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# EVIDENCE OF PERSUASIVE IN PREDICTIVE MURDER

**Afriyati [1], Belly Isnaeni [2], Agung Arafat Saputra[3]**
Pamulang University

Correspondence
Email: Ipietaurhenlaw12@gmail.com ,dosen02637@unpam.ac.id ,dosen02146@unpam.ac.id No. Telp:

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***Abstract***
*The doctrine of inclusion as a basis for expanding the crime can be criminalized by a person who is involved in the realization of a crime. Participation is regulated in Article 55, Article 56 of the Criminal Code and Article 57 of the Criminal Code which means that there are two or more persons who commit a crime. The inclusion of (deelneming) in positive law is that there are two or more persons who commit a crime or in the words of two or more persons participating in a criminal act may be mentioned that a person participates in relation to another person (provided for in Articles 55 and 56 of the Criminal Code). In Article 55 paragraph 1 to 2 of the Criminal Code, the Concept of the Occupation can be categorized as those who give or promise something by misusing power or dignity, by violence, threat or misdirection, or by providing opportunities, means or information, deliberately encouraging others to do deeds. The participation of advocates on the crime of child killing can be subject to accountability that has been regulated as Article 340 of the Criminal Code. Article 55 of the Criminal Code there are four forms of participation: a). Order to do; b). Participate; c). Advocates / moves others to do; d). Help do or help to do.*
***Keywords:*** *Proof; Advocates; Murder*

***Abstract***
The teaching on participation as a basis for expanding the criminal penalties for people involved in the realization of a crime. Participation is regulated in Article 55, Article 56 of the Criminal Code and Article 57 of the Criminal Code which means that there are two or more people who commit a crime. Participation *(deelneming)* in positive law is that there are two or more people who commit a crime or in other words there are two or more people taking part in realizing a crime, it can be stated that a person participates in a relationship with another person (regulated in Article 55 and 56 of the Criminal Code). In Article 55 paragraph 1 to 2 of the Criminal Code, the Concept of Persuasion can be categorized as those who by giving or promising something by abusing power or dignity, with violence, threats or misleading, or by providing opportunities, means or information, intentionally encourage others to commit acts. The participation of the persuader in the crime of premeditated murder is subject to accountability as regulated in Article 340 of the Criminal Code. Article 55 of the Criminal Code contains four forms of participation:a). those who do; b). ordered to do; c). participate in doing; d). persuade/advocate/move other people to do it.
**Keywords:** Proof; Persuasion; Murder.

## INTRODUCTION

Laws are made with the aim of maintaining order and the welfare of society. Laws live and develop in society because laws have become an inseparable part of society. So there is an adage *ubi societas ibi ius* , which is freely translated which more or less means, where there is society there is law. That the existence of law is very much needed by society, so that a society without law will become wild. Crime has long been known in the history of human civilization. So it is not surprising that the assumption arose that crime is as old as humanity. One of the first forms of crime to occur was murder. The murder was committed by Adam's son, namely Qabil, against Habil as told in the holy book of the Qur'an. At that time, Qabil killed Habil who was Qabil's brother. Thus, violence after violence in various forms threatens human life carried out by and against human children themselves and continues to this day. [1]Therefore,

[1]JE. Sahetapy. *Victimology of an Anthology,* Sinar Harapan, Jakarta 1987, pp. 35-36.

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criminal law is needed to regulate community life. Where the nature of criminal law is as "ultimum remidium" in enforcing criminal law to provide a deterrent effect for the perpetrators.

Moeljatno said that Criminal Law is part of the overall law in force in a country, which provides the basis and rules for:[2]

1. Determining which actions may not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain criminal penalties for anyone who violates the prohibition.
2. Determining when and in what cases those who have violated these prohibitions can be subject to or sentenced to the penalties that have been threatened.
3. Determining how criminal penalties can be imposed if someone is suspected of violating the prohibition.

To determine which actions are considered criminal acts or criminal acts, we adhere to a principle called the principle of legality, namely the principle that determines that every criminal act must be determined as such by statutory regulations (Article 1 paragraph (1) of the Criminal Code).[3]

If the three parts above are systematically classified by Moeljatno , then they will be divided into two main parts. *First* , regarding criminal acts *and* criminal liability *, also* called material criminal law. *Second , regarding how or the procedure to sue people suspected of committing criminal acts and for which they can be punished or cannot be punished, is called formal criminal law (* which is the implementation of material criminal law).

In relation to material criminal law, it can be explained that material criminal law in Indonesia is contained in the Criminal Code (KUHP), the systematics of which consist of 3 (three) books, namely: Book I, on General Provisions, Book II on Crimes and Book III on Violations. Books II and III contain prohibited or required acts and the criminal sanctions that are threatened. More specifically in Book II on Crimes, it contains prohibited or required acts, forms of error and the criminal sanctions that are threatened. The acts formulated in Books II and III are often known as criminal acts or criminal acts.

A criminal act is an act prohibited by the Criminal Code. So if someone commits an act that violates the prohibitions and obligations regulated in the Criminal Code, then that person can be subject to criminal penalties. It can be understood what is meant by the term " criminal act" or in Dutch *strafbaar feit* which is actually the official term in *the Strafwetboek* or Criminal Code currently in force in Indonesia, which in Latin is called *delictum* or *delict* .

Our lawmakers have used the term *strafbaar feit* to refer to what we know as a "criminal act" in the Criminal Code without providing an explanation of what is actually meant by the term *strafbaar feit* . [4]then various doctrines and opinions arose about what is actually meant by *strafbaar feit* . Furthermore, several views that vary in Indonesian have emerged with various terms from the term *strafbaar feit* , such as: "criminal act", "criminal event", "criminal act", "punishable act" while Soedarto and various Special Criminal Laws use the term Criminal Act. Therefore, the Indonesian Criminal Code is based on the Dutch WvS, so the original term is the same, namely *strafbaar feit* .[5]

Thus, speaking of *strafbaar feit* in criminal law, it is distinguished between criminal acts or criminal acts and criminal responsibility. According to criminal law, *strafbaar feit* is

[2]Moeljatno. *Principles of Criminal Law,* Rineka Cipta, Jakarta 2015, p. 1
[3] *Ibid* p. 5.
[4] PAF Lamintang, *Basics of Indonesian Criminal Law* , Sinar Grafika. 2014, p. 179
[5]Andi Hamzah, *Indonesian Criminal Law,* Sinar Grafika 2017 p. 87

distinguished into two elements, namely objective elements and subjective elements. In relation to this, Moeljatno, followed by Roeslan Saleh and AZ Abidin [6]separate *the actus reus* (delictum) of criminal acts as a condition for objective punishment; and *mens rea* of criminal responsibility as a condition for subjective punishment. What is prohibited is the act (including neglect) and what is threatened with punishment is the person who commits the act or neglect.

Based on the description above, a person can only be punished if the objective and subjective requirements for punishment are met *(actus reus and mens rea)* , [7]if the objective or subjective elements are met in the defendant, then the judge can issue a verdict in the form of a statement that the defendant is guilty and has committed a crime. Likewise, in cases of involvement in murder, both ordinary murder and premeditated murder, the judge already has considerations in issuing a verdict. However, if the objective and subjective elements cannot be proven, then it is likely that the judge will issue a verdict in the form of release from all legal charges or acquittal. In addition to having committed a crime, criminal responsibility can only be demanded when the crime is committed with error. Therefore, the study of the theory of the separation of criminal acts and criminal responsibility is first carried out by tracing its application and development in court decisions.

The crime of murder has several forms or qualifications (naming), including the crime of murder and the crime of premeditated murder. The crime of murder is regulated in Article 338 of the Criminal Code, namely: *"Anyone who intentionally takes the life of another person, is threatened, because of murder, with a maximum prison sentence of fifteen years"* [8] Meanwhile, the crime of premeditated murder is regulated in Article 340 of the Criminal Code, namely: " *Anyone who intentionally and with prior planning takes the life of another person, is threatened, because of premeditated murder (moord), with the death penalty or life imprisonment or for a certain period of time, a maximum of twenty years* ."[9]

The difference between the two crimes above lies in the element of "with prior planning (planning)." The crime of murder is realized/occurred by the existence of the will or intention to kill and its implementation together. In other words, between the emergence of the will to kill and its implementation become one unit. While the crime of premeditated murder is realized/occurred starting with a plan before the execution of the murder, such as the perpetrator thinking about the act to be carried out calmly, there is a time gap between the emergence of the will and the execution of the will. [10]Anwar[11] states that between the crime of premeditated murder and the crime of murder, the difference lies in what happens to the perpetrator before the murder is carried out. In the crime of premeditated murder, the perpetrator needs time to think calmly. While in the crime of ordinary murder, the intention to kill and the execution of the murder are one unit.

