

Analysis of Evidence Elements Intentional and Planning on the Crime of Planning Murder in the Decision of the East Jakarta State Court Number 490/Pid.B/2017/Pn.Jkt.Tim

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ABSTRACT

Premeditated murder in the terminology of criminal law is a criminal act of eliminating life which is planned or thought out in advance to decide the plan of the perpetrator. One of the criminal acts of killing life is premeditated murder which has been regulated in Article 340 of the Criminal Code. In the current era, there is still a criminal act of premeditated murder that violates legal norms in society and becomes a deep wound for the victim's family, therefore the perpetrator must be held accountable for his actions. This research method uses a normative juridical approach, where library research is carried out through an inventory of materials from books and legislation. Based on this research, it can be concluded that the application of the law to the crime of premeditated murder is that the defendant is accused of being the perpetrator of the crime of premeditated murder where the Defendant violates Article 340 of the Criminal Code. The qualifications of this article can be described with the actions of the defendant who deliberately and with a prior plan to decide the will of the perpetrator who committed the murder of the victim. The decision was judged by the author to have not fulfilled the intentional and planned element as in the judge's decision.

Keywords: *Premeditated murder, the law of proof, integrated criminal justice system*

1. INTRODUCTION

Criminal law is a law that is made to overcome crimes that occur. Crime prevention using criminal law must go through the criminal justice system. The conviction of someone who commits a crime must be proven carefully. One of these evidences includes various elements of the offense charged. The elements in a criminal act are the elements contained in a criminal act. The first element is to fulfill the element of offense, which means to fulfill the elements of a criminal act.

Elements of a criminal act are actions that consist of behavior as a result, matters or circumstances accompanying the act, additional circumstances that are aggravating the criminal, objective unlawful elements, sub-classical unlawful elements. [1]

The robbery that occurred in a luxury house in the Pulomas area, East Jakarta occurred in 2016 to be exact on December 26, which killed 6 people out of a total of 11 people being held captive.

The incident began when the perpetrators of robbery and murder in Pulomas were looking for a target house to be robbed at random. Their targets are houses whose fences are open or unlocked. The perpetrators had been monitoring the

Pulomas housing complex for two days before launching their action on December 26, 2016.

The four perpetrators of the robbery were as follows: Ramlan Butar Butar, Erwin Situmorang, Alfin Sinaga and Yus Pane. When they passed in front of Dodi Triono's house on Jalan Pulomas Utara Number 7A, Kayuputih, Pulogadung, they saw someone coming out of the luxury house. They stop to check, it turns out the fence is not locked. The first person to enter was Yus Pane. Then followed by Ramlan and Erwin. While Alfin waited in the car.

The perpetrator dragged 11 victims into a bathroom measuring 1.5 meters x 1.5 square meters. In the bathroom, there were 11 victims piled on top of each other. After being evacuated, five people died on the spot, while one other person died in hospital. The perpetrator is subject to Article 340 of the Criminal Code regarding premeditated murder. The verdict is also in accordance with the demands of the prosecutor who sentenced the defendant to Article 340 of the Criminal Code related to premeditated murder with death.

The crime of premeditated murder is regulated in Article 340 of the Criminal Code which reads:

“The person who with deliberate intent and with premeditation takes the life of another person, shall, being guilty of murder, be punished by capital punishment of life imprisonment or a maximum imprisonment of twenty years.”

The Public Prosecutor's indictment is in the form of a combination of Subsidiary and Alternative, then the Judicial Council will first consider the first primary indictment, namely article 340 of the Juncto Criminal Code, Article 55 paragraph (1) of the First Criminal Code which contains the following elements: Who, Intentionally, By planning in advance, Taking the lives of others and Those who do, Order to Do, or Participate in doing.

The law of proof is the provisions that contain guidelines for procedures that are justified by law to prove the guilt charged against the defendant. Proof is the most important part in a court trial because with proof it will be seen whether the defendant is guilty or not guilty.

