



Legal Review of Ferdy Sambo Decision From the Perspective of Justice of the Offender

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Abstract: The purpose of the research is to find out what factors influence the imposition of sanctions for illegal mining crimes in decision No. 177/Pid.Sus/2022/PN Gto. The research method used in this research is the normative research method by taking a statutory approach. The results of this study Illegal mining has a detrimental impact, both for official permit holders and the environment. Perpetrators of illegal mining can be subject to criminal sanctions in accordance with the provisions in Law Number 4 of 2009 concerning Mineral and Coal Mining. Criminal sanctions that can be given include imprisonment and fines. The factors that influence the decision of Decision Number 177/Pid.Sus/2022/PN Gto are laws and regulations, violation of the law, involvement of the defendant, absence of a valid permit, level of loss and environmental impact, and mitigation factors.

Keywords: Application of the Ultra Petita; Justice of the Perpetrator

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1. Introduction

In the Criminal Code (KUHP), the offense of murder which is based on the element of error can still be divided into several types, such as those carried out due to elements of planning carried out in advance by the perpetrator. The offense of murder which is accompanied by prior planning has a heavier criminal penalty than murder which is committed in an ordinary way (without planning).¹

The existence of different criminal sanctions between ordinary murder and premeditated murder is actually substantively based on the element of fault that lies with the perpetrator. The decision by the panel of judges will then ultimately be used as a basis for the executor, in this case the prosecutor's office, to carry out the execution of the judge's decision. Furthermore, the law enforcers mentioned above carry out their respective duties and authorities in accordance with applicable procedural law.²

In criminal procedural law, *ultra petita* is a concept used by a panel of judges to decide a case outside of what was requested by the prosecutor, which Yagie Sagita Putra stated that a decision that is *ultra petita* is because there are reasons that warrant the decision being *ultra petita*,³ for example because the indictment by the prosecutor was less than perfect. Normatively, *ultra petita* is regulated in Article 178 Het Herziene Indonesisch Reglement (HIR) & RBg, that the panel of judges may not hand down a decision or case that is not contested, or simply put, they may not decide on a case other than what is requested. Apart from that, in a further provision, namely in Article 189 Paragraph (3) RBg, the panel of judges is prohibited from making decisions regarding matters that have not been requested or requested.

The application of the principle of *ultra petita*, where the judge decides beyond what is requested by the prosecutor or other parties, is actually, according to Suwitno Y. Imran, an action of *Ultra Qui Judicat*, meaning that the judge has deviated from what was imposed on him in relation to his authority in deciding a criminal case, in particular criminal act of premeditated murder. The *Ultra Petita* Principle and the *Ultra Qui Judicat* Principle are related to each other, where these two principles are usually found in the criminal justice system which is carried out by judges as the parties who examine and try criminal cases.

Janwar Hippy, et al, in their study stated that the principle of *ultra petita* can only be used in a limited way in a judicial institution. Furthermore, he explained that *ultra*

¹ Rizqi Putreri Mahyudin, "Strategi pengelolaan sampah berkelanjutan," *EnviroScienteeae* 10, no. 1 (2014): 33–40.

² Gilang Herdila Wiratama, Mas Agus Priyambodo, dan Fatimah Ratna Wijyanthi, "TELAAH PASAL 338-340 KUHP TENTANG PEMBUNUHAN BERENCANA (Analisis Pembunuhan Berencana Mahasiswa Universitas Surabaya Yang Di Masukkan Koper Lalu Dibuang oleh Guru Les Musik)," *Jurnal Multidisiplin Dehasen (MUDE)* 2, no. 3 (2023): 661–72.

³ Ahmad Zaelani, "Ultra petita dalam putusan hakim menurut hukum pidana Indonesia dan hukum Islam" (B.S. thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2019), <https://repository.uinjkt.ac.id/dspace/handle/123456789/45552>.

petita is a situation where the judge decides a case beyond what was requested by another person (the prosecutor). Apart from that, he also emphasized that the ultra petita provisions are regulated in Article 178 paragraphs (2) and (3) HIR and its equivalent in Article 189 paragraphs (2) and (3) RBg which prohibits a judge from deciding more than what is required (petitum) provisions. HIR is a procedural law that applies in civil courts in Indonesia. However, according to the author, what was mentioned by Janwar Hippy, et al, is in the context of civil procedural law, while the ultra petita and ultra qui judicat used by the judge in the case of Ferdy Sambo et al, are in the realm of criminal procedural law. Furthermore, the use of the ultra petita and ultra qui judicat principles in a judge's decision is generally commonly used by judges in various criminal cases. ⁴

Normatively, of course, judges are prohibited from deciding on a case outside of what is requested by one of the parties (JPU) in accordance with what has been regulated in Article 178 HIR and RBg, and further provisions regulated in Article 189 Paragraph (3) RBg, that the judge it is prohibited to decide on matters that are not requested. Law enforcement for perpetrators should also consider the principles of justice for perpetrators in order to provide legal certainty. Apart from that, it is also necessary to provide logical arguments in the decision as a form of accountability by the judge. Because justice for perpetrators is justice that can also be given to victims of criminal acts.

