

JUDICAL REVIEW OF PERPETRATORS OF PREMEDITATED MURDER COMMITTED ON THE BASIS OF SUPERIOR ORDERS

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ABSTRACT

This research delves into the judicial review of premeditated murder cases committed based on superior orders, using the case of former Chief of the Professional and Security Division of the Indonesian National Police, Inspector General Ferdy Sambo, as a focal point. The study aims to explore the legal implications, public perception, and standard procedures within the police force regarding subordinate compliance with superiors. Employing a descriptive analysis methodology, data was gathered through literature review from secondary and tertiary sources. The findings illustrate the intricate balance between accountability, legal principles, and ethical considerations in law enforcement. While acknowledging the necessity of punishment in criminal law, the research emphasizes the importance of accurately applying legal terms, especially regarding the element of premeditation, to ensure justice and uphold legal certainty. Recommendations include continuous education and training for law enforcement personnel to prevent errors and uphold ethical standards in the execution of their duties.

Keywords: Perpetrator of Criminal Acts, Premeditated Murder, Superior's orders

INTRODUCTION

Indonesia is a legal state, based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Every person who occupies the territory of Indonesia is obliged to comply with the laws in force in Indonesia and no one is immune from the law, and every Actions must be based on and have consequences in accordance with the laws and regulations existing in the Republic of Indonesia, which aim to realize orderly, prosperous and just social life in society, nation and state in order to achieve the goals of the State. (Aryan et al., 2024)

The increasing communal conflicts lately in various places involving ethnicity, religion, and inter-community have become significant social facts in recent times, regardless of the scale or intensity of the incidents. These conflicts are the result of long-standing social processes within society that cannot be collectively addressed. Inter-regional, inter-ethnic, and separatist movements are real threats faced by Indonesia as a unitary state. One form of conflict, namely in the form of crime, requires special attention regarding crimes such as assault, murder, and theft.

The occurrence of assaults, murders, and thefts, as evident from various sources, indicates that these actions are not detached from the behavior of a poorly controlled society due to low levels of education and the influence of negative social environments. Disputes, whether personal or group-based, can be factors that lead to violent criminal acts, ultimately resulting in murder.

One example is the alleged premeditated murder committed by former Chief of the Professional and Security Division of the Indonesian National Police, Inspector General Ferdy Sambo, against his aide, Brigadier Nofriansyah Yoshua Hutabarat, which has garnered public attention in recent months. The alleged premeditated murder was carried out by the suspect, Ferdy Sambo, through his aide, Bharada Richard Eliezer, who is suspected to be the executor in the murder planned by Ferdy Sambo. In his statement, Ferdy Sambo admitted to participating in the killing of the victim, Nofriansyah Yoshua Hutabarat. (Ashifa et al., 2024)

Initially, Ferdy Sambo claimed that there was a shootout between Bharada Richard Eliezer and Brigadier Yoshua, allegedly due to harassment by Brigadier Yoshua towards Putri Chandrawati, Ferdy Sambo's wife. However, Ferdy Sambo ultimately confessed that he ordered Bharada Richard Eliezer to shoot Brigadier Yoshua and staged it as if there had been a shootout. (Junaedi et al., 2023)

The motive for the murder is suspected to be because Yoshua Hutabarat harassed Ferdy Sambo's wife, Putri Chandrawati. Based on the reading of the indictment by the public prosecutor of the South Jakarta District Attorney's Office on October 17, 2022, Ferdy Sambo was charged with premeditated murder under Article 340 of the Indonesian Criminal Code, together with Article 55 paragraph (1) subsection 1 subsidiary Article 338, with a maximum penalty of death, life imprisonment, or 20 years' imprisonment.

It is known that Richard Eliezer was designated as a Justice Collaborator regarding the case of premeditated murder against Brigadier Yoshua Hutabarat. The Law and Human Rights Protection Agency (LPSK) stated that Bharada Richard Eliezer met the requirements to become a Justice Collaborator. LPSK asserted that Bharada Richard Eliezer was not the main perpetrator in this premeditated murder case; rather, he participated in shooting Brigadier Yoshua to fulfill the orders of his superior, Ferdy Sambo. (Bardi, 2023)

The case of the alleged murder of Brigadier Yoshua reached a verdict on Monday, February 13, 2023. The South Jakarta District Court sentenced Ferdy Sambo to death, and Putri Candrawathi was sentenced to 20 years in prison. Based on Law No. 48 of 2009 concerning Judicial Power, Article 8 paragraph (1) states that "anyone who is suspected, arrested, detained, prosecuted, and/or brought before a court must be presumed innocent until proven guilty by a court decision that has obtained legal force." The presumption of innocence is explicitly stated in the Indonesian Criminal Procedure Code (KUHAP) and Law No. 48 of 2009 concerning Judicial Power. The implementation of the suspect's rights during the investigation must also comply with the provisions of the applicable laws and regulations.

