

LEGAL ASPECTS OF THE CRIMINAL ACTS OF MURDER AND MUTILATION FROM A CRIMINOLOGICAL PERSPECTIVE

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ABSTRACT

The crime of mutilation is included in the category of sadistic crimes, where the perpetrator of the crime not only kills or takes the life of another person but the perpetrator also cuts up every part of the victim's body while the victim is dead, that this crime is a follow-up crime from the crime of murder so that the victim's whereabouts are unknown or if known, it will deceive the police investigators in revealing his identity. The problem in this thesis is the regulation of the crime of murder with mutilation in Indonesia, what are the factors causing the crime of murder with mutilation in the view of criminology, how is the criminal policy against the crime of murder with mutilation against a wife. Based on the problems presented, it is known that the regulation of the crime of murder with mutilation in Indonesia does not yet have a law or regulation that specifically regulates the crime of mutilation. The Indonesian Criminal Code (KUHP) does not have any specific provisions on the crime of mutilation, but only on the crime of murder in general as regulated in Article 338 of the Criminal Code and Article 340 of the Criminal Code.

1. Introduction

Crimes committed by criminals are a social phenomenon that occurs in society. Every day, the mass media reports various crimes occurring in this country. Individuals, in pursuit of their livelihoods, ignore the reasons for their actions. Some perpetrators are unafraid of law enforcement, which regulates public order and security.

Incidents of murder and assault continue to evolve, accompanied by a wide variety of styles and methods, from the simplest to the most sophisticated.

"Murder means taking a life, which means taking life from a human being."

Murder is carried out using cruel methods such as prior torture, burning, and even mutilation. Mutilation is a form of murder that involves dismembering the victim's body into several parts, done with the aim of destroying evidence.

Mutilation crimes typically occur depending on the perpetrator's mental state, with perpetrators often experiencing mental disorders. Mutilation is a subsequent crime to murder. The intention is to conceal the murder, so the



victim's body is mutilated, preventing investigators from identifying the victim or, if discovered, hindering investigations in uncovering their identity.

From a criminological perspective, mutilation is defined as the separation of one body part from another due to unnatural causes. Within the context of a crime, the perpetrator typically commits mutilation with the goal of severing the connection between themselves and the victim and preventing the victim's identity from being recognized for various reasons.

The primary motive for mutilation is to eliminate the victim's identity, making it difficult to trace, let alone the perpetrator. Mutilation by dismembering the body also reflects the perpetrator's panic. After committing mutilation, the perpetrator typically panics and seeks a shortcut to escape.

2. Research Method

The type of legal research used is normative juridical. Normative juridical research is research that places norms as the object of research, whether legal norms in statutory regulations or legal norms derived from statutes. It is also called doctrinal legal research, which uses secondary data. Normative legal research is known as qualitative legal research.

The data collection tool in this study used the Library Research method. Data were obtained from various literature sources, including scientific journals, laws and regulations, and other documentation such as magazines, the internet, and other theoretical sources related to murder by mutilation committed by a husband against his wife.

Data analysis is the process of organizing, sorting, grouping, coding, and categorizing data, then organizing it into a form of data management to identify themes and working hypotheses that are developed into substantive theories. Qualitative analysis means analyzing legal materials qualitatively using orderly, coherent, logical, and effective sentences, thereby facilitating interpretation of the legal materials and understanding the results of the analysis.

3. Research Results And Discussion

Mutilation is the cutting or destruction of a corpse, often motivated by sexual crimes, where the victim's body is often damaged or dismembered. The crime of mutilation (human cutting) is a crime classified as a crime against the body, involving the cutting off of certain body parts from the victim. Grammatically, the word "mutilation" itself means the separation, removal, severing, or cutting off of certain body parts. In this context, mutilation itself is permitted in the medical world, where it is known as amputation.



To date, there are no express and clear provisions governing the crime of mutilation, either in the Criminal Code or other laws and regulations. Therefore, this journal is written to address the articles of the Criminal Code related to the crime of mutilation, thereby achieving the goal of the principle of legality, namely upholding legal certainty and preventing arbitrary action by those in power.

