



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 36/PUU-XXII/2024**

**Concerning**

**Proof of Motive in Premeditated Murder (Article 340 of the Criminal Code)**

- Petitioner** : Moh. Qusyairi
- Type of Case** : Judicial Review of the Indonesian Criminal Code (Criminal Code) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 340 of the Criminal Code is in contrary to Article 28A, Article 28D paragraph (1) and Article 28I paragraph (1) of the 1945 Constitution.
- Verdict** : To dismiss the Petitioner's petition in its entirety
- Date of Decision** : Monday, 15 July 2024
- Overview of Decision** :

The Petitioner is an individual Indonesian citizen, working as an advocate. The Petitioner suffered a constitutional loss as stated in Article 28A, Article 28D paragraph (1) and Article 28I paragraph (1) of the 1945 Constitution. According to the Petitioner, the provisions of Article 340 of the Criminal Code do not have a clear, complete and comprehensive meaning, it does not regulate the determination of motives in the criminal act of premeditated murder. This results in the obstruction of the advocate's right to provide legal assistance and defend the client's rights to the maximum extent. Whereas without any proof of motive in premeditated murder, the defendant is not given sufficient opportunity to obtain a reduced sentence. Therefore, by not considering the motive as a reason that lightens or incriminates the defendant, it has violated the rights and eliminated the rights of the Petitioner as an advocate in handling the premeditated murder case to defend the client's rights to the maximum extent in order to obtain a lighter sentence and to be treated fairly and equally before the law.

Regarding the Court's authority, because the Petitioner petitions for a judicial review of the Indonesian Criminal Code against the 1945 Constitution, which is one of the Court's authorities, then pursuant to Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, and Article 29 paragraph (1) of the Judicial Power Law, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing, regardless of whether or not the Petitioner's arguments regarding the unconstitutionality of the norm of Article 340 of the Criminal Code that is being petitioned for review are proven, in his qualifications as an individual Indonesian citizen who also works as an advocate, the Petitioner has specifically described his constitutional rights which he considers to be violated by the enactment of the norm that is

being petitioned for review, namely among others the occurrence of legal uncertainty, so that not only are there restrictions in defending the client's legal rights, but the Petitioner is also confused when accompanying the defendant in preparing an effective defense for the defendant. When defending a defendant, an advocate needs to prepare thorough arguments for his client, so that he can provide a most effective appeal for his client. Therefore, it is evident that there is a causal relationship between the Petitioner's alleged constitutional loss and the enactment of the statutory norm being petitioned for review, if this petition is granted, such loss will no longer occur. Therefore, the Petitioner has the legal standing to act as Petitioner in the *a quo* Petition.

Regarding the constitutionality review of Article 340 of the Criminal Code as argued by the Petitioner, the Court is of the opinion that the Petitioner's petition is clear and there is no need or urgency to hear the statements from the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas pursuant to Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (PMK 2/2021), regarding whether the *a quo* norm may be re-submitted for a review, the Court has read and compared between the petition material of the Petitioner's and that of the Case Number 1/PUU-XXII/2024 which also requested a constitutionality review of Article 340 of the Criminal Code, it is evident that the legal basis for review in the previous case is different from the legal basis for review in the *a quo* case. In addition, in Case Number 1/PUU-XXII/2024, the Court issued a Decree, because the petition was withdrawn, so that the subject matter of the previous petition had not been considered by the Court. Therefore, since for the previous judicial review petition, the Court did not consider/had not considered the constitutionality of the norm of Article 340 of the Criminal Code, and since the *a quo* petition provide a different legal basis for review, the Court is of the opinion that the *a quo* petition is not prevented from the provisions contained in Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of PMK 2/2021, therefore a petition to review the *a quo* norms may be re-submitted.

Whereas after the Court carefully read the arguments of the Petitioner's petition and the submitted evidence, the main issue disputed by the Petitioner is related to the need for proof of motive in the crime of premeditated murder as regulated in Article 340 of the Criminal Code, so that the severity of the criminal punishment imposed on the defendant is adjusted to the motive of the crime he committed, regarding the Petitioner's *a quo* arguments, the Court considers the following:

1. Whereas doctrinally, the criminal act of murder is categorized as a crime against human life, because the crime is committed in a series of actions that can result in the loss of a person's life or the death of a person, such act is intentionally carried out to take the life of a person or another person. The criminal act of murder itself has certain qualifications, one of which is the ordinary form of criminal act of murder as regulated in Article 338 of the Criminal Code and the criminal act of premeditated murder as regulated in Article 340 of the Criminal Code, as a form of incriminating murder;
2. Whereas both the criminal acts of ordinary murder and premeditated murder have a fundamental element, namely the element of intention to take another person's life. This means that both ordinary murder and premeditated murder must be based on the perpetrator's will to carry out the act with the aim of taking another person's life.
3. By linking the *a quo* element of intent with the universally applicable doctrines, both in theory and practice, we would obtain several variants of intention or *opzet* which are divided into three types, as follows:
  - 1) Intentional act (*opzet als oogmerk*). In an intentional act, the perpetrator truly intends to achieve the consequences under which criminal threats are imposed.

