

Judge's Consideration in Assessing the Defendant's Denial in a Case of Premeditated Murder (Decision No. 160/Pid.B/2020/PnLmg)

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Abstract: The purpose of writing this research is to find out Judge's considerations in assessing the Defendant's rebuttal are in accordance with the Criminal Procedure Code in Decision Number 160/Pid.B/2020/PnLMG. This research uses normative legal research which is prescriptive in nature. The research approach used is the case approach (case approach). The research sources used include primary legal materials and secondary legal materials. The legal material collection technique used is library research. The analysis technique used is a deductive syllogism which originates from the major premise and minor premise so that conclusions can be drawn. Based on the results of the study it can be concluded that Judge in assessing the Defendant's objection is in accordance with the Criminal Procedure Code

Keywords: Criminal Procedure Code, Crime of Premeditated Murder, Denial Right, Judge's Legal Construction

1. Introduction

A criminal act is an act that is prohibited by law accompanied by threats or sanctions in the form of certain crimes for those who violate the prohibition. Rape, abuse, murder, theft, and so on are forms of criminal acts that are detrimental to society. The crime of murder is a form of crime that gets attention in society. Arrangements regarding murder in the Criminal Code are regulated in Articles 338 and 340. The difference in the formulation between the two articles is that in Article 340 it is a regulation regarding the crime of premeditated murder with criminal sanctions in the form of death penalty or a specified period of imprisonment for a maximum of twenty years.

According to the Criminal Procedure Code in Indonesia, each stage in the case settlement process is interrelated and supports one another. These stages include investigation, prosecution, and trial examination in court. Article 1 point 2 of the Criminal Procedure Code states, Investigation is a series of investigative actions in matters and according to the methods stipulated in this law to seek and collect evidence with which evidence sheds light on the crime that occurred and to find the suspect. Whereas prosecution in the Criminal Procedure Code is stated in Article 1 point 7 that, Prosecution is the act of the public prosecutor to transfer a criminal case to the competent district court in matters and according to the manner stipulated in this law with a request that it be examined and decided by a judge at trial.

When linked to Article 139 of the Criminal Procedure Code, the relationship between investigation and prosecution will be seen clearly, where in that article it determines that, after the public prosecutor receives or receives back the complete investigation results from the investigator, he immediately determines whether the case file meets the requirements to be able to or not referred to court. If the public prosecutor considers that the investigator's file is complete, the public prosecutor will immediately draw up an indictment. Provisions regarding the transfer of case files in accordance with Article 143 paragraph (4) of the Criminal Procedure Code are carried out by the public prosecutor by attaching an indictment.

Since the investigation process, the rights of suspects or defendants have been considered in the provisions of the Criminal Procedure Code. One of these rights is the right of denial. The right of denial in practice is often used when examining a defendant. The defendant sometimes denied the dossier he had signed during the investigation process, often for reasons of both physical and psychological pressure from investigators. In the case of premeditated murder at the Lamongan District Court with the Defendant, this is an example of the use of the right of denial. During the trial the Defendant denied the investigation report and denied the witness testimony presented by the public prosecutor.

The use of the right of denial will certainly have an impact on the running of the trial process, especially at the stage of proof to find the truth or at least get close to material truth. The impact of using the right of denial will of course be directed at the public prosecutor who must prove the charges he has drawn up. Of course, the public prosecutor will take strategic steps to confront the Defendant who uses his right of denial to convince the judge to make a decision.

2. Methodology

This research uses normative legal research which is prescriptive in nature. The research approach used is the case approach. The research sources used include primary legal materials and secondary legal materials. The legal material collection technique used is library research. The analysis technique used is a deductive syllogism which originates from the major premise and minor premise so that conclusions can be drawn.

3. Discussion

In Article 184 paragraph (1) of the Criminal Procedure Code what is meant by valid evidence are: a) Witness statements; b) Expert testimony, c) Letter; d) Instructions; e) Statement of the accused. Criminal procedural law in Indonesia as stipulated in the Criminal Procedure Code uses the theory of proof based on a negative law (*negatief wettelijk bewijstheorie*). This is stated in Article 183 of the Criminal Procedure Code which states that "A judge may not impose a sentence on a person, unless with at least two valid pieces of evidence he obtains confidence that a crime has actually occurred and that the defendant is guilty of committing it." (Susanti Ante, 2013: 100). In proving a criminal case, a research must be carried out first regarding the evidence used as evidence that the defendant is guilty. According to this theory, judges can only declare the defendant guilty in criminal law if they have fulfilled the evidence requirements in accordance with the provisions of the Criminal Procedure Code and the judge's belief in the case (Bastian Nugroho, 2017: 19).

