



Motive Evidentiary in Premeditated Murder: Aligning the Norms and Practical

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Abstract

Introduction to The Problem: Motive, if related to crime, refers to the urge contained in the mental attitude of the actor to implement that *mens rea* in an act that is committed to a crime *actus reus*. The incorporation of motive in cases involving premeditated murder under the legal framework of Article 340 of the Indonesian Criminal Code remains a contentious issue, lacking a consensus. While some individuals posit that premeditated murder necessitates the presence of a motive, contrasting viewpoints contend that the crime can be established without requiring evidence of a motive.

Purpose: This study aims to provide an overview and analysis of the significance of understanding motives as a means for judges to find out the background of the premeditated murder so that the panel of judges renders a decision accurately and proportionately.

Methodology: The method used in this research is the normative juridical approach that focuses on the study of literature and legislation with the specifications of analytical descriptive research.

Findings: The study suggested that Article 340 of the Criminal Code lacks a comprehensive explanation of the presence of motives. Consequently, the implementation of motives is limited to the interpretation provided by legal scholars and the subjective discretion of the presiding judge in each individual instance. In the absence of an interpretation of this motive, the Panel of Judges is not obliged to find a motive for the murder. As a result, this leads to different decisions, some resulting in acquittal and others in conviction of the defendant, because the judge did not discover a motive for the murder during the presentation of evidence. Meanwhile, according to the Indonesian version of the Criminal Code, namely Law No. 1 of 2023, the existence of the motive is mandatory in sentencing as stated in Article 54 paragraph (11) sub b of the Criminal Code.

Paper Type: Research Article

Keywords: Motives; Criminal Code; Premeditated Murder

Introduction

Humans are one of God's unique creations, distinguished from others by inherent qualities. These distinctions are rooted in the fundamental presence of attributes such as rationality, conscience, and the ability to engage in logical reasoning, guiding their

decisions to undertake or abstain from actions. In addition, humans are also embedded with freedom in all respects, including the freedom to live, freedom to obtain a decent life and education, freedom of religion, freedom of the state, and freedom of interaction with other human beings as long as this freedom does not take away absolute rights which also attached to other humans or in other words, humans can actualize their will (Robeyns, 2005). Since being born into the earth, humans have natural rights that are integrally attached to them. Humans are free creatures (Wilujeng, 2013).

In light of the description mentioned above, this liberty emerges as the philosophical cornerstone, rendering humans as legal entities capable of actions, harmonizing with the cadence of causality. It implies that every action or inaction triggers repercussions, subject to accountability by one or more individuals, thereby establishing a cause and leading to specific outcomes felt by others. An array of underlying factors likewise shapes the genesis of a criminal act (Basri et al., 2022).

When assessing attitudes, it is impossible to separate persons as legal entities from the variable nature of their internal attitudes towards taking action or refraining from it. In this scenario, it might manifest as either a motivating factor or a motive. The word motive originates from the word mover or motion, which means movement or something that moves psychologically; thus, the term "motive is closely related to motion, namely movements carried out by humans or also called actions" (Sarwono, 2009).

In terms of the criminal code, the crime motive is defined as "the leading force of the will, or the psychological factor which leads to contemplation of a crime (Issa, 2022). Effendy (2017) offers a different perspective on the vocabulary used to describe motives, which suggested that motives encompass all the incentives and impulses driving human actions, forming the basis for every human behavior. When it comes to criminal cases, the motive is frequently viewed as inconsequential, as it aids law enforcement inquiries and the assurance of determining guilt or innocence. It is vital to establish a clear account of the accused's rationale, whether they engaged in an action or refrained from it.