If the results of the evidence with the evidence determined by law are "not strong enough" to prove the guilt of the accused, the defendant is "acquitted" from punishment. On the other hand, if the defendant's guilt can be proven by means of evidence referred to in Article 184 of the Criminal Procedure Code, the defendant is declared "guilty", he will be sentenced.

Indonesian's law adheres to a negative evidence system, which combines elements of judge's belief with elements of evidence according to the law. These two elements must be met when the judge gives a verdict of acquittal or guilty.

Theft with violence in a legal perspective is one of the crimes (delict) that is troubling and detrimental to the community.

2. BACKGROUND

In the process of determining a suspect, he can be in the middle or end of the investigation process when at least 2 pieces of evidence have been found that have primary or primary quality of evidence or determine what crimes have been violated, where each type of crime is different. .

So if the law of proof against the determination of an act as a criminal act is not objective, it will be feared that it will not be objective and have an impact on human rights violations, that is why with the existence of a law of evidence at the investigation stage regarding the determination of an act as a crime, if it is true that there is an act criminal acts, then the forced efforts must also be carried out objectively, so that here the law of proof regarding the determination of an act as a criminal act is to be the basis for whether or not investigators can carry out these forced efforts.

Analysis of evidence of deliberate and planned elements in the decision 490/Pid.B/2017/PN.Jkt.Tim. Where the robbery and murder cases occurred on Monday, December 26 2016, at 2:26 p.m. at Jl. North Pulomas No. 7A Rt. 001 Rw. 014 Ex. Kayu Putih District. Pulogadung, East Jakarta. The violent robbery incident that left 6 (six) people dead and 5 others injured, was carried out by 4 people who were

masterminded by Ramlan Butar-butur and its members, namely, Ridwan Sitorus, Erwin Situmorang and Alfin Bernius Sinaga. As for the victims in this incident 6 (six) people died, namely Ir. Dody Triyono (owner of the house), Diona Artika Andra Putri, Donita Gema Zalfiala, Amelia Putri, Yanto and Tarso, while 5 (five) other people who could be saved were Zanette Kalila Azaria, Emi, Santi, Fitriani and Windy.

This incident began with the intention of a group of robbers who targeted the house to be robbed because the house's gate was not locked. Armed with several sharp weapons, such as machetes, sickles and firearms, the four perpetrators then went to the house in the Pulomas area to rob valuables by driving a Suzuki Ertiga vehicle, which is a rental car and the perpetrators changed their number plates first. The perpetrators were then divided by the mastermind behind the robbery, Ramlan Butar-butur. One perpetrator was tasked with monitoring the surroundings from inside the car, namely Alfin Bernius Sinaga, while the other 3 actors entered the house to carry out their actions.

The four victims were then ordered to gather and squat in the family room, joining Fitriani and Windy who had also been arrested. By pointing firearms and brandishing machetes at the victims, then the perpetrators took the belongings of the 6 (six) victims in the form of several cellphones, wallets and bags. After securing the items, the perpetrators ordered the victims to go to the bathroom under the stairs.

After putting the 6 (six) victims into the bathroom, one of the perpetrators met Emi who was ironing clothes at the time. Victim Emi was immediately taken to join the six other victims in the bathroom. Then one of the perpetrators asked the victim Santi to show the other occupants of the house who were still in the 2nd floor room. The perpetrator took Santi to the 2nd floor and found Zanetta, and then the two victims were taken to the 1st floor and put into the bathroom. Next, the perpetrator went back up to the 2nd floor and found Diona in one of the rooms and took the victim to the 1st floor.