The drafters of the Criminal Code formulated the crime of premeditated murder as a form of special aggravated murder,[12] seen from the inner attitude of guilt *(schuld)* , the threat of premeditated murder should be aggravated. Why is that, because the perpetrator of premeditated murder as a "cold-blooded killer," this is a different inner state from an emotional killer.[13]

[6] *Ibid* , p. 89
[7] *Ibid,* p. 90
[8]Moeljatno. *KUHP (Criminal Code)* , Bumi Aksara. 2009a, pp. 122-123
[9] *Ibid* , pp. 122-123.
[10] Yanri, FB (2017, March) *Premeditated murder. Law and Justice* , *4(1),* p. 38.
[11]Anwar, M. *Criminal Law Special Part (KUHP Book II).* Bandung Alumni. 1986, p. 93.
[12]A. Chazawi. *Crimes Against Body & Life.* Rajawali Pers. 2001, p. 81.
[13]Andi Hamzah. *Indonesian Criminal Procedure Law.* Sinar Grafika 2001, pp. 304-305.

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However, the understanding and requirements of the planned element can be obtained from the opinions of criminal law experts (doctrine) and judges' decisions (jurisprudence). This situation is very reasonable, as expressed by Mertokusumo, [14]that the life of society is very broad, of course all of it cannot be regulated by laws and regulations completely and clearly, so the law must be sought and found. Basically, everyone who is interested in a legal problem makes a legal discovery. Judges are considered professional people in finding the law, because judges are always faced with concrete legal events or conflicts that must be resolved every day.

The definition and requirements of the element of premeditation will always be dynamic, in accordance with the development and complexity of cases or cases of premeditated murder. Even in certain cases, determining the crime of ordinary murder or premeditated murder is not easy, because both have very thin differentiation or differences. Likewise, determining the existence of an element of premeditation in the crime of premeditated murder is not an easy job. The above situation requires the judge's accuracy in analyzing, examining, considering, and deciding cases or cases of premeditated murder, whether they have fulfilled the element of premeditation or not. While some judges' points of view see premeditation as based on the existence of a certain time gap between the existence of a will and the implementation of the will. Some other judges see premeditation as the existence of a decision of the will that is decided calmly, because the existence of time is relative and its existence is certain in the element of premeditation. From all that, the judge forgets the main requirement of the element of premeditation, namely implementing the plan that has been planned.

Memorie van Toelichting (MvT) formulated the definition of the term *met voorbedachte rade* (planned in advance) as a designation or description of the existence of a certain time to consider calmly [15]. The MvT stipulates the requirement of a plan in advance if there is a certain time or moment. The existence of a certain time is used by the perpetrator to consider his actions calmly. The definition of planning according to the MvT was emphasized by *the Arrest Hoge Raad* dated March 22, 1909 with his statement "To be able to accept a plan in advance, there needs to be a short or long period of time in which calm consideration and thought are carried out. The perpetrator must be able to calculate the meaning and consequences of his actions in a mental state that allows for thinking."

The effort of proof is very necessary for the judge in determining the verdict to be imposed on the defendant. The judge must be able to process and process the data obtained during the trial process in this case evidence, witness statements, the defendant's defense, as well as the prosecutor's demands and psychological content.

Proof is an attempt or effort to convince the judge of the truth of the arguments put forward by the parties in the court hearing based on the evidence that has been determined in the laws and regulations. Proving in the legal sense is providing sufficient grounds for the judge examining the case in question to provide certainty about the truth of the events presented in accordance with the provisions of Article 183 of the Criminal Procedure Code (KUHAP) which states that: *"A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the conviction that a crime actually occurred and that the defendant is guilty of committing it."*

Judges in making decisions or verdicts will always be guided by the results of the evidence. In relation to Evidence and all its activities, knowing the meaning of these terms will greatly assist in understanding the scope of evidence and its urgency. So that the decision to be made to the defendant can be based on a sense of responsibility, justice, wisdom, professionalism and be objective. Sometimes the punishment given to perpetrators of crimes

[14]Mertokusumo, S. *The discovery of law.* Yogyakarta: Liberty. 2009, p. 38.
[15]Tongat. *Material criminal law (Review of criminal acts against legal subjects in criminal code)* . Jakarta: Djambatan. 2003, p. 23.

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committed by more than one person, for example, involvement in the crime of murder, is still not in accordance with applicable criminal law regulations. The many different opinions among criminal law experts themselves regarding involvement, illustrate that involvement is a complicated matter and requires a deep understanding of it.

In addition, the judge's considerations and decisions in deciding on the crime of premeditated murder are closely related to human rights. Judges are required to be careful and precise in considering cases of premeditated murder. Do not let the actions carried out by the defendant, which are not actually persuasion in premeditated murder, be decided as persuasion in premeditated murder or vice versa. Decision Number ...../Pid.B/20../PN. Jkt Brt. In accordance with this description, it is interesting to analyze. The incident began in 2012 when Agrapinus Rumatora (AR) borrowed Rp. 1,000,000,000.- (one billion rupiah) from John Kei, and promised to return the money of Rp. 1,600,000.00.- (one billion six hundred million rupiah) within a period of 6 (six) months, until JK was released on December 26, 2019. The loan money has not been returned by AR. Furthermore, on May 14, 2020, JK gave a Power of Attorney to DK to collect debts from AR. Based on the Power of Attorney, defendant DK has collected debts from AR several times using the same team (colleagues), namely Tuce Kei et al. That on June 14, 2024, where John Kei (JK) and his entourage met defendant DK at his office in the Kelapa Gading area, the meeting took place because JK was about to go home to Bekasi but because the Pegangsaan Dua Kelapa Gading area was congested, JK contacted DK who was in the office at that time so he stopped by DK's office, during the meeting JK gave directions to defendant DK's colleagues who worked in the office, including Yermias FF where JK gave a moral message "If you have worked well, don't embarrass yourself, remember trust is expensive" not long after that JK immediately said goodbye and went home. Then on June 20, defendant DK took operational money to collect, and defendant DK called defendant Tuce to gather at Arcici sport center on Sunday, June 21, 2020 at 09:00 WIB to go to collect Agrapinus Rumatora (AR). On Sunday, June 21, 2020, defendant DK went to Arcici sport center at around 09:45 WIB, defendant DK met Arcici sport center Tuce Kei et al, including Yermias Far - Far, before leaving, defendant DK gave directions or orders in front of Tuce Kei et al to go to collect Agrapinus Rumatora in Perm. Green Lake Tangerang in a good way and without violence, if AR has not been able to pay, invite him nicely to clarify directly with JK, considering that they are still relatives. Defendant DK was given Power of Attorney by JK (power of attorney for collection dated May 14, 2020 to collect AR).

After being given directions by the Defendant DK, Tuce Kei et al., around 5 cars went straight to AR's house. Tuce Kei et al. arrived first at AR's house located at Green Lake, while Yermias Far - Far et al. got lost and could not catch up with Tuce Kei et al. who had already arrived at Agrapinus Rumatora's house. Upon arriving at Green Lake, Tuce Kei et al. could not meet Agrapinus Rumatora, resulting in vandalism at Agrapinus Rumatora's house. Meanwhile, Yermias Far - Far et al., because they got lost (didn't know Agrapinus Rumatora's house), asked the local residents several times for the address of the Green Lake Housing Complex. While asking for an address, suddenly Erwin (the victim) and his friend named Angky using a motorbike approached Yermias FF and Samuel Teco who were asking for an address, at that time Samuel Teco saw Angky (the person riding the motorbike) about to pull out a knife, so Samuel Teco told Yermias FF about it, immediately Yermias FF took his machete and immediately cut Angky's hand which resulted in several of his fingers being cut off, and Erwin (the victim) was chased by Yermias FF and Samuel Teco, the victim ran towards the car that was being ridden by Yermias FF et al, where Henra Yanto, Bony and Bukon were waiting in the car, because they heard Yermias FF's screams, finally his friends who were in the car got out to help which resulted in Erwin dying from the slashing carried out by Yermias et al. In the afternoon, defendant DK was informed by JK via telephone about who had carried out the vandalism at AR's house, and defendant DK answered that he did not know about it. Not long

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after, Yermias FF et al came to DK's office, and DK asked about the incident that had occurred at AR's house. Yermias FF et al did not know about it, and defendant DK was even informed about the murder they had committed.

The judge decided that the defendant DK had been proven to have committed the crime of incitement to commit premeditated murder as regulated in Article 55 paragraph (1) 2 and 340 of the Criminal Code. In his considerations, the judge stated that the elements of incitement and planning had been proven even though the defendant DK had no problems or disputes with the victim Erwin.

It is interesting to analyze the judge's considerations above which stated that defendant DK was proven to have committed the crime of persuasion in premeditated murder. In fact, the persuasion concluded by the judge was a moral message conveyed by JK, even if there was a murder plan carried out by JK through defendant DK aimed at AR who had debts. However, the murder plan carried out by defendant Tuce Kei et al. against AR was not achieved, because AR had left the location. Then defendant Yermias FF et al. met with Angky and Erwin (victims) at a different location, who had no problems with JK or defendant DK before. After that, there was a slashing carried out by Yermias FF et al. against Angky and Erwin, so that Erwin died.