In the criminal justice system, a person who is suspected or accused of having committed a criminal act, especially the crime of murder, has the right to defend himself against the suspicion or accusation presented to him.⁵ The rights of suspects or defendants to defend themselves, either through their legal advisor, have been clearly regulated in Articles 52 and 54 of the Criminal Procedure Code. This defense can ultimately be understood as part of the process of establishing justice that is as fair as possible for the perpetrator and victim.

2. Method

The research method used in this research is the normative research method by taking a statutory approach.⁶

3. Legal Considerations of the Panel of Judges in the Ferdy Sambo Case Decision in Providing a Sense of Justice for the Perpetrator

A judge's decision, whether in a criminal or civil case, has a central position, because it will be used as a basis for carrying out the execution by the party ordered to do so

⁴ Ibnu Sina Chandranegara, "Ultra Petita dalam Pengujian Undang-Undang dan Jalan Mencapai Keadilan Konstitusional," *Jurnal Konstitusi* 9, no. 1 (2012): 27–48.

⁵ Ade Inggit Paramitha, "Pembelaan Terhadap Terdakwa Menurut Hukum Pidana Positif dan Hukum Pidana Islam" (PhD Thesis, Universitas Islam Negeri Sumatera Utara, 2019), <http://repository.uinsu.ac.id/11245/>.

⁶ Zainuddin Ali, *Metode penelitian hukum* (Sinar Grafika, 2021).

in the future. However, of course execution can be carried out when there are no further legal measures taken by the parties (public prosecutor & defendant). It is known that Ferdy Sambo, et al, are suspected of having committed the crime of premeditated murder against the victim on behalf of Brigadier Jhosua Hutabarat. In his indictment, the public prosecutor charged the defendants with various existing articles in accordance with those formulated in the Criminal Code, such as Article 338 to article 340.⁷ Meanwhile, in his indictment, the public prosecutor gave quite various demands to the defendants, including the demands given to Ferdy Sambo, who was charged with criminal justice. Prison as long as the well lives. Furthermore, in the decision of the panel of judges, he was sentenced to death. The decision by the panel of judges in the case of Ferdy Sambo et al has invited quite diverse responses and reactions from community groups. One of them is the response issued by the Indonesian National Human Rights Commission (Komnas HAM) which considers that no one is above the law.⁸

The judges in this case presented several key considerations:

1) Fulfillment of Premeditated Murder Elements

The judges assessed that Ferdy Sambo's actions met the elements of premeditated murder under Article 340 of the Criminal Code. This consideration was based on the fact that the defendant had carefully planned the murder, including preparing tools and selecting the right time and place to execute his actions.

2) Rejection of the Defendant's Alibi

The defendant claimed that the murder was a spontaneous reaction to the harassment by the victim against his wife. However, the judges rejected this alibi due to a lack of supporting evidence. Additionally, the judges considered that the murder was carried out in a manner that did not reflect a spontaneous reaction, but rather a well-planned action.

3) Public Sentiment Considerations

This case received wide public attention, with calls for justice for the victim. The judges took this public sentiment into account in their ruling, aiming to maintain public trust in the judicial and law enforcement systems.⁹

⁷ neng Rani Nabawiyah, "Analisis Yuridis Eksekusi Putusan Pidana Mati Ferdy Sambo Dikaitkan Dengan Undangundang Nomor 1 Tahun 2023 Tentang KUHP" (PhD Thesis, Nusa Putra University, 2023), <http://repository.nusaputra.ac.id/id/eprint/678/>.

⁸ Parhan Muntafa dan Ade Mahmud, "Penerapan Hukum Pidana Mati Bersyarat Dalam KUHP Baru Di Hubungkan Dengan Asas Kepastian Hukum," *Jurnal Preferensi Hukum* 4, no. 2 (2023): 130–36.

⁹ Queena Sakti Citra Maharani dan Aprillia Yovieta, "Penjatuhan Disiplin Etik Tidak Menghapuskan Pertanggungjawaban Anggota Polri Yang Melakukan Tindak Pidana," *Jurnal Hukum Pidana dan Kriminologi* 4, no. 1 (2023): 32–43.