Premeditated murder consists of murder as defined in Article 338, plus the element of premeditation. The heavier penalty for premeditated murder, compared to murder under Article 338 or Article 339, is based on the element of premeditation. Article 340 is formulated by restating all the elements of Article 338, then adding one more element: "with premeditation." Because Article 340 repeats all the elements of Article 338, premeditated murder can be considered a separate, stand-alone murder (*een zelfstanding misdrijf*) unlike ordinary murder in its principal form (Article 338). This is different from murder followed, accompanied, or preceded by another crime (Article 339), where the elements of Article 338 are no longer mentioned in the formulation of Article 339; it is simply referred to as murder, which refers to the meaning of Article 338. Therefore, it is no longer disputed that murder under Article 339 is a special form of aggravated murder (*gequalificeerd misdrijf*). Moreover, premeditated murder was intended by the law's drafters as a special form of aggravated murder. It should not be formulated in this way. Instead, Article 340 simply defines it as murder, without needing to reiterate all the elements of Article 338. The formulation could be, "Murder committed with premeditation shall be punished as premeditated murder." and so on.

The crime of mutilation usually depends on the perpetrator's mental state, with perpetrators tending to suffer from mental disorders. The crime of mutilation is a subsequent crime to murder. With the intention of concealing the murder, the victim's body is mutilated, thus preventing the victim's whereabouts from being known or, if discovered, hindering investigators in uncovering their identity.

From a criminological perspective, mutilation is the separation of one body part from another due to unnatural causes. Some causes of mutilation are accidental, deliberate, or motivated by criminal intent, and other factors such as circumcision. In the context of a crime, perpetrators typically commit mutilation with the goal of severing the relationship between themselves and the victim and preventing the victim's identity for various reasons.

Despite all of this, mutilation crimes are often committed by individuals experiencing depression and mental disorders. By not mutilating the victim's body, perpetrators are often dissatisfied with completing their crime.





The primary motive for mutilation murder is to eliminate the victim's identity, making it difficult to trace, let alone the perpetrator. Eliminating identity by dismembering the body also reflects the perpetrator's panic. After committing murder, the perpetrator usually panics and seeks a shortcut to escape. Mutilation murderers are also generally highly intelligent, especially if the perpetrator considers removing the head, fingers, and bones as a way to complicate the investigation.

The widespread use of this method of mutilation by criminals occurs due to various factors besides covering up traces. These include a person's psychological condition, which can lead to psychological disturbances that can be classified as inhumane acts, social factors, romantic interests, economic factors, or the perpetrator's domestic circumstances.

When a crime occurs, public attention is drawn to the perpetrator, both in terms of their personality and the nature of the crime. However, upon closer examination, it is not objective to focus on the perpetrator of mutilation murder without examining other factors that contribute to the crime. Murder by mutilation is a sadistic crime, where the perpetrator not only kills or takes the life of another person but also dismembers every part of the victim's body. This crime usually occurs depending on the perpetrator's mental state, with perpetrators tending to suffer from mental disorders. Other experts argue that this crime is a follow-up to a murder. The intention is to cover up the murder, so the victim's body is mutilated, preventing the victim's whereabouts from being identified or, if known, to deceive investigators in determining their identity.

Urbanization can influence crime. The greater the migration of people from rural areas to cities, the greater the incidence of crime in those cities, as cities automatically become more densely populated. Crime-ridden and slum areas can also contribute to crime. Certain areas with their own characteristics tend to lead to crime. For example, densely populated areas with poor security systems are more likely to be targeted for crime.

This crime can be addressed through preventive and repressive measures. This form of countermeasure involves imposing sanctions on perpetrators of criminal acts. Criminal sanctions are the best available tool we have to deal with threats of harm. Criminal sanctions are sometimes the primary guarantor, and ethics are the primary threat to human freedom.

Perpetrators of crimes can be subject to criminal sanctions or punishment. Specifically regarding the issue of punishment, as one of the fundamental issues of criminal law, a crucial issue is the concept of the purpose of punishment, which seeks to justify punishment in an effort to make it more functional.



Recently, there has been a trend towards an increase in the number of murders accompanied by mutilation. Crime prevention efforts have been and continue to be undertaken by both the government and the community. Various programs and activities have been implemented while continuously seeking the most appropriate and effective ways to address this problem. Based on the elements or subsystems within the criminal justice system, namely the police, prosecutors, courts, and correctional institutions, the operation of the criminal justice system can be interpreted as the operation of each of these elements, in their respective functional capacities, to confront and/or handle the crime of mutilation. Based on this understanding, the operation of the criminal justice system begins when information is received that a crime is suspected to be, is occurring, or has occurred.

