

PREMEDITATED MURDER ON BOARD WHILE SEARCHING FOR SHELTER ACCORDING TO HUMAN RIGHTS

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Abstract

Premeditated murder is a crime against life stipulated in Article 340 of the Criminal Code. Premeditated murder is an act that stands alone with ordinary murder regulated in Article 338 of the Criminal Code. The provisions contained in the act of premeditated murder are a repetition of the murder act in Article 338 of the Criminal Code. The approach used in reviewing this research is the statutory approach (statute approach) and conceptual approach (conceptual approach). This research is legal (normative juridical) by understanding various sources. Primary is based on legislation, secondary is based on the study of books and journals, and the last is tertiary, based on dictionaries to find foreign languages that are difficult to understand.

Keywords: *Sustaining Life, Natural Factors, Premeditated Murder*

1. INTRODUCTION

The sea is a collection of water that has a salty taste that can provide an accurate picture of the entire area of the earth. Meanwhile, according to the legal perspective of Article 1 of Law Number 23 of 2014, the sea is a water space on earth that connects land with land and other natural forms, which is a geographical and ecological unity along with all related elements, and whose boundaries and systems are determined by laws and regulations and international law. In essence, use it to carry a means of transportation that uses engine technology, namely ships. Its form and uses are designed proportionally to achieve people's ambitions. There are three kinds of ship functions, including facilitating the exchange of initial positions to the place to be addressed, carrying objects that will move places or communities. Because the ship has expertise in a particular field, such as oil extraction drilling vessels, the last type of ship is a semi-transport vessel. This ship can be used as a support to move from one place to another, so that ship users can be used as boosters or towing other ships such as tugboats.

In accordance with the theme discussed, the emphasis is on the first type of ship as a means of free movement of goods and people. Goods have the properties of being perishable, destroyed, burned by fire, crushing other objects, requiring different finishes, and hardening. Force Majeure is a state in which a place is under pressure that cannot be prevented due to natural factors. If the goods are destroyed but against the will, Based on the Civil Code in the third book on engagement, Article 1245 means No cost of loss and interest, must be reimbursed, mainly due to force majeure or due to an accidental event the debtor cannot give or do something required, or because of other things. The same has done a forbidden act. Acts of unwilled or unintentional conduct are reasonable arguments for avoiding redress

It would be different if the loss of one's life was caused by premeditated murder due to fighting over buoys on the ship, because life cannot be replaced with anything. Based on Article 48 of the Criminal Code, whoever commits an act under the influence of force, is not punished). Thus was

born this research. This study has an element of novelty that is different from previous studies, namely the existence of a group of people who commit premeditated murder with the aim of robbing the buoy. However, compelling circumstances due to force majeure, such as goods, is still forgivable. However, it is different with humans who are seen from a human rights perspective if it is associated with the Criminal Code (which is general) Human Rights Law if it is associated with the Criminal Code (which is general). Human Rights Law has a unique character because based on the principle of *Lex specialis derogat legi generali*, legal concepts that lean towards the specific can change the legal concept in a general direction.

Based on the description above, the problem is: How are human rights in a legal perspective against premeditated murder that occurs on board ships due to the seizure of buoys if it is related to Article 28A of the 1945 NRI Constitution; and Are appropriate criminal sanctions against the perpetrators of premeditated murder. This article aims to examine and find out the differences between Article 1245 of the Indonesian Civil Code.

2. IMPLEMENTATION METHOD

This research wants to explore the position of written law synchronously until it reaches the even stage. The research method used is normative juridical or legal research, which is carried out by seeking truth coherence, examining the application of legal rules, legal norms, and applicable legal principles, and is associated with legal issues. This research is qualitative because it aims to explain a situation thoroughly and according to laws and regulations through people's representative institutions with arrangements made. This research was reviewed through reading references to obtain primary data based on the Human Rights Law and the Criminal Code. The goal is to make it easier to find the truth about the problem under study.

3. RESULTS AND DISCUSSION

3.1 Human Rights View on premeditated murder that occurred on board a ship due to the confiscation of buoys under Article 28A of the 1945 Constitution.

Life begins with the enjoyment given by God Almighty from birth. To live is to move as it should be. The meaning of life when associated with Human Rights is to carry out various kinds of activities. However, it must not act based on physical or background because if there is a violation, a person has the right to self-protection from the State, human rights are inherent rights in human nature and are fundamental as a gift of God Almighty and are gifts that must be respected, upheld, and protected by every individual, society, and State. This right is not only granted by the State, but existed before the State and community organizations were formed. Indonesia adopts human rights in Article 1 Paragraph 1 of Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, which means a set of rights inherent in the essence and existence of humans as creatures of God Almighty and is His gift that must be respected, upheld and protected by the state, law, government, and everyone, for the honor and protection of human dignity and dignity). This is similar to Pancasila, where each precept contains a deep meaning regarding human rights that guide the State of Indonesia. The government must ensure that there are no human rights violations, and anyone who violates them must be subject to strict sanctions. Living on earth is a human right.

Jan Materson argues that human rights are "can be generally defined as those rights which are inherent in our nature and without which we cannot live as a human being." Therefore, anyone cannot arbitrarily eliminate or even revoke this right. use the ability of reason in various things. The

right to life is a fundamental human right, non-derogable right. If the right to life does not exist, then another human rights problem arises.