This intentional nature gives rise to two theories, namely as follows:

- a. Theory of will, which considers that intentionality exists when the act and consequences of a criminal act are desired by the perpetrator.
  - b. Theory of imagination assumes that intention occurs when the perpetrator has a clear imagination of the consequences that could be achieved if he/she carries out the act, therefore, he/she arranges his/her actions to conform with his/her imagination.
- 2) Intention in secured awareness (*opzet bij zekerheids-bewustzijn*). This intention exists when the perpetrator through his/her actions does not aim to achieve the consequences that are the basis of the crime, but he/she knows very well that these consequences will certainly follow his/her actions.
  - 3) Intention in possible awareness (*opzet bij mogelijkheids-bewustzijn*). This intention is considered to have occurred if in the perpetrator's mind there is only a mere shadow of the possibility that the relevant consequences will occur without him/her intending them.
4. Whereas in accordance with the above references to the doctrine/theory of intent, *expressis verbis* we cannot separate the element of intention as contained in Article 338 of the Criminal Code and Article 340 of the Criminal Code and the "intention" or "motive" as one of the main elements in the criminal acts regulated in the two articles.
  5. Whereas the distinguishing element between the criminal act of ordinary murder as contained in Article 338 of the Criminal Code and the criminal act of premeditated murder as referred to in Article 340 of the Criminal Code lies in the element of prior planning (premeditation).
  6. Whereas regarding the element of "prior planning", there are three conditions for the crime of premeditated murder, as follows:
    - 1) The will is decided in a calm situation. In this case, when the perpetrator decided to carry out his/her intention to kill, the perpetrator did so in a calm state of mind, not in a hurry or haste, and the perpetrator did not do it under duress or in a state of high emotion. Everything is prepared by the perpetrator with prior thought and the perpetrator has considered what consequences will occur later.
    - 2) There is sufficient time between the emergence of the will and the implementation of the will. In this case, there is time from the emergence of the will to the implementation of the will. The time referred hereto is not too long and not too short. This period focuses on the current situation, where during the said period the perpetrator can still change his/her mind, or if the perpetrator decides to commit the murder, the perpetrator has time to think about and prepare how to commit the murder, for example how to obtain the goods or tools that will be used to commit murder, the alibi used so that the perpetrator will not be suspected, and how to commit the murder without leaving a trace.
    - 3) The execution of deeds in a calm situation. In this case, to carry out the murder, the perpetrator is not in a state of high emotion, does not under excessive fear, and is not in a hurry and the act was carried out without coercion. This calm attitude is carried out to ensure the success of the method that has been prepared by the perpetrator to carry out his will.
  7. Whereas doctrinally, the element of intention/motive of the perpetrator of the criminal act of premeditated murder cannot actually be separated from the element of intention. This means that the perpetrator who carries out the action or deed has the intention in his heart or mind. Any act or deed carried out with intention, if carried out

voluntarily and consciously and such act or deed is prohibited by law, then it will result in criminal liability.

8. In relation to criminal acts, a motive can be described as a basic purpose of an act or desire that drives a person's intentions. Intention and motive are two different things, where the main difference lies in their specificity. Intention specifically shows what the perpetrator was really thinking when he was going to commit a crime. Meanwhile, motive refers to the reason or motivation that drives someone to do something or not to do something.
9. Whereas the existence of an intention of the perpetrator or suspect which in reality cannot be separated from the element of intent, then this intention can be proven together with the element of "intentionally" in the court, because it is impossible for to commit an act intentionally without being accompanied by the intention of the perpetrator.
10. Whereas regarding the severity or lightness of the criminal responsibility that will be imposed on the perpetrator or suspect is not based on proof of motive but rather is based on proof of whether the murder committed by the perpetrator or suspect has fulfilled the elements and requirements that are categorized as a criminal act of premeditated murder. This means that to the extent that all the elements contained in Article 340 of the Criminal Code have been fulfilled, the element of motive does not eliminate the element of the perpetrator's fault. Meanwhile, regarding the severity or lightness of the sentence, the judge will consider the factors that are revealed during the trial that incriminate and reduce the fault of the perpetrator.

Whereas pursuant to all of the above considerations, the Court is of the opinion that the Petitioner's argument regarding the unconstitutionality of Article 340 of the Criminal Code is legally unjustifiable in its entirety.

Accordingly, the Court subsequently passed down a decision which verdict states to dismiss the Petitioner's petition in its entirety.