While being brought downstairs, the victim Diona fought back so that the perpetrator hit the victim in the face with the handle of an air soft gun one time. After combining victim Diona with other victims in the downstairs bathroom, the perpetrator then returned to the upstairs room to look for valuables, but only found 1 black Apple brand cellphone. The perpetrator then went downstairs and reported to his friend that he only found 1 cellphone. Then the perpetrator asked the victims who had been held captive in the bathroom to show the host's room. Victim Donita was then taken by the perpetrators to Ir Dody Triyono's room and received Rp. 1,000,000 (One Million Rupiah) and 1 (one) wrist watch with a black rubber strap.

After the perpetrator brought the victim back to the downstairs bathroom, the victim Yanto arrived at the garage of the house and was then intercepted by the perpetrator Alfin Bernius Sinaga, who had been in charge of monitoring from the car from the start. The perpetrator then closed the gate and got back into the rental car. Victim Yanto was then put into the bathroom together with the other victims. Not long after, the last victim, Ir. Dody Triyono arrived at his

house driving a Honda Jazz. Seeing this, the perpetrator Ramlan Butar-butur and the perpetrator Erwin Situmorang opened the gate so that the victim Ir. Dody entered and the gate was then closed again. When the victim, Ir Dody Triyono, got out of the car, the two perpetrators immediately approached and pointed at him with firearms and machetes.

The victim was then led into the house and searched. From the search, Rp. 7,000,000 (seven million Rupiah) from the wallet and one cellphone. Then the victim Ir. Dody Triyono was put into the bathroom together with the other victims, so a total of 11 people were in the small bathroom. The bathroom door was closed and locked from the outside by the perpetrator Ramlan Butar-butur. After locking the victims and successfully taking the victim's belongings, then the perpetrators left the house to the Bogor area.

The actions of the perpetrators who allowed 11 victims to be locked in a narrow bathroom without any lighting, without a vent and locked from the outside, as well as the bathroom door lock brought by Ramlan Butar-butur, resulted in the death of 6 victim and five others were injured.

Before finally the victims were found the next day, after 19 hours confined in the bathroom by one of the witnesses who came to the house. The witness then together with local security staff broke into the bathroom and rescued the victims. The condition of the victims was pathetic, 6 victims died due to lack of oxygen and five others were injured and traumatized. Police arrested the perpetrators after 19 hours the victim was found trapped in the bathroom.

One of the most common criminal acts in society is murder. An incident against a life is an attack on another person's life. Legal interests that are protected and which are the object of this crime are regulated in Articles 338 of the Criminal Code up to 350 of the Criminal Code. With regard to crimes against life, the main study that will be studied is Article 340 of the Criminal Code on premeditated murder. Crimes against life that are carried out intentionally in the main form are called homicides. Here it is necessary to act that results in the death of another person, while the death is intentional, including the intention.

For an actor to take the life of another person, he must do something or a series of actions that result in the death of another person with a note that the profit from the perpetrator must be aimed at the result in the form of the death of another person. Thus, people cannot talk about the occurrence of a crime of murder, if the result in the form of the death of the other person has not arisen. Crimes against life committed intentionally (murder) in the main form, are contained in Article 338 of the Criminal Code whose formulation is:

"The person who with deliberate intent takes the life of another person, shall, being guilty of manslaughter, be punished by a maximum imprisonment of fifteen years."

Article 338 above contains the following elements:

1. Subjective Element: intentionally

The definition of this element is the mental state of an actor that reflects the will that is intended to carry out an act that violates the provisions of the law in the form of eliminating the life of another person who has

thought about the consequences and other losses, so that an actor must be responsible for his actions

2. Objective Element: taking the lives of others

The element of taking another person's life is the act of committing murder in a certain way so that it causes the death of a person.

The act of taking another person's life has conditions that must be met, namely:

- a) There is a form of action;
- b) There is a death;
- c) There is a causal relationship between actions and the consequences of people's deaths.