Judge Wahyu Iman Santoso also provided an opportunity for the public prosecutor and legal advisors to submit legal remedies. Therefore, Ferdy Sambo and his legal advisors still have the opportunity to file an appeal. The death sentence imposed on Ferdy Sambo has not yet obtained legal force. After the verdict, Ferdy Sambo officially filed an appeal against the sentence imposed by the panel of judges through his legal representative. Ferdy Sambo filed his appeal on February 15, 2023. In contrast, Richard Eliezer, after being sentenced to 1 year and 6 months by the judge, did not appeal, so the verdict against him has become final and legally binding.

After filing the appeal, on April 12, 2023, the High Court of Jakarta rejected Ferdy Sambo's legal representative's arguments in his appeal memorandum. The judges upheld the death sentence against Ferdy Sambo. In the appeal memorandum, Sambo's legal representative questioned the death penalty imposed by the South Jakarta District Court, arguing that it violated human rights. However, the appellate judges deemed the death penalty to be applicable within Indonesia's positive legal system, as it could deter criminals. Thus, Ferdy Sambo's appeal was rejected. However, the appeal is not the only recourse for Ferdy Sambo to avoid the death penalty. After the appeal was rejected, Ferdy Sambo still has the possibility to file a cassation. In May, Ferdy Sambo officially filed a cassation. (Hakim, 2023)

Referring to the Regulation of the Chief of the Indonesian National Police No. 7 of 2022 regarding the Code of Ethics for the Profession of the Indonesian National Police, the Police Professional Code of Ethics consists of norms or rules that constitute the ethical or philosophical foundation with behavioral regulations or statements regarding what is required, prohibited, or improper conduct for the police. The Code of Ethics is a written system of professional norms, values, and rules that explicitly state what is right and wrong for professionals. The purpose of the code of ethics is to regulate and provide quality to the practice of the profession, maintain the honor and reputation of the professional organization, and protect the public who require professional services. The code of ethics thus becomes a mechanism for disciplining, nurturing, and controlling the work ethos of members of the professional organization.

This research aims to determine the influence of the case of the killing of Brigadier Joshua by Ferdy Sambo on the public's perception. The author seeks to understand the extent of the legal role in handling this case and the standard procedures for subordinate compliance with superiors in the police force. The benefit of this research is to provide an analytical overview of the Ferdy Sambo case, understand the legal basis applicable to the Ferdy Sambo case, and comprehend the background of the case.

LITERATURE REVIEW

A state based on law is a state founded on legal principles to guarantee justice for its citizens. Justice is considered a requirement to achieve happiness in life for the country's population, and as the basis of justice, it is necessary to form a moral attitude in each individual so that they become virtuous citizens. (Moh. Kusnardi Dan Harmaily Ibrahim, 1988) According to Maidin Gultom, justice can be interpreted as recognition of each individual according to their human values and position, both personally and in the context of their relationship with the surrounding environment. (Maidin Gultom, 2008)

Therefore, law enforcement is the implementation of legal norms which initially only exist in the form of ideals and are then realized in real life in society in accordance with the objectives of the law itself. Is Susanto states that the essential purpose of law is to establish rules to ensure legal certainty. Apart from the importance of maintaining legal certainty and justice, it also has significant value in obtaining legal benefits to improve people's social life. (Siswanto Sunarso, 2015)

Based on this, punishment is an important part of criminal law, because it is the culmination of the entire process of holding someone responsible who has been guilty of committing a criminal act. Punishment can be interpreted as the stage of determining sanctions and also the stage of providing sanctions in criminal law. The word "criminal" is generally interpreted as law, while "conviction" is interpreted as punishment. (Natsir, 2017)

One of the purposes of punishing those who have committed criminal acts is to provide protection to society. The implementation of criminal law (Strafrechtstheorieen) is important because people need to understand the nature of criminal law (straffen) and the legal basis of criminal law (de rechtsgrond van de straf). Franz von Liszt (Bambang Poernomo, 1983)

In line with this, the theory of criminal objectives is increasingly moving towards a more humane and more rational system. The course of the criminal system shows that it is retribution (revenge) or for the purpose of satisfying those who have a grudge, both the community itself and the party who is harmed or becomes a victim of crime. This is primitive, but sometimes its influence is still felt in modern times. It is also considered ancient, namely expiation, namely releasing lawbreakers from evil deeds or creating a balance between right and falsehood. (Hamzah, 2017)

METHODOLOGY

The research method employed in this study is descriptive analysis, as it is based on regulations governing the act of premeditated murder. The data collection technique utilized is through literature review obtained from secondary and tertiary sources, such as articles. The approach adopted in this research is conceptual, observing phenomena related to the enforcement of law concerning premeditated murder in accordance with the applicable legal theories.