Pursuant to Article 183 paragraph (3) of the Criminal Procedure Code, it says that an assessment of the strength of evidence of a clue in any given situation is carried out by a judge wisely and prudently after he has conducted an examination with full accuracy and thoroughness based on his conscience. As for the strength of proof, the evidence is similar in nature and strength to other evidence, that is, it only has the nature of "free" proof (Farhan Willy Grimaldi, 2019: 260). According to Yahya, what is implied in Article 189 paragraph (4) of the Criminal Procedure Code means that confession according to the Criminal Procedure Code is not evidence that has "perfect" evidentiary power or is not *volledig bewijs kracht*, nor does it have "decisive" evidentiary power or is not *beslissende bewijs kracht*. Because the defendant's confession or statement is not evidence that has perfect and decisive evidentiary power, the public prosecutor and the court still have the obligation to make every effort to prove the defendant's guilt with other evidence. The Criminal Procedure Code does not recognize statements or "unanimous confessions" and "pure". Whether or not the defendant confesses, the examination of evidence of the guilt of the accused remains an obligation in the trial (Yahya Harahap, 2012: 275).

The right of the Defendant to withdraw such statement during the trial examination process in the law is not limited, provided that the revocation is accompanied by a logical and well-founded basis, so as to be able to support the act of withdrawing said statement. The consequence is that if the basis for the revocation is acceptable to the Panel of Judges, then the information contained in the minutes of the investigation will be considered "incorrect"; and this statement cannot be used as a basis for evidence by the Public Prosecutor at trial. On the other hand, if the basis for withdrawing the statement cannot be accepted by the Panel of Judges, then the statement contained in the minutes of investigation can be used by the Panel of Judges as a tool to help find the truth.

Theoretically logical reasons included: There were traces of beatings and or torture on the defendant's body which was supported by the witnesses for the beating. However, in practice the traces of beatings during the investigation were no longer present during the trial. The defendant did not have complete data when the Minutes of Investigation were made. Usually this reason is put forward in cases of Corruption Crimes; For example, the suspect during the investigative examination was asked by the investigator to provide a list of his assets, but at that time the suspect was unable to provide the list of assets given to the investigator was incomplete (Yahya Harahap, 2012: 326).

The revocation of the Defendant's statement is also based on the interpretation of Article 66 of the Criminal Procedure Code which states that, "The suspect or defendant is not burdened with the obligation to prove." This means that one valid piece of evidence is that the defendant's statement/confession can be refuted or rejected by the defendant. The freedom or right of the accused not to answer questions raised by the examination process is also protected by the Criminal Procedure Code. As stipulated in Article 175 of the Criminal Procedure Code which states that, if the defendant does not want to answer or refuses to answer questions put to him, the head judge at trial recommends answering and after that the examination is continued. In addition, in giving testimony and answering or refusing to answer questions, the accused or witness should be sworn in to avoid the accused deliberately giving false information (P.A.F. Lamintang dan Theo Lamintan, 2009:293).

The revocation of the Defendant's statement will be assessed by the Panel of Judges based on the evidence supporting the reasons for the revocation of the Defendant's statement, if the reasons for the revocation are acceptable to the Panel of Judges then the Defendant's statement is of no value as evidence. However, if the revocation of the Defendant's statement by the Panel of Judges cannot be accepted because it is considered not accompanied by logical reasons and strong evidence to support that reason, it is an "indication" of the

Defendant's guilt. This is in accordance with the Jurisprudence of the Supreme Court of the Republic of Indonesia dated 23 February 1960 No. 299K/Kr/1995 provides a rule of law "the defendant's confession outside the courtroom which was later revoked at trial without a justifiable reason is an indication of the defendant's guilt". Likewise in the Supreme Court Decision dated February 25, 1960 No. 225K/Kr/1960, dated 25 June 1961 No. 6K/Kr/1961 and September 27, 1961 No. 5K/Kr/1961 which confirms "confessions given outside the trial cannot be revoked without any reason"

The use of the Defendant's statement as a guide was confirmed by the Supreme Court's decision dated September 20, 1977 No. 177K/Kr/1965, which emphasized: "That the confessions of Defendants I and II before the police and prosecutors, reviewed in relation to each other, can be used as a guide to determine the guilt of the accused". The contents of the Supreme Court decision above contain the principle that confessions given out of court can be used by the judge as a "guide" to determine the guilt of the accused (Yahya Harahap, 2012: 326).