In order to prove the demands of the Public Prosecutor that the defendants committed the crime of premeditated murder which was preceded by the crime of robbery as regulated in Article 340 of the Criminal Code, the elements concerning the crime must be fully fulfilled. The elements of the crime of premeditated murder in accordance with Article 340 of the Criminal Code are as follows:

a) Whoever;

Whoever here is a person as a legal subject, who has rights and obligations that can be held accountable for a criminal act committed, and becomes a Defendant because he is prosecuted, examined and tried in a court session (as in the provisions charged by the Public Prosecutor for committing the act as described above). in the indictment, then in this crime the legal subject must refer to the person/human, who can be held accountable for the criminal act accused, so that the emphasis in this element is the role of the Defendant or the person whose identity is in accordance with the indictment, while the problem whether or not he is proven to have committed an act will depend on the proof of the material element of the indictment in question. Based on the facts that emerged at the trial, it was revealed that the Defendants were legal subjects who in their mental condition and ability showed a condition that was capable of being responsible, therefore the element of "whoever" has been fulfilled.

b) On purpose;

The element of intentionality in the formulation of this article, is that the crime occurred must be done intentionally (Opzet) meaning that the perpetrator in committing the crime knows his actions and wants the consequences of his actions, or the perpetrator is aware of the consequences caused by the criminal act he has committed.

That if it is related to the meaning of "deliberately" above, it is found that the murder committed by the defendant was not the act he wanted, this can be seen from the result of the negligence of the Defendants who locked the victims in a narrow place with the aim that the Defendants could first first fled from the scene,

- thereby killing the lives of 6 (six) victims. Therefore, the second element is not fulfilled.
- c) With planned in advance;
The pre-planned element in the formulation of this article is that if the perpetrator has systematically prepared and considered the actions to be taken, besides that, he must also consider the possibilities regarding the consequences of his actions, there must also be a certain period of time between the preparation of the plan and the implementation of the plan. that. And between the emergence of the intention to kill and its execution, there is still time for the perpetrator to think about it, or there is still an opportunity to cancel his intention to commit the murder.
That it has been revealed that the Defendants' initial intention was to carry out robbery with violence to take valuables belonging to the victims, and the defendants planned to keep the Victims alive in one place, thus the elements planned in advance were not fulfilled by the actions of the defendant.
- d) Taking other people's lives;
Furthermore, the formulation of the 4th (fourth) element of this article, namely taking the life of another person, requires an act that results in the death of another person.
Acts that can result in the loss of another person's life are not necessarily an act that is always formulated in the form of murder, but there are actions which, apart from being regulated in these articles, can also result in the loss of another person's life. One of the acts referred to that often occurs is persecution.
Persecution is an act that is qualified as a crime against the body with various characteristics of consequences ranging from consequences that do not cause serious injuries and death of people, causing serious injuries to causing death of people. Persecution is an act that is carried out intentionally for the sole purpose of the perpetrator.
That because the defendant's actions have resulted in the lives of 6 (six) victims and five others were injured, it is concluded that this element has been fulfilled.
- e) Those who do, order to do, or participate in doing
The definition of participating in the formulation of Article 55 of the Criminal Code is jointly committing, meaning that in the crime there must be at least two perpetrators who committed the crime; and or all of these people carry out the criminal act.
That in this incident it was proven that there were 4 (four) perpetrators, then this element has been fulfilled.

The description of the qualifications for crimes against the body will then be formulated further based on the consequences that cause serious injuries and the death of others. This is intended to link based on the analysis of facts with the criminal case in Decision Number: 490/PID.B/2017/PN.JKT.TIM. The Defendants in this criminal case have been indicted by the Public Prosecutor using alternative charges consisting of Article 340 of the Criminal Code. Jo. Article 55 paragraph (1) 1st of the Criminal Code, Article 339 of the Criminal Code. Jo. Article 55 paragraph (1) of the 1st Criminal Code, Article 338 of the Criminal Code. Jo. Article 55 paragraph (1) of the 1st Criminal Code, Article 365 paragraph (3) of the Criminal Code. Jo. Article 55 paragraph (1) of the 1st Criminal Code and Article 333 paragraph (3) of the Criminal Code. Jo. Article 55 paragraph (1) of the 1st Criminal Code.