In Article 340 of the Criminal Code, nowhere does it specify that a motive must be present; it is but one possibility. The motive is solely evident in the perpetrator's intent to carry out unlawful actions, as elucidated earlier – criminal acts initiate from a motive. Therefore, it is deemed necessary to study to determine intent in premeditated murder. Some criminal experts consider motive to be unnecessary in proving Article the Criminal Code, with the argument that "when the perpetrator decides to it in a state calm, there is sufficient time between deciding will and carrying out the act and the implementation of actions is carried out I in a state of calm". Bemmelen in (Chiu, 2005). In Article number 340 of the Criminal Code, the motive is



not required. Motive is only one element, it is only one ingredient ([Irawadi et al., 2019](#)).

As one of the criminal law studies, several previous studies have been carried out by previous researchers. However, they are not directly related but can be used as a comparison by the author. The first research was conducted by Antonaccio et al. ([2011](#)) under the title "Attracted to Crime: Exploration of Criminal Motivation among Respondents in Three European Cities." Their research demonstrates disparities across different research locations, thereby suggesting that the role of criminal motivation could be influenced by the context in which it operates. Overall, the study proposes the value of giving greater focus to motivation, particularly in enhancing endeavors to elucidate it, directly quantify it, and incorporate it more prominently into explanatory frameworks.

The second previous study related to motive was conducted by Rosenberg ([2007](#)). In his study, the researcher emphasized that the sole means of upholding the validity of the irrelevance-of-motive principle is to establish its validation through definition. It involves defining motive as a subset of intentions that hold no significance in terms of criminal liability. This article supports the irrelevance-of-motive principle by employing a plausible interpretation of the term "motive," aligning with its historical significance. In addition, Bolon ([2019](#)) also conducted the theme of how the position of motive is in proving the crime of premeditated murder. Another research related to this study was conducted by Mutiara and Gunarto ([2018](#)), who chose "Determination of Motive Elements in Determining Criminal Responsibility for Premeditated Murder According to the Criminal Code." It aimed to reveal whether determining the motive of the perpetrator in the crime of premeditated murder is necessary or not in the evidence at trial and how the judges' views are related to the motive in the trial of the crime of premeditated murder.

Additionally, the last previous study was conducted by Iriyanto & Halif ([2021](#)) with the theme Elements of a Plan in a Crime of Premeditated Murder; this study is a case study on decision Number 201/Pid.B/2011/PN.Mrs. The key distinction between prior studies and the current study lies in the fact that past research often regarded motive as a component of the offense, despite the fact that the motive aids in establishing the charge of premeditated murder. Nevertheless, the research subject diverges from prior investigations.

Drawing from the aforementioned descriptions, it becomes evident that the incorporation of motive in cases involving premeditated murder under the legal framework of Article 340 of the Criminal Code remains a contentious issue, lacking a consensus. While some individuals posit that premeditated murder necessitates the presence of a motive, contrasting viewpoints contend that the crime can be established without requiring evidence of a motive. These disparities in opinion serve as a catalyst for the author's keen interest in initiating a journal study, with the central

inquiry articulated in the article's title: "Exploring the Role of Motive in Establishing Premeditated Murder Charges".

Methodology

Referring to the background and focus of the research, The approach used in this research is the statute approach. In a legal research book, Peter Mahmud explains that in this approach, statutory regulations are used as a reference in solving legal issues to be discussed by taking into account the hierarchy and principles of statutory regulations (Marzuki, 2021). Legal research is one of the research activities whose object is in the form of norms. Therefore, legal writing is descriptive normative legal research. Meanwhile, the researcher used literature study or library research to gather data. The author conducts a series of activities to obtain secondary data by reading, taking notes, and quoting various literature, regulations, books, mass media, and other written legal materials related to the research (Syahrums, 2022).

In this case, the author utilizes data gathered from diverse sources concerning motives, the criminal code, and premeditated murder. The analysis of legal materials in normative legal research involves processing data through library research. It involves studying materials available in libraries, also known as secondary data. The process includes categorizing legal materials to streamline the analysis. The secondary data obtained is in the form of secondary data, whether in the form of laws and regulations, decisions, judge's decisions, deeds or other documents, or even doctrines, then documentation or recording is carried out regarding the contents related to the legal writing study carried out.

