

Juridical Analysis of Criminal Liability for Perpetrators of Premeditated Murder from the Perspective of The New Penal Code

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ABSTRACT

Objective: This research aims to analyze the criminal liability of perpetrators of premeditated murder and to examine the implementation of Article 459 of the new Criminal Code in criminal justice practice. **Method:** The research employs a normative legal research method using statutory, conceptual, and case approaches. The legal materials consist of primary, secondary, and tertiary legal sources, which are analyzed using a descriptive qualitative method. **Results:** The findings indicate that criminal liability for perpetrators of premeditated murder is determined by the fulfillment of the elements of the criminal offense, the existence of intent, the offender's capacity to be held criminally responsible, and the absence of justifying or excusing grounds. The new Criminal Code retains the fundamental characteristics of premeditated murder while introducing reforms through a sentencing system that places greater emphasis on balancing legal certainty, justice, and the protection of human rights, including the regulation of capital punishment as a special form of punishment. **Novelty:** Therefore, the implementation of Article 459 of the new Criminal Code requires consistent legal interpretation and careful judicial consideration to ensure legal certainty and justice in the enforcement of criminal law.

INTRODUCTION

Criminal liability is a fundamental concept in criminal law concerning whether an individual can be held responsible for an action committed. In criminal law doctrine, criminal responsibility does not merely focus on the presence of an unlawful act (*actus reus*), but also requires fault (*mens rea*) as the basis for imposing punishment [1]–[3]. Premeditated murder represents one of the most severe offenses against life, directly impinging upon every person's fundamental right to live. Previously, the legal standing of premeditated murder in Indonesia was governed under Article 340 of the former Criminal Code (KUHP), [4]. It was subsequently restructured and integrated into the new Criminal Code pursuant to Law Number 1 of 2023, [5]. In the new Criminal Code, premeditated murder is explicitly formulated in Article 459, stating that any person who with prior planning deprives another person of life shall be punished with the death penalty, life imprisonment, or imprisonment for a maximum of twenty years, [5], [6].

Criminal liability in premeditated murder cases is influenced by various factors, including the offender's psychological condition, the relationship with the victim, and the presence of potential excusing or justifying grounds, [7], [8]. In certain cases, familial relationships do not negate criminal responsibility, yet they may serve as a judicial consideration in sentencing, highlighting the complexity of determining the offender's degree of fault, [9], [10]. The new Criminal Code introduces significant changes, including a concept of criminal responsibility that emphasizes a balance between legal certainty and substantive justice, [6]. This shift requires a novel understanding and interpretation of existing criminal norms. While Law No. 1 of 2023 modernizes the penal

system, [6], implementation in the field faces ongoing challenges, particularly regarding the interpretation of legal norms and the application of criminal liability principles. Under Law No. 39 of 1999, Article 1 Point 1 concerning Human Rights, human rights are defined as a set of rights inherent to the nature and existence of human beings as creatures of Almighty God, constituting His grace that must be respected, upheld, and protected by the constitutional state, the government, and every individual for the honor and protection of human dignity. Consequently, law enforcement officers are required to adapt to these changes to prevent errors in legal application that could prejudice specific parties, [11].

The new Criminal Code raises questions as to whether its framework for criminal liability adequately addresses long-standing issues such as judicial inconsistency and varying interpretations of offense elements, [12]. According to Van Hammel, from the perspective of positive law, punishment is a form of suffering specifically designated for those who violate the law, [13]. Van Hammel argues that the main purpose of criminal punishment is to uphold justice, provide a deterrent effect, protect society from criminal acts, and inform judicial discretion in sentencing, [13], [14]. Furthermore, Article 28A of the 1945 Constitution of the Republic of Indonesia explicitly guarantees the right of every individual to life and to defend life, forming the constitutional basis for protecting the right to life. The practice of capital punishment in Indonesia frequently sparks debate, particularly regarding moral and religious arguments asserting that only God has the right to take life. It is imperative to reference international standards on the right to life, as Indonesia is obligated under international law to respect and execute agreed international covenants, [15].

Juridical analyses highlight that judicial reasoning in premeditated murder cases often focuses heavily on fulfilling the formal elements of the offense and establishing evidentiary sufficiency. Meanwhile, substantive justice for victims and the public—including public security and general deterrence—is not always consistently reflected in court decisions, [16]. Complexities also arise when offenders are minors, suffer from mental disorders, or act as accomplices, creating risks of sentence disparities and uncertain application of the fault principle, [17], [18]. This exposes a gap between normative constructions in both the old and new Criminal Codes and law enforcement practices in courts, particularly regarding how judges interpret and apply criminal liability in premeditated murder cases in a consistent, proportional manner aligned with the reform of national criminal law, [19], [20].