The judge's consideration is very important in determining the realization of the value of a judge's decision which contains justice (*ex aequo et bono*) and contains legal certainty. The judge's considerations are the thoughts or opinions of the judge in making a decision by looking at things that can lighten and burden the offender. The judge's considerations are the elements of a crime that can show that the actions of the Defendant have fulfilled and are in accordance with the crime charged by the Public Prosecutor so that these considerations are relevant to the injunction of the Judge's decision (Lilik Muhliyadi, 2007: 193).

In Law Number 48 of 2009 concerning Judicial Power it is regulated that, "Judges' considerations are thoughts on the judge's opinion in making a decision by looking at things that can lighten and burden the perpetrator." The judge's considerations in imposing a decision are regulated in Article 50 paragraph (1) in conjunction with Article 53 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, which stipulates that, "A court decision must not only contain and the basis for the decision, it also contains certain articles of relevant statutory regulations or unwritten sources of law which are used as the basis for adjudicating."

In the Decision of the Lamongan District Court Number 160/PidB/2020/PnLMG the Public Prosecutor charged the Defendant Sunarto Supangkat with subsidiary charges, as follows:

- a. Primary, those who by giving or promising something, by abusing power or dignity, by violence, threats or deception, or by giving opportunities, means or information, deliberately encourage other people to commit acts, deliberately and with prior planning to take people's lives others, threatened with premeditated murder as stipulated and subject to criminal penalties in Article 340 of the Criminal Code in conjunction with Article 55 paragraph (1) 2nd of the Criminal Code;
- b. Subsidiaries, those who, by giving or promising something, by abusing power or dignity, by violence, threats or misdirection, or by giving opportunities, means or information, deliberately encourage others to commit acts, killings which are followed, accompanied or preceded by an act crime, which is carried out with the intention of preparing or facilitating its implementation, or to free oneself or other participants from a crime in the event of being caught red-handed, or to ensure possession of goods obtained unlawfully as stipulated and punishable by punishment in Article 339 of the Criminal Code in conjunction with Article 55 paragraph (1) the 2nd Criminal Code;
- c. More Subsidiaries, those who by giving or promising something, by abusing power or dignity, by violence, threats or misdirection, or by giving opportunities, means or information, deliberately encourage others to commit an act, deliberately take the lives of others, are threatened because murder as stipulated and punishable under Article 338 of the Criminal Code in conjunction with Article 55 paragraph (1) of the 2nd Criminal Code;
- d. More Subsidiary Again, those who by giving or promising something, by abusing power or dignity, by violence, threats or misdirection, or by giving opportunities, means or information, deliberately encourage others to commit acts, theft which is preceded, accompanied or followed by violence or threats of violence, against people with the intention of preparing or facilitating theft, or in the case of being caught red-handed, to allow themselves or other participants to escape, or to retain possession of stolen goods, if the act results in death as stipulated and punishable by crime in Article 365 Criminal Code in conjunction with Article 55 paragraph (1) 2nd Criminal Code.

At the trial when the Defendant was questioned by the Panel of Judges, in essence, the Defendant stated that he did not know the Witness Imam Winarto, who in this case was the person who committed the murder of the victim Hj. Rowaini also did not acknowledge what the Defendant had said in the investigation report. The Defendant's Legal Counsel through Pledoi/Defense basically conveyed the following:

- a. The defendant Sunarto had withdrawn or revoked all of the information contained in the Minutes of Examination carried out by the investigator and revoked all of the minutes because he felt pressure from

the investigator, even though the pressure from the investigator was not in the form of physical violence but was psychological pressure in the form of threats with words the word unfolds in the above juridical facts, causing fear which results in obeying orders from the investigator including the investigation report of the answers of the witness and/or the accused Imam Winarto in the investigation report (vide compare with the Elucidation of Article 52 of the Criminal Procedure Code in conjunction with Article 117 of the Criminal Procedure Code);