Maintaining life means that a person tries to save his life to continue his daily life by eating and drinking, exercising, maintaining a healthy body, getting enough sleep, and surviving in a state of urgency or emergency. Circumstances that force a person to do anything to save his life can occur in premeditated murder in the seizure of buoys on a ship.

Premeditated murder is contained in Article 340 of the Criminal Code, which states, Whoever intentionally and with premeditation deprives another person of life, shall be threatened with murder with premeditation, with the death penalty or imprisonment for life or for a certain time, not more than twenty years). This article means that an act committed in a sane state accompanied by the intent to forcibly deprive another person of his life will be punishable by death or life imprisonment or a maximum of twenty years imprisonment. Premeditated murder when viewed from a human rights perspective and associated with Article 28A of the 1945 Constitution and the Criminal Code, is an inappropriate act because murder is a cruel act.

3.2 Appropriate criminal sanctions against premeditated murder due to confiscation of life support

The Criminal Code not only gives orders regarding the imposition of crimes that should be punished to perpetrators, but also regulates unlawful acts or acts that cannot be criminalized. In other words, the Criminal Code regulates the elimination of criminal acts committed by perpetrators for acts that should be punishable by crime. Abolition of a criminal offence is a circumstance that makes a person commit a criminal offence but is not charged. This means that it can happen at any time without knowing the time. Disasters sometimes require a person to try to save themselves, as happened to a ship in the middle of the sea, which can be anticipated by wearing life jackets on ship passengers. The life jacket must have a shape that can support the weight of every human being so that it can float. Based on the related theme, buoys are the main target for passengers who want to save themselves, so that excessive seizure of the object can occur and result in the death of other passengers. This action can lead passengers to the crime of premeditated murder. Premeditated murder satisfies the element of "unlawful nature", which means that the act is contrary to what is allowed by law or the act is inappropriate. But judging from the situation they did this because of forced circumstances.

Coercion or overmacht is regulated in Article 48 of the Criminal Code, which means that it cannot be punished by anyone who has committed an act under the influence of a compelling circumstance. Forced force is defined as a condition that is beyond human capacity, and forces someone so that it can make the position go awry. Overmacht comes from Dutch, which means a state that cannot be avoided by anyone in any form of business. According to *Memorie van Toelichting*, "coercion is a force, impulse, or compulsion that cannot be resisted. In addition, Simons also gave the view that force must be separated into two, namely narrow coercion and emergency. Narrow coercion means that there is no fault in the act. While emergency coercion means that the act eliminates the position against the law. Based on this description, when a passenger snatches a life vest belonging to another passenger to cause the loss of another person's life, it is not against the law due to an emergency. This situation leads to the non-fulfillment of the element of premeditated murder in Article 340 of the Criminal Code. This absolute compulsion is a condition where a person cannot do anything else so that he experiences something that is completely unavoidable and impossible to take another path. In particular, the passenger's intention is only to save himself, and

there is no punishment in the absence of unlawful acts. Indonesia's penal code does not condemn the crime of *overmacht*. This is the same with human rights. The 38 correct arguments for tolerating people who take buoys because they are forced to are because the situation inside becomes panic and abnormal.

Therefore, people who kill by coercion can be sentenced to acquittal. Answered is the meaning of Article 28A of the 1945 Constitution. He wants a person to survive without committing unlawful acts, provided that if he is forced to, there is no other choice to survive. In this case, human rights and the Criminal Code provide excuses for forgiveness if the act of defending life must eliminate the lives of others. These actions are only limited to maintaining life. It should not be more than that, such as stealing in a state of urgency and other evil intentions. Human rights laws tend to be specific, and the Criminal Code is general, in accordance with the principle of *lex specialis derogat legi generali*.

The perpetrator's actions are already categorized as crimes and must be sanctioned for taking the life of someone who has the right to life, but the perpetrator cannot be punished for forgiving reasons. The action taken by the perpetrator is the impulse of *Overmacht*, which is done because of a compelling impulse so that he takes action because of internal pressure coming from outside or unexpected directions. Therefore this inner function becomes abnormal. Based on the principle of no crime without guilt, the provision of crime against humans can be done by looking at the element of guilt in the perpetrator. This principle is the same as the saying "there is no smoke without fire". This means that an act will not arise without a cause, but in premeditated murder, in the case of fighting over a float to save one life, a person can still get legal protection.

4. CONCLUSION

Human rights regulate the right to life that humans are born with, without exception. Based on Article 28A of the 1945 Constitution which reads, "everyone has the right to live and has the right to defend his life and life", it can be concluded that a person who has a life vest or other safety device has the right to live before the device is seized by another person, so that the person loses his life and results in premeditated murder. However, due to a compelling emergency or *Overmacht*, the act is not categorized as premeditated murder. The sentence is abolished, even though the victim also has the right to live in accordance with Article 28A of the 1945 Constitution.

The sanction given to a person who commits murder under compulsory circumstances or *Overmacht* is protected by Article 48 of the Criminal Code, which means (Whoever has committed an act under the influence of a compelling circumstance). That is, in circumstances that are beyond man's capacity, and they threaten his life or his own soul, in a state of oppression that cannot be resisted, or in a state where there is no other way out but to do so, and it can be proven, then the person is legally free and obtains criminal removal. Despite the principle of *Lex specialis derogat legi generali*, they were forgiven in desperate circumstances.

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