

Legal Analysis of Criminal Responsibility For Perpetrators of Murder and Abandonment of Babies From Illicit Relationships

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Abstract.

Case Number 36/Pid.B/2024/PN KFM tried defendant Lusia Neno Kolo, who was accused of committing the crime of murder against her newborn baby. The charges filed included Article 340 of the Criminal Code (premeditated murder), Article 342 of the Criminal Code (murder of a child by a mother due to fear of being discovered pregnant), and alternative charges in the Child Protection Law. The panel of judges ultimately sentenced her to 7 years in prison based on evidence under Article 342 of the Criminal Code. This article analyzes the legal construction, the judge's considerations, the proven elements of the crime, and the relevance of the post-mortem and forensic evidence in the case. Evidence in the form of testimony from the midwife, a visum et repertum, and the results of the Forensic Laboratory (DNA) which showed a 99.999% probability that the baby was the defendant's biological child, became important evidence that strengthened the elements of the crime.

Keywords: *Child murder; biological murder and legal analysis.*

I. INTRODUCTION

The crime of murder of a child by the biological mother is a form of crime that is categorized as a privileged crime in criminal law, because it is influenced by biological, psychological and social conditions that accompany the process of pregnancy and childbirth. Indonesian criminal law specifically regulates this through Articles 341 and 342 of the Criminal Code, which provide exceptions or qualifications different from ordinary murder, taking into account the psychological state of the mother who gave birth, especially when the act is carried out due to fear or social pressure. The case that is the focus of this research is Decision Number 36/Pid.B/2024/PN KFM involving the defendant Lusia Neno Kolo. This case began with the defendant's attempt to conceal her pregnancy since mid-2023, failing to undergo an official medical examination, and even attempting a traditional abortion. After giving birth to a baby without medical assistance on January 23, 2024, the defendant then killed the baby by covering the baby's mouth and cutting the baby's neck with a cutter. This act was carried out because the defendant was afraid that her family and the community would find out about her pregnancy and birth. These facts were revealed through witness statements, a post-mortem examination (visum et repertum), and forensic DNA laboratory evidence that confirmed the baby's biological status at 99.999%. The case of the murder of one's own child by the biological mother, as stated in Decision Number 36/Pid.B/2024/PN KFM, reflects the urgent phenomenon of filicide in Indonesia, with an increase in cases in 2024, such as in Bekasi, Kediri, and Ternate, due to factors of social shame, depression, and lack of family support.

This phenomenon is often based on altruistic or emotional motives, where the mother feels pressured for fear of being caught giving birth out of wedlock, as regulated in Article 342 of the Criminal Code, which distinguishes it from ordinary murder. In Indonesia, cases of infanticide are increasing due to weak reporting due to the perpetrator being a close relative, coupled with economic factors, domestic violence, and problematic environments that trigger impulsive decisions. This ruling confirms the application of Article 342 of the Indonesian Criminal Code, which carries a 9-year prison sentence, to Lusia Neno Kolo, who concealed a 7-8 month pregnancy and killed her baby girl on January 23, 2024, in Nimasi Village, North Central Timor. Analysis of this case is crucial for strengthening legal certainty and

prevention through social support and family law education. This article discusses the background of the case, the criminal facts, forensic evidence including a 99.999% DNA test confirming a biological relationship, and the legal considerations of the panel of judges who acquitted the defendant of Article 340 of the Criminal Code. Problem formulation in this research Legal Analysis of Criminal Responsibility for Perpetrators of Murder and Abandonment of Babies from Illicit Relationships Study of Decision Number 36/Pid.B/2024/PN KFM.

1. How does the application of Article 342 of the Criminal Code reflect restorative justice in district courts?
2. What is the basis for the judge's legal considerations in issuing the verdict in case no. 36/pid.B/2024/PN KFM in the criminal act of murder and abandonment of a baby from an illicit relationship?

II. RESULT AND DISCUSSION

Legal facts indicate that the defendant underwent pregnancy without medical supervision and without informing her family or the surrounding community. The midwife's testimony indicated that the defendant's uterus after delivery showed signs of having completed labor. Furthermore, sharp incisions and indications of mechanical violence against the respiratory tract were found on the baby. These witnesses' statements are consistent with the post-mortem examination results, which stated that the baby was born alive (live birth), as evidenced by the presence of air in the lungs and signs that the baby was breathing. These conditions strengthen the conclusion that the baby did not die due to birth defects or medical complications, but due to active killing by the perpetrator. The results of DNA testing from the Forensic Laboratory confirmed that the biological relationship between the defendant and the baby was 99.999%. This evidence is crucial to proving the first element of Article 342 of the Criminal Code, namely "a mother who gives birth to a child." Thus, from the entire series of evidence, there is no doubt regarding the defendant's status as the biological mother and her involvement in the baby's death.

The most important element in Article 342 is the fear motive. In this context, the motive is not understood as justification, but as a legal exception that classifies child murder by a mother as a crime with a lighter penalty than ordinary murder.

Some indicators of fear that were proven in court include:

1. The accused hid the pregnancy for months.
2. The defendant felt ashamed because he was working and was worried about losing his job.
3. The defendant was afraid of causing disappointment to the family.
4. The accused gave birth alone without assistance.
5. The defendant immediately killed the baby to erase evidence of the birth.