The Indonesian Criminal Code does not contain the definition of intentional at all, but in *Memorie van Toelichting*, it is explained that what is meant by intentional is "willens et wetens". [2] This means that from the explanation it is known that an act can be considered intentional if the perpetrator wills his action and knows the consequences of the act. There are 3 types of intentionality, namely:

1. Intentional as intent (*opzet als oogmerk*)
Intentional as an intention, namely wanting to realize an action, wanting not to do / neglecting a legal obligation, and also wanting the consequences of that act So that when a person takes an action to cause a desired result, realizing that the result is certain or may arise because of the action that has been taken, the person can say that the person has intentional as an intention. [1]
2. Deliberation as certainty (*opzet als zekerheidsbewustzijn*)
Deliberation as certainty is intentional in the form of a person's awareness of an effect that according to human reason in general must occur due to certain actions and the occurrence of these consequences cannot be avoided. The consequences that arise are other consequences of the actions they take are not the desired results.[3]
3. Deliberation as a possibility (*dolus eventualis*)
Deliberation as a possibility (*dolus eventualis*)
Deliberation as a possibility is an awareness to do an action that he knows that other consequences may arise from the act that he does not want from his action, but the maker does not cancel the intention to do it. In this *dolus* known the theory of "what can be done" (*in Kauf nehmen*) that actually the result of a known situation is likely to occur, it is not agreed upon but nevertheless, to achieve what is meant the risk will arise as a result or in addition to that purpose it is accepted. [4]

The public prosecutor in the Criminal case in Decision Number: 490/Pid.B/2017/Jkt.tim has described the actions of the defendants in the indictment to hold the defendants accountable for their actions. According to the author, the

prosecution of the Public Prosecutor in prosecuting the defendants is very unsure of the qualifications of the offense carried out with the result of the loss of another person's life. This can be seen from the many articles that were indicted against the defendants, but the articles that were used as the basis for the demands by the Public Prosecutor seemed to just repeat and copy from the previous indictment, so that the Public Prosecutor did not pay attention to the elements of the article with a description of the actions committed.

Based on the description above, the author will relate to Decision Number: 490/Pid.B/2017/Jkt.tim which is the object of the author's analysis, especially those related to the application of the articles applied by the panel of judges with the disclosure of facts that took place during the trial by imposing penalties on the defendant used Article 340 jo. Article 55 paragraph (1) 1 of the Criminal Code. The article handed down by the panel of judges connected two articles which meant that the defendants had committed premeditated murder.

In Article 340 of the Criminal Code there is an element of "pre-planning" which is a special requirement that must be considered in order to determine that a defendant is proven to have committed premeditated murder or ordinary murder, considering that the difference between ordinary murder and premeditated murder lies only in the element of prior planning.

There are subjective elements in Article 340 of the Criminal Code, among others, intentionally being the mental state of an actor that reflects the intention that is intended to commit an act that violates the provisions of the law in the form of eliminating the life of another person who has thought about the consequences and other losses, so that an actor is obliged to responsible for his actions. The element with a plan in advance is a form of intention that exists in the perpetrator regarding the description of the will that will be carried out at the time of implementation. Furthermore, the objective element in the article is the element of taking another person's life which is an act of committing murder in a certain way that causes the death of a person, so that the object of this element is the life of another person.

Taking into account and understanding the meaning and requirements of the pre-planned elements as explained in Article 340 of the Criminal Code above, the process of formation is planned in advance is the formation of an intention (intention). The process of forming a plan requires and goes through certain conditions. Meanwhile, the intentional formation does not require conditions as required for the formation of the element "with a plan in advance". The formation, intentional, such as the intention in Article 338 of the Criminal Code is formed quite suddenly.

