person is male it is generally called gay, while if female it is called lesbian.

Based on the description above, homosexuality is also considered a social problem (Miao dkk., 2019), because homosexual offenders, especially gay offenders, are involved in many criminal acts such as the murder of fellow gay offenders caused by jealousy of fellow homosexual offenders, in modern times it is considered necessary to have further regulation or regulation of the implementation of sexual relations (Kouvelis dkk., 2021). Because it can build personality but can also destroy human traits.

Homosexuals or gays are part of the community that falls into the category of LGBT or lesbian, gay, bisexual and transgender (Wilkinson dkk., 2020). Until now, LGBT deviant sexual behavior is still not clearly and thoroughly regulated in the Criminal Code (Liu dkk., 2020). The article that is used as the basis for reference to deviant sexual acts, especially same-sex obscene acts or same-sex sexual relations committed by the LGBT community so far is only Article 292 of the Criminal Code which states that a person of legal age who commits obscene acts with another person of the same sex, who is known or reasonably should be suspected, that is not yet of legal age, shall be punished with imprisonment for a maximum of 5 (five) years.

One of the law enforcement efforts carried out by the state apparatus is the duty and authority of law enforcement officers in the implementation of the criminal justice system process is the application of law to the crime of murder with same-sex romance motives (Zhang dkk., 2019). The crime of murder with the motive of same-sex romance at this time, both in quality and quantity, is increasing along with the increasing development of community life which is increasingly showing symptoms that are of concern both in quality and quantity (Pai dkk., 2019). Various problems that exist in the life of the community often lead to disputes and lead to murder motivated by same-sex romance.

For example, the criminal act of murder with the motive of same-sex romance by reviewing Decision Number: 64/Pid.B/2022/PN.Kot (Amendolagine dkk., 2019), in the jurisdiction of the Kota Agung District Court. The crime of murder was committed by the Defendant Syahrial Aswad Bin Amzar (hereinafter referred to as SA Bin A) based on the criminal charges of the Public Prosecutor who charged the Defendant with the crime of premeditated murder against the victim Dede Saputra (DS), for the actions of the Defendant is punishable under Article 340 of the Penal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code.

The act that the Defendant SA Bin A committed together with the Witness BMZ Bin YZ (prosecuted in a separate case file) against the victim DS Bin A stems from the invitation of the victim DS Bin A who wanted to be served by the Defendant SA Bin A and BMZ Bin YZ to have same sex intercourse in exchange for money (Karlsson dkk., 2020). The victim DS Bin A always failed to keep his promise after having same-sex sexual intercourse with the Defendants SA Bin A and BMZ Bin Y (Xie dkk., 2019), which resulted in the Defendants SA Bin A and BMZ Bin YZ being hurt and holding a grudge against the victim DS Bin A, so the Defendants SA Bin A and BMZ Bin YZ planned the murder by trapping the victim DS Bin A to have same-sex sexual

intercourse and repeatedly thrusting a knife into the body of the victim DS Bin A which immediately resulted in the death of the victim DS Bin A. Based on the background, the author formulates the problems of the case.

Based on the background, the author formulates the following problems:

1. How is the responsibility of the perpetrator of the crime of murder with the motive of same-sex romance Study Decision Number: 64/Pid.B/2022/PN.Kot?
2. How is the Judge's Consideration in the Decision on the Crime of Murder with Same-Sex Romance Motive Study Decision Number: 64/Pid.B/2022/PN.Kot?

RESEARCH METHODOLOGY

The approaches used in this research are normative juridical approaches and empirical juridical approaches to obtain correct and objective research results (Thorell dkk., 2022). Then for the data analysis process, the data that has been systematically arranged is analyzed in a qualitative juridical manner, namely by giving a qualitative analysis. understanding of the data in question in accordance with the facts obtained in the field, so that it is truly from the main problem at hand and arranged in sentence by sentence. scientific and systematic in the form of answers to problems based on research results.

RESULT AND DISCUSSION

Responsibility of the Perpetrator of the Crime of Murder with Same-Sex Romance Motive Study of Decision Number: 64/Pid.B/2022/PN.Kot

Criminal responsibility is related to the perpetrator's guilt as an element of a criminal event or criminal act so that the two are closely related (Suganthi, 2019), where one of the criminal acts that must be held criminally responsible is the criminal act of murder with the motive of same-sex romance which refers to the provisions of Article 340 of the Criminal Code jo. Article 55 paragraph (1) to 1 KUHP.

Criminal accountability is carried out through the criminal justice process, the submission of a person before the court to be held accountable for his actions which may end with a criminal verdict, release from all legal charges or acquittal is due to indications or indicators that the person has committed an act that is alleged to him.

Every action or implementation will definitely give birth to responsibility for the role or perpetrator even though the implementation of the role is going well or as it should (Amis dkk., 2020). Responsibility is the ability of a person to be responsible for his mistakes in committing or not committing acts that are prohibited by law and not justified by society according to the view of society, against the law. Fault is an element of a criminal event or criminal act and there is a close relationship between the two (Stahl dkk., 2020). Regarding the criminal responsibility of the perpetrator of the crime of murder with the motive of same-sex romance according to the law.