**B. Problem Formulation**

Based on the background description above, the following problems can be formulated:

1. How to prove the elements of the crime of persuading to commit premeditated murder; and
2. How did the judge consider imposing criminal sanctions on the perpetrators who persuaded them to commit premeditated murder in Decision Number: 1746/ Pid.B/2020/PN.Jkt.Brt)?

**C. Purpose and Use**

Every research has a goal as a target to be achieved. The purpose of this research is to find out and analyze the judge's considerations that stated that the defendant DK committed the crime of persuasion in premeditated murder because he had persuaded and planned the murder of AR even though the one killed by ER was not AR. In addition to the purpose, of course this research has uses or benefits. The uses of this research are:

1. Theoretically, this research can contribute to thinking about the dynamics of understanding and requirements for the element of premeditation in the crime of premeditated murder.

2. In practice, this research can be used as a reference by law enforcers, both at the investigation and prosecution levels, and during examination in court in cases of premeditated murder.

**D. DISCUSSION**

**Qualification of Inducement in the Crime of Premeditated Murder**

**A. The Concept of Persuasion in Article 55 paragraph 1 to 2 of the Criminal Code.**

**1. Participation *(Deelneming)* in Criminal Acts.**

The teaching on participation as a basis for expanding the criminal penalties for people involved in the realization of a crime. Participation in Article 55, Article 56, and Article 57 of the Criminal Code means that there are two or more people who commit a crime. Participation *(deelneming)* in positive law is that there are two or more people who commit a crime or in other words there are two or more people taking part in realizing a

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crime, it can be said that a person participates in a relationship with another person.[16] According to Satochid Kartanegara, [17] *deelneming* in a *strafbaar feit* or *delict* means "if in one crime several people or more than one person are involved". In this case, it must be understood how the "relationship" of each participant is to the delict, because the relationship is varied. This relationship can be in the form of:

a. Several people together commit a delict.
b. Maybe only someone has the "will" and "plans" the delict, but the delict is not carried out by himself, but he uses other people to carry out the delict.
c. It can also happen that one person commits a delict, while another person "helps" that person to carry out the delict.

Because the relationship of each participant to the delict can take various forms, the teaching or understanding of deelneming is based on "Determining the responsibility of each participant for the delict".

According to doctrine, *Deelneming* by its nature consists of:[18]

a. Stand-alone *deelneming (zelfstandige deelneming)* , namely the responsibility of each Participant is valued individually;
b. *Deelneming* that does not stand alone ( *onzefstandige deelneming),* namely the responsibility of one participant is dependent on the actions of other participants.

Participation is regulated in Article 55 of the Criminal Code which fully states the following:[19]

1. Convicted as a perpetrator of a crime:
   1) Those who do it, who order it to do it, and who participate in doing it;
   2) A brand that gives or promises something by abusing power or influence, with violence, threats or deceit, or by providing an opportunity, means or information intentionally persuades someone to do an act.
2. Regarding the people mentioned in number 2, the only things that can be held accountable are the actions that they deliberately induced, and their consequences.

Classification of perpetrators according to the provisions of Article 55 of the Criminal Code is:

1. The perpetrator *(plegen, dader)* or in doctrine is often called *"middelijke daderschap"*
   The perpetrators of a crime who essentially fulfill all the elements of a crime. In a narrow sense, the perpetrators are those who commit a crime. While in a broad sense it includes the four classifications of perpetrators above, namely those who commit the act, those who order it to be done, those who participate in it and those who encourage it.
2. Ordering to do *(Doenplegen, Ordering Dader).*
   A person wants to commit a crime, but he does not do it himself. He orders someone else to do it. In this case, the person who is ordered will not be punished, while the person who ordered him is considered the perpetrator. He is the one responsible for the criminal incident because it was his order that caused the crime to occur.

[16] Erdianto Efendi. *Indonesian Criminal Law,* Refika Aditama 2011, p. 174.
[17] Satochid Kartanegara. *Criminal Law Collection of Lectures Part One,* Student Lecture Hall, p. 418.
[18] Satochid Kartanegara. *Ibid* , p. 419.
[19] R. Soesilo. *Criminal Code (KUHP) and its Complete Commentaries Article by Article.* Politeia Bogor, 1996, pp. 72 – 74.

3. Participate in carrying out *(Medeplegen, Mede Dader)*
Those who participate in a criminal act. There are conditions for those who participate, including:
    a. There is conscious cooperation from each participant without the need for an agreement, but there must be an intention to achieve results in the form of a criminal act.
    b. There is physical cooperation to carry out criminal acts.

4. Persuading *(Uitlokker)*
Advocates have been clearly defined in a limited way in Article 55 paragraphs 1 to 2, namely those who, by giving or promising something, by abusing power or influence, by violence, threats or deception, or by providing opportunities, means or information, deliberately persuade others to commit their acts of persuasion, namely someone who has the intention to commit a criminal act, but does not do it himself, but rather motivates another person to carry out his intention.

From the provisions of Article 55 paragraph 1 to 2 of the Criminal Code, in the phrase "intentionally persuading others to do an act", then to be categorized as a persuader, a person must meet 2 (two) requirements, namely first there is "intention" and second there is "will" to move others to do certain acts intended by the persuader. The result of the persuasion of the persuader is that the person being persuaded is moved to do the act. Therefore, the persuader's recommendation must be firm and clear so that it can be interpreted by the person being persuaded.

**2. The Concept of Inducement in the Crime of Premeditated Murder.**

**a. Meaning of Persuasion in the Criminal Code**

In Article 55 paragraph 1 to 2 of the Criminal Code, the concept of Persuader can be categorized as those who by giving or promising something by abusing power or dignity, with violence, threats or misleading, or by providing opportunities, means or information, intentionally persuade others to do something. According to Adami Chazawi, [20]the formulation of the law consists of 2 (two) elements, namely:

1. Objective elements, which consist of:

a) The elements of the act are persuading another person to commit an act, a criminal act, by means of:
    1. Give something;
    2. Promise something;
    3. Abuse of power;
    4. With violence;
    5. With threats;
    6. By misdirection.

b) The subjective element is intention.
According to Adam Chazawi, the conditions for persuasion are:[21]
    1. The intention of the persuader, which must be directed at 4 (four) things, namely:
        a. Intended for use of persuasion efforts;

[20] A. Chazawi. *Criminal Law Lessons: Criminal System, Criminal Acts, Theories of Punishment and Limits of the Applicability of Criminal Law.* Raja Grafindo Persada 2005 p. 112.

[21]A. Chazawi. *Ibid* , p. 113

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   b. Aimed at realizing the act of persuasion and its consequences;
   c. Directed at other people to do what is recommended;
   d. Directed at another person who can be held responsible or punished.
2. In carrying out acts of persuasion, one must use the methods of persuasion as stipulated in Article 55 paragraph 1 number 2;
3. The formation of the will of the persuaded (executor) to commit a crime in accordance with what is recommended is caused directly by the use of persuasion efforts by the persuader (the presence of *psychological causality)* ;
4. The person who was persuaded (the executor) has carried out the crime in accordance with what was recommended (the implementation may be in accordance or only an attempt);
5. The person who is persuaded is the person who is able to take responsibility.

Based on the foregoing, it appears that the characteristic of a persuader is that he himself determines an evil will, so that an act that can be punished occurs. The person who deliberately persuades to commit the criminal act is also *an auctor intellectualis* , as in the case of the person who orders the commission of the criminal act, not materially carrying out the criminal act but through another person.[22]

The responsibility of the persuader in the participation system in Indonesia, as is known that the persuader *(Uitlokker)* is a form of participation that stands alone, this means that based on the efforts made by that person, the persuader may not commit a fully completed crime *(Voltooid)* , even if the persuader attempts to commit a crime, then the persuader can be held responsible for being punished the same as the maker or perpetrator.[23]

**b. The Concept of Premeditated Murder in the Criminal Code.**

Judges in deciding a murder case must be comprehensive in analyzing it. Mitchell & Roberts stated: [24]" *What, in law, should be the minimum length of time for which the offender deliberated on the matter in order for the court to conclude that he premeditated it? There is no simple answer to this"* (what in law, should be the minimum length of time determined by the offender. In order for the court to conclude that he planned it? There is no simple answer to this). What Mitchell & Roberts stated shows that determining the crime of premeditated murder is not easy, especially for judges. Judges must be very careful in looking at premeditated murder cases. The intersection of murder and premeditated murder is very thin. Judges in deciding the crime of premeditated murder must be truly comprehensive and careful.

As in Decision No.: 1746./Pid.B/2021/PN..Jkt.Brt, the judge considered that the defendant DK was legally and convincingly proven to have committed the crime of persuasion with a plan and intentionally taking another person's life. The judge considered that the element of persuasion with a plan and in advance to take another person's life was proven, even though the defendant DK had no previous problems or disputes with the victim Erwin, and there was no intention to commit or kill Erwin, but the defendant DK had persuaded someone else to kill. In fact, DK only ordered to collect debts from AR.