The law does not provide an explanation, so it is natural that in the doctrine there are opinions of experts to explain the true meaning of the word "pre-planning". Simons argues that calm deliberation is not only required for perpetrators when making plans and making decisions but also when committing crimes, so that the conditions referred to here clearly indicate that the emergence of the will and the execution of the will is carried out calmly. Meanwhile, Modderman's opinion leads to the notion that the element of

planning in advance does not lie in a certain period of time between the time of decision making and the time of its implementation, but rather on the mental attitude (psychological attitude) or thoughts about the behavior of the perpetrator.

In the context of criminal law, evidence is the central point of examination in court. The proof system aims to find out how to put the results of evidence in the case being examined.

Article 183 of the Criminal Procedure Code requires that in carrying out evidence in court, what is more emphasized is proof according to valid evidence and means or in this proof it is known as negative statutory proof. This can be understood in the sentence which reads that there is sufficient evidence to impose a sentence on a defendant, namely at least two valid pieces of evidence. Therefore, the legislators formulated Article 183 of the Criminal Procedure Code because in this evidence system there is an integrated integration between the Conviction-in time evidence system (judge's belief) and the positive legal evidence system (legitimate evidence).

The legal evidence according to the law in accordance with what is referred to in Article 183 paragraph (1) of the Criminal Procedure Code, among others:

1. Witness Statement

Witness testimony, does not include information obtained from other people or testimony de auditu. This means that the Criminal Procedure Code explicitly states that the testimony de auditu is not a valid witness testimony. Although the testimony de auditu is not a witness testimony, if it is related and in line with the facts obtained from other evidence, the testimony de auditu needs to be considered in order to increase the judge's conviction. This relates to the system of evidence based on the law in a negative way which gives judges the freedom to use their beliefs.

2. Expert Description

Article 186 of the Criminal Procedure Code states that the testimony of an expert is what an expert states in the field of court. An expert's statement may also have been given at the time of examination by the investigator or public prosecutor which is set forth in a report form and made by remembering the oath at the time he accepts the position or job. If this is not given during the examination by the investigator or the public prosecutor, at the examination at the trial, he is asked to provide information and it is recorded in the minutes of the examination.

3. Document

4. Hint

Article 188 paragraph (1) of the Criminal Procedure Code defines instructions as actions, events or circumstances, which due to their conformity, either with one another or with the crime itself, indicate that a crime has occurred and who the perpetrator is.

5. Defendant's Statement

The application of Article 340 of the Criminal Code by the Panel of Judges in the decision Number: 490/Pid.B/2017/PN.Jkt. The writer will review the team to answer the first problem in writing this thesis

related to the correctness of planning and the truth of the actions committed by the defendants in eliminating victim's life. This aims to prove the suitability of the articles indicted by the Public Prosecutor with the application of the articles handed down by the judge to the defendants based on the facts revealed at the trial. Whether or not the defendants committed premeditated murder, which has an influence on the death of the victim, the author will describe based on the evidentiary process and the evidence presented by the Public Prosecutor in the trial.

The process of proof in cases of premeditated murder which is carried out jointly must be proven by at least two (2) pieces of evidence in accordance with the provisions of Article 183 of the Criminal Procedure Code. Based on Article 183 of the Criminal Procedure Code and Article 184 of the Criminal Procedure Code the Public Prosecutor in Decision Number: 490/Pid.B/2017/PN.Jkt.Tim proposes 3 types of evidence, which is:

1. Statement of witness (16 witnesses);
2. Document, in the form of VER (Visum et Repertum) on January 19, 2017 which was made at Bhayangkara Tk General Hospital. I R. Said Sukanto;
3. Defendant's Statement

In connection with the actions of the defendants that resulted in the loss of the victim's life, the elements of Article 338 of the Criminal Code must be proven first. The element of taking another person's life when connected to the article has matched the whole article. However, it should be remembered that the planning of coercion and violence that the defendant Ramlan Butar Butar had conveyed to the other three defendants had already been carried out. However, one of the conditions for the murder to occur is that the act was carried out without any element of prior planning, so that the act was purely carried out and thought of at the same time. The form of the act of confining the victim by the defendant was carried out with the aim of being able to escape and retain the stolen goods. so this article is not proven.