Criminal Code, the perpetrator unlawfully commits the act of intentionally taking the life of another person.

According to Wirjono Prodjodikoro, the perpetrator of a criminal offense in taking responsibility for his criminal act is related to fault, which in criminal law there are 2 (two) types, namely intentionally (*dolus / opzet*) and negligence (*culpa*):

Intentionality (*dolus/opzet*), there are 3 (three) intentions in criminal law, namely:

1. Willfulness to achieve an intended purpose/*dolus directus*;
2. Intentionality that does not contain an objective but is accompanied by the knowledge that an effect will definitely occur (intentionality with certainty);

3. Intentionality as above, but with the knowledge that there is only a possibility (not certainty) that an effect will occur (intentionality with possibility / *dolus eventualis*).

Negligence (*kealpaan/culpa*), the meaning of negligence is error in general, but in science has a technical meaning, namely a type of error of the perpetrator of a criminal offense that is not as severe as intentionality, namely lack of caution, so that unintended consequences occur.

Criminal responsibility in foreign terms is also called *theekenbaardheid* theory or criminal responsibility which leads to the imposition of criminal sanctions with the intention of determining whether a defendant or suspect is responsible for a criminal act that occurs or not (Elgar dkk., 2020). According to Van Hamel, criminal responsibility is a normal state and psychological maturity that brings three kinds of abilities to understand the meaning and consequences of their own actions, realize that their actions are not justified or prohibited by society and determine the ability to act.

Furthermore, the basis for the existence of a criminal offense is the principle of legality while the basis for the criminalization of the perpetrator is the principle of guilt. This implies that the perpetrator or perpetrators of a criminal offense can only be punished if he/she has a fault in committing the criminal offense (Holzinger dkk., 2020). When is a person Being said to have fault is a matter that concerns the issue of criminal liability.

The basis of criminal responsibility is the guilt found in the soul of the perpetrator in relation (the guilt) to the punishable behavior and based on that psychology the perpetrator can be reproached for his behavior. For the existence of guilt in the perpetrator, it must be achieved and determined in advance several things related to the perpetrator, namely:

1. The ability to take responsibility;
2. The psychological relationship between the perpetrator and the consequences caused (including behavior that is not contrary to the law in everyday life;
3. *Dolus* and *culpa*, fault is a subjective element of the criminal offense (Mudelsee, 2019). This is a consequence of his opinion that connects (unites) *strafbaarfeit* with fault.

Criminal responsibility is a form of determining whether a suspect or defendant is responsible for a criminal offense that has occurred (Chanana & Sangeeta, 2021). In other words, criminal responsibility is a form that determines whether a person is acquitted or convicted.

As supporting data in writing this thesis, the occurrence of the crime of murder with the motive of same-sex romance can be studied in Decision Number: 64/Pid.B/2022/PN.Kot, in the jurisdiction of the Kota Agung District Court (Nyashanu dkk., 2020). The crime of murder with the motive of same-sex romance was committed by the Defendant SA Bin A based on the criminal charges of the Public Prosecutor who charged the Defendant with the crime of premeditated murder against the victim DS, for the actions of the Defendant is punishable under Article 340 of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code.

The act that the Defendant SA Bin A committed together with the Witness BMZ Bin YZ (prosecuted in a separate case file) against the victim DS Bin A originated from the invitation of the victim DS Bin A who wanted to be served by the defendant SA Bin A and BMZ Bin YZ to have sexual intercourse with each other.

sex in exchange for money. The victim DS Bin A always did not keep promises after having same-sex sex with the Defendants SA Bin A and BMZ Bin YZ, which resulted in SA Bin Y and BMZ Bin YZ being hurt and holding a grudge against DS, so SA Bin Y and BMZ Bin YZ planned the murder by trapping the victim DS Bin A to have same-sex sex and repeatedly thrusting a knife into the body of the victim DS Bin A which immediately resulted in the death of the victim DS Bin

A, where the defendant was charged by the Public Prosecutor with the primair charge and the first, second and third subsidiar charges.

The responsibility of the perpetrator of the crime of murder with the motive of same-sex romance through the mechanism of the criminal justice system, which includes the following:

Police Phase Settlement Process

Against the criminal offense of murder with the same-sex romance motive is to search for and collect evidence which in the first stage based on sufficient preliminary evidence must be able to provide confidence, although it is still temporary (Teske, 2019), to the public prosecutor about what actually happened or what criminal offense has been committed and who is the suspect. At the level of police investigation as an Investigator, the duties and authority of the investigator are as follows:

1. Make Berita Acara Pemeriksaan (BAP) about the results of the investigation;
2. According to Article 8 of the Criminal Procedure Code, when the investigator has finished, the investigator must immediately submit the case file to the Public Prosecutor.