- b. The accusation of being involved as an advocate for committing murder was carried out by the Crown witness and there were no other witnesses to support the accusation and juridically there was no additional evidence from the Investigator and or the Public Prosecutor that strengthened the accusation from the crown witness as suggested by the Attorney General's Circular Letter described above, the investigation report must be ruled out;
- c. Implicitly it is also concluded in Article 55 paragraph (2) of the Criminal Code which says that "against the proponent, only acts that are intentionally recommended are taken into account, along with the consequences". which can be accounted for by the proponents of the aquo based on the testimony of witnesses and/or the accused Imam Winarto that the murder was carried out by poisoning but in reality it was carried out by stabbing a knife without the explicit consent of the defendant Sunarto Supangkat and therefore the consequences for all of the defendants Sunarto Supangkat were not can be held responsible for premeditated murder as charged in the primary indictment;
- d. There was a reason for the defendant Sunarto Supangkat to recommend killing because of an insult as stated by the witness and/or the defendant Imam Winarto, this reason was contrary to the testimony of the witnesses who stated that they never knew that between the defendant and Hj Rowaini there was an acrimony between them and their family after the divorce was good. Of course, and Hj Rowaini's worries about being reconciled to Supangkat are speculations because the reason for Hj Rowaini's divorce in 2003 was because Supangkat had an affair with his employee and his name was USWATUN, who is now his third wife;
- e. The defendant's statement alone is not enough to prove that he is guilty of committing the act he was charged with but must be accompanied by other evidence (vide article 183 of the Criminal Procedure Code in conjunction with article 189 paragraph (4) of the Criminal Procedure Code) moreover the dossier of the dossier on the statement of the accused has been refuted and revoked;
- f. The testimony of the three witnesses ade charge corresponds to one another since September 2019 the defendant Sunarto Supangkat resides temporarily in Jember renting a house and works every day to help his wife sell food and pastries so that the Public Prosecutor's objection not to transferring the KTP is only a normative obligation without sanctions and contrary to the reality in the field, you only need to change your KTP if you feel you have a permanent domicile and not a temporary residence with a rented house.

If you look at the Defendant's statement as well as the Pledoi or Legal Counsel's Defense above, it can be said that the Defendant in this case used his right of refusal as stipulated in Article 52 of the Criminal Procedure Code by withdrawing or withdrawing the statement during the investigation report and not admitting the guilt he was charged with. In withdrawing or withdrawing his statement, the defendant was based on the reason that during the investigation process he experienced psychological pressure by the investigator, but the retraction of the statement by the defendant was not accompanied by evidence supporting the reasons for retracting the statement.

In relation to the revocation of the Defendant's statement, the Panel of Judges in Decision No. 160/Pid.B/2020/PnLmg provides the following considerations:

- a. In their considerations, the Panel of Judges stated that from a juridical point of view the defendant "had the right" and was justified to "revoke" the information given during the investigative examination. The revocation is carried out during the trial court examination in progress. The law does not limit the right of the accused to retract such statement, as long as the revocation has a sound and logical basis. Such is the quality and logic of the reasons put forward, that they are truly able to support the revocation. If so, the quality of the reasons put forward is of course the revocation acceptable. If the judge can accept the reasons for revocation, it means:
 1. information contained in the investigation report, is considered "untrue"
 2. and that statement cannot be used as a basis to help find evidence in court. On the other hand, if the reason for the revocation cannot be justified, because the reason for the revocation that was found by the defendant has no basis and logical reasons, then the confession statement contained in the minutes of investigation is deemed correct, the judge can use it as a tool to help find evidence at trial.

