



Analysis of criminal responsibility for the crime of premeditated murder: An analysis of decision number 813K/Pid/2023

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ABSTRACT

Background: This research is motivated by the existence of premeditated murder where the suspect is a member of the police force, namely Ferdy Sambo, the motive for this murder is heartbreak towards the victim who is suspected of committing sexual harassment against Ferdy Sambo's wife, Putri Candrawati, the problems that arise regarding the regulation of criminal liability for premeditated murder and the application of criminal sanctions for premeditated. **Methods:** The type of research used by the author is the normative legal and juridical. Statuta Approach, Case Approach, Comparative Approach. **Findings:** That the act of premeditated murder is regulated in Article 340 of the Criminal Code with a maximum penalty of 20 years imprisonment, while in Law No 1 of 2023 or the National Criminal Code the crime of premeditated murder is regulated in article 459 with the same penalty but the difference is the death penalty embedded in Article 100 of Law No. 1 of 2023 which with a probationary period of 10 years in prison if good behaviour can be changed to life. **Conclusion:** The use of Law No. 1 of 2023, which should take effect only 3 years later in accordance with Article 624 of Law No. 1 of 2023, it is necessary to review the decision of the Supreme Court on the use of the National Criminal Code as a consideration for the decision in the case of the defendant Ferdy Sambo and also the defendant Ferdy Sambo received a reduction in sentence which was. **Novelty/Originality of this Study:** This study provides a critical analysis of the application of Law No. 1 of 2023 concerning the Criminal Code in the case of Ferdy Sambo, particularly examining the shift from retributive to rehabilitative criminal justice paradigms. It uniquely highlights the implications of implementing future legislation in current judicial decisions, questioning the appropriateness and legality of such premature application.

KEYWORDS: criminal liability; the crime of aggravated murder; supreme court decision.

1. Introduction

Premeditated murder is one of the serious crimes against humanity regulated under Article 340 of the Indonesian Criminal Code (KUHP) (Oktatiandi et al., 2023). This crime is categorized as a severe criminal offense with a maximum penalty of death. Article 10 of the KUHP outlines the types of punishments that can be imposed on someone who commits a criminal offense, where the punishments can include principal punishments (death penalty, imprisonment, and confinement, fines); and additional punishments (revocation of certain rights, confiscation of specific goods, and announcement of the judge's verdict).

Recently, the government passed the Draft Criminal Code (Rancangan Undang-Undang Hukum Pidana or RUU KUHP) into Law No. 1 of 2023, which regulates criminal sanctions in Article 64. The punishments that can be imposed on someone based on Law No. 1 of 2023

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are criminal penalties consisting of (Stepashin, 2017): principal penalties, additional penalties; and special penalties for certain criminal acts specified in the law. Furthermore, Article 65, paragraphs (1) and (2), further explain the principal penalties the principal penalties as referred to in Article 64 letter consist of: imprisonment, confinement, supervision penalty, fines, community service. The order of penalties as referred to in paragraph (1) determines the severity or leniency of the penalty.

Article 66 paragraph (1) states that additional penalties as referred to in Article 64 letter b include the revocation of certain rights, confiscation of certain goods and/or receivables, announcement of the judge's decision, payment of compensation, fulfillment of local customary obligations. Meanwhile, Article 67 paragraph (1) states that special penalties as referred to in Article 64 letter c are the death penalty, which is always threatened as an alternative.

The premeditated murder case that caught the attention of the entire Indonesian public involved a police officer, Ferdy Sambo, who held the position of Head of the Propam Division (Al Mujtaba & Ma'ruf, 2023). This murder involved his wife, driver, and aide, who were also involved in the premeditated murder of Brigadier Norfiansyah Yosua Hutabarat (Junaedi et al., 2023). The motive for this murder was the alleged sexual harassment of Ferdy Sambo's wife, Putri Candrawati, by the victim.