Based on the description above, the action that can be taken by the investigator is to conduct an investigation regarding the alleged criminal offense, if the investigation process has been completed, the investigator will submit the Investigation Report (BAP) file to the Public Prosecutor along with evidence that strengthens the suspicion that there has been a criminal act of murder with the motive of same-sex romance.

Process of Completion of the Prosecution Stage

After the investigation and investigation process is carried out, the next stage is prosecution. Prosecution is the submission of a criminal case to the authorized District Court in the case and in the manner provided for in the Criminal Procedure Code with a request that it be examined and decided by a judge at a District Court session (Shaw dkk., 2020). After receiving the results of the investigation in the form of an Examination Report (BAP), the steps taken by the Public Prosecutor are to immediately take preparatory actions in order to carry out prosecution by studying and examining whether the person or object mentioned in the results of the investigation is appropriate or has met the requirements for prosecution.

Based on an example in the Case File of a criminal act of murder with the motive of same-sex romance with the Decision of the Kota Agung District Court Number: 64/Pid.B/2022/PN.Kot, on behalf of the Defendant SA Bin A, age/date of birth: 34 years old / July 13, 1987, gender: male, nationality: Indonesia, residence (Kluytmans-van Den Bergh dkk., 2020): Nabang Sari RT/RW 005/003 Kedondong Village, Kedondong Sub-District, Pesawaran Regency, occupation: self-employed (Lee dkk., 2019). The defendant SA Bin A committed the crime of murder with the motive of same-sex romance against the victim DS, where the murder incident began with the invitation of DS who wanted to be served by SA Bin A and BMZ Bin YZ to have same-sex sex in exchange for money (Seland dkk., 2020). The victim DS Bin A always did not keep promises after having same-sex sex with SA Bin A and BMZ Bin YZ, which resulted in the Defendants SA Bin A and BMZ Bin YZ being hurt and holding a grudge against the victim DS Bin A, so the Defendants SA Bin A and BMZ Bin YZ planned the murder by trapping the victim DS to have same-sex sex and repeatedly thrusting a knife into the body of the victim DS Bin A which immediately caused the victim DS Bin A to die.

Before compiling a criminal complaint (requisitor) must consider which elements are proven and which elements are not proven, so that it can determine the article that can be charged to the suspect or determine the charges whether the defendant will be prosecuted, or released from all charges. In the prosecution of the Defendant SA Bin A who committed the crime of murder with the motive of same-sex romance, the Defendant SA Bin A was charged with the prima facie charges

and the first, second and third subsidiary charges as set out in Article 340 of the Criminal Code jo. Article 338 of the Criminal Code jo. Article 351 paragraph (3) of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code, where in the criminal charges filed by the Public Prosecutor the Defendant was legally and convincingly proven guilty of committing the crime of Aggravated Murder as regulated and punishable in Article 340 of the Criminal Code jo. Article 55 paragraph (1) to 1 Criminal Code and sentenced SA Bin A with life imprisonment.

Settlement Process of Trial Stage

Judicial Institution is tasked to find, examine, adjudicate and organize every case submitted to it. To ensure the implementation of this purpose until it gets the expected results, it is necessary to enforce law and justice as an implementing body that performs its duties as fair and impartial as possible. To ensure that justice is carried out as objectively as possible, Law Number 48 of 2009 concerning Judicial Power of the Republic of Indonesia. The facts that occurred in the criminal act of murder with the motive of same-sex romance coupled with the conviction of the Judge, the criminal case of murder with the motive of same-sex romance in criminal justice for perpetrators of criminal acts of murder with the motive of same-sex romance can be seen in the Decision of the Kota Agung District Court Number: 64/Pid.B/2022/PN.Kot, on behalf of the Defendant SA Bin A, the Panel of Judges must have a strong legal basis in providing a verdict on the criminal act of murder with the motive of same-sex romance at the stage of the trial.

court settlement. The judge's decision in court is very influential in fulfilling a sense of justice and legal certainty for the victim and the defendant. The defendant SA Bin A was legally and convincingly proven guilty of committing the crime of murder with the motive of same-sex romance which is regulated and punishable in Article 340 of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code as charged in the First Primair Indictment of the Public Prosecutor.

Based on the description of the testimony of the witnesses in connection with the testimony of the defendant and the evidence presented during the trial as well as the legal facts, the Panel of Judges examining and trying the case of the crime of murder with same-sex motives considered that the defendant legally and convincingly committed the crime of premeditated murder, where the actions committed by the defendant were considered detrimental to others. Because the defendant is capable of being responsible, the criminal act that he has been proven to have committed must be held accountable to him, therefore it is reasonable for the judge to declare that the defendant has been proven legally and convincingly guilty of committing the crime of "premeditated murder" as regulated and punishable in Article 340 jo. Article 55 paragraph (1) to 1 of the Criminal Code as charged to him in the first alternative primary charge of the Public Prosecutor.