Results and Discussion

Regarding sentence, it remains imperative to establish the culpability of the individual who perpetrated the offense, whether they are deemed guilty or not guilty (subjective guilt). In other words, that person must be accountable for his actions, or if viewed from the point of view of his actions, then that person can be sued (Moeljatno, 2008). This opinion is closely related to the principle of no crime without mistake or error (*green straf zonder schuld, or actus non facit reum nisi mens sit rea, or an act does not make a person guilty*) as well as the principle of legality as stipulated in Article 1 paragraph (1) of the Criminal Code in where an act cannot be punished except based on the strength of the provisions of the existing criminal law (Alviolita, 2018). When an individual engages in unlawful behavior, they are required to bear responsibility for their actions in accordance with the legal system. This entails undergoing a number of legal procedures that are governed by both the criminal procedural law and the criminal code.

The penalty is inherently intertwined with the community and cannot be detached from the judicial proceedings. The last legal process before sentencing is criminal responsibility (Hudson, 2002). Criminal responsibility serves as a pretext for punishment with a preventative objective, as it ensures that no one commits a crime



through the preventive nature of accountability. This perspective is also societal in nature ([Rusianto, 2016](#)).

The primary objective in dealing with a criminal act, particularly one involving premeditated murder as defined in Article 340 of the Criminal Code, is to diligently and accurately uncover the "complete" truth of the case. This is achieved by adhering to the provisions of the criminal procedure law, ensuring honesty and appropriateness, with the ultimate goal of identifying the individual responsible (anyone) for the legal violation. Subsequently, the court is approached to conduct an examination and make a decision regarding the presence of a proven crime and the culpability of the accused. So, in addition to the process at the investigative level, investigations carried out by the Indonesian National Police and the Indonesian Attorney General's Office as general criminal prosecution agencies, which ultimately go to the judiciary, are the estuary for the law enforcement process which consists of law enforcement instruments in the trial consisting of Judges, The Public Prosecutor and Legal Counsel as parties accompanying the defendant.

In examining a case, the panel of judges should have considered evidence because the results will be used as material for consideration in deciding a case ([Schanzenbach & Tiller, 2008](#)). The proof stage is crucial in examining a case in court. The objective of evidence is to establish assurance on the occurrence of a proposed event or fact in order to ensure an accurate and impartial judgment by a court. The judge cannot provide a verdict unless the occurrence or fact is established beyond doubt, therefore establishing a legal connection between the persons involved ([Moeljatno, 2008](#)).

In deciding a criminal case, the panel of judges considers two categories: juridical considerations and non-juridical considerations ([Assaad et al., 2021](#)). Juridical considerations are judges' considerations based on juridical facts revealed in court proceedings. They are determined by law as matters that must be included in a decision, for example, the indictment of the public prosecutor, criminal charges, statements of the accused, statements of witnesses, items of evidence, and Articles in criminal law regulations. Meanwhile, non-juridical considerations can be seen from the "background," the consequences of the defendant's actions, and the condition of the defendant ([Zulyadi, 2020](#)).

Concerning premeditated murder, as stipulated in Article 340 of the Criminal Code, which reads, "Whoever deliberately and with premeditation takes the life of another person, is threatened with premeditated murder, with the death penalty or imprisonment for life or a specified period, for a maximum of 20 years." Premeditated murder, in the terminology of criminal law, is the crime of killing a life, which, with a plan or premeditation, decides the perpetrator's plan ([Limbong & Adhari, 2022](#)). From the description of the formulation of Article 340 of the Criminal Code, it can be inferred that the offense of premeditated murder is a substantive crime because it