In the first-level court decision, the defendant was sentenced to death by the judges of the South Jakarta District Court (Romdoni & Bakar, 2022). The defendant also filed an appeal, which was rejected, and the death sentence was upheld. However, in the case, the defendant was sentenced to life imprisonment (Mesra et al., 2024). The Supreme Court judges examining the case argued that there was an error in the application of the law (*Judex Juris*) by the first and second-level courts (Sriwidodo, 2023). In their considerations, the Supreme Court judges also took into account the purpose and guidelines for sentencing according to criminal law and the national criminal law policy after the enactment of Law No. 1 of 2023 concerning the Criminal Code, where the death penalty is viewed as a special penalty, no longer a principal penalty (Gusman & Nazmi, 2023).

Criminal liability in cases of premeditated murder in Indonesia involves the fulfillment of a number of legal elements that must be proven legally and convincingly in court (Rusmana & Rama, 2024). Premeditated murder is regulated in Article 340 of the Criminal Code, which states that a person can be punished if they commit murder with premeditation (Tirtaraharja et al., 2023). In this case, the main elements that must be fulfilled include the intention to kill, careful planning involving preparation related to the method, time, and place of the incident, and the causal relationship between the defendant's actions and the victim's death. If these three elements are proven in the trial process, then criminal liability for the crime of premeditated murder can be imposed (Robinson, 2017).

Criminal liability in this case is *dolus specialis*, or premeditated intent, where the defendant's actions not only occurred spontaneously, but were planned with full awareness (Wolswijk, 2016). This means that the defendant is not only responsible for the actions that caused death, but also for the planning process. Intention and planning are usually proven through examination of evidence such as the defendant's communication, preparation of the tools or means used, and the motive behind the planning.

Even though the elements of the crime of premeditated murder have been fulfilled, the defendant may not be held criminally responsible if there are legitimate reasons for eliminating the criminal penalty (Fikrillah et al., 2024). These reasons are divided into two, namely justification and excusing reasons. Justification, such as self-defense (*noodweer*), can make the defendant's actions right from a legal perspective, while excusing reasons, such as a disturbed mental condition, can eliminate the perpetrator's guilt (Arrosyiid & Febriansyah, 2023). However, in the context of premeditated murder, this reason for eliminating criminal liability is rarely applied because of the nature of the act which was planned and deliberate.

The punishment for perpetrators of premeditated murder in Indonesia can be the death penalty, life imprisonment, or a maximum of 20 years in prison (Haloho et al., 2024). In imposing a sentence, the judge considers several aspects, including the degree of intent

and planning, motive, social impact of the act, and mitigating or aggravating factors such as the perpetrator's remorse or the defendant's life history (Pruitt, 2014). Criminal liability in premeditated murder is not only a matter of proving intention and deliberate action but also includes a deep understanding of the motive behind the crime. Motive is often an important factor considered by judges because cruel motives or those based on personal interests that are detrimental to the public tend to increase the punishment. For example, murder committed for material gain or to cover up other crimes will be considered more aggravating than murder that occurs due to sudden conflict. In addition, the social impact of the crime is also a serious consideration in sentencing the defendant (Roberts, 2009). If the act of premeditated murder causes great unrest or fear in the community, the judge tends to give a heavier sentence to provide a deterrent effect and protect the public interest.

In certain cases, an analysis of the defendant's role in planning the murder can also affect the level of responsibility (Anderson & Heaton, 2012). For example, if the defendant acts as the mastermind of the murder plan, he can be given a heavier sentence than someone who only helps with the implementation without a central role in the planning. The role of each individual in this crime is regulated in Indonesian criminal law which recognizes the concept of intellectual perpetrators and physical perpetrators, where both can be subject to criminal penalties but with different weights depending on their respective roles.