Considering the provisions of Article 340 jo. Article 55 paragraph (1) to 1 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure as well as other relevant laws and regulations, the Panel of Judges of the Kota Agung District Court found the Defendant SA Bin A legally and convincingly proven guilty of committing the crime of participating in premeditated murder as charged in the first-primary alternative charge of the Public Prosecutor and sentenced the Defendant to imprisonment for 17 (seventeen) years.

Based on the theory of criminal responsibility, namely the theory of intent, which states that intent is the will to make an action and the will to commit a crime.

The will to cause a result of the action, meaning that a person can be declared guilty and can be held accountable for criminal acts so that they can be punished if they have fulfilled the elements of guilt, namely intent. Therefore, the actions of the defendant SA Bin A can be classified as the theory of intentionality, which means that the defendant intentionally wanted to kill the victim DS

Bin A. The defendant intentionally struck the victim DS Bin A in the head from the side using a rock and struck the victim on the left side of his lower jaw which caused the victim DS Bin A to fall to the ground and threw the body of the victim DS Bin A into a small water reservoir.

Based on the description above, it can be analyzed that the responsibility of the perpetrator of the crime of murder with the motive of same-sex romance is the ability of the defendant SA Bin A to be able to take responsibility for his actions through the mechanism of the criminal justice process at the police level, the prosecution level at the prosecutor's office and at the judicial level to decide on a criminal sentence for the defendant SA Bin A who has been proven legally and convincingly guilty of committing the crime of participating in premeditated murder as stated in the first alternative indictment of the public prosecutor and sentencing the defendant to imprisonment for 17 (seventeen) years.

Judges' Consideration in the Decision on the Crime of Murder with Same-Sex Romance Motive Study of Decision Number: 64/Pid.B/2022/PN.Kot

The decision of a judge in handing down a verdict (verdict) has a central position, because the verdict has broad consequences, both concerning the perpetrators of criminal acts and the wider community. The freedom possessed by judges in carrying out their judicial functions includes the freedom to determine the severity of the criminal sanctions imposed, this freedom must also be based on logical considerations and not contradict the provisions in the Laws and Regulations.

According to Ahmad Rifai, there are several theories that can be used by judges when a sentence is imposed in a case, as follows:

1. Balance Theory is a balance between the conditions set by the law and the interests of the parties involved or related to the case.
2. Art and Intuition Approach Theory, the judge's decision making is the judge's authority. As a limit of discretion in the decision-making process, the judge will adjust the provisions and penalties in accordance with the instructions for each criminal offender or in civil cases, the judge will look at the status of the litigants, namely the plaintiff and the defendant, in criminal cases the defendant or the Public Prosecutor in criminal cases. Judges in making decisions, using an artistic approach are driven by instinct or intuition rather than the Judge's knowledge.
3. Scientific Approach Theory is the idea that the criminal prosecution process must be carried out systematically and carefully, especially in relation to previous decisions, to ensure the consistency of the judge's decision.
4. Experience Approach Theory, the judge's experience is something that can help a person in dealing with things that a person faces every day. This theory rests on a fundamental philosophical basis that considers all aspects related to the issue in question and then looks for laws and regulations that are relevant to the issue in question as a legal basis for decision making and deliberations of judges which should be based on clear motivation to uphold the law and uphold justice for the litigants.
5. Wisdom Theory, this aspect of the theory emphasizes that the government, community, family and parents are responsible for guiding, educating, nurturing and protecting the defendant, so that one day he can become a useful person for his family, community and nation.

The judge's decision is the culmination of a case that is being examined and tried by the judge. The judge makes his decision on matters such as a decision about the incident, whether the defendant committed the act charged and whether the defendant is guilty and can be punished.

Judges in determining their decisions have the freedom as stipulated in Law Number 48 of 2009 concerning Judicial Power of the Republic of Indonesia, which states that the Judicial Power The judge is an independent state power to administer justice in order to uphold law and justice, both for the community in order to create a public welfare or for the defendant himself. The freedom that judges have in carrying out their judicial functions includes the freedom to determine the severity of the criminal sanctions imposed, this freedom must also be based on logical considerations and not contradict the provisions in the Laws and Regulations. In order to be able to provide an appropriate decision and provide a sense of justice, the judge is obliged to consider several things such as Decision Number: 64/Pid.B/2022/PN.Kot, namely several legal facts that have fulfilled the elements of the article charged. That the defendant was charged by the public prosecutor with the following charges:

1. Primair Indictment: The actions of the defendant are regulated and punishable under Article 340 of the Indonesian Penal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code.
2. Subsidiary Indictment:
 - a. First: The act of the defendant is regulated and punishable under Article 338 of the Indonesian Penal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code.
 - b. Or Second: The act of the defendant is regulated and punishable under Article 365 paragraph (2) and paragraph (3) of the Criminal Code.
 - c. Or Third : The act of the defendant is regulated and punishable under Article 351 paragraph (3) of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code.