Furthermore, Article 340 of the Criminal Code has been mentioned above when it is related to a criminal case in Decision Number: 490/Pid.B/2017/PN.Jkt.Tim, namely the existence of an element of prior planning between the perpetrators, illustrating that the planning in question only leads to an act of coercion. and violence. However, that until the death toll occurred was due to confinement and not an act of murder that was carried out directly with calm conditions and the perpetrator had the mind to act. If there is a plan, the victims will be killed with evidence of sharp tools owned by the perpetrators during the action. It was also based on the defendant's confession that there was an instruction if the household members fought back "just kill them immediately", but this was not appropriate because they (the perpetrators) did not kill but held the victims with the aim of escaping with the stolen goods.

In relation to the formulation of Article 340 of the Criminal Code above, the series of acts committed by the defendant

are completely separated from the element of planning beforehand to kill the lives of others. The defendant's actions were more directed at the act of murder as formulated in Article 338 of the Criminal Code because the circumstances that reflected the advance planning as contained in Article 340 of the Criminal Code were not proven. This can be seen when planning the will and carrying out the act, where the planning presented by the defendant Ramlan Butar Butar did not lead to murder but confinement and violence with the aim of escaping and retaining stolen goods.

The form of the act committed by the defendant to the victim is in the form of confinement. However, the consequences of the death of the victim cannot be determined because a series of actions consisting of confinement aimed at the victim are not proven by an internal examination of the victim's body. Based on the results of Visum Et Repertum, with the conclusion, found signs of containment on the internal organs, which are in accordance with the results of forensic data. The cause of death of the victim was a lack of oxygen, causing suffocation. Thus, the planning element in Article 340 of the Criminal Code is not proven.

Article 338 of the Criminal Code and Article 340 of the Criminal Code above, it is clear that the elements of the offense behind the word intentionally are all controlled or covered by opzet, namely the elements of "eliminating" and "other people's lives". Thus it can be concluded that if people want to say that someone has been proven to "deliberately kill another person", then the elements of "eliminating" and "other people's life" must be proven first. In proving that the defendant intends to commit the act of taking another person's life, it must be proven that the defendant knows that what he wants is the life of another person. The forms of action can be without / have not resulted in the loss of another person's life. Thus, this result is very important to determine whether or not the killing was completed. Determining an effect from the form of an action becomes difficult because the occurrence of an effect is often influenced or caused by many interrelated factors.

Article 365 Paragraph (3) of the Criminal Code when connected with a criminal case in Decision Number: 490/Pid.B/2017/PN.Jkt.Tim is close to the actions committed by the defendants. Article 365 Paragraph (1) of the Criminal Code explains that persecution which is carried out is preceded by an act of theft, accompanied or followed by violence or threats of violence to facilitate theft or in the case of being caught red-handed to allow escape by oneself or other participants, or to control the stolen goods.

Some of the descriptions above have an understanding which states that both murder and persecution are a form of intention (opzet) that lies with the perpetrator. The legislators did not provide an explanation of the intent of the opzet. The definition of opzet has been known in the Criminal Law that was previously applicable in the Netherlands, namely *Crimineel Wetboek* in 1809 which explained that opzet was the will to do or not to take actions as prohibited or required by law. The understanding that

has been explained has been defended by Memorie van Toerichting (M.v.T) and furthermore the notion of opzet has also been found in Memorie van Antwoord (M.v.A) or in the memory of his answer, that opzet is the (conscious) purpose of the will to commit a certain crime.