Other considerations include the defendant's psychological condition, which may affect the judge's assessment of the perpetrator's capacity to take full responsibility. While excusable reasons such as psychological disorders may be considered, in cases of premeditated murder, this is unlikely to be accepted as a defense. Judges also look at whether the defendant shows remorse for their actions, as this may indicate potential for rehabilitation, although this does not necessarily reduce the sentence in serious cases such as premeditated murder. The overall aim of this process is to achieve balanced justice—where the interests of the victim and society are protected, while still considering the rights of the defendant in accordance with the principles of criminal justice.

2. Methods

The type of research used by the author is the Normative Juridical method (Sudrajat, 2022). This research is conducted on regulations, court decisions/rulings, and legal materials related to the title of this thesis. Normative research is a study that examines documents, utilizing various secondary data such as legislation, court decisions, and legal theories related to the research. It involves a statutory approach, case approach, and comparative approach.

The statutory approach is a method in legal analysis that focuses on interpreting and applying written laws, also known as status or legislation, enacted by a governing authority. In this approach, legal professional primarily examine the explicit language, scope, and purpose of a statute to determine its meaning and applicability in specific situations. The statutory approach often involves analyzing the legislative intent, historical context, and the plain language of the law to understand how it should be applied in different cases. This approach is valuable for ensuring that decisions align with legislative objectives and maintain consistency in legal interpretations. Courts using the statutory approach may also rely on established interpretive rules and principles, such as the "plain meaning rule", which emphasizes interpreting words in their ordinary sense unless otherwise defined by the statute. The case approach, also known as case law or jurisprudential approach, relies on judicial decisions from prior court cases to analyze and resolve current legal issues. This approach emphasizes the use of precedents—previous rulings by courts—especially those set by higher courts, which serve as authoritative guides for similar legal questions in future cases.

3. Results and Discussion

3.1 Regulation of criminal liability for premeditated murder offenses

3.1.1 Regulation of premeditated murder offenses in the criminal code

The regulation of criminal liability for premeditated murder offenses is outlined in the Indonesian Criminal Code/*Kitab Undang-Undang Hukum Pidana* (KUHP) Indonesia (Pepa, 2022). Article 340 of the KUHP states that anyone who intentionally and with prior planning takes the life of another person shall be punished with the death penalty, life imprisonment, or a term of imprisonment not exceeding 20 (twenty) years. The establishment of this law indicates that premeditated murder is considered more severe than ordinary murder, as regulated in Article 338 of the KUHP. This is due to the planned intent to commit the crime, making it more serious.

In determining whether there is premeditation, law enforcement officials assess whether there is intent in the planning of the murder, with a period in between to consider how the murder will be carried out. The distinction between murder (Article 338 KUHP) and premeditated murder can be seen if ordinary murder is committed spontaneously, while premeditated murder involves thorough planning, where the perpetrator has the intention to take another person's life and then plans how the act will be executed over a sufficiently long period to allow for careful and calm consideration.

The punishment for premeditated murder is much more severe than for murder as regulated in Articles 338 and 339 of the KUHP. Premeditated murder can even be punished with the death penalty, which is the most severe punishment imposed for crimes against life (Phillips, 2014). This threat of the death penalty is not applied to other crimes against life, and premeditated murder can also be punished with life imprisonment or a term of imprisonment not exceeding twenty years (Radelet & Borg, 2000). Several reasons for the application of the death penalty in Indonesia arise from such provisions, raising questions about why the death penalty is maintained in the KUHP (Amrullah, 2024). At the time of drafting the law, it was explained that the reason lies in the special circumstances of Indonesia as a former Dutch colony.

According to Roeslan Saleh, the reason for retaining the death penalty is that the threat to legal order in Indonesia is greater and more imminent than in the Netherlands. The diverse population of Indonesia has the potential to cause conflict, while the government and police in Indonesia are inadequate. Based on these circumstances, the death penalty is viewed as an indispensable tool for the government.

In line with this view, Adami Chazawi offers the perspective that there are two reasons the government maintains the death penalty. First, the likelihood of actions threatening legal interests here is much greater than in the Netherlands, considering that this country is vast, with a population consisting of various ethnic groups and communities with different customs and traditions. This situation has significant potential to cause disputes, sharp clashes, and significant chaos among the public. Second, the security apparatus owned by the Dutch East Indies government is still very lacking or not as perfect and comprehensive as in the Netherlands.