The considerations of the Judge in the verdict of the crime of murder with the motive of same-sex romance based on Decision Number: 64/Pid.B/2022/PN.Kot, are as follows:

Consideration with regard to the Criminal elements in the indictment

The defendant has been charged by the Public Prosecutor with an indictment in the form of a combination in the form of a single-subsiderity alternative, so that the Panel of Judges, taking into account the legal facts mentioned above, directly chooses the first alternative charge which is compiled in the form of a subsiderity, therefore, the first alternative primary charge as stipulated in Article 340 jo. Article 55 paragraph (1) to 1 of the Criminal Code, the elements of which are as follows:

1. Element of Who:
2. What is meant by the element of who is anyone's attitude without certain qualities as a legal subject suspected of committing a criminal offense, which in this case is the Defendant SA Bin A with the identity mentioned.
3. The element of intentionally with premeditation taking the life of another person:
4. Based on the testimony of the witness and the facts supporting the clues, the Panel of Judges is of the opinion that the defendant intentionally wanted to kill the victim DS Bin A. The defendant intentionally struck the victim DS Bin A on the head from the side with a rock and struck the victim on the left side of his lower jaw which caused the victim DS Bin A to fall to the ground and threw the body of the victim DS Bin A into a small water reservoir.
5. Elements of who did, who ordered to do and who participated in the act:
 - a. The person who can be punished as the person who commits the crime is the person who commits the crime (pleger), the person who orders to commit the crime (doen plegen), and the person who participates in the crime (medepleger);
 - b. Considering that the term "pleger" refers to a person who commits a criminal act alone. Whereas what is meant by the person who orders to commit (doen plegen) is not the

person himself who commits the criminal act, but there must be at least 2 (two) people involved, namely the person who orders and the person who is ordered. Then the person who participates in committing (medepleger) is a person who intentionally participates or jointly commits a criminal act;

- c. Based on the legal facts revealed at trial, which were obtained from the compatibility of the evidence submitted by the Public Prosecutor, and the Defendant/Legal Advisor, as well as being connected with the evidence and the entire case file in this case, it is known that the entire series of criminal acts deprived the life of the Victim DS Bin A in the span of time from Sunday, July 11, 2021, at approximately 23.00 WIB, until the time span of Monday, July 12, 2021, at approximately 03.00 WIB, around a papaya plantation in Kebumen Hamlet, Pekon Banjar Agung Udik, Pugung District, Tanggamus Regency, both starting from planning, implementation and actions to obscure the existence of the criminal event, carried out jointly with Mr. Bakas Maulana Zambi alias Alan bin Yuzambi, whose complete description of actions as clearly described in the consideration of the fulfillment of the second element above, so *mutatis mutandis* is also taken over as part of the consideration of the fulfillment of the description of this element;
- d. Based on the above facts, the series of actions mentioned above, the Defendant can be classified as a person who participated in the act, so the Panel of Judges believes that the third element of this article has also been fulfilled by the actions of the Defendant.

Consideration by taking into account the justification and excuse as the basis for the elimination of criminal responsibility for the defendant

- a. The excuse is a reason that is subjective and inherent in the Defendant, especially regarding the inner attitude before or at the time of committing a criminal offense, where this excuse has been regulated as in the provisions of Article 44 paragraph (1), Article 48, Article 49 paragraph (2), and Article 51 paragraph (2) of the Criminal Code and during the trial process the Panel of Judges did not find facts that showed the circumstances as stipulated in these articles, so the Panel of Judges believes that the Defendant can be held responsible for all of his actions;
- b. Justification is an objective reason and is attached to the act or other matters outside the mind of the maker or perpetrator, this is as stipulated in the provisions of Article 49 paragraph (1), Article 50, and Article 51 paragraph (1) of the Criminal Code and during the trial process the Panel of Judges did not find facts or matters that prove the existence of the desired circumstances as referred to in the provisions of these articles, so the Panel of Judges is of the juridical opinion that there is no reason for the Defendant to lose the unlawful nature of his actions;
- c. That because during the trial the Panel of Judges did not find any circumstances that could eliminate criminal responsibility, either as justification or excuse, therefore the Defendant must be held accountable for his actions, and because the Defendant is capable of taking responsibility, the Defendant must be found guilty and sentenced.

Consideration with regard to aggravating and mitigating circumstances

That in order to impose punishment against the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant, as follows:

Aggravating circumstances:

- a. The actions of the Defendant are very disturbing to the community;
- b. The Defendant's actions caused the wife and family of the Victim to lose one of their family members;

- c. The Defendant did not confess, and did not show remorse for all of his actions;
- d. The Defendant's actions left a sense of suffering for the family he left behind;
- e. The Defendant's actions are contrary to the norms of religion, and decency.