RESEARCH METHOD

The term "research" derives from the English word *research* (*re* meaning again, and *search* meaning to look for); thus, research literally means searching again, [21]. The word originates from the Latin *reserare*, meaning to uncover or open. Research is defined as an activity to uncover or open knowledge because knowledge—whether existing or yet undiscovered—is assumed to exist in nature, requiring discovery to yield true knowledge that answers specific inquiries.

The methodology of this paper centers on normative juridical legal research utilizing statutory and case approaches. Primary and secondary legal materials were qualitatively analyzed using a deductive-syllogistic approach to evaluate the criminal responsibility of premeditated murder perpetrators under the new Criminal Code, [22]. Rather than focusing on field data, normative legal research concentrates on written legal norms, legal principles, and doctrines. This approach is widely applied in Indonesian legal research to systematically analyze statutes, court judgments, and doctrines. Secondary legal materials used include statutes, court decisions, expert opinions, books, journals, and official legal documents, [21], [22].

The analytical framework relies on the statute approach and the analytical approach. The statute approach examines all regulations related to premeditated murder and criminal liability within the Indonesian legal framework, focusing primarily on the provisions of the new Criminal Code regarding offense elements, the concept of fault (*mens rea*), principles of criminal responsibility, and potential vagueness in statutory language that could create practical hurdles, [5], [23]. The analytical approach systematically examines the interactions between legal norms, concepts, and judicial practice. This helps critically analyze legal hurdles in proving the element of premeditation and determining criminal liability, aiding in the formulation of an ideal framework for consistent application that aligns with national penal reform goals, [6], [24], [25].

RESULTS AND DISCUSSION

Results

Criminal liability is a core pillar of the criminal justice system, serving as the normative foundation to evaluate whether a person can be held legally accountable for a committed act. It stems from the modern criminal law principle *geen straf zonder schuld* (no punishment without fault), establishing that punishment cannot be imposed solely because an act meets the statutory elements of an offense; fault attributable to the offender must also be proven. Under this framework, evaluating criminal responsibility requires both connecting the act to its consequence and conducting a comprehensive analysis of the perpetrator's subjective state of mind at the time of the offense. Law No. 1 of 2023 concerning the Criminal Code introduces a fundamental paradigm shift in Indonesia's penal system by pivoting from retributive justice (retaliation) toward a holistic framework encompassing corrective, rehabilitative, and restorative justice. This shift reflects a move toward utilitarian sentencing focused on rehabilitation, societal protection, and harm restoration rather than pure retribution.

Comparing the former Dutch colonial-era Criminal Code (*Wetboek van Strafrecht* of 1918) with the new Criminal Code (Law No. 1 of 2023) reveals significant changes in the penal framework, specifically regarding premeditated murder. First, regarding statutory drafting, the new Criminal Code replaces the term "whoever" (*barangsiapa*) with "any person" (*setiap orang*) and omits the explicit phrase "intentionally" (*dengan sengaja*), integrating intent into the general intent provisions under Articles 36 and 54(j). Second,

regarding sentencing, the new Criminal Code retains the death penalty, life imprisonment, and maximum terms of twenty years for premeditated murder, but introduces a conditional death penalty with a ten-year probation period under Article 100. This allows a death sentence to be commuted to life imprisonment if the convict demonstrates good conduct during probation. Third, regarding legal capacity and criminal responsibility, the new Criminal Code updates archaic terminology ("defective mental development or disease-induced disorder") to precise medical-legal classifications: "mental disability" and "intellectual disability" under Articles 38 and 39. Fourth, concerning penological goals, the new Criminal Code explicitly establishes that punishment is aimed not at retribution, but at crime prevention, public protection, convict rehabilitation, victim restitution, and restoring social balance.

Forensic psychiatric examinations conducted by psychiatric specialists are documented in a *Visum et Repertum Psychiatricum* (VeRP). A VeRP is defined as an official psychiatric medical report summarizing a subject's mental status examination at a healthcare facility, serving as valid documentary evidence in criminal proceedings. When evaluating a VeRP, judges must focus on the defendant's mental state at the exact time of the offense rather than during trial examinations, as certain mental conditions (such as periodic or psychotic disorders) can be episodic.

A notable case illustrating the evidentiary evaluation of criminal incapacity is Klaten District Court Decision No. 17/Pid.B/2023/PN Klt involving the defendant Donni Oktavianus, who killed both of his biological parents. During proceedings, the defendant claimed he killed his father after seeing a "snake figure" in him, subsequently killing his mother. The defendant had a history of psychiatric treatment at the Jambi Regional Mental Hospital through April 2021. However, the latest psychiatric *visum* concluded that the defendant was not suffering from an overt mental disorder during the incident; instead, his state resulted from excessive dextromethorphan abuse. Based on these facts, the panel of judges found no legal relevance between the defendant's "snake figure" claim and the statutory grounds for excusing criminal liability, holding the defendant fully accountable for his criminal acts.