3.1.2 Regulation of premeditated murder crimes in the national penal code or new law

The legal basis for premeditated murder crimes is stipulated in the National Penal Code or Law No. 1 of 2023. Premeditated murder is regulated under the provisions of Article 459 of Law No. 1 of 2023, which states:

"Anyone who, with prior planning, takes the life of another person shall be punished for premeditated murder with the death penalty or life imprisonment or imprisonment for a maximum of 20 (twenty) years."

In Law No. 1 of 2023, which governs premeditated murder crimes, the regulations do not differ significantly from the old Penal Code in Article 340, which also regulates premeditated murder provisions. Article 459 states that anyone who, with prior planning, takes the life of another person is punished for premeditated murder. The perpetrator of

premeditated murder can be threatened with the death penalty, life imprisonment, or imprisonment for a maximum of 20 (twenty) years.

Thus, it can be seen that Article 459 of the National Penal Code remains unchanged from Article 340 of the old Penal Code. As a comparison, the difference between premeditated murder crimes in the old and new Penal Codes lies in the threat of the death penalty. In the old Penal Code, Article 10 classifies punishment into two types: principal punishment and additional punishment.

Regarding the death penalty, Article 10 of the Penal Code explains that the death penalty is considered a principal punishment. Principal punishment means it has a mandatory or non-optional nature and is binding based on the applicable laws and regulations. In addition to the death penalty, principal punishments include imprisonment, confinement, fines, and detention. On the other hand, additional punishment is a type of punishment that is facultative, meaning it is a type of punishment that may be imposed on a convicted person by the judge but is not mandatory. Additional punishments include the revocation of certain rights, the confiscation of certain goods, and the announcement of the judge's decision.

3.1.3 Elements of criminal liability in articles on premeditated murder

Premeditated murder, as regulated in Article 340 of the Criminal Code (KUHP) and Article 459, emphasizes that anyone who intentionally and with prior planning takes another person's life will be subject to the death penalty, life imprisonment, or imprisonment for a specific period, up to twenty years. The distinction between ordinary murder and premeditated murder lies in the element of "with prior planning (premeditation)." The concept of premeditation is not explicitly defined in the Criminal Code, so its interpretation relies on legal experts' views (doctrine) or court decisions related to premeditated murder (jurisprudence).

The premeditation element in Article 340 of the Criminal Code is the planning aspect in premeditated murder (Rauzi et al., 2023). Therefore, a murder plan that meets the planning criteria, namely a deliberate decision made calmly and within a specific time frame, must have a close relationship with the murder committed. Thus, the two planning criteria above must be complemented by a third criterion, namely the execution of intent (action) in a calm state. In criminal law, intent is distinguished into three forms (Robinson, 2017): 1) Intent as a Purpose: Intent exists when the perpetrator truly desires to achieve the outcome, which is the primary reason for imposing criminal penalties. 2) Intent as Certainty: This type of intent exists when the perpetrator knows well that a consequence is certain to result from the action. 3) Intent as Possibility: Intent exists when the perpetrator considers it merely a possibility that a consequence will result from an action. Elements of the Crime Leading to Loss of Life: An action causing another person's death, intent directed at the execution of another person's death, the intent to take a life is carried out immediately after the intention to kill arises, the term "another person" indicates that taking another person's life is a negative act, even with minor actions. This crime involves elements and qualifications, namely murder and criminal sanctions. This offense is formulated materially, focusing on the consequence of loss of life, regardless of the method used to take life.