focuses on the consequences of intentional and premeditated actions which result in depriving/eliminating the lives of other people (Hiariej, 2014). Material offenses are offenses whose formulation focuses on unwanted consequences (Pratama, 2022). In order to find out about intentional meaning, we can draw a common thread from two theories, namely, the theory of will and the theory of knowledge. According to Pompe, the condition for intentionality is *willens en wetens* or willing and knowing, meaning that someone is said to have committed an act intentionally if the act is done knowingly and willingly. It is just that the perpetrator who commits a criminal act is aware of the consequences of the act, which can be under his will or purpose (Novitasari et al., 2022). The point is that someone who commits an act intentionally must have the will (*willens*) of what he is doing and must also know (*wetens*) of what he is doing and its consequences (Utoyo et al., 2020).

Based on this article's formulation and the Criminal Code's outline, in principle, it does not describe the existence of a necessity. The motive must be a formulation of an offense, so in applying the law, Article 340 of the Criminal Code adopts the teachings/doctrines of legal experts and judicial practice. Nevertheless, this shows differences in views/scientific differences between legal experts regarding whether or not a motive is necessary for proving at trial regarding premeditated murder.

Legal doctrine has a significant role because this doctrine is advanced by a legal expert who can influence jurisprudence and become the rule of law; therefore, doctrine can become one of the sources of positive law. According to Sidharta (2009), the term doctrine means teaching, teaching can also be equated with doctrine, and doctrine is a reservoir of norms so that doctrine becomes a source of law. According to the Directory of Decisions of the Supreme Court of the Republic of Indonesia, which is available on the Website of the Supreme Court of the Republic of Indonesia in 2023, it was found that decisions related to cases of premeditated murder, especially those carried out jointly, were as many as 56 cases spread throughout the territory of the Republic of Indonesia, from these decisions, after a review it turned out that the author found that there were variants of considerations that described a motive. Some did not describe a motive, so what was more critical was related to proving the elements of the article being charged.

In the decision on the case of premeditated murder at the Labuha District Court No. 10/pid. B/2015 dated March 10, 2015, in conjunction with North Maluku High Court Decision No. 13/Pid. B/2015/PT. TTE dated May 18, 2015, in conjunction with the Republic of Indonesia's Supreme Court Decision No. 940 K/Pid/2015, in the *yudex factie* decision of the Labuha District Court, only one defendant was blamed, namely Gerson Mario Dacosta, while the other defendants Kristian Berti *et al.* were acquitted. In the appeal level at the North Maluku High Court, the *yudex factie* decision of the Labuha District Court was annulled with the verdict of Gerson Mario Dacosta *et al.* legally and convincingly established as guilty of perpetrating the crime of premeditated murder, which was carried out jointly. At the cassation level filed by



Gerson Mario Dacosta it has been declared unacceptable or NO (*Niet Onvankelijke Verklard*); thus, the decision of the North Maluku High Court is used as a reference for consideration. From the abstraction of the legal considerations of the North Maluku High Court case, the authors did not find any motive that became the basis for the judge to prove the defendant's guilt. The author only found the judge's considerations related to the proven premeditated murder; namely, the judge found the fact that there was prior planning (*vooredchte Rade*), meaning that between the intention to kill and its execution, there was still time for the perpetrators (the defendants) to commit the murders and the killings calmly were carried out together.

There are several examples of cases in which the legal decisions did not consider motive as an instrument that also had to be proven in criminal acts, namely the case of the murder of a woman who was a factory worker, Marsinah, in which in this decision the defendants were acquitted at the cassation level of case register No. 1147 K/Pid/1994, dated April 29, 1995. The Panel of Judges, at the cassation level in their legal principles, believed that the nine acquitted defendants were not proven guilty of killing Marsinah because, in the *in cassu* decision, it was not clear who killed Marsinah (Udasmoro & Saktiningrum, 2022). In addition, the consideration of the Supreme Court in the acquittal was because the *judex juris* did not find a motive for the crime committed by the Defendants, who were charged with committing a crime violating Article 340 of the Criminal Code.