Discussion

The enactment of Law No. 1 of 2023 concerning the Criminal Code represents the culmination of a long legislative journey driven by the recognition that the 1918 *Wetboek van Strafrecht* (WvS) was no longer aligned with contemporary Indonesian social values, economic developments, and national principles. The legislative policy behind the new Criminal Code focused on decolonization, democratization, and harmonizing national penal law with *Pancasila*, while unifying scattered criminal laws. Promulgated on January 2, 2023, the code was set to take effect three years later on January 2, 2026, as stipulated in the concluding provisions of Article 624 of Law No. 1 of 2023. This three-year transitional period was designated to allow law enforcement officers, legal scholars, and the public to adapt to the new national codification. From the perspective of criminal law reform theory, the new Criminal Code shifts away from colonial retributive paradigms

toward an integrative model balancing preventive, corrective, rehabilitative, and restorative objectives. This shift is codified in Articles 51 through 54, directing judges to view offenders as subjects to be rehabilitated rather than objects of punishment.

The new Criminal Code explicitly incorporates restorative justice into the primary codification rather than relying solely on departmental guidelines, [6]. Key provisions include Article 94 in conjunction with Articles 81–83 (additional penalties regarding victim compensation) and Article 76(3)(a) (probationary supervision tied to victim restitution). This unifies existing restorative justice mechanisms—such as Indonesian National Police Regulation No. 8 of 2021—into a single statutory framework. In premeditated murder cases, restorative justice options during prosecution remain limited due to offense severity and statutory penalties. However, restorative principles remain relevant post-sentencing, particularly regarding inmate rehabilitation, sentence remissions, and conditional release evaluations.

The comparative statutory analysis between Article 340 of the former Criminal Code and Article 459 of Law No. 1 of 2023 spans five core dimensions, as summarized below:

Table 1. Comparative Matrix: Article 340 (Former KUHP) vs. Article 459 (New KUHP)

Aspect	Former Criminal Code (Article 340 WvS/KUHP)	New Criminal Code (Article 459 Law No. 1/2023)
Offense Elements	"Whoever, intentionally and with prior planning, deprives another of life" (intent explicitly separated from planning), [4].	"Any person who, with prior planning, deprives another of life" (intent integrated into the general provisions and implicit in planning), [5].
Concept of Fault (<i>Mens Rea</i>)	<i>Dolus praemeditatus</i> proven via two distinct requirements: intent (<i>sengaja</i>) and planning (<i>berencana</i>), [3], [8].	<i>Dolus praemeditatus</i> remains required, but textually combined under "with prior planning," requiring clear judicial interpretation, [5], [23].
Sentencing System	Death penalty as a primary sentence on equal standing with life or fixed-term imprisonment, [4].	Death penalty established as a special alternative punishment (Article 98) with a 10-year probation mechanism (Article 100), [5], [6].
Human Rights Protection	Minimal review before executions carried out without mandatory behavioral evaluations, [4].	Mandatory 10-year evaluation period prior to execution, aligning with rights-based proportionality and the right to life, [5], [15].

Aspect	Former Criminal Code (Article 340 WvS/KUHP)	New Criminal Code (Article 459 Law No. 1/2023)
Legal Certainty	Offense elements are clear, but statutory structure reflects colonial penal philosophies, [4].	Offense formulation is aligned with modern national sentencing principles (Articles 51–54), though omitting "intentionally" requires consistent judicial interpretation, [5], [6].

This comparative structure demonstrates that while the new Criminal Code retains the underlying offense elements of premeditated murder, it introduces a humanized sentencing framework via conditional capital punishment, balancing legal certainty, public safety, and human rights protections.

Special deterrence depends on a sentence's capacity to rehabilitate an offender so they no longer commit crimes upon release. Penological effectiveness relies on the quality of correctional rehabilitation programs. Indonesian correctional facilities currently face operational challenges, most notably severe overcrowding, which impedes rehabilitation efforts. Under the new Criminal Code, special deterrence for premeditated murder is addressed through two main approaches. First, through penal diversification, the new Code expands sentencing alternatives (such as supervision, fines, and community service), reflecting a more nuanced approach, even though severe offenses like premeditated murder continue to warrant custodial sentences. Second, by strengthening rehabilitation goals in sentence execution, the new Criminal Code mandates that punishment focus on reintegrating convicts into society through structured rehabilitation.