DISCUSSION

Standard operating procedure for subordinate compliance to superiors in the police force

The police play a crucial role in maintaining order within society. However, it cannot be denied that there are numerous cases of police officers violating the police code of conduct, leading to multiple crises in law enforcement. Yet, the police are at the forefront of law enforcement in Indonesia. In carrying out their duties, all members of the Indonesian National Police (Polri), from central to regional officials, and even field officers, are guided by the principles of the Rule of Law in the Republic of Indonesia. Therefore, the execution of duties must be based on applicable laws, or what is known as positive law.

The 1945 Constitution is the highest legal source in Indonesia. The Constitution, also known as the constitution, encompasses all provisions and rules regarding fundamental state principles. Any action or behavior by individuals or authorities that deviates from or contradicts the constitution is considered unconstitutional. The 1945 Constitution contains at least four elements:

1. That the government, in carrying out its duties and obligations, is based on law or legislation.
2. The guarantee of human rights.
3. The division of powers within the state.
4. Oversight by judicial bodies.

Considering the scattered tasks and authorities of the police formulated in various laws and regulations, both specific and general, the police become an institution with vital functions necessary for human life. Based on the content of laws and regulations governing police duties and authorities, specifically related to law enforcement processes and internal organizational regulations, and generally covering roles as guardians, protectors, and servants of society.

Instructions within the police force form the basis for the tasks carried out by subordinates. Before these instructions are manifested into behavior, there exists intentionality. Intentions are assumed to be factors influencing behavior, and the behavior displayed is seen as an intention to comply with an instruction. Instructions are given by the authoritative source within the Police institution. According to Herbert Kelman, compliance is an expression of obedience to an authority's request even if one does not personally agree with the request. In the police force, subordinates must execute instructions as part of their job responsibilities. However, every individual has the right to agree or disagree with an instruction, even though they must ultimately carry it out. For subordinates who have a high intention to follow an instruction from superiors, this can become a burden, leading to behaviors that violate the Police Code of Ethics (KEPP).

Police officers must adhere to a standard of duty within the bounds of applicable laws, meaning that police officers are not justified in performing their duties based on personal inclinations, but rather must adhere to legal regulations. Government authority stems from laws and regulations, implying that authority derived from laws and regulations, the principle of legality becomes a primary principle upon which government operations are based, particularly ensuring that every government operation has the legitimacy of authority granted by legislation.

Besides carrying out duties and authorities based on laws and regulations, the police must also uphold good ethical standards by upholding Tibrata and Catur Prasetya. Morality in accordance with the police profession's code of ethics serves to prevent deviations in discretionary actions. Essentially, violations of the police profession's code of ethics by police officers result from discretionary actions that do not align with legal norms and professional ethics.

The perspective on ethics in this issue is personal autonomy ethics, or commonly known as human freedom. This theory suggests that humans have personal freedom (autonomy) of respect and honor. Morality is a rational self-regulator, a rational self-regulator, must be autonomous and free. Indeed, in this theory, every human being must be autonomous and free, including subordinates to their superiors. However, they are framed by the unit, in this case, the Police, where in police culture, there is always obedience of subordinates to superiors. This culture is very difficult for subordinates to reject orders, whether good or bad.

Violations or criminal acts by police officers that are not in line with the police code of ethics will certainly have legal consequences. The provisions regarding the Police Profession Code of Ethics as regulated in the National Police Chief Regulation No. 7 of 2006 and National Police Chief Regulation No.8 of 2006, are moral norms with the hope of fostering a high commitment among all members of the police force to adhere to and implement the Police Profession Code of Ethics in all aspects of life, including in the execution of duties, in daily life, and in service to society, the nation, and the state.

Institutional ethics are norms in the Police Profession Code of Ethics (KKEP) that contain guidelines for the attitude and behavior of every member of the police force in carrying out duties, authority, and responsibility for legal obligations and the use of police professional authority according to the respective police functions. Institutional ethics are mentioned in Paragraph 2 of Articles 5 and 6 of National Police Chief Regulation No. 7/2022. Article 5 regulates in detail the obligations of all members of the Police. Meanwhile, Article 6, which consists of 3 paragraphs, regulates the obligations of police members as superiors, subordinates, and commanding superiors.