Mitigating circumstances: The Defendant has never been convicted

Based on the entire description of the above considerations, including by considering the defense of the Defendant, the aggravating circumstances and the mitigating circumstances for the Defendant, the Panel of Judges basically agrees with the charges of the Public Prosecutor insofar as the charges are proven against the Defendant. However, regarding the determination of the length of imprisonment (strafmat) to be imposed on the Defendant, the Panel of Judges does not fully agree with the charges of the Public Prosecutor, where the Panel of Judges considers that the period of imprisonment (strafmat) to be imposed as contained in the amended decision needs to be adjusted based on comprehensive considerations regarding philosophical aspects. It is hoped that this decision will not only punish on the basis of the interests of the Defendant and the victim alone in this case (backward looking), but will be able to provide aspects of justice, legal certainty and benefit broadly or comprehensively in the future (forward looking) both for the Victim's Family, the Defendant, the wider community and the state, the aim is that in the future it is hoped that actions like this will not recur either specifically for the Defendant or in general for other people or the wider community, during the trial the Panel of Judges did not find anything that could eliminate responsibility.

Therefore, the Defendant must be responsible for his actions, because the Defendant is capable of being responsible, the Defendant must be found guilty and sentenced.

The purpose of punishment is not merely to punish the criminal acts committed by the Defendant but also has an educative value, namely as an instrument for future actions. In addition, the purpose of this punishment is carried out in order to fulfill a sense of justice for those who are victims, and/or their families of the criminal act, and also as a medium for legal learning for the wider community so that members of the community are expected not to commit such criminal acts in the future. The Panel of Judges is also of the opinion that in imposing the punishment to be determined in this verdict, it must be based on a comprehensive consideration of philosophical, sociological, and juridical aspects by taking into account the objectives of the punishment, so that later it is expected that the aspects of justice, legal certainty and expediency will be more closely achieved.

Based on the description above, it can be analyzed that the Judge's decision is the culmination of a case that is being examined and tried by the Judge. The judge gives his decision on the following matters, a decision on the event, whether the defendant has committed the act he is accused of. Decision on the law, whether the actions committed by the defendant constitute a criminal offense and whether the defendant is guilty and can be punished. Decision on the punishment, if the defendant is indeed punishable. The judge in making a decision must be based on or determined by the law, meaning that the judge may not impose a sentence that is lower than the minimum limit and also the judge may not impose a sentence that is higher than the maximum sentence determined by the law.

Based on McKenzie's Ratio Decidendi theory which states that the Judge in imposing a decision must be based on or determined by the Law, meaning that the Judge may not impose a sentence that is lower than the minimum limit and also the Judge may not impose a sentence that is higher than the maximum sentence determined by the Law, then the decision of the Judge of the Kota Agung District Court is the culmination of a case that is being examined and tried by the Judge, where the Panel of Judges of the Kota Agung District Court tried the Defendant in

accordance and appropriate with the Defendant's guilt, in which the Defendant SA Bin A was legally and convincingly proven guilty of committing the crime of participating in premeditated murder.

Based on the description above, it can be analyzed that the Judge's consideration in the verdict of the crime of murder with the motive of same-sex romance considers the criminal elements in the indictment, considers the justification and excuse as the basis for eliminating criminal liability for the defendant and considers the aggravating and mitigating circumstances by stating that the Defendant SA Bin A has been legally and convincingly proven guilty of committing the crime of participating in premeditated murder as charged in the first-primary alternative indictment of the Public Prosecutor and sentences the Defendant therefore, to 17 (seventeen) years imprisonment.

CONCLUSION

Responsibility of the Perpetrator of the Crime of Murder with Same-Sex Romance Motive is the ability of the defendant SA Bin A to be able to take responsibility for his actions through the mechanism of the criminal justice process at the police level, the prosecution level at the Prosecutor's Office and at the judicial level to decide on a criminal verdict for the defendant SA Bin A who has been proven legally and convincingly guilty of committing the crime of participating in premeditated murder as stated in the first alternative charge of the Public Prosecutor and sentencing the Defendant to imprisonment for 17 (seventeen) years.

Consideration of the Judge in the verdict of the crime of murder with same-sex romance motive considers the criminal elements in the indictment, considers the justification and excuse as the basis for removing criminal liability for the defendant and considers the aggravating and mitigating circumstances by stating that the Defendant SA Bin A has been legally and convincingly proven guilty of committing the crime of participating in the premeditated murder as charged in the first alternative charge of the Public Prosecutor and imposes a sentence on the Defendant therefore, imprisonment for 17 (seventeen) years.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration.

Author 1: Validation; Writing - review and editing.