In the case of the alleged premeditated murder of Jessica Kumala Wongso, a *yudex factie* at the Central Jakarta District Court, the Panel of Judges considered that there was a legal fact related to the motive for the murder, namely "out of envy or jealousy at witness Arief Setiawan Semarko's intimacy with Mirna when they met on December 8, 2015, in Kelapa Gading. This motive has become the reason for objections from the defendant in the cassation filed. However, on the contrary, in the decision of the Supreme Court of the Republic of Indonesia No. 498 K/Pid/ 2017, the cassation effort for the defendant Jessica Komala Wongso was rejected (Listyawati, 2021). Thus, all legal considerations of *yudex factie* were considered appropriate and correct, including the motive of jealousy which was the background for the premeditated murder.

However, there are several cases where the legal decisions did not consider motive as an instrument that also had to be proven in criminal acts, namely the murder case of a woman who was a factory worker, Marsinah, in which case the defendants were acquitted at the cassation level. The main culprit is untouchable or unidentified, while others are made a suspect (Ali & Rauf, 2021). The Panel of Judges at the cassation level, in its legal principles, believed that the nine defendants who were acquitted were not proven guilty of killing Marsinah because, in the *in cassu* decision, it was not clear who killed Marsinah (Al Ayyubi et al., 2022).

In addition, there are cases where the trial process was deemed not to require a motive as an instrument in proof, namely in the case of Jessica Kumala Wongso for allegedly committing the premeditated murder of Mirna, better known as the *cyanide coffee case*. In this case, an expert opinion states that motive is not needed in the context of proof. In the Criminal Code or the formulation of offenses, according to the opinion of the criminal law experts mentioned above, motives are not part of the formulation of offenses, but that does not mean that motives are unnecessary. Motive is still necessary because the motive is part of the intention or an inner state when the deed loses the life of a murder victim. On the other hand, there are different views that motive is something that must be proven by the prosecutor and considered by the panel of judges in deciding a case because if a motive has been described in an indictment by the prosecutor, then in theory, the description of the motive behind a person or will become a burden of proof for the prosecution. Harahap (2002) stated that all the charges that have been charged must be proven in court as much as possible to prove the charges filed. There will be a big dilemma in the law enforcement process when there is a provision in a description of the indictment which becomes the burden of proof and must be considered by the panel of judges but is set aside when there is no confirmation in a legal norm stating that motive is not required in the verification process. At the same time, a teaching/doctrine is recognized as a source of positive law.

Reflecting on the example of the cyanide coffee case above, Criminal Law expert Jamin Ginting emphasize that motive should be taken into account as a means of establishing guilt. If motive is not used as a reference in the sentencing of people who commit mistakes, that has taken someone's life by planning, then only the actual perpetrator(s) (if there are multiple) will be punished. At the same time, the others, as the beginning of the emergence of plans for criminal acts if the crime occurs, will not be touched by the law. Motive can be used as an instrument to prove premeditated murder has occurred. However, he agreed that the public prosecutor did not need to disclose and describe the motive (Ruba'i, 2016). So that in a trial that seeks material truth, if no motive is raised, then the evidence will only reach the perpetrator who directly committed the criminal act of premeditated murder and is responsible for his actions. Therefore, one of the fundamental bases of a legal norm is contained in Article 55 of the Criminal Code, which states, "Those who give or promise something, abuse their power or dignity, use violence, threats or misdirection or provide opportunities, suggestions or information, deliberately encourages other people to commit criminal acts".

Referring to the description above, someone advocated committing a criminal act, in this case, the offense of premeditated murder, which suggested that it could be concluded that the motive was in him, while the executor was in someone else. However, if the motive is not needed, it will impact law enforcement inequality, namely, someone who has a motive/person who recommends it is not present. Then, it is possible that the person who suggested it is released from accountability for his



mistakes if the motive is not positioned as one of the instruments in proving the judge's considerations in deciding a criminal case. In the instant matter, a dissonance emerges with the perspective articulated by Moeljatno, as referenced in Fadlian (2020), positing that "*a criminal act is an act prohibited by the rule of law, which prohibition is accompanied by threats or sanctions in the form of certain crimes, for anyone who violates the prohibition*".