According to Van Hamel, in an offense which is considered to have been completed by committing a prohibited act or with the occurrence of a prohibited result, the opzet only deals with "what has actually been done" and "what has actually been caused" by the perpetrator, especially with what is included in the meaning of the special elements of a special offense.

The forms of intentionality are divided into 3, among others, as follows:

- 1) **Deliberately as an intention**
The intentional form as an intention is a form of intentionality that exists on the part of the maker to want the consequences of his actions, so that he never commits his actions if the maker knows that the consequences of his actions will not occur.
- 2) **Deliberately with certainty awareness**
This form of intentionality occurs when the maker believes that the intended result will not be achieved without the unintended consequence. If the maker wants an effect that affects the occurrence of an effect that has previously been described as a result that cannot be justified, that person does it intentionally with certainty.

In addition, the defendants previously had no intention of committing or killing the victims, their intention was to commit theft with their respective divisions of duties, namely:

- 1) The defendant ERWIN SITUMORANG als UCOK was given the task of securing the occupants of the house and taking or collecting valuables that were in the house or belongings of the occupants of the house and equipped himself with a sharp weapon of the type of machete.
- 2) The defendant RIDWAN SITORUS als IUS PANE als MARIHOT SITORUS was given the task of entering the victim's house first to find and collect the occupants of the house and look for valuable items in the house and equip themselves with Air Soft Gun weapons.
- 3) The defendant ALFIN BERNIUS SINAGA was given the task of staying in the white Suzuki Ertiga car, which at that time was wearing a fake police number plate no. Pol : B -- 1278 – EOP to monitor the situation outside the house armed with 1 (one) machete, 1 (one) sickle and 1 (one) lighter.
- 4) RAMLAN BUTAR-BUTAR acts as a captain in charge of securing the occupants of the house and equipping himself with an Air Soft Gun.

3. CONCLUSION

Based on the description of the discussion above, a conclusion can be formulated that proving the element of intent in the crime of murder in case No. 490/Pid.B/2017/PN.Jkt.Tim which according to the judge is Article 340 of the Criminal Code is not appropriate because according to the author it is more appropriate for the defendant to be subject to Article 338 of the Criminal Code because Article 340 of the Criminal Code is premeditated murder then Article 338 of the Criminal Code is ordinary murder, so the intention of the perpetrator must be further investigated according to the applicable law. Judges must consider the essence of the offense not only because of pressure from the community. This analysis is applied to the case of premeditated murder, the application of which is Article 340 of the Criminal Code with everything that has happened that the perpetrator who did it was not crazy and could take proceedings in court. so that they can be held accountable for their actions. The judge's thoughts in deciding the case 490/Pid.B/2017/PN.Jkt.Tim. with the inclusion of elements in Article 340 of the Criminal Code, as well as all the information that the judge can find in the trial, adds to the judge's confidence in making a decision without remembering that the judge must think about mitigating and burdening the perpetrator. The thought of the assembly that was directed from the panel to the defendant in this case was not in accordance with the existing legal theory, especially sentencing. Because for that there are so many weaknesses in giving sanctions to criminal actors, the assembly must rethink things that make it easier and more difficult so that there is an opportunity for the perpetrator to repent and have the opportunity to live a bad life in the decision not to include lightening and difficult things.

REFERENCES

- [1] Moeljatno. "Perbuatan Pidana Dan Pertanggungjawaban Dalam Hukum Pidana" (Pidato diucapkan pada upacara peringatan Dies Natalis ke VI Universitas Gadjah Mada, di Sitinggil Yogyakarta, 19 Desember 1955).
- [2] Sudarto. Hukum dan Hukum Pidana. (Bandung: Alumni, 1981).
- [3] Fuad, A. dan Tongat. Pengantar Hukum Pidana. (Malang: UMM Press, 2004).
- [4] Lamintang. Delik-delik Khusus Kejahatan Melanggar Norma Kesusilaan & Norma Keputusan. (Jakarta: Sinar Grafika, 2009).