As stated by R. Soesilo, planning involves: "Planning means having planned beforehand, a translation from the foreign term 'metvoobedacterade,' which refers to the time between the intention to commit murder and its execution. This time allows the perpetrator to calmly think about how best to carry out the murder. This period should not be too short, but it should also not be excessively long. What is important is that the period allows the perpetrator enough time to think calmly." Article 340 of the Indonesian Penal Code stipulates that a person who intentionally and premeditatedly takes another's life will be punished for premeditated murder, with penalties of death, life imprisonment, or imprisonment for a term not exceeding twenty years. Thus, the punishment for premeditated murder can be death, life imprisonment, or imprisonment for up to 20 years. To determine an individual's criminal responsibility, it is essential to consider whether they

committed the act with intent or negligence, and whether they are capable of bearing responsibility for their actions.

A person who has not committed a criminal act cannot be held criminally responsible. This refers to the principle of legality, which is also found in Article 1 of the Penal Code, which states: "No act can be considered a criminal offense except by virtue of existing criminal provisions in the legislation, before the criminal act is committed." Being capable of bearing responsibility here means whether the individual possesses a sound mind or not.

A sound mind means the ability to distinguish between permissible and impermissible acts. A person with an unsound mind cannot be expected to determine their will in accordance with what is required by law. Murder is regulated in Article 338 of the Penal Code, which states: "Anyone who intentionally takes the life of another person is punished for murder with imprisonment for a maximum of fifteen years." From the above article, we can identify the elements of murder contained within it as follows.

3.1.3.1 Subjective element: Intentionally

Intentionally means that the act must be intentional, and the intent must arise at that moment because the intent (*opzet/dolus*) referred to in Article 338 of the Criminal Code is intentional conduct formed without prior planning (Sukadana & Pangestika, 2023). In contrast, the intent referred to in Article 340 of the Criminal Code is intentional conduct to take another person's life that is formed with prior planning. In general, Zainal explains that legal scholars have recognized three forms of intent, namely intent as a purpose, intent with awareness of certainty, intent with awareness of possibility. Furthermore, Lamintang describes intent with awareness of possibility as follows: "The perpetrator in question, at the time of committing the act to cause a prohibited consequence by law, has realized the possibility of another consequence arising other than the consequence he indeed intended."

3.1.3.2 Objective element

The basic element of murder is taking someone's life (Obiora, 2022). It also involves intent, meaning the perpetrator intentionally desires the act of taking life and realizes that their action aims to take another person's life (Zulyadi, 2020). When committing an act of taking another person's life, three conditions must be met: first, the occurrence of an act; second, the death of another person as a result of the act; and third, the existence of a causal relationship (*causaal verband*) between the act and the death of another person. Although there are many crime motives in Indonesia, premeditated murder is considered one of the most severe crimes compared to other murder crimes.

3.2 Application of criminal sanctions for premeditated murder (Case study of supreme court decision No. 813K/Pid/2023)

In the Cassation Decision, where the Supreme Court panel examined the Cassation Application of the Defendant Ferdy Sambo, SH.SIK.MH., a key consideration was the judges' rationale in reducing the sentence from the death penalty to life imprisonment (Anbiya, 2024). The Supreme Court's considerations included considering the objectives and guidelines for sentencing according to criminal law and national criminal policy after the enactment of Law No. 1 of 2023 concerning the Criminal Code, the death penalty is viewed as a special punishment, no longer a principal punishment. This reflects a shift in Indonesia's criminal law policy from a retributive/*lex talionis* paradigm to a rehabilitative paradigm, emphasizing the objectives of sentencing as a means of prevention, rehabilitation, conflict resolution/restoration of balance, creation of security and peace, and fostering the convict's remorse. Thus, the entire sequence of the premeditated murder committed by the Defendant against the victim, Norfiansyah Yosua Hutabarat, needs to be reviewed clearly, wisely, and judiciously, emphasizing objectivity and proportionality regarding the Defendant's culpability for the actions committed. Therefore, the sentencing

of the Defendant in the case at hand must carefully consider various philosophical, sociological, and normative aspects to ensure justice and benefit not only for the victim and their family but also for the Defendant and society in general while upholding the values of fair legal certainty.