- b. In their considerations, the Panel of Judges stated that the position and value of the statement of confession given in the minutes of investigation as in the Jurisprudence of the Supreme Court Decision dated September 20, 1977 No. 1777/K/Kr/1965 in the rule of law, confessions given outside the courtroom can be used by judges as "instructions" to determine the guilt of the accused. In the Supreme Court Decision dated 23 February 1960 No. 299 K/Kr/1959 provides a legal gift "the defendant's confession outside the courtroom which was later revoked at the trial court without a justifiable reason is an indication of the defendant's guilt". Likewise in the Supreme Court Decision dated 25 February 1960 No. 225 K/Kr/1960, dated 25 June 1961 No. 6 K/Kr/1961 and September 27, 1961 No. 5K/Kr/1961 which confirms "confessions given outside the trial cannot be revoked without any reason";
- c. In their considerations, the Panel of Judges stated that during the trial the Defendant stated that the Defendant did not know and had never ordered a person named Imam Winarto to kill the victim. The statement as in the Minutes of Examination number 23 where the Defendant stated that the Defendant held a grudge against the victim because the victim said it was unpleasant was not true, in essence the Defendant stated that what was in the Dossier was not true because when it was examined and the Dossier was made the Defendant was in a state of stressed;
- d. In their consideration, the Panel of Judges stated that in the testimony of the Defendant it was also stated that at that time the police officer who arrested him said the defendant "wanted to be taken to one place" if he did not want to confess. Apart from that, there were also police who said "if I cover up this case, then all of my family will be wiped out", and the defendant was very scared. While being detained in the cell there was a police officer who wanted to hit the defendant with the shoe he was wearing, fortunately he was not hit because it was blocked by the bars of the detention room. there were threatening words from the Police who arrested the accused;
- e. In their considerations, the Panel of Judges stated that during the trial when asked whether when the Minutes of Examination was made the Defendant had been threatened or pressured into giving his statement, the Defendant answered emphatically that when he was examined by the Investigators there was none;
- f. In their considerations, the Panel of Judges stated that Article 1 point 2 of the Criminal Procedure Code provides the definition "Investigation is a series of investigative actions in terms of and according to the manner stipulated in this law to seek and collect evidence which with that evidence makes it clear about the crime that occurred and to find the suspect." and the authority of investigators is that in addition to making arrests, detentions, searches and confiscations, they also summon people to be heard and examined as suspects or witnesses (vide Article 7 paragraph (1) of the Criminal Procedure Code). Furthermore, Article 1 point 5 of the Criminal Procedure Code also provides a definition "Investigation is a series of investigative actions to search for and find an event that is suspected of being a crime in order to determine whether or not an investigation can be carried out according to the method stipulated in this law." and one of the powers of the investigator is arrest (Vide Article 5 of the Criminal Procedure Code);
- g. In their considerations, the Panel of Judges stated that based on the description of the definitions and functions, the duties and powers as stipulated in the Criminal Procedure Code of Investigation are an integral part of the investigative function. If we borrow the words used in the KUHAP Implementation Guidelines, an investigation is one of the ways or methods or sub-functions of an investigation that precedes other actions, namely action in the form of arrest, detention, search, confiscation, examination of letters, summons, inspection actions, and submission of files to the public prosecutor. Whereas before any investigative action is carried out, an investigation is carried out by the investigating officer, with the aim and objective of collecting "preliminary evidence" or "sufficient evidence" so that follow-up investigations can be carried out.
- h. In their considerations, the Panel of Judges stated that the duties and powers of investigators and investigators in the aquo case were carried out in a different process which of course was carried out by officers who had different authorities so that if a threat was made by an officer at the time of arrest, of course it could not be used as an excuse at the time of the arrest. inspection was also threatened. As the testimony of the defendant himself during the trial stated that during the examination during the preparation of the Minutes of Examination there was no pressure or threats;
- i. In their considerations, the Panel of Judges stated that the Defendant in the investigation level of the Defendant's investigation had also been given the right to be accompanied by Legal Counsel and after re-examination the investigation report was read and the defendant had given initials and signatures to the investigation report so that the reason for revoking the investigation report was unreasonable and the information as presented in the investigation report is correct, then the Panel of Judges can use it as a tool to help find evidence in court;

- j. In their consideration, the Panel of Judges stated that in essence the Defendant had the right to deny his actions and regarding the revocation of the Minutes of Examination as the Panel of Judges considered on pages 66-67 that the revocation was groundless because the Panel considered the evidence as a letter giving instructions regarding the actions of the accused, so that this defense is groundless and the Panel of Judges rejects it.

After examining the considerations of the Panel of Judges above, the authors are of the opinion that the Panel of Judges in evaluating the Defendant's objection was in accordance with the Criminal Procedure Code. This is because the Judge in assessing the Defendant's objection was based on the provisions of the Criminal Procedure Code and was strengthened by the Jurisprudence of the Supreme Court Decision dated 23 February 1960 No. 299 K/Kr.1959 which provides a rule of law regarding the Defendant's confession outside the courtroom which was later revoked at trial without a justifiable reason, which is an indication of the Defendant's guilt, as well as the Supreme Court Decision dated 25 February 1960 No. 225 K/Kr/1960, dated 25 June 1961 No. 6 K/Kr/1961 and September 27, 1961 No. 5 K/Kr/1961 which emphasizes that confessions given outside of court cannot be revoked without any reason.

4. Conclusion

Based on what has been described in the results and discussion, the author draws the conclusion that, first, the Defendant in using the right of denial as stated in Article 52 of the Criminal Procedure Code is not in accordance with the Norms of Evidence in the Criminal Procedure Code because the use of the Defendant's right of denial in the form of revocation of the Defendant's statement is not accompanied by a basis logical reasons and supporting evidence. Second, the considerations of the Panel of Judges in assessing the Defendant's objection to Decision Number 160/Pid.B/2020/Pn.Lmg are in accordance with the provisions of the Criminal Procedure Code, so that the Revocation of the Defendant's Statement by the Panel of Judges is unacceptable.

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