[22]Moeljatno. *Criminal Law on Participation Offenses.* Bina Aksara 1983, p. 52.
[23] Aruan Sakidjo and Bambang Poernomo *, Basic Criminal Law General Rules of Codified Criminal Law.* Ghalia Indonesia 1990, pp. 151-152
[24] Mitchell, B., & Roberts, JV *Bringing principles & fairness to the sentencing of murder. Criminal Law Forum* , *Springer Science+Business* Media Dordrecht 2013, p. 517.


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The judge's consideration stating that defendant DK was proven legally and convincingly to have committed the crime of persuasion with a plan and intentionally taking another person's life was not right. Moreover, the judge considered the element of intentionally and premeditatedly taking another person's life stated proven, even though defendant DK had no conflict or previous disagreement with victim Erwin. In addition, defendant DK only carried out the power of attorney to collect AR, even defendant DK had no intention of committing or killing victim Erwin, even if there was a plan to kill, then the one who was killed was AR who owed JK not Erwin However, the judge considered that defendant DK had persuaded and planned the murder of Erwin.

The element of planning in the crime of premeditated murder is a completed crime. The planning that has been planned by the perpetrator must be realized in the form of an act so that a crime of premeditated murder occurs. The judge in considering the element of planning. The judge's perspective or paradigm interprets the element of planning only in the existence of a calm will decision and a certain time, making the judge's consideration in Decision Number: 1746 / Pid.B / 2021 / PN.Jkt. Brt less than appropriate. The judge considered the elements of persuasion and planning in the crime of premeditated murder committed by DK emphasizing the requirements of persuasion and the requirements for deciding the will calmly, and the requirements for the existence of time between the emergence of the will and the implementation of the will.

Calmly deciding on one's will is a process of contemplation, thought and consideration by the perpetrator in determining his will to commit murder, whether the act will be carried out or cancelled. Will according to the theory of will *(wilstheory)* is the will to act as formulated by *wet* (law). [25]In other words, will is the will to make an action and the will to cause a consequence because of that action. [26]Meanwhile, a calm state is carrying out actions calmly, that is, not in a hurry, not nervous, not agitated. [27]So deciding your will calmly means that your will to do something is decided in a calm mental state, not in a hurry or suddenly, nor in a state of coercion or emotion.[28]

The quality of the existence of a certain time in planning is debated. Some criminal law experts relativize the quality of the length of time, however the quality of the length of time in premeditated murder is limited, it should not be too narrow and not too long, [29]requiring a certain time that should not be narrow and not too long, most importantly in the length of time the perpetrator can think calmly about his actions. Likewise Tresna[30] states that there is no provision regarding how long time must apply between the time when the intention to commit an act arises and its implementation, however there must be time, as a place for the perpetrator to use his calm mind to plan everything.

While the requirement of a certain time is absolute, along with the process of deciding the will. Although, the existence of a certain time is relative, because what is being debated is not the issue of the length of time. The availability of sufficient time means that within the available time, the perpetrator can think calmly. [31] The indicators of the availability of sufficient time in a crime of premeditated murder are: (1) the perpetrator has

[25] Moeljatno. *Principles of Criminal Law.* Reneka Cipta 2009b, p. 186.
[26]Ali, M. *Basics of Criminal Law.* Sinar Grafika. 2011, p. 174
[27]Compiler Team. *Big Indonesian Dictionary.* Balai Pustaka. 1990, p. 927
[28]A. Chazawi. *Crimes Against Body & Life.* Rajawali Pers. 2001, p.82.
[29]R. Soesilo. *Criminal Code (KUHP) and its Complete Commentaries Article by Article.* Politeia Bogor, 1996, p. 123.
[30] Tongat. *Material Criminal Law (Review of Criminal Acts Against Legal Subjects in the Criminal Code).* Djambatan. 2003, p. 23.

[31]Tongat. *Ibid,* p. 25.

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the opportunity to withdraw his will to kill; and (2) if the perpetrator's will is firm to kill, there is sufficient time to think, for example by what method or means to kill, how to avoid law enforcement and others. Judges in considering the element of premeditation are guided by these two conditions.

The element of planning is stated to have been fulfilled if there is a calm breaking of the will in the perpetrator of the murder and there has been a certain time required, starting from the existence of the will to the implementation of the will. The judge in considering and deciding the case of premeditated murder in Decision Number .../Pid.B/2011/PN. Jkt. Brt, views the element of planning as limited to the existence of a calm breaking of the will and the existence of a certain time. Although in the process of consideration the judge did not consider the two conditions of the element of planning too concretely.

In its development, the element of planning has three conditions: (1) deciding the will calmly; (2) there is sufficient time available from the time the will arises until the implementation of the will; and (3) the implementation of the will (action) in a calm atmosphere.[32] The planning element is declared fulfilled if these three conditions have been met. If one condition is not met, the planning element cannot be fulfilled, because the three elements are cumulative, all must be met.

The first and second conditions, namely deciding the will calmly and having sufficient time since the emergence of the will until the implementation of the will have been fulfilled by DK . However, DK did not fulfill the three conditions of the element of planning, even if there was the third condition, namely the implementation of the will (action) in a calm atmosphere. DK did not carry out what had been planned to kill someone who had been planned. Even if JK did have the will to kill AR because he had a debt to him while in Salemba Prison which was done through the defendant DK. However, the decision of the will to kill carried out by DK et al to kill AR and the availability of sufficient time was not carried out, because AR had left the location at that time.

The plan to kill JK through DK to kill AR did not materialize. However, Yermias FF et al then killed Erwin who had no previous problems or disputes with DK. So the murder of Yermias FF et al to Erwin is not a crime of premeditated murder, even though the murder was planned, because the murder planned by JK through DK to kill AR was not to kill Erwin. Generally, judges consider the element of premeditation based on two premeditated conditions, as described above. In fact, the premeditated condition has experienced dynamic developments.

So far, the understanding and conditions for planning refer to MvT, which defines planning as a certain time to consider calmly.[33] This means that planning can be declared fulfilled if there is a certain time or moment, so that the perpetrator can decide his will by considering, thinking and contemplating calmly what will be done. Hamzah also has the same opinion, that planning requires time (period) for the perpetrator of the crime to think calmly. Likewise, Soesilo stated that between the emergence of the intention or will to kill and its implementation there is a tempo (time), so that the perpetrator can think calmly.

In fact, the element of planning can be declared fulfilled if there is a decision of will that is carried out calmly. Although there is a very short time, the most important thing is that there is a decision of will that is carried out calmly by the perpetrator of the murder, then the murder can be declared as premeditated murder. *Arrest The Hoge Raad* on March 22, 1909, stated: "in order for a plan to be accepted in advance, there must be a short or long period of time in which calm consideration and thought are carried out." The requirement for a certain period of time is relative in quality, it is allowed to be long, but it is also allowed

[32] A. Chazawi. *Crimes Against Body & Life.* Rajawali Pers. 2001, p. 82.
[33] Tongat. *Ibid,* p. 25 .

to be short, even very short. The most important thing is that the perpetrator has time to think about or reflect on the murder that will be committed, that is sufficient to be considered to fulfill the element of planning.

These two doctrines and jurisprudence are always used as the basis for analyzing the crime of premeditated murder. Thus, murder is declared as premeditated murder if there has been a certain time gap between the intention to commit murder and the execution of the murder. Then there is a decision of will that is decided calmly, because it goes through a process of thought, consideration, and reflection beforehand.

In essence, the element of planning cannot be stated only if the requirement of planning is met, there must be an implementation of the will of what has been planned. In fact, the implementation of the will is the most important requirement for the crime of murder. So this third requirement, namely the requirement for the implementation of the will, is important and must be met. The requirement of planning is formed since the consideration of the will and the existence of a sufficient time limit, from the existence of the will to the implementation of the will. However, these two requirements cannot be said to have fulfilled the element of planning if there is no implementation of the will. So the third requirement is the implementation of the will, as a determinant of whether or not there is an element of planning. This third requirement is not to prove the existence of a plan, but to prove the existence of premeditated murder, so this third requirement becomes important.

Koeswadji said[34] that the element of planning is not a form of opzet (intention), but a way of forming opzet. This element of planning has the following requirements: (1) opzet (intention) is formed after being planned in advance; (2) the way opzet (intention) is formed must be in a calm state; and (3) planning it requires a relatively long period of time. Koeswadji's opinion above, wants to say that the intention (will) in the crime of murder is different from the crime of premeditated murder. The intention (will) in the crime of murder is formed suddenly, while in the crime of murder requires certain conditions. So the existence of a certain time and the existence of a calm will decision are only requirements for planning or the will of premeditated murder. However, if the two requirements are carried out against a planned target, then it has become premeditated murder or the intention to commit premeditated murder.