REFERENCES

- Amendolagine, V., Presbitero, A. F., Rabellotti, R., & Sanfilippo, M. (2019). Local sourcing in developing countries: The role of foreign direct investments and global value chains. *World Development*, 113, 73–88. <https://doi.org/10.1016/j.worlddev.2018.08.010>
- Badji, A., Dieng, Y., & Diop, I. (2022). Information and Discussion Platform in the Context of Monitoring PLHIV in Border Areas and During COVID 19. Dalam Á. Rocha, C. Ferrás, A. Méndez Porras, & E. Jimenez Delgado (Ed.), *Information Technology and Systems* (Vol. 414, hlm. 106–117). Springer International Publishing. https://doi.org/10.1007/978-3-030-96293-7_11
- Bhat, S. A., Kamaiah, B., & Acharya, D. (2020). Examining the differential impact of monetary policy in India: A policy simulation approach. *Journal of Economics, Finance and Administrative Science*, 25(50), 339–362. <https://doi.org/10.1108/JEFAS-05-2019-0072>
- Chanana, N. & Sangeeta. (2021). Employee engagement practices during COVID-19 lockdown. *Journal of Public Affairs*, 21(4). <https://doi.org/10.1002/pa.2508>

- Elgar, F. J., Stefaniak, A., & Wohl, M. J. A. (2020). The trouble with trust: Time-series analysis of social capital, income inequality, and COVID-19 deaths in 84 countries. *Social Science & Medicine*, 263, 113365. <https://doi.org/10.1016/j.socscimed.2020.113365>
- Ferreira, S. F. S., Pires, L., Castelo-Branco, M., & Afonso, R. M. (2022). Initial validation of the Portuguese version of the EVE discrimination questionnaire (EVE-D): The level of perceived ageism by physicians in the Portuguese healthcare system. *Educational Gerontology*, 48(11), 549–563. <https://doi.org/10.1080/03601277.2022.2052406>
- Holzinger, A., Carrington, A., & Müller, H. (2020). Measuring the Quality of Explanations: The System Causability Scale (SCS): Comparing Human and Machine Explanations. *KI - Künstliche Intelligenz*, 34(2), 193–198. <https://doi.org/10.1007/s13218-020-00636-z>
- Jacob, D., Teichmann, C., Sobolowski, S., Katragkou, E., Anders, I., Belda, M., Benestad, R., Boberg, F., Buonomo, E., Cardoso, R. M., Casanueva, A., Christensen, O. B., Christensen, J. H., Coppola, E., De Cruz, L., Davin, E. L., Dobler, A., Domínguez, M., Fealy, R., ... Wulfmeyer, V. (2020). Regional climate downscaling over Europe: Perspectives from the EURO-CORDEX community. *Regional Environmental Change*, 20(2), 51. <https://doi.org/10.1007/s10113-020-01606-9>
- Karlsson, I. C. M., Mukhtar-Landgren, D., Smith, G., Koglin, T., Kronsell, A., Lund, E., Sarasini, S., & Sochor, J. (2020). Development and implementation of Mobility-as-a-Service – A qualitative study of barriers and enabling factors. *Transportation Research Part A: Policy and Practice*, 131, 283–295. <https://doi.org/10.1016/j.tra.2019.09.028>
- Kluytmans-van Den Bergh, M. F. Q., Buiting, A. G. M., Pas, S. D., Bentvelsen, R. G., Van Den Bijllaardt, W., Van Oudheusden, A. J. G., Van Rijen, M. M. L., Verweij, J. J., Koopmans, M. P. G., & Kluytmans, J. A. J. W. (2020). Prevalence and Clinical Presentation of Health Care Workers With Symptoms of Coronavirus Disease 2019 in 2 Dutch Hospitals During an Early Phase of the Pandemic. *JAMA Network Open*, 3(5), e209673. <https://doi.org/10.1001/jamanetworkopen.2020.9673>
- Kouvelis, P., Xiao, G., & Yang, N. (2021). Role of Risk Aversion in Price Postponement Under Supply Random Yield. *Management Science*, 67(8), 4826–4844. <https://doi.org/10.1287/mnsc.2020.3755>
- Lee, J., Song, H.-D., & Hong, A. (2019). Exploring Factors, and Indicators for Measuring Students' Sustainable Engagement in e-Learning. *Sustainability*, 11(4), 985. <https://doi.org/10.3390/su11040985>
- Liu, C., Dou, X., Li, J., & Cai, L. A. (2020). Analyzing government role in rural tourism development: An empirical investigation from China. *Journal of Rural Studies*, 79, 177–188. <https://doi.org/10.1016/j.jrurstud.2020.08.046>
- Miao, Z., Baležentis, T., Tian, Z., Shao, S., Geng, Y., & Wu, R. (2019). Environmental Performance and Regulation Effect of China's Atmospheric Pollutant Emissions: Evidence from “Three Regions and Ten Urban Agglomerations.” *Environmental and Resource Economics*, 74(1), 211–242. <https://doi.org/10.1007/s10640-018-00315-6>
- Mikhaylov, A., Moiseev, N., Aleshin, K., & Burkhardt, T. (2020). Global climate change and greenhouse effect. *Entrepreneurship and Sustainability Issues*, 7(4), 2897–2913. [https://doi.org/10.9770/jesi.2020.7.4\(21\)](https://doi.org/10.9770/jesi.2020.7.4(21))
- Mudelsee, M. (2019). Trend analysis of climate time series: A review of methods. *Earth-Science Reviews*, 190, 310–322. <https://doi.org/10.1016/j.earscirev.2018.12.005>
- Nyashanu, M., Pfende, F., & Ekpenyong, M. (2020). Exploring the challenges faced by frontline workers in health and social care amid the COVID-19 pandemic: Experiences of frontline workers in the English Midlands region, UK. *Journal of Interprofessional Care*, 34(5), 655–661. <https://doi.org/10.1080/13561820.2020.1792425>
- Pai, S., Pretko, M., & Nandkishore, R. M. (2019). Localization in Fractonic Random Circuits. *Physical Review X*, 9(2), 021003. <https://doi.org/10.1103/PhysRevX.9.021003>
- Seland, Ø., Bentsen, M., Olivié, D., Toniazzo, T., Gjermundsen, A., Graff, L. S., Debernard, J. B., Gupta, A. K., He, Y.-C., Kirkevåg, A., Schwinger, J., Tjiputra, J., Aas, K. S., Bethke, I.,