Although some of these objectives have been achieved, this success has not been satisfactory. It is acknowledged that numerous mutilation cases have been resolved by the judiciary through the operation of the criminal justice system, resulting in numerous decisions, but many of these decisions have not satisfied the public that justice has been served.

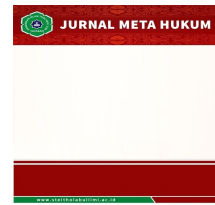
The increasing and frequent occurrence of crime is a matter of great concern, thus calling on the government (state), as the public servant and protector, to address the spread and increase of crimes that violate the values and norms that exist and apply within a society, thus making these crimes criminalized by the state. Criminal law is an important tool in crime prevention, or perhaps a remedy for eradicating crimes that disturb and harm society in general and victims in particular.

The use of penal measures through the criminal justice system in handling mutilation crimes must continue to be carried out by law enforcement officials, including police, prosecutors, judges, and correctional institutions. The use of penal measures or criminal sanctions to address these crimes must be undertaken with caution, as it is not impossible that they could backfire, creating harm and increasing the number of crimes in society.

Crime prevention efforts through penal or criminal law channels emphasize repressive measures, namely eradication or suppression after the crime has occurred. This effort is undertaken when preventive measures or preventative measures are unable to prevent the crime.

In accordance with the nature of the source of crime, crime prevention is generally carried out through preventive and repressive efforts. The Medan City Police Criminal Investigation Unit has formulated a crime prevention strategy, stipulating that the basic pattern of crime prevention is integrated, involving components outside the National Police (Polri). Therefore, crime prevention





involves not only internal elements of the Police but also elements outside the Police, supported by active community participation.

Crime prevention efforts through preventive measures, involving the National Police and other law enforcement agencies, along with support from community self-help groups, strive to minimize the space and opportunities for crime. These efforts include providing public awareness of crimes to prevent them from committing crimes that seriously disturb the community, and strengthening religious practices, as good religious practices can prevent crime.

4. Conclusion

In Indonesia, there are no laws or regulations specifically governing the crime of murder with mutilation. The Indonesian Criminal Code (KUHP) does not specifically address the crime of mutilation, but only covers the crime of murder in general, as stipulated in Articles 338 and 340 of the Indonesian Criminal Code. Criminology categorizes the causes of murder with mutilation into two categories: intrinsic (internal) and extrinsic (external). Intrinsic (internal) factors include: pressing economic needs, intelligence, age, and gender. Extrinsic (external) factors include: education, social circle, environment, occupation, and a weak community security system.

Criminal policy regarding the crime of murder with mutilation involves both penal and non-penal measures. Penal efforts or criminal law enforcement involve a process that begins with a report to the police, followed by an investigation, inquiry, and referral to the prosecutor's office, which is then transferred to the court. The judge in court will decide whether a crime of premeditated murder with mutilation is committed based on the indictment and the principle of justice for both the perpetrator and the victim. Non-penal efforts include counseling and providing education on preventing the crime of premeditated murder with mutilation.

References

- Bambang Waluyo, *Pidana dan Pidanaan*, Sinar Grafika, Jakarta, 2018.
- Barda Nawawi Arief, *Kebijakan Formulasi Ketentuan Pidana Dalam Peraturan Perundang-Undangan*, Pustaka Magister, Semarang, 2012.
- Gerson W. Bawengan, *Masalah Kejahatan dengan Sebab dan Akibat*, Pradnya Paramita, Jakarta, 2017.
- P.A.F. Lamintang dan Theo Lamintang, *Kejahatan Terhadap Nyawa, Tubuh dan Kesehatan*, Sinar Grafika, Jakarta, 201.