3.2.1 Supreme court's considerations regarding decision No. 813K/Pid/2023

Supreme Court Justice Jupriyadi, S.H., M.Hum., and Supreme Court Justice Dr. Desnayeti M., S.H., M.H., state as follows. The grounds for the cassation appeal by the Prosecutor and the Defendant cannot be justified because the decision of the High Court, which upheld the decision of the District Court, correctly found that the Defendant was legally and convincingly guilty of committing the offenses of "Participating in Premeditated Murder" and "Unlawfully causing a malfunction in the electronic system, done collectively," as charged under the PRIMARY indictment, which violates Article 49 in conjunction with Article 33 of Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, in conjunction with Article 55 paragraph (1) 1 of the Penal Code. The application of the regulations was correct and appropriate, did not exceed its authority, and was based on the applicable criminal procedure law.

Considering the Defendant's cassation petition, which claims that the motive behind the criminal act was due to the Defendant feeling that his honor and dignity were wounded in relation to the incident involving his wife, Witness Putri Candrawathi, such matters pertain to the evaluation of evidence, which has been properly and accurately considered by the fact-finding court. Even if this claim is true, the Defendant's actions cannot be legally justified, as he, in his high-ranking position as the Chief of the Police's Internal Affairs Division (Kadiv Propam Polri), was responsible for overseeing and sanctioning the conduct of his subordinates.

In the author's opinion, the focus of this analysis is on the Supreme Court's decision using Law No. 1 of 2023, which only becomes effective three years after its promulgation. This law was used in a case where the Defendant was initially sentenced to death in the first and appellate courts but was subsequently sentenced to life imprisonment by the Supreme Court. Regarding the application of Law No. 1 of 2023, which will only take effect three years later, in 2026, there is a legal basis regulated in Article 624 of Law No. 1 of 2023, which states. This Law shall come into effect three (3) years from the date of enactment.

Additionally, according to the Minister of Law and Human Rights, Yasonna H. Laoly, the new Criminal Code (KUHP), which was enacted in January 2023, has a transition period of three (3) years before it comes into force and is applied. Therefore, the use of Law No. 1 of 2023 should not yet be in effect. The regulation is clearly stated in Article 624 as its legal basis, but it has already been used as a consideration in the Supreme Court's decision regarding the change of the sentence from the death penalty to life imprisonment. The author believes that this matter needs to be reviewed, considering the use of Law No. 1 of 2023 as the basis for sentencing in the premeditated murder case involving Ferdy Sambo.

Regarding the change from the death penalty to life imprisonment, according to the judges' considerations, the Supreme Court justices who deliberated the decision using the National Criminal Code or Law No. 1 of 2023 viewed the death penalty as a special sentence, no longer a principal sentence. Thus, the political spirit of criminal law in Indonesia has shifted from the original retributive/lex talionis paradigm to a rehabilitative paradigm that emphasizes sentencing purposes as means of prevention, rehabilitation, conflict resolution/restoration of balance, creation of safety and security, and fostering remorse, as regulated in Article 100 paragraph (1) regarding the imposition of the death penalty. It states that the death penalty is not contrary to the Indonesian constitution. Therefore, if a defendant is sentenced to death, this is not at all contrary to Indonesia's positive criminal law. The provisions for accountability for premeditated murder also include the death penalty threat. Article 340 of the Criminal Code states:

"Anyone who intentionally and with premeditation takes the life of another person shall be punished for premeditated murder (moord), with the death penalty or life imprisonment or a specified term of up to 20 (twenty) years."

In Law No. 1 of 2023, it is regulated in Article 459, which states:

"Anyone who, with prior intent, takes the life of another person, shall be punished for premeditated murder, with the death penalty or life imprisonment or imprisonment for up to 20 (twenty) years."