Psychological factors such as social fear, economic pressure, and shame are important elements that differentiate premeditated murder from murder driven by panic and psychological stress. However, these psychological conditions do not completely eliminate criminal responsibility; they only influence the degree of culpability and the basis for sentencing.

1. Analysis of the Element of Intention (Mens Rea)

Criminal acts under Article 342 of the Criminal Code still require intent. This means that even if the defendant acted under duress, he or she still had:

- a. *willensbestanddeel* → the will or desire to do an action.
- b. *wetensbestanddeel* → knowledge that his actions would take the life of the baby.

The act of covering the baby's mouth, inserting plastic into the mouth, and cutting the baby's neck with a cutter shows that there is awareness of the purpose (*doelbewustzijn*). This act was objectively certain to result in death. However, proving *mens rea* does not automatically lead to Article 340 (premeditation), as there was insufficient time for the defendant to calmly reflect on the act. The premeditation was merely a spontaneous act, not a well-thought-out plan as required by Article 340 of the Criminal Code.

2. Analysis of the Match Between the Indictment and the Trial Facts

The prosecutor's layered charges were a strategy to ensure that one of the articles was proven, ranging from the most serious (Article 340) to the alternative (the Child Protection Law). However, the judge concluded:

- a. The charge under Article 340 was not proven because there was no voornemen or sufficient time for planning.
- b. Article 341 of the Criminal Code (unpremeditated murder) is also inappropriate, because in this case there is a clear motive in the form of fear.
- c. Article 342 of the Criminal Code is most appropriate because all elements are perfectly fulfilled.

3. Judge's Legal Considerations in Sentencing

In imposing a sentence, the judge considers both objective (the act) and subjective (the perpetrator) aspects. The judge's considerations include:

a. Aggravating Aspects

1. The defendant took the life of his own biological child, which is morally reprehensible.
2. The method of murder was considered cruel, namely cutting the baby's neck until it was almost severed.
3. The defendant had previously tried to abort the pregnancy, indicating prolonged psychological stress.

b. Mitigating Aspects

1. The defendant admitted his actions and expressed regret.
2. Be polite in court.
3. The defendant already has other children and is a single parent, so that too heavy a sentence could impact the welfare of the other children.

This consideration shows that the judge applies the principle of individualization of criminal penalties, namely that the penalty is not only seen from the act, but from the condition of the perpetrator.

c. Implementation of Article 342 of the Criminal Code

The panel of judges declared the defendant guilty of violating Article 342 of the Criminal Code, which stipulates that "a mother who, in order to carry out her intention due to fear of being discovered giving birth, takes the life of her child shortly after birth," is distinguished from Article 340 of the Criminal Code (general premeditated murder) because it lacks the element of calm premeditation but rather impulsiveness due to fear. Strong evidence includes the defendant's confession, post-natal examination (breast milk, uterine contractions, vaginal wounds), and a DNA test from the National Police Forensic Laboratory with a 99.999% probability that the baby's bone remains are her biological child. The 7-year prison sentence was imposed taking into account remorse, honest confession, and the impact on her first child who is still young.

From a criminological perspective, this case demonstrates a crime born of psychological pressure, shame, and social fear. In certain societies, pregnancy outside of marriage is often considered shameful, leading women to choose to conceal their pregnancies and give birth alone without medical assistance. This situation often triggers panic behavior that leads to violence against the newborn. Therefore, Article 342 of the Indonesian Criminal Code was created as a form of *lex specialis* to balance justice and humanity. This ruling also serves as an affirmation that the state continues to protect the baby's right to life while also considering the social and psychological pressures on the mother. The Public Prosecutor requested that the panel of judges sentence the defendant to nine years in prison. Nine years is considered a proportionate sentence, as it is less severe than murder, yet still reflects the gravity of the loss of a baby's life. This verdict has educational value for the public, as concealing a pregnancy and giving birth without preparation can have fatal consequences. On the other hand, the sentence should not be too severe so that the defendant still has the opportunity to return to society and care for other children.

III. CONCLUSION

Decision Number 36/Pid.B/2024/PN KFM illustrates the correct application of Article 342 of the Criminal Code, as the judge determined that the defendant's primary motive was fear of discovery of the pregnancy and childbirth, not premeditated murder. Evidence based on the post-mortem examination, forensic findings, and the defendant's confession successfully established the judge's belief that all elements of the article were met. By imposing a 7-year sentence, this decision reflects a balance between justice, legal certainty, and humanity, considering the defendant's psychological condition and the social pressures experienced.

1. Appropriate and Proportional Application of Law: The panel of judges correctly distinguished and applied Article 342 of the Indonesian Criminal Code (Maternal Infancy) rather than Article 340 of the Indonesian Criminal Code (Premeditated Murder). This demonstrated a thorough understanding of the legal elements, particularly the context of "fear of discovery" and the victim's "own child" in Article 342, which more closely aligns with the facts of the case.

2. The Importance of a Holistic Approach in Justice: This case demonstrates that the criminal justice process cannot operate in a vacuum. The Panel of Judges' considerations, which included sociological and philosophical aspects alongside purely legal ones, are a commendable practice in achieving substantive, not merely formal, justice.

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