As a comparison in Germany, the German Criminal Code (StGB) does not require motive as an element of an offense; to prove premeditated murder, it is sufficient if the perpetrator calmly plans accompanied by the preparation and execution of the act (Habermeyer et al., 2010). In the author's opinion, what is stated in the penal law in Germany is not much different from the inherited Dutch Penal Code, which is still in effect in Indonesia. The inherited Dutch Penal Code, based on history, originated in Germany. Even so, the motive for opening becomes a necessity. The presence of a motive becomes essential to uncover the method and accomplices involved in the execution of the act. This revelation leads to the outcome of the act, which results in the loss of a person's life.

Furthermore, it ensures that the sentence issued by the panel of judges is quantifiable and focused on the party genuinely responsible for committing or causing the crime. In this case, the author urges that the meaning of the element "whoever" in the above description will refer to everyone who jointly or at least knows and or advocates a criminal act, then when a criminal act, in this case, is premeditated murder has been committed and resulted in the loss of one or more lives, according to law all parties/persons in the "series of legal events" must be held accountable for their mistakes before the law as long as the person who committed the criminal act is not prevented from being held accountable according to law. Then it should be done by analyzing a motive. It will be revealed how the acquisition, how to do it, and with whom the action was carried out so that the result of the action is the loss of a person's life and the sentence imposed by the panel of judges is measurable and directed to the party who committed the crime or causes.

Based on the view of motive in terms of proving law thread about the motive in legal literature that it lies in the psychological aspect (*mental element*) which describes wrongdoing as well as the level of wrongdoing and is a useful requirement for convicting and formulating goals of punishment by judge criminal (Habermeyer et al., 2010). Thus, the judge can judge the heinousness of the perpetrator of the crime that violates the Criminal Code, as seen from mistakes judged by criminal law. Overall, legal experts believe that a high degree of judgmental accuracy within criminal law is instrumental in determining the presence of criminal responsibility (Rusianto, 2016). Sometimes, in an article, formulation places motive as part of *bestanddeel delict*. Regarding this, there are usually words or elements "with intent" (Rosyida et al., 2019). If there is such a formulation, then the formation of the Criminal Code only wants one intentional pattern, namely intentional intent (*opzet als ogmerk*).



As another example, the formulation of offenses in the Criminal Code includes elements with the intent of which include the offense of forgery of letters (Article 263), the offense of theft (Article 378), and factors of motive that are very important in proving/proving these offenses. The Netherlands with the offense of murder contained in Article 338 of the Criminal Code, Article 340 of the Criminal Code of premeditated murder (*moord, premeditatus*), which essentially places the motive far from the formulation of the offense because it does not use the words "with intent" (*opzet als ogmerk*) but uses the word or an element of "intentionally" (*opzettelijk*).

In terms of proof of criminal law, there are two-act elements; namely, the first is called the *monistic view*, and the second is the view of *dualistic*. The *Monistic view* sees that the requirements for the existence of a sentence must be two, namely. According to Ilyas & Mustamin in Murdiana (2012) this view provides principles understanding, that in the sense of an act or a criminal act already prohibited or criminal responsibility.

According to a monistic view, the elements in a criminal act include action, unlawful nature, no justification, responsibility, guilt, and no excuses. If guided by the monistic theory, according to the author, related to the unnecessary motive in proving a criminal act of premeditated murder, it is very relevant and accepting the clause regarding the opinion that motive is not needed in the context of proving the elements of a premeditated murder offense, because the motive is not something that is needed or needed or Another explanation is that whoever did it is he who is responsible for the crime. On the other hand, there is a dualistic theory which distinguishes between actions and mistakes, where a person can be convicted and held criminally responsible for his actions, but the mistake is from another person (*dader*). So, in the trial process that requires/searches for material truth, what is the motive for the criminal act of premeditated murder is not raised, so the person who made a mistake was not found and punished for his mistake because the context of the mistake arose because it was known that there was a motive for the initial act.