Regarding the death penalty, several experts support it, stating that: 1) Jonkers, often referred to as Jonkers JE, from the Dutch East Indies, supports the death penalty system because, in his view, for any reason, the death penalty cannot be revoked once executed. He does not accept any other reason or opinion stating that "the death penalty cannot be accepted" because, according to him, court decisions are based on rational and correct reasons. 2) Suringa, commonly known as Hazewinkel Suringa, is one of the experts in criminal law and a figure in the national criminal law reform. He argues that the death penalty is a form of punishment that is very much needed in certain periods, especially during power transitions that occur in a short time. As time progresses, crime also develops with the times, and therefore, according to him, the death penalty is very suitable for the development of the era. 3) Barda Nawawi Arief is one of the figures in the national criminal law reform and an expert in criminal law, who explicitly states in his book that the death penalty still needs to be maintained in the context of the renewal of the National Criminal Code. For him, the death penalty is still very relevant and should be maintained, especially for perpetrators of corruption crimes. 4) Oemar Seno Adji states that as long as Indonesia is still affirming itself and struggling with life that is threatened by danger, as long as public order is disturbed and endangered by inhumane actions, the death penalty is still needed.

However, in the Supreme Court's decision, there is a difference in judgment, which resulted in a life imprisonment sentence with the consideration of using Law No. 1 of 2023 (Sekarsari & Puluhulawa, 2024). The Supreme Court judges who examined the case argued that, by considering the purposes and guidelines of sentencing according to criminal law science and the national criminal law policy after the enactment of Law No. 1 of 2023 concerning the National Criminal Code, the death penalty is viewed as a special sentence, no longer as a principal sentence (Susdarwono & Wiranta, 2023). Thus, the political spirit of criminal law in Indonesia has shifted from the original retributive/lex talionis paradigm to a rehabilitative paradigm that emphasizes sentencing purposes as means of prevention, rehabilitation, conflict resolution/restoration of balance, creation of safety and security, and fostering remorse, as regulated in Article 100 paragraph (1) regarding the imposition of the death penalty. It states that judges can impose the death penalty with a probation period, as referred to in paragraph (1), and the death penalty can be changed to life imprisonment by a Presidential decision after obtaining consideration from the Supreme Court. With the existence of Article 100, suspects involved in serious cases and sentenced to the death penalty can easily escape with the 10-year probation period and a certificate of good conduct and behavior.

4. Conclusions

The regulation concerning criminal liability for premeditated murder is outlined in Article 340 of the Criminal Code (KUHP) and Law No. 1 of 2023, or the National Criminal Code. Law No. 1 of 2023 governs premeditated murder in a manner similar to the previous Criminal Code, specifically Article 340, which also addresses the provisions for premeditated murder. Article 459 of the new law stipulates that anyone who premeditates the taking of another person's life shall be punished for premeditated murder. The perpetrator of premeditated murder may face the death penalty, life imprisonment, or imprisonment for up to twenty (20) years.

In the application of criminal sanctions for premeditated murder (Case Study of the Supreme Court Decision No. 813K/Pid/2023), the defendant Ferdy Sambo received a sentence reduction. Initially, the trial court and appellate court imposed the death penalty, but the Supreme Court sentenced the defendant to life imprisonment. This decision was based on the use of Law No. 1 of 2023, considering that "the judge imposes the death penalty with a probation period of 10 (ten) years, taking into account the defendant's remorse and prospects for self-improvement, and the defendant's role in the crime." This was further clarified by Article 100 paragraph (4), which states: "If the convicted person during the probation period as referred to in paragraph (1) demonstrates good conduct and behavior, the death penalty may be converted to life imprisonment by a Presidential decision after obtaining consideration from the Supreme Court." The application of this article, when in effect, impacts the core content of Article 100 of the Criminal Code, potentially leading to criminal actions by defendants sentenced to death. The use of Law No. 1 of 2023, which should only come into effect three years later according to Article 624, raises the need for a re-evaluation of the Supreme Court's decision on the use of the National Criminal Code as a consideration in the case of defendant Ferdy Sambo.

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