The duty as a superior is regulated in Article 6 paragraph 1, which consists of 4 points. Quoted from National Police Chief Regulation No. 7 of 2022, the following are the 4 obligations of superiors:

- 1) Demonstrating exemplary leadership that serves, acts as a consultant capable of solving problems, and ensuring the quality of subordinates' performance and the unity of the Police force.
- 2) Following up and resolving task obstacles reported by subordinates within their authority.
- 3) Promptly addressing allegations of misconduct committed by subordinates.
- 4) Directing, supervising, and controlling the implementation of tasks, authorities, and responsibilities carried out by subordinates.

Meanwhile, the obligations as a subordinate are regulated in Article 6 paragraph 2, which consists of 3 points. The obligations of subordinates are as follows:

- 1) Carrying out orders from superiors related to the implementation of duties, functions, and authorities and reporting to superiors.
- 2) Rejecting orders from superiors that contradict legal norms, religious norms, and ethical norms.
- 3) Reporting to the issuing superior regarding the refusal to carry out orders to obtain legal protection from the issuing superior. There is one obligation for the issuing superior as stipulated in Article 6 paragraph 3, which is: The issuing superior, as referred to in paragraph (2) letter c, must provide protection.

Reasons for Forgiving Criminal Acts of Planned Murder Ordered by Superiors

In the articles of the Indonesian Criminal Code (KUHP), the elements of offenses and criminal liability are mixed in Books II and III, thus requiring an expert to distinguish between the two elements. According to the drafters of the Criminal Code, the requirements for prosecution are equated with offenses, therefore, the elements of offenses in prosecution must also be proven in court. Criminal liability leads to the punishment of perpetrators, if they have committed a criminal act and fulfill its elements as stipulated in the law. From the perspective of an illicit

act (obligation), a person will be held criminally accountable for such acts if they are unlawful. From the perspective of accountability, only a person "capable of being accountable" can be criminally liable.

The Indonesian Criminal Code explains the system of criminal liability it adopts but does not provide a clear explanation. Articles in the Criminal Code mention faults such as intent or negligence, but concerning the understanding of fault, intent, and negligence, they are not explicitly defined or explained by the law. The understanding of fault, intent, and negligence is not further elaborated, but based on legal doctrine and opinions of legal experts regarding the articles in the Criminal Code, it can be concluded that the elements of fault, intent, and negligence contained in the articles must be proven by the court. Therefore, to prosecute someone who has committed a criminal act, the court must also prove these elements. This means that criminal liability requires the role of a judge to determine and prove the elements of criminal liability because if these elements cannot be proven, a person who has committed a criminal act cannot be held accountable.

In criminal law, there are several reasons for judges not to impose punishment on perpetrators or defendants brought to court for committing a criminal act. These reasons are called grounds for forgiving punishment. Grounds for forgiving punishment are rules primarily presented to judges, which determine the circumstances under which a perpetrator who meets the formulation of an offense should or should not be punished. The judge places the authority of the legislator to determine whether there are special circumstances as formulated in the grounds for forgiving punishment. These grounds for forgiving punishment are reasons that allow someone who has actually fulfilled the formulation of an offense to not be punished. Unlike grounds for dismissing prosecution, grounds for forgiving punishment are decided by the judge by declaring that the nature of the act is excusable or the fault of the perpetrator is excusable, because there are legal provisions and laws that justify or forgive the perpetrator.

According to S.R. Sianturi, legal relationships must comply with public law. The position of the superior must be based on the provisions of public law. There are three conditions that must be met to be called an official order, namely:

- 1) There is a relationship between the issuer and the executor of the order based on public law.
- 2) The authority of the issuer must correspond to his position based on public law.
- 3) The order given falls within the scope of his authority.

The Criminal Code defines the grounds for forgiving criminal acts, namely reasons that eliminate the defendant's fault. The actions committed by the defendant remain unlawful and remain criminal because there is no fault. Grounds for forgiving are regulated in Article 44 of the Criminal Code (incapacity to be accountable), Article 48 (Duress), Article 49 paragraph 2 of the Criminal Code (defense of necessity that exceeds the limits or excessive self-defense), and Article 51 paragraph 2 of the Criminal Code (execution of an unlawful official order). The grounds for forgiving are as follows:

- 1) Incapacity to be accountable due to illness/mental disorder
- 2) Lack of knowledge of the existence of elements of the criminal act
- 3) Duress
- 4) Forced defense exceeding limits
- 5) Execution of an official order without authority, which the perpetrator believed to be legitimate.