As stated by Atmasasmita [35]at what stage is a person's actions held legally accountable, whether at the time of initial intention; whether at the time of intention to act, whether at the time of body movement, or at the time of committing an act or deed. According to him, criminal law only looks at the visible aspects, namely the fourth stage, at the time of committing an act or crime. Thus, the implementation of the will that has been planned in a crime becomes an important requirement. This requirement for the implementation of the will is what can prove the existence of premeditated murder.
Remmelink [36]stated that the crime of premeditated murder regulated in Article 340 of the Criminal Code is dolus premeditatus, namely dolus that is carefully considered. Dolus premeditatus or the crime of premeditated murder can be declared proven to have the element of planning if viewed from a subjective perspective. Remmelink emphasized that the concept of planning in advance is not a special form of dolus, but only gives a special nuance to the dolus through the method of carrying out the crime, namely considerations taken calmly at the time of implementation. To consider whether the element of planning is fulfilled or not, it is observed subjectively, not objectively. This means that there is a time

[34] A. Chazawi. *Ibid,* p. 85.

[35] Atmasasmita, R. *Reconstruction of the Principle of No Crime Without Fault.* Gramedia Pustaka. 2017, p. 158.

[36] J. Remmelink. *Criminal Law (Commentary on the Most Important Articles of the Dutch Criminal Code & Their Equivalents in the Indonesian Criminal Code.* Gramedia Pustaka Utama. 2003, p. 170.

gap between the intention of the perpetrator of premeditated murder and his actions, and the existence of preparations for implementation does not indicate the fulfillment of the element of planning. Because the element of planning can only be assessed subjectively, namely the existence of careful consideration at the time of implementation.

### 3. Criminal Liability of Inducement in Premeditated Murder

#### 1. Premeditated Murder Crime

In Indonesian legislation itself, there is no definition of a criminal act. The definition of a criminal act that has been understood so far is the theoretical view of legal experts. Therefore, legal experts have tried to give meaning and content to the term. But until now. There has been no uniformity of opinion.

Definition of criminal acts by several experts:

1. Moeljatno [37], a criminal act is an act that is prohibited by a legal rule, the prohibition of which is accompanied by a threat (sanction) in the form of a certain penalty for anyone who violates the prohibition. It can also be said that "a criminal act only refers to the nature of the act, namely the nature of being prohibited with the threat of punishment if violated."
2. R. Tresna, stated that a criminal incident is an act or series of human acts, which are contrary to the law or other statutory regulations, for which acts punishment is carried out.[38]

Moeljatno, in his various writings, has said that criminal acts can be equated with *criminal acts.* He firmly rejects the use of the term criminal act as a substitute for the term *Strafbaar feit* or *delict* .[39]

In line with Moeljatno's opinion, Roeslan Saleh [40]also said that criminal acts can be equated with *criminal acts* , so it is different from the term *Strafbaar feit* which includes criminal liability. According to him, *criminal act* means behavior and consequences, which are commonly called *actu reus* . Criminal acts *must be distinguished from criminal* liability . Therefore, the definition of criminal acts does not include criminal liability.

Moeljatno [41]further said that for criminal liability *,* it is not enough to just commit a criminal act, but in addition there must be a mistake *(guilt)* , or a reprehensible mental attitude, it turns out that in the unwritten legal principle: there is no crime without fault *(Geen straf zonder schuld. Ohne schul keine strafe).*

In criminal law, the concept of liability is a central concept known as the doctrine of fault. In Latin, the doctrine of fault is known as mens rea. The doctrine of *mens rea* is based on an act does not make a person guilty unless the person's mind is evil. In English, this doctrine is formulated as *an act does not make a person guilty, unless the mind is legally blameworthy.* Based on this principle, there are two conditions that must be met in order to convict someone, namely there is a prohibited external act/criminal act (actus reus), and there is an evil/reprehensible internal attitude *(mens rea).*[42]

According to Barda Nawawi Arief, [43]criminal acts only discuss actions objectively, while subjective matters related to the perpetrator's mental attitude must be excluded from the definition of criminal acts, because the perpetrator's mental attitude is included in the

[37] Moeljatno. *Principles of Law .... , Op Cit,* p. 59.
[38] A. Chazawi. *Criminal Law Lessons ... Loc Cit,* p. 35.
[39] Moeljatno. *Criminal Law Science.* 1983, p. 31.
[40] Roeslan Saleh. *Criminal Acts and Criminal Responsibility.* Aksara Baru 1981, p. 150.
[41] Moeljatno. *Principles of Law Criminal. Op Cit* p. 62.
[42]Moeljatno. *Principles of Criminal Law. Ibid,* p. 165. See also Moeljatno. *Criminal Acts,* p. 25.
[43] Barda Nawawi Arief. *Anthology of Criminal Law Policy.* Citra Aditya Bakti 1996, p. 107.

scope of guilt and criminal responsibility which is the ethical basis for punishing the perpetrator. The separation of criminal acts and criminal responsibility aims to provide a balanced position in sentencing based on the principle of *daad en dader strafrecht* which pays attention to the monodualistic balance between individual and community interests. This means that even though a crime has been committed, the perpetrator is not covered by guilt, therefore he cannot be held accountable. The nature of the prohibited act implies that the criminal act is based on the principle of legality as the main basis that places acts with the threat of sanctions as acts that are unlawful.

Every Criminal Act listed in the Criminal Code (KUHP) can generally be described into elements that are basically divided into two types of elements, namely subjective elements and objective elements. Subjective elements are elements that are inherent in the perpetrator or related to the perpetrator, and include everything contained in his heart. While objective elements are elements that are related to circumstances, namely in which circumstances the actions of the perpetrator must be carried out. [44]It can be said that in order to find out the existence of a criminal act, it is generally formulated in criminal laws and regulations regarding prohibited acts and accompanied by sanctions. In this formulation, several elements or conditions are determined which are the characteristics or characteristics of the prohibition so that it can be clearly distinguished from other acts that are not prohibited, namely the objective element of a criminal act refers to the nature of the act only, namely that it can be prohibited with the threat of punishment if violated. While what is meant by the **Subjective element** is a person who is able to be responsible and there is an error *(dollus or culpa)* . The act must be done with an error. This error can be related to the consequences of the action or to the circumstances in which the action was carried out.[45]

**2. Criminal Liability**

When talking about criminal responsibility, it cannot be separated from the element of "fault", where this relates to a fundamental principle in holding the perpetrator responsible for committing a crime, namely the principle that there is no crime without fault.

In the Criminal Code, there is no clear definition of what is meant by criminal responsibility, however legal scholars have attempted to research and draw conclusions in various expert opinions, namely:[46]

a. The Van Hammels
The ability to be responsible is a state of psychological normality and maturity (intelligence) which brings three abilities, namely:
1) Able to understand the value of the consequences of one's own actions;
2) Able to realize that his actions are not permitted in the eyes of society;
3) Able to determine his will for his actions

b. Moeljatno, quoting Simons' opinion, stated,
'Fault' is the existence of a certain psychological state in a person who commits a criminal act and the existence of a relationship between that state and the act committed in such a way that the person can be blamed for committing the act. That for there to be a fault, two things must be considered in addition to committing the crime. First: the existence of a certain psychological (mental) state, and Second: the existence of a certain relationship between that mental state and the act committed, so that it gives rise

[44]PAF Lamintang. *Basics of Criminal Law in Indonesia.* Sinar Grafika 2014, p. 192.
[45] Moeljatno. *Principles of Criminal Law (Module for Prosecutor Education and Training "PPPJ" 2010)* , pp. 33-35.
[46] Tri Andrisman. *Criminal Law Principles and Basic General Rules of Indonesian Criminal Law.* University of Lampung 2009, p. 97.

to the aforementioned blame. Although there is a close relationship between the first and the second, even the existence of the first is the basis for the existence of the second or the second depends on the first, but for clarity it is better in theory to separate the one and the other."[47]

c. In line with Simons' opinion, Sutorius [48]in his writing entitled Het *Schuldbeginsel/Opzet en de Varianten Daarvan,* said:
"That one cannot speak of wrongdoing without any reprehensible or improper act. Therefore, in the principle of no punishment without wrongdoing, it is interpreted as no punishment without objectively improper acts that can be blamed on the perpetrator. Wrongdoing views the relationship between the improper act and the perpetrator in such a way that the act is in the true sense his act."