- Fan, Y., Griesfeller, J., Grini, A., Guo, C., Ilicak, M., ... Schulz, M. (2020). Overview of the Norwegian Earth System Model (NorESM2) and key climate response of CMIP6 DECK, historical, and scenario simulations. *Geoscientific Model Development*, 13(12), 6165–6200. <https://doi.org/10.5194/gmd-13-6165-2020>
- Shaw, R., Kim, Y., & Hua, J. (2020). Governance, technology and citizen behavior in pandemic: Lessons from COVID-19 in East Asia. *Progress in Disaster Science*, 6, 100090. <https://doi.org/10.1016/j.pdisas.2020.100090>
- Stahl, G. K., Brewster, C. J., Collings, D. G., & Hajro, A. (2020). Enhancing the role of human resource management in corporate sustainability and social responsibility: A multi-stakeholder, multidimensional approach to HRM. *Human Resource Management Review*, 30(3), 100708. <https://doi.org/10.1016/j.hrmr.2019.100708>
- Suganthi, L. (2019). Examining the relationship between corporate social responsibility, performance, employees' pro-environmental behavior at work with green practices as mediator. *Journal of Cleaner Production*, 232, 739–750. <https://doi.org/10.1016/j.jclepro.2019.05.295>
- Teske, S. (Ed.). (2019). *Achieving the Paris Climate Agreement Goals: Global and Regional 100% Renewable Energy Scenarios with Non-energy GHG Pathways for +1.5°C and +2°C*. Springer International Publishing. <https://doi.org/10.1007/978-3-030-05843-2>
- Thorell, L. B., Skoglund, C., De La Peña, A. G., Baeyens, D., Fuermaier, A. B. M., Groom, M. J., Mammarella, I. C., Van Der Oord, S., Van Den Hoofdakker, B. J., Luman, M., De Miranda, D. M., Siu, A. F. Y., Steinmayr, R., Idrees, I., Soares, L. S., Sörlin, M., Luque, J. L., Moscardino, U. M., Roch, M., ... Christiansen, H. (2022). Parental experiences of homeschooling during the COVID-19 pandemic: Differences between seven European countries and between children with and without mental health conditions. *European Child & Adolescent Psychiatry*, 31(4), 649–661. <https://doi.org/10.1007/s00787-020-01706-1>
- Tüfekci, S., Aygün, E., & Halis, H. (2021). Evaluation of immunogenicity after first dose of hepatitis B vaccine in newborns with very low birth weight. *Human Vaccines & Immunotherapeutics*, 17(12), 5590–5594. <https://doi.org/10.1080/21645515.2021.1942715>
- Wilkinson, A., Ali, H., Bedford, J., Boonyabancha, S., Connolly, C., Conteh, A., Dean, L., Decorte, F., Dercon, B., Dias, S., Dodman, D., Duijsens, R., D'Urzo, S., Eamer, G., Earle, L., Gupte, J., Frediani, A. A., Hasan, A., Hawkins, K., ... Whittaker, L. (2020). Local response in health emergencies: Key considerations for addressing the COVID-19 pandemic in informal urban settlements. *Environment and Urbanization*, 32(2), 503–522. <https://doi.org/10.1177/0956247820922843>
- Xie, H., Zhang, L., Lim, C. P., Yu, Y., Liu, C., Liu, H., & Walters, J. (2019). Improving K-means clustering with enhanced Firefly Algorithms. *Applied Soft Computing*, 84, 105763. <https://doi.org/10.1016/j.asoc.2019.105763>
- Zhang, G., Deng, N., Mou, H., Zhang, Z. G., & Chen, X. (2019). The impact of the policy and behavior of public participation on environmental governance performance: Empirical analysis based on provincial panel data in China. *Energy Policy*, 129, 1347–1354. <https://doi.org/10.1016/j.enpol.2019.03.030>

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