The grounds for forgiving punishment as grounds for forgiving contained in the Criminal Code is Overmacht Relative or Duress. Overmacht is a relative duress (*vis compulsive*) like an emergency situation. Duress is regulated in Article 48 of the Criminal Code. The Criminal Code does not provide a definition of duress. In the Memorandum of Explanation (MvT), duress is described as force, every duress is in a position of compulsion (a tight spot). This duress is a psychological force from outside the perpetrator and this force is stronger than the perpetrator.

Excessive Self-defense (*Noodweer exces*) Article 49 paragraph (2) of the Criminal Code states that Excessive self-defense, directly caused by severe emotional shock due to an attack or threat of attack, is not punishable. There is a similarity between self-defense (*noodweer*) and excessive self-defense (*noodweer exces*), namely both require

an unlawful attack to be defended, namely the body, honor, decency, and property, whether one's own or another's. The difference is:

- a) In excessive self-defense (noodweer exces), the perpetrator exceeds the limits due to severe emotional shock, therefore,
- b) The act of self-defense exceeding the limits remains unlawful, only the person is not punished due to severe emotional shock.
- c) Furthermore, excessive self-defense becomes the basis for forgiveness. Whereas self-defense (noodweer) is a justification, because, it is not against the law. In excessive self-defense, the defense limit that needs to be exceeded, so it is not proportional. Exceeding the defense limit has two forms. First, a person who is attacked due to severe emotional shock defends himself momentarily at the time of the attack (Hoge Raad May 27, 1975 N.J. 1975, no. 463). So, here are two phases, first is noodweer exces. The second form is a person who has the right to self-defense because he is forced due to severe emotional shock from the start using tools that exceed the limits.

Executing an Unlawful Official Order, but the Defendant Believes the Order is Legitimate, Article 51 paragraph (2) of the Criminal Code states that the Order comes from an unauthorized authority, but the perpetrator believes that the order comes from an authorized authority. The perpetrator can be forgiven if he carries out the order with good intentions, believing that the order is legitimate, and still within the scope of his work. This is regulated in Article 51 paragraph (2) of the Criminal Code. There are three conditions that must be met to be called an official order:

- 1) There is a relationship between the issuer and the executor of the order based on public law;
- 2) The authority of the issuer must correspond to his position based on public law;
- 3) The order given falls within the scope of his authority.

In Article 51 paragraph (2) of the Criminal Code, exceptions to the common view are given if certain conditions are met above. In other words, even though the order given is not from an authorized official, in other words, an invalid official order, the person who carries out the order will not be punished if certain conditions are met.

CONCLUSION AND RECOMMENDATION

The crime of premeditated murder committed on the basis of orders from superiors has a legal status that varies. On one hand, the perpetrator can be designated as such and thus faces severe punishment. On the other hand, they may also be acquitted because they are positioned as victims of their superior's orders. The position of the perpetrator is as a subordinate to the issuing authority, where in standard compliance procedures, the subordinate's obligation to their superior is regulated in Article 6 paragraph (2). According to the Penal Code (KUHP), forgiveness of a criminal act is a reason that absolves the perpetrator's guilt, rendering their act unpunishable, although it remains illegal. The substance of unauthorized orders from superiors, namely orders without authority, fundamentally cannot exempt those ordered from punishment. The exception to the general provision regarding unauthorized orders from superiors is only if the ordered party meets two conditions stipulated in Article 51 paragraph (2) of the Penal Code, namely: if the ordered party, in good faith, believes that the order was given with authority; and, the execution of the order falls within the scope of the ordered party's job. The role of authorized and unauthorized orders from superiors in balancing the protection of the perpetrator and the public interest, based on Article 51 of the Penal Code, indicates that not all orders from superiors can exempt someone from punishment, rather an order must be carefully considered beforehand, whether it contradicts the law, decency, and humanity.

In cases of premeditated murder based on orders from superiors, judges must accurately use legal terms in considering the element of premeditation. The term "preparation with intent" is a different term and has different legal implications. Therefore, judges must accurately use legal terms in their considerations and judgments. The accuracy of judges in using criminal law terms makes them comprehensive in analyzing, considering, and deciding cases of premeditated murder. Furthermore, they must follow the development of understanding and requirements

of the element of premeditation. Planning involves not only the fulfillment of a decision of will calmly and within a certain time frame but also the implementation of the planned action as intended. A good understanding of criminal law and other supporting knowledge is essential for all law enforcement personnel to avoid errors that may damage criminal law principles alongside neglected legal certainty. Elements of the offense such as premeditation must be given serious attention in order to apply the law properly in investigation, prosecution, especially for judges adjudicating and deciding criminal cases, to prevent legal fallacies.

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