In this case, Roeslan Saleh [49]argues that "To determine the ability to be responsible, it is determined first by reason, namely being able to distinguish between actions that are permitted and those that are not permitted. But regarding the second factor, namely the will factor, it is not a factor in determining whether or not a person is able to be responsible". It is said so, because according to Roeslan Saleh "The will depends on and is only a continuation of reason, namely when his mind is healthy and normal, meaning that when a person is able to distinguish between actions that are permitted and those that are not permitted, then by law the person is required to determine his will in accordance with what is permitted by law. Therefore, the will factor is not a factor that determines the ability to be responsible, namely what determines whether or not he is able to be responsible, but is only one of the factors that helps determine guilt, namely one of the elements of guilt"

Formulating criminal responsibility negatively, especially in relation to the repressive function of criminal law. In this case, being held accountable in criminal law means being punished. Thus, the concept of criminal responsibility is a requirement that is needed to impose a criminal penalty on the perpetrator of a crime. Meanwhile, based on the idea of monodualism *(daad en dader strafrecht),* the due process *of* determining criminal responsibility is not only carried out by considering the interests of society, but also the interests of the perpetrator himself. This process depends on the fulfillment of the requirements and circumstances that can be blamed for the perpetrator of the crime, so that it is legitimate to be sentenced to a criminal penalty. According to Galligan, if these requirements are ignored and there are no minimal circumstances that indicate the perpetrator can be blamed, then the law and its institutions have failed to fulfill their function.[50]

Moeljatno stated [51]that the formulation of a criminal act only contains three things, namely (1) the subject of the crime targeted by the legal norm ( *norm addressaat* ), (2) prohibited acts ( *strafbaar* ), and (3) criminal threats *(strafmaat)* . These three things are criminalization issues that are included in the scope of criminal acts. In contrast, criminal responsibility only questions the subjective aspects of the perpetrator of the crime. At this stage, the problem no longer revolves around the problem of the act and its unlawful nature, but rather relates to the circumstances under which the perpetrator can be held responsible for the crime.

[47] Moeljatno. *Principles of Criminal Law. Op Cit,* p. 171.
[48] Sutorius, E. Ph. *"Het Schuldbeginsel/Opzet en de Varianten Daarvan",* Wonosutanto translation, (Criminal Law Training Materials Batch I, Semarang, FHUNDIP, 6 – 28 August 1987) p. 2.
[49] Roeslan Saleh. *Criminal Acts and Criminal Responsibility.....* Aksara Baru 1983, p. 80.
[50]Chairul Huda. *From No Crime ...* 2011, p. 62.
[51]Moeljatno. *Criminal Acts and Responsibility ....* Bina Aksara. 1983, p. 11.

In line with Moeljatno's view, according to Roeslan Saleh, [52]committing a crime does not always mean that the perpetrator is guilty of it. In order to be able to hold someone accountable in criminal law, conditions are needed to be able to impose a penalty on him, for committing the crime. Thus, in addition to having committed a crime, criminal responsibility can only be demanded when the crime is committed with 'error'. In interpreting 'error', Roeslan Saleh [53]stated that 'Error' is the perpetrator of the crime can be blamed, because seen from the perspective of society, he could actually do something else if he did not want to commit the act.

The element of a criminal act is the unlawful nature of the act, while the element of criminal responsibility is the forms of error consisting of intent *(dolus)* and negligence *(culpa)* and the absence of a reason for forgiveness. Reasons for forgiveness are reasons that eliminate the defendant's fault. The principle of criminal responsibility is "not punished if there is no fault". This means that if there is a reason for forgiveness, the defendant must be released from legal charges *(ontslag van rechtsvervolging).*

Roeslan Saleh [54]further named Intention and negligence as forms of error. "To determine whether there is an error, what is reviewed is the nature of the person who committed the act. These natures are seen when he committed the crime." The unlawful nature of a criminal act is part of Criminal Law, according to Roeslan Saleh [55]. He added that: "Unlawful means contrary to the law, which is broader than contrary to the law. In addition to the statutory regulations, unwritten rules must be considered here. The principle of a criminal act is the principle of legality, which is contained in Article 1 paragraph 1 of the Criminal Code. As stated above, the unlawful nature of an act means that there is no justification. This justification is what eliminates the unlawful nature of the act."

Regarding criminal responsibility, Barda Nawawi Arief stated:[56]

"That for there to be criminal responsibility, it must first be clear who can be held accountable. This means that it must first be ascertained who is declared as the perpetrator for a particular action. This problem concerns the subject of the criminal act which has generally been formulated by the legislator for the criminal act in question. However, in reality, it is not easy to ascertain who the perpetrator is. Then, after the perpetrator is determined, what happens next regarding criminal responsibility? Therefore, the problem in determining criminal responsibility is another aspect of the subject of the criminal act which can be distinguished from the problem of the perpetrator. This means that the definition of the subject of the criminal act can include two things, namely who committed the crime (the perpetrator) and who can be held accountable. In general, the perpetrator is the one who can be held accountable in criminal law, but this is not always the case. This problem also depends on the method or system of formulating responsibility taken by the legislator."

Roeslan Saleh [57]stated that criminal responsibility is defined as the continuation of objective blame that exists in a criminal act and subjectively meets the requirements to be punished for the act. More simply, the basis for the existence of a

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[52]Roeslan Saleh. *Criminal Acts and Criminal Responsibility. ..... Op Cit,* p. 89.
[53]Roeslan Saleh. *Ibid,* p. 77.
[54]Roeslan Saleh. *Criminal Acts and Criminal Responsibility . Op Cit,* p. 150
[55]Roeslan Saleh. *The Unlawful Nature of Criminal Acts,* Aksara Baru 1981 p. 32
[56] Barda Nawawi Arief. *Criminalization Problems in Relation to the Development of Special Offenses in Modern Society". (Paper presented at the Seminar on the Development of Special Offenses in a Modernizing Society, organized by BPHN-UNAIR Surabaya,* 25-27 February 1980), Bandung: Bina Cipta, 1982. pp. 105-107)
[57] Roeslan Soleh. *Criminal Acts and Criminal Responsibility. ..... Op Cit, p. 75.*

criminal act is the principle of legality, while the basis for the perpetrator being punished is the principle of no crime without fault (abbreviated as the principle of fault). This means that the perpetrator of a crime will only be punished if he or she has a fault in committing the crime.

It is not enough to punish someone if that person has committed an act that is against the law or is against the law. So even though his actions meet the formulation of a *crime* in the law and are not justified, this does not yet meet the requirements for imposing a sentence. For punishment, there still needs to be a condition, namely that the person who committed the act has made a mistake or is guilty *(subjective guilt)* . Here applies what is called the principle of "No Crime Without Fault" ( *Keine Strafe ohne Schuld or Geen straf zonder schuld* or *Nulla Poena Sine Culpa* (" *culpa* " here in a broad sense, also includes intent). This principle is not stated in the Indonesian Criminal Code or in other regulations, but the validity of this principle is now not in doubt. It would be contrary to the sense of justice if someone was sentenced to a crime even though he was very innocent.

Regarding the element of intent, Moeljatno [58]uses the theory of knowledge or imagination. The reason is: "Because the will is automatically covered by knowledge. Because to will something, a person must first have knowledge (image) about it. But what someone knows is not necessarily desired by him. Moreover, the will is a direction, intention or goal, which is related to the motive (motivating reason for doing) and the purpose of his actions. The consequence is that he determines an action that is desired by the defendant, then:

(1) it must be proven that the act is in accordance with the motive for doing it and the goal to be achieved;
(2) There must be a causal relationship between motive, action and purpose in the mind of the accused."

In this case, the proof is shorter because it only relates to the elements of the act that was done. There is no causal relationship between the motive and the act. In its later development, theoretically the form of error in the form of intent is divided into three types, namely intent as an intention, intent with conscious certainty and, intent with conscious possibility *(dolus eventualis)* .

3. **Responsibility of the Instigator in Premeditated Murder**

The promoter's participation in the crime of child murder can be subject to accountability as regulated in Article 343 of the Criminal Code. Article 55 contains four forms of participation:

a. The person who does;
b. Ordering to do;
c. Participate in carrying out;
d. Persuade / move others to do;

As the qualification of the form of participation, Lamintang explained that what is meant *by deelnemen* in the formulation of Article 340 of the Criminal Code is not participating in doing it but participating in one of the ways mentioned above. The crime described in Article 340 of the Criminal Code is considered, for other people who participate in doing it, as Murder or premeditated murder.

According to Prof. Van Hattum, in a trial for participating in premeditated murder, it must be proven that the person participating in the premeditated murder

[58]Moeljatno. *Introduction to Legal Science.* 1983, p. 31.

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fulfills the elements of premeditation as required in Article 340 of the Criminal Code. Based on this opinion, it appears that a person who has participated in premeditated murder is not prosecuted for murder but for his participation. So that the persuader in premeditated murder can be charged for what he advised as in Article 340 of the Criminal Code.

In the case of *the crime* of participation as a persuader, there must be an element of being carried out together, and there must be an element of common intention, so that the perpetrator who meets one or more persuaders cannot immediately be categorized as participating in persuading. This is related to the proof of the series of events, so that there is a causal relationship between the statements of the persuader and the implementation of the recommended act and the consequences of the recommended act.

That based on the above, it appears that the concept of a persuader cannot stand alone, where there must be a material crime first. So that the persuader can be punished if there has been a crime committed by the main perpetrator, regardless of whether the crime has been carried out or failed to be carried out. So as Article 55 paragraph 1 to 2 of the Criminal Code, by giving advice to someone to commit a crime, by giving or promising something by abusing power or dignity, with violence, threats or misleading, or by providing opportunities, means or information, intentionally persuading others to commit a crime, then the persuader can be sentenced to criminal penalties.