When considering its correlation with the theory of causality in criminal law, specifically Von Buri's theory of *conditio sine qua non* from Von Buri, the theory of individualization/testing *causa Proxima* and the *theory of generalization* from Treger, causality in criminal law is related to a big question: who can be placed as "the cause" of crime? The answer to the question has a close relationship with the proceeds of crime, whether from the crime or whether the crime is sufficient to hold the perpetrator accountable (Ilyas & Mustamin, 2022). In this case, if a criminal act committed by a person causes an effect on another person which results in a change in his condition (the victim), then according to the theories described above, the person who made the cause (mistake) must be held accountable for the consequence. An example would be the premeditated murder of Brigadier Joshua if the loss of life of Brigadier Yosua Hutabarat due to a bullet from the firearm in Bharada E's hands.



Eddy OS Hiariej, who does not need a motive, does not rule out the possibility that the law will only look at Bharada E as the cause of Brigadier J's death.

Regarding the theory of causality, Eddy OS Hiariej considers it to be a theory of causality (motive in proving omitted). Individualization/teaching of *causa proxima*, which in the sense of cause is the closest condition and cannot be separated from consequences, in this context, punishment is seen in *concreto* or *post factum*. According to the individual's point of view, what is specifically regulated here is that there is only one condition as a cause for the emergence of an effect. In addition, the offense of premeditated murder is a material offense that results from the act (loss of a person's life), which an act is prohibited by law, so according to Prof. Eddy OS Hiariej, which agrees with Kohler's opinion, the individualization theory is the most likely cause for an effect (Hiariej, 2014).

However, the legal facts, the murder was based on the order/will of Inspector General Ferdy Sambo based on the hurt (motive) related to sexual harassment (motive) against his wife, Putri Candrawati, so that the judge's decision in the *in cassu* case, Bharada E was sentenced to 1 year six months in prison, in contrast to the verdict Ferdi Sambo (No. 796/Pid. B/2022/PN.Jkt.Sel dated February 13, 2023) was sentenced to death and Putri Candrawati to 20 years in prison. From the website of the Central Jakarta High Court, the decision on behalf of the defendant Ferdy Sambo case number 53/PID/2023/PT.DKI, dated April 12, 2023, has upheld the *judex factie* decision of the district court of South Jakarta. Furthermore, the decision is still under examination at the cassation level because Defendant Ferdy Sambo appealed. But in the end, the Supreme Court has reduced the death sentence for disgraced former two-star police general Ferdy Sambo to life in prison on the grounds that he committed the premeditated murder of his own aide-de-camp Nofriansyah Yosua Hutabarat along with others.

Based on the description above, the author believes that the motive manifests and is seen as relevant in law enforcement, especially in the context of proof, because, reflecting on the example cases above, the judge imposes criminal responsibility on someone who is the cause (mistake) in this case Ferdy Sambo will be greater than someone who committed a criminal act based on an order (executor), even though in the Ferdi Sambo criminal case it was not clear what was the motive for the premeditated murder of Brigadier Joshua.

According to Article 340 of the Criminal Code, motives in criminal acts must be directly related to the conduct itself. There exists a rationale that necessitates the inclusion of motive, supported by arguments, due to its role as an intrinsic component of intention. This internal state of the perpetrator is closely linked to premeditated murder, culminating in the loss of a person's life. So, it is necessary, and its nature requires proof of how intentional and planned elements were carried out by the perpetrator. Within the sphere of criminal law, the urgency of motives may include



the three types of intentionality, which consist of intentionality as an intention (*oopzet asoogmerk*), intentionality as a certainty (*noodzakelijkbewustzijn*), and intentionality as a possibility (*opzet bij mogelijkheidsbewustzijn*), the three types of intentionality in the description are not regardless of the motivation behind the perpetrator in realizing his actions (Abidin & Hamzah, 2010). Law as a unit of codified norms regulates *rechts object*, namely society, which must remain open to developments. Laws may not be static at one point or monumental so that they can create a constant social life, and laws will always follow the development of society.