- R. Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana di Indonesia*, Rarifa Aditama, Bandung, 2013
- Soedjono Dirdjosiswoyo, *Ruang Lingkup Kriminologi*, Remaja Karya, Bandung, 2016.
- Akhyaruddin, A., Marzuki, M., & Mukidi, M. (2023). ANALISIS YURIDIS TINDAK PIDANA PENCUCIAN UANG DARI HASIL TINDAK PIDANA NARKOTIKA (Studi Putusan Mahkamah Agung RI Nomor 250 K/Pid.Sus/2018). *Jurnal Meta Hukum*, 2(2), 27-38. <https://doi.org/10.47652/jmh.v2i2.420>
- Akhyar, A., Danialsyah, D., & Bukhari, B. (2023). ANALISIS YURIDIS TINDAK PIDANA PEMBUNUHAN DISERTAI PEMERKOSAAN (Analisis Putusan Nomor 271/Pid.B/2019/PN Mrb). *Jurnal Meta Hukum*, 2(2), 39-50. <https://doi.org/10.47652/jmh.v2i2.421>
- Simalango, D. ., Marzuki, M., & Mukidi, M. (2023). PERTANGGUNGJAWABAN PIDANA OLEH KURATOR ATAS TINDAKANNYA YANG MERUGIKAN BUNDEL PAILIT (Studi Kasus Putusan Pengadilan Negeri Jakarta Pusat Nomor 2081/Pid.B/2011/PN.Jkt.Pst). *Jurnal Meta Hukum*, 2(2), 51-62. <https://doi.org/10.47652/jmh.v2i2.422>
- Sianipar, E. P. U. ., Lubis, M. Y. ., & Akhyar, A. . (2023). ANALISIS YURIDIS PERTANGGUNGJAWABAN PIDANA PERMUFAKATAN JAHAT (SAMENSPANNING) DALAM KEJAHATAN NARKOTIKA YANG DILAKUKAN OLEH ANAK (Studi Putusan Nomor 57/Pid.Sus-Anak/2022/PN Lbp). *Jurnal Meta Hukum*, 2(2), 63-76. <https://doi.org/10.47652/jmh.v2i2.423>
- Marzuki, M., Faisal, F., & Akhyar, A. . (2023). PENEGAKAN HUKUM TERHADAP TINDAK PIDANA PEMALSUAN SURAT PERSETUJUAN BERLAYAR (Studi Putusan Nomor 249/Pid.B/2021/PN Ktp). *Jurnal Meta Hukum*, 2(2), 77-88. <https://doi.org/10.47652/jmh.v2i2.424>
- Mustamam, M., Bachri, H. ., & Mukidi, M. (2023). IMPLEMENTASI UNDANG-UNDANG NOMOR 35 TAHUN 2009 TENTANG NARKOTIKA MELALUI FUNGSI ASESMEN DALAM UPAYA PENYELESAIAN TINDAK PIDANA PENYALAHGUNAAN NARKOTIKA (Studi Di Kepolisian Sektor Aceh Selatan). *Jurnal Meta Hukum*, 2(2), 89-104. <https://doi.org/10.47652/jmh.v2i2.425>
- Gulo, I. E. ., Mukidi, M., & Mustamam, M. (2023). ANALISIS YURIDIS PENERAPAN DIVERSI DALAM PERADILAN PIDANA ANAK ATAS TINDAK KEJAHATAN PIDANA PENGANIAYAAN DI INDONESIA (Studi Kasus Pengadilan Negeri Gunung Sitoli). *Jurnal Meta Hukum*, 2(2), 105-115. <https://doi.org/10.47652/jmh.v2i2.426>

- Affan, I., Jonizar, J., & Mukidi, M. (2023). ANALISIS YURIDIS TINDAK PIDANA MENGGUNAKAN SURAT PALSU DALAM PELEPASAN HAK PENGUASAAN DENGAN GANTI RUGI DALAM JUAL BELI TANAH (Studi Putusan Nomor 1722/Pid.B/2021/PN Lbp). *Jurnal Meta Hukum*, 2(2), 116-128. <https://doi.org/10.47652/jmh.v2i2.427>
- Triyunda, R. ., Mustamam, M., & Danialsyah, D. (2023). PERTANGGUNGJAWABAN PIDANA AHLI WARIS YANG MENJADIKAN HARTA WARISAN SEBAGAI JAMINAN KREDIT TANPA PERSETUJUAN AHLI WARIS (Studi Putusan Pengadilan Negeri Metro Nomor 121/Pid.B/2021/PN. Met). *Jurnal Meta Hukum*, 2(2), 142-154. <https://doi.org/10.47652/jmh.v2i2.429>
- Montana, V. ., Lubis, M. Y. ., & Affan, I. . (2023). PENEGAKAN HUKUM TERHADAP PRAJURIT TNI YANG MELAKUKAN TINDAK PIDANA PENYALAHGUNAAN NARKOTIKA (Studi Putusan Pengadilan Militer I-02 Nomor 109-K/PM.I-02/AL/XI/2022). *Jurnal Meta Hukum*, 2(2), 168-181. <https://doi.org/10.47652/jmh.v2i2.431>