**Proof of persuasion based on the Criminal Procedure Code in premeditated murder.**

**A. Law of evidence in criminal procedure law**

**1. Theory of proof in criminal procedure law**

The purpose of Criminal Procedure Law is to seek and obtain a material truth, namely the truth of a crime by applying the provisions of Criminal Procedure Law objectively with the aim of finding out who the perpetrator is who is held criminally responsible and based on the Court's Decision to find and someone is proven to have committed a crime and whether the person charged can be blamed. In other words, proof is the central point of examining a case in a court hearing, besides that it is also a provision that contains an outline and guidelines on the methods that are justified by law to prove the guilt charged to the defendant.[59]

Proving contains the intention and effort to state the truth of an event so that the truth can be accepted by reason. [60](Martiman Prodjohamidjojo, in Lily Rosita and Hari Sasangka, Law of Evidence in Criminal Cases. Bandung: Mander Maju 2003 p. 11) therefore the truth that is decided is not just true, but a truth that can be accounted for as certainty of legal protection and human rights.[61] Van Hamel further said that someone who is seen as a perpetrator cannot be solely based on an assumption, but this must be proven.[62]

According to Van Bemmelen in his book *"Strafordering Leerbook Van Het Nederlandsch Straf Procesrecht"* (Law in the Netherlands containing Criminal Procedure Law) that the most important thing in Criminal Procedure Law is to seek and obtain the Truth. Meanwhile, according to the doctrine (opinion of legal experts) that the purpose of Criminal Procedure Law is:

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[59]M. Yahya Harahap. Discussion of Problems and Application of Criminal Procedure Code (Examination of Court Hearings, Appeals, Cassation, and Judicial Review, Second Edition Sinar Grafika, 2000 p. 252

[60] Martiman Prodjohamidjojo, in Lily Rosita and Hari Sasangka, *Law of Evidence in Criminal Cases.* Bandung: Mander Maju 2003 p. 11

[61] Nikolas Simanjuntak. *Indonesian Criminal Procedure in the Legal Circus* . Ghalia Indonesia 2009 p. 234

[62]PAF Lamintang. *Loc Cit,* p. 605

1). Seeking and finding material truth;
2). Obtain a judge's decision; and
3). Implement the judge's decision.

Of the three functions above, the most important because it is the basis for the next two functions, is "seeking the truth". After finding the truth obtained through evidence and evidence, the judge will arrive at a verdict (which should be fair and appropriate), because it is then implemented by the prosecutor. So, the purpose of criminal procedural law is to seek the truth which aims to achieve order, tranquility, peace, justice, and welfare in society. The prosecutor then charges the perpetrator of a legal crime, and then requests an examination and court decision to find out whether there is evidence that a crime has been committed and whether the person accused can be blamed.

Proof is the act of proving. Proof is a process of finding out how the evidence is used, submitted or maintained, a legal procedure that applies. Meanwhile, proving means showing evidence or convincing with evidence. According to Van Bemmelen, it is providing reasonable certainty *(redelijk)* about

a. Did a certain thing really happen;
b. Why is this so?

Evidence is the most important part of the entire process of examining civil cases or criminal cases in court. The purpose of civil procedural law or criminal procedural law is to seek the truth. The difference in civil cases and the goal to be achieved is material truth. The difference in civil cases and the goal to be achieved is formal truth while criminal cases seek true truth or material truth. Seeking true truth is very broad, therefore in

The Criminal Procedure Code contains four stages in seeking the true truth, namely through:

a. Investigation;
b. Prosecution;
c. Examination at trial;
d. Implementation, observation and supervision.

In its position as a public legal instrument that supports the implementation and application of material criminal law provisions, Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) has its own formulation of the evidentiary system. The formulation of the evidentiary system is certainly to support the objectives of criminal procedure law, namely to seek and obtain material truth.[63]

Proof is a provision that contains an outline and guidelines on the ways that are justified by law to prove the guilt charged against the defendant. By achieving material truth, the ultimate goal of criminal procedure law will also be achieved, namely to achieve order, peace, justice and welfare in society. [64]Viewed from the perspective of the criminal justice system, the matter of proof is a very determinant for every party directly involved in the criminal case examination process, especially in terms of assessing whether or not the guilt charged against the defendant is proven.

The purpose of criminal procedure is to determine the truth, and based on that truth a judge's decision will be determined to implement a criminal law regulation. Proving whether or not the defendant committed the act charged is the most important

[63] Indonesian Department of Justice *Guidelines for the Implementation of the Criminal Procedure Code* . Republic of Indonesia Department of Justice 1982, p. 1.
[64]Andi Hamzah. *Indonesian Criminal Procedure Law* , Sinar Grafika, 2001 p. 9

part of criminal procedure. What are the consequences if someone is charged based on the available evidence accompanied by the judge's conviction, even though it is not true. So the very important question is how the judge can determine the existence of the truth, this question is about proving something.

The law of evidence as part of Criminal Procedure Law regulates the types of evidence that are legally valid, the system adopted in providing evidence, the conditions and procedures for submitting such evidence and the authority of the judge to accept, reject and assess evidence

The sources of legal evidence are:

a. Constitution;
b. Doctrine or teaching;
c. Jurisprudence.

Examined from the perspective of the criminal justice system in general and criminal procedural law *(formeel strafrecht/strafprocessrecht)* in particular, the aspect of "evidence" plays a determining role in declaring someone's guilt so that a sentence is imposed by the judge. The judge when passing a verdict, not only in the form of punishment, but can also issue a verdict of acquittal and a verdict of release from all legal charges.

A verdict of acquittal will be issued by the judge if the Court (judge) is of the opinion that from the results of the examination in the court hearing, the defendant's guilt or the act charged against him has not been proven legally and convincingly. A verdict of acquittal from all legal charges will be issued by the judge if he is of the opinion that the act charged against the defendant has been proven, but the act does not constitute a criminal act.

The judge's task in considering his decision is not only to determine what the law is for a particular fact, but also the legal norms. If to solve a problem there is no legal rule, then to solve the problem must be sought in legal doctrine, and moral values by complying with the code of ethics and guidelines for the judge's behavior. Therefore, the judge in solving the existing facts and finally deciding the attitude that must be taken, namely providing justice, legal sources such as laws and regulations in addition, norms, doctrines, customs and court decisions become the basis for *the reasoning* of his decision.

According to Yahya Harahap, [65]there are several theories of proof in procedural law, namely:

1. *Conviction in Time.*
The conviction-in-time system of proof determines the judge's belief that determines the evidence of the defendant's guilt, namely from where the judge draws and concludes the guilt of a defendant, namely from where the judge draws and concludes his belief, is not a problem in this system. The conviction may be taken and concluded by the judge from the evidence he examines in court.
2. *Onviction-Raisonee*
In the conviction-raisonee system, the judge's belief still plays an important role in determining whether the defendant is guilty or not. However, in this system, the judge's belief factor is limited. If in the conviction-in-time proof system the role of the judge's belief is free and without limits, then in the conviction-raisonee system, the judge's belief must be supported by clear reasons.
3. Proof according to law is positive *(positief wettelijke stelsel)* .

[65]M. Yahya Harahap. *Op Cit,* p. 256-2 57

This system is guided by the principle of proof with evidence determined by law, namely to prove the guilt or innocence of the defendant solely depends on valid evidence. Fulfillment of the requirements and provisions of proof according to law is sufficient to determine the guilt of the defendant without questioning the judge's belief, namely whether the judge is convinced or not about the defendant's guilt is not a problem.

4. Evidence according to law is negative *(negatief wettelijke stelsel)* .
   The negative legal system of proof is a theory between the positive legal system of proof and the conviction-in-time system of proof. This system combines objective and subjective elements in determining the guilt or innocence of the accused, neither of which is more dominant between the two elements. The accused can be found guilty if the guilt charged against him can be proven by means and with valid evidence according to the law and at the same time the proof of the guilt is "accompanied" by the judge's conviction.

According to M. Yahya Harahap, [66]to determine whether a defendant is guilty or not according to the negative legal evidence system, there are two components:

a. Proof must be carried out in a manner and with evidence that is valid according to law;
b. And the judge's conviction must also be based on methods and evidence that are valid according to law.

Based on the description above, it can be interpreted that the practice of evidence in the trial process applied in Indonesia tends to be more towards a positive system of evidence according to law, this is because in the examination process in court, judges often refer to valid evidence according to law in imposing criminal penalties on the Defendant.

**2. Evidence in criminal procedure law**

The evidence adopted by Criminal Procedure Law is *a negative system* according to law *(Negative Wettelijk)* . This can be seen in Article 183 of the Criminal Procedure Code: "A judge may not sentence a person unless with at least two valid pieces of evidence he obtains the conviction that a crime actually occurred and that the defendant is guilty of committing it."

So basically, to be able to accuse a defendant, there must be:

a. Judge's conviction;
b. Valid means of proof that a punishable act has occurred and that the accused person committed it.