Considering the thoughts above, an affirmation and common view/interpretation are needed which aims to ensure that the application of a legal norm in a statutory regulation does not create habits and *debates* such as the position of motive as a means of proof in a criminal case of premeditated murder which gives rise to differences of opinion that impact in the law enforcement process. Hence, the implementation of legal reforms becomes imperative. In this scenario, the government, legal experts, and the House of Representatives collaborate to formulate statutory regulations, specifically the new Criminal Code. This endeavor seeks to realize the objectives of the law, namely certainty, advantage, and justice. The Indonesian version of the Criminal Code was passed by the House of Representatives at a plenary meeting last Tuesday, December 6, 2022.

The WvS version of the Penal Code, which is still in effect, differs from the recently adopted Criminal Code, particularly in terms of the motive position. The existing Criminal Code, as previously explained, does not explicitly address the requirement of a motive in the verification process. Conversely, in the recently approved Indonesian version of the Criminal Code, it is stated that motive plays a role in the judge's decision-making process and can be used as evidence. It is emphasized in Article 54 paragraph (1) letter b of Law no. 1 of 2023 concerning the Criminal Code, which reads, "In sentencing, it is mandatory to consider (b) the motives and objectives of committing a crime." The word 'mandatory' means that it is imperative (binding) for the judge to find a motive in a crime primarily related to the offense of premeditated murder. Such a notion was raised during a hearing at the Indonesian House of Representatives during the discussion of the Draft Criminal Code, namely, related to premeditated murder. It is established that the victim must perish, and the perpetrator intends this demise. Consequently, the concept of murder inherently encompasses an element of intention. Therefore Article 54 of the Criminal Code is more important to consider the motives, methods, means, or endeavors to murder, as well as the consequences and impact of murder in society.

Conclusion

Based on the presentation and findings in this study, the authors can conclude that, theoretically, there are differences in scientific views regarding the motives of some criminal law experts. Some stated that the motive was placed outside the formulation of the offense, which was not required to be proven because the Public Prosecutor



only proved the *bestanddeel delict* from the formulation of the offense itself. On the one hand, there were other opinions that motive had relevance to proving a criminal offense, in which case motive is a thing that becomes a unit in a person's inner state to commit a particular offense, and the importance of motive in the context of proof is that a person's sentence is accepted by a person who is indeed guilty of his criminal act. In addition, the Wetboek van Strafrecht (WvS) version of the Penal Code, which is still valid today, does not explicitly explain the position of motive in terms of whether or not it is necessary to prove it. However, in the Indonesian version of the Criminal Code, which has a tenor of three more years, the position of motive as something imperative is strictly regulated. as a basis for the consideration of the Panel of Judges to render a criminal verdict against parties who committed the criminal act of premeditated murder. In order to provide a concrete understanding of statutory regulation, reform must be carried out, especially in terms of an objective understanding of legal provisions. In other words, a unification of understanding is carried out so that at the implementing level, in this case, law enforcers do not give rise to different interpretations of the position of motives, especially in the context of evidence. The overarching goal is to align the application of the law with the core tenets of justice.

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Declarations

Author contribution : Author 1: initiated the research ideas, instrument construction, data collection, analysis, and draft writing; Author 2: revised the research ideas, literature review, data presentation, and analysis, and the final draft, adding references from journal articles and revised references into APA style. Author 3: revised the research ideas, literature review, finding International Journal related motives

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