CONCLUSION

Fundamental Finding : Criminal liability for perpetrators of premeditated murder under the Indonesian penal system requires satisfying all statutory elements of the offense: the unlawful act (*actus reus*), criminal intent (*mens rea*), the offender's capacity to be held liable, and the absence of legal justification or excuse. The element of "prior planning" distinguishes premeditated murder from simple homicide, as it indicates a deliberate, calculated intention prior to execution. Proving premeditation requires clear evidentiary support and objective judicial reasoning to secure legal certainty, justice, and utility. The legal framework under Law Number 1 of 2023 concerning the Criminal Code provides a more systematic structure than its predecessor. **Implication :** It incorporates modern penal principles, including legality, *nulla poena sine culpa* (no punishment without fault), sentence individualization, and human rights protections. In judicial practice, maintaining a consistent interpretation of "prior planning" remains vital to prevent sentencing disparities and ensure legal certainty in premeditated murder prosecutions. **Limitation :** This study is limited by its primarily normative juridical

approach, which focuses on statutory provisions and legal principles governing criminal liability for premeditated murder. It does not comprehensively examine empirical variations in judicial interpretation or sentencing practices across different Indonesian courts. The study also provides limited analysis of how evidentiary challenges, particularly the assessment of prior planning and criminal intent, are addressed in actual judicial proceedings. **Future Research** : should employ empirical and comparative approaches by examining court decisions involving premeditated murder across different jurisdictions in Indonesia. Further studies should analyze how judges interpret and establish the element of prior planning, criminal intent, and supporting evidence under Law Number 1 of 2023. Comparative research between the previous Criminal Code and the new Criminal Code could also assess whether the new framework reduces sentencing disparities and strengthens consistency, legal certainty, and protection of human rights.

REFERENCES

- [1] A. Rifai, *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif*. Jakarta: Sinar Grafika, 2018.
- [2] C. Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*. Jakarta: Kencana, 2006.
- [3] R. Saleh, *Perbuatan Pidana dan Pertanggungjawaban Pidana*. Jakarta: Aksara Baru, 1983.
- [4] R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) serta Komentar Lengkap Pasal demi Pasal*. Bogor: Politeia, 1995.
- [5] A. Hamzah, *Delik-Delik Tertentu dalam KUHP Baru*. Jakarta: Sinar Grafika, 2023.
- [6] T. Prasetyo, H. Mulyadi, and J. Sinambela, *KUHP Baru dan Keadilan Bermartabat: Reformasi Paradigma Sanksi Pidana di Indonesia*. Jakarta: Terbit Raja Buku, 2025.
- [7] A. Hamzah, *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta, 2010.
- [8] Moeljatno, *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta, 2002.
- [9] L. Marpaung, *Asas-Teori-Praktik Hukum Pidana*. Jakarta: Sinar Grafika, 2005.
- [10] Moeljatno, *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta, 2008.
- [11] Muladi, *Kapita Selektta Sistem Peradilan Pidana*. Semarang: Badan Penerbit Universitas Diponegoro, 1995.
- [12] Muladi and B. N. Arief, *Teori-Teori dan Kebijakan Pidana*. Bandung: Alumni, 2010.
- [13] P. A. F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*. Bandung: Citra Aditya Bakti, 1997.
- [14] P. A. F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*. Bandung: Citra Aditya Bakti, 2014.
- [15] S. Laritmas and A. Rosidi, *Teori-Teori Negara Hukum*, 1st ed. Jakarta: Kencana Prenada Media, 2024.
- [16] J. Rawls, *A Theory of Justice*. Cambridge, MA: Harvard University Press, 1971.
- [17] A. Hamzah, *Asas-Asas Hukum Pidana di Indonesia dan Perkembangannya*. Jakarta: Sofmedia, 2010.
- [18] B. N. Arief, *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Kencana Prenada Media Group, 2011.
- [19] S. Rahardjo, *Ilmu Hukum*. Bandung: PT Citra Aditya Bakti, 2000.
- [20] B. L. Tanya et al., *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*. Yogyakarta: Genta Publishing, 2010.

- [21] Sari *et al.*, *Melakukan Penelitian Kepustakaan*, 1st ed. Sukoharjo: Pradina Pustaka, 2025.
- [22] Suteki and G. Taufani, *Metodologi Penelitian Hukum: Filsafat, Teori, dan Praktis*, 5th ed. Depok: PT RajaGrafindo Persada, 2025.
- [23] Sudarto, *Hukum Pidana I*, Rev. ed. Semarang: Yayasan Sudarto, 2018.
- [24] T. Prasetyo, *Hukum Pidana*. Jakarta: RajaGrafindo Persada, 2016.
- [25] M. N. P. Hasibuan, *Delik-Delik dalam KUHP: Klasifikasi, Unsur dan Analisis Yuridis*. Jakarta, 2025.

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