Therefore, the concept of the judge's belief can only be formed based on the existence of valid evidence according to the Criminal Procedure Code. The judge's belief that will be formed will ultimately consist of only two types, namely the belief that the defendant is not. Based on Article 184 of the Criminal Procedure Code, what is meant by valid evidence is:

a. Valid evidence is:

1) Witness testimony;
   That in Article 1 number 26 of Law Number 8 of 1981 concerning Criminal Procedure Law, it states: "A witness is a person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case that he himself heard, saw and experienced."
2) Expert testimony;

[66] M. Yahya Harahap. *Ibid* , p. 259

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Based on Article 186 of the Criminal Procedure Code, "Expert testimony is what an expert states in court." Expert testimony is an award and reality and/or conclusion of the award based on his/her expertise. If expert testimony is given at the investigation level, then before giving testimony, the expert must first take an oath or promise. However, the Criminal Procedure Code does not mention clear criteria about who an expert is. With the increasingly rapid development of technology, there is no limit to the number of expertise that can provide information so that the disclosure of cases will be clearer. An expert generally has special expertise in his/her field, both formal and informal, therefore there is no need to determine formal education, as long as his/her expertise has been recognized. The judge determines whether a person is an expert or not through his/her legal considerations. Expert testimony has a vision that what is explained must be about everything that falls within the scope of his/her expertise, what is explained about his/her expertise is closely related to the criminal case being examined.

3) Letter

The letter as stated in Article 184 paragraph 1 letter c, made on an oath of office or confirmed by oath, is:

a) Minutes and other letters in official form made by an authorized public official or made in his presence, containing information about events or circumstances heard, seen or experienced by him personally, accompanied by clear and firm reasons for his statement;
b) A letter made in accordance with the provisions of statutory regulations or a letter made by an official regarding matters included in the administrative procedures that are his responsibility and which are intended to prove something or a situation;
c) A statement from an expert containing an opinion based on his expertise regarding a matter or situation that is officially requested from him;
d) Other letters that can only be valid if they are related to the contents of other evidence.

4) Instruction;

According to Article 188 of the Criminal Procedure Code, "Indications are actions, events or circumstances, which due to their correspondence, either between one and the other, or with the crime itself, indicate that a crime has occurred and who the perpetrator is." Indications can only be obtained from:

a. Witness Statement;
b. Defendant's statement;
c. Letter.

An assessment of the evidentiary strength of an indication in each particular situation is carried out by the judge wisely and judiciously after he has conducted an examination with great care and thoroughness based on his conscience.

5) Defendant's statement;

The defendant's statement is what the defendant states in court about the act he committed or what he himself knows or experienced. The defendant's statement given outside the court can be used to help find evidence in court, namely as indicative evidence as long as the statement is supported by valid evidence as long as it concerns the matter he is accused of. The defendant's statement can only be used against himself. The defendant's statement alone is not enough to prove that he is

guilty of committing the act he is accused of, but must be accompanied by other evidence.

b. Things that are generally known do not need to be proven.

Thus, in order to impose a sentence on a person, there must be at least two pieces of evidence from the five pieces of evidence regulated in Article 184 of the Criminal Procedure Code which regulates the legal evidence according to the law in a limited manner. The above also suggests that the Criminal Procedure Code also adheres to the principle of Minimum Limit of Proof which regulates the limits of the requirements that must be met in proving the defendant's guilt.

**B. Proof of Inducement of Premeditated Murder.**

Inducement to commit a Criminal Act as stated above, is included in the form of inclusion in the formulation of Article 55 of the Criminal Code, this form of inclusion is the same as ordering to do *(doen pleger)* . In the form of encouraging the perpetrators there are at least two people or more and their respective positions are two parties, namely, as the party who persuades and the party who makes the recommendation. It's just that the one who makes the persuasive recommendation is not a tool (instrument) that cannot be held accountable but the person who makes the recommendation here can be punished or held accountable.

In the absence of a persuading party, the perpetrator or the person who committed the act does not have a relationship or bond with each other, but is separate. The position of the perpetrator and responsibility is adjusted to the contribution of the act carried out by each perpetrator. So in this form of participation, the position between the perpetrators, both those who persuade or those who are persuaded to do it, are both perpetrators of the criminal act, and between the two there is no binding relationship at the time of the implementation of the act, unlike participating in doing it.

The relationship between the two occurs at the time before the criminal act is committed. It is the same as ordering to do, only in ordering to do where the perpetrator is under the control of the person ordering and this is different from encouraging to do because the persuader has a very limited role, namely only to persuade

From the perpetrator's confession, either expressed during the examination of the suspect or during the examination of the defendant. The confession expressed by the perpetrator can be used as evidence of clues, which can be of evidentiary value as long as the confession is supported by other evidence.

In Article 55 paragraph 1 point 2 of the Criminal Code, the concept of an inducer can be categorized as someone who, by giving or promising something by abusing power or dignity, with violence, threats or deception, or by providing opportunities, means or information, intentionally induces another person to commit an act.

To be able to fulfill the elements of Article 55 paragraph 1-2 of the Criminal Code, you must fulfill:

1. Those who by giving or promising something;
2. By abuse of power or dignity, by violence; threats or misdirection, or by providing opportunity, means or information;
3. Deliberately encouraging other people to do something.

In contrast to people who participate in the act, R. Soesilo explains what is meant by "people who participate in the act" (medepleger) in Article 55 of the Criminal Code. According to R. Soesilo, "participating in the act" means "jointly doing". There must be at least two people, namely the person who commits (pleger) and the person who participates in the act (medepleger) of the criminal event. Here it is requested that


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both people all carry out the act of implementation, so carry out the elements or elements of the criminal act. It is not permissible, for example, to only carry out preparatory acts or acts that are only helpful, because if so, then the person who helps is not included in "medepleger" but is punished as "assisting in doing" (medeplichtige) in Article 56 of the Criminal Code.

That based on the theory of subjectivity, there are two measures used: The first measure is regarding the form of intent that exists in the perpetrator, while the second measure is regarding the interests and goals of the perpetrator.

The measure of intent can be:

1) The question of the perpetrator's intention to actually participate in committing the crime, or only to provide assistance; or
2) The question of the perpetrator's will to actually achieve the consequences that are elements of the crime, or only participate or help if the main perpetrator wants it. Meanwhile, the measure of the same interest or purpose is if the perpetrator has his own interests or goals, or only helps to fulfill the interests or to achieve the goals of the main perpetrator.

Based on the explanation above, we can conclude from "participating in" a criminal act. In "participating in" there is a conscious cooperation between the perpetrators and they together carry out the will, the perpetrators have a goal in committing the crime. That the person who persuades must intentionally persuade another person, while persuading him must use one of the ways such as giving, misusing power and so on as mentioned in the article, meaning that no other way may be used. In "persuading to do", the person who is persuaded can also be punished as a "pleger" or a person who commits a crime. However, according to Article 55 paragraph 2 of the Criminal Code, the responsibility of the persuader is limited only to what he persuaded to do and the consequences.

So that the perpetrator's lover, the perpetrator's family or the perpetrator's friend can be charged with child murder, as long as the form of the encouragement can be proven as per Article 55 paragraph 1 to 2 of the Criminal Code which is linked to evidence. Upon the confession of the child murderer explaining the existence of an encouragement in the crime he committed, the Police have the authority to determine what action will be taken against the crime, meaning the Police have the right to handle or not handle it. If there is sufficient evidence to charge the perpetrator with child murder, the Police choose to continue handling the case, then the file will be submitted to the Prosecutor's Office for research into whether or not the case can be prosecuted. If prosecution can be carried out, then the file is submitted to the Court, but if it does not meet the elements of the article that has been proven, then the case file is returned to the Police investigator.

## Conclusion

Criminal inducement as a crime, then to be categorized as an inducer, a person must meet 2 (two) requirements, namely first there is "intention" and second there is "will" to move others to do certain actions intended by the inducer. Therefore, the inducer's recommendation must be firm and clear so that it can be interpreted by the perpetrator to commit a criminal act. An act is qualified as an inducement if it uses the means as determined in a limited manner in Article 55 paragraph 1 to 2 of the Criminal Code, namely giving something, promising something, abusing power or dignity, with violence, threats or misleading, or by providing opportunities, means or information. Thus, these requirements must be proven in court. Where the defendant DK was not proven to be an inducer for what was recommended to commit premeditated murder as per Article 34O of the Criminal Code.

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The persuader can also be charged with the crime of inducement in premeditated murder if it can be proven that he intentionally persuaded someone to commit a crime of murder. Thus, both the persuader and the recipient of the suggestion must be held accountable for each person involved in the crime. The position of the perpetrator and the responsibility are adjusted to the contribution of the actions carried out by each perpetrator. The persuader can only be held accountable for the punishable actions that he suggested in connection with a series of events that can be proven, which must be supported by the fulfillment of evidence as per Article 184 of the Criminal Procedure Code, namely: witness statements, expert statements, letters, instructions and statements from the defendant.

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