3.1 The intended act was committed against a subordinate and the elements of the crime of premeditated murder were fulfilled

In the initial considerations contained in the decision by the panel of judges who examined and tried Ferdy Sambo's case, the judge gave an assessment and consideration that the first thing that made him subject to the death penalty was because Ferdy Sambo committed this act against his own subordinates. It is known that the victim was a member of the National Police who was specially assigned to serve Ferdy Sambo's family.¹⁰

If you look in more detail at the judge's considerations in decision no. 796/PID.B/2022/PN JKT.SEL, the judge believes that Ferdy Sambo, as the victim's superior, should as far as possible not do anything that could cause him to no longer be trusted by the public.¹¹ What this means is that as a State servant who has carried out the duties of his agency for more than 20 years, especially when he was charged with committing the crime of premeditated murder, he served as Head of the National Police Propam Division. This position is actually very central because it is tasked with supervising and inspecting the police.¹²

That the defendant has been legally and convincingly proven to have committed the crime of murder as charged by the public prosecutor.¹³ That the crime of premeditated murder is one of the most serious and heinous types of criminal acts because it is done intentionally because there is a plan or prior intention for someone to kill. However, if viewed from the perspective of justice for the perpetrator, the death penalty for the defendant as stated in the judge's decision in decision no. 796/PID.B/2022/PN JKT.SEL, it should not have been done. The reason is simple which will be explained as follows:

First, in criminal law, there are teachings which clearly determine that criminal law should be used as the last legal remedy (*ultimum remedium*). This principle in the criminal justice system must be implemented as an inseparable part of the State's efforts to provide justice for everyone. In other words, if there is a lighter

¹⁰ Sukma Diah Ayu Lestari, "Latar Belakang Dan Implikasi Pemberlakuan Asas Rechterlijk Pardon Di Dalam Kitab Undang-Undang Hukum Pidana 2023" (PhD Thesis, Universitas Islam Indonesia, 2023), <https://dspace.uui.ac.id/handle/123456789/44995>.

¹¹ Br Nainggolan Yolandasari, "Perspektif Hukum Pidana Terhadap Perbuatan Merendahkan Kehormatan Dan Keluhuran Martabat Hakim (PMKH)," 2023, <http://digilib.unila.ac.id/id/eprint/78433>.

¹² Ocha Indah Kesuma Gabriella, "Pertanggungjawaban Ahli Dalam Memberikan Keterangan Pada Kasus Percobaan Pembunuhan," 2023, <http://digilib.unila.ac.id/79500/>.

¹³ Keren Shallom Jeremiah dan Karina Hasiyanni Manurung, "Analisis Perbuatan Obstruction of Justice yang dilakukan oleh Aparat Kepolisian dalam Perkara Pembunuhan berencana," *Jurnal Esensi Hukum* 4, no. 2 (2022): 99–111.

punishment then this should be applied, instead of using other types of criminal punishment such as the death penalty against someone.¹⁴

Fulfillment of the Elements of the Crime of Premeditated Murder To assess whether Ferdy Sambo's actions fulfill the elements of the crime of premeditated murder, we need to refer to the elements stipulated in Article 340 of the Criminal Code. These elements are:

1) Element of Willfulness

Premeditated murder requires an element of intent or intention to take the life of another person. In this case, the element of intent is fulfilled because the defendant intentionally planned and carried out the murder of his subordinate.

2) Element of Planning

Another important element is planning or pre-meditation. This involves careful thought and preparation before the act of murder is committed. In this case, planning can be seen in the selection of time, place, and the preparation of tools and means needed to carry out the murder. The fact that the defendant took concrete steps to ensure the success of the act shows clear planning.

3) Element of Execution

murder is also an important element in this crime. The defendant not only planned but also carried out the act of murder. The evidence at trial shows that the defendant actively took part in the execution of the murder, which corroborates the fulfillment of this element.

In analyzing the Ferdy Sambo case, it is important to consider how each element of the crime of premeditated murder can be proven in court. In terms of intent, planning, and execution, Ferdy Sambo's actions demonstrate the fulfillment of all the elements required by Article 340 of the Criminal Code. Recordings and testimonies in court showed that the defendant had communicated and coordinated to carry out his plan, corroborating that the act was not carried out spontaneously but with careful planning. The defendant's motive, while not always a key element in proving premeditated murder, provided context that helped understand the reasons behind the act; in this case, it related to a personal conflict between the defendant and his subordinate, strengthening the case for premeditation. As a senior police officer, the defendant's actions towards his subordinate demonstrated an abuse of power and authority, with the influence of

¹⁴ Titis Anindyajati, Irfan Nur Rachman, dan Anak Agung Dian Onita, "Konstitusionalitas Norma Sanksi Pidana sebagai Ultimatum Remedium dalam Pembentukan Perundang-undangan," *Jurnal Konstitusi* 12, no. 4 (2015): 872–92.

his position giving him access and the ability to carry out his plan without significant hindrance.

Ramdan Kasim, in a study, stated that the concept of punishment in the Criminal Code, including the crime of premeditated murder which carries varied penalties, should be adjusted considering that the old Criminal Code is a legacy of the Dutch colonial nation so it must prioritize more modern criminal principles.¹⁵ Apart from that, he also emphasized that the Criminal Code that has been in force so far tends to be repressive towards everyone.

3.2 There was no element of harassment towards the defendant's wife as per the defendant's alibi

In the legal considerations by the panel in the Ferdy Sambo case, the judge considered that there were no acts of harassment experienced by his wife as alleged by the defendant Ferdy Sambo to the victim Jhousa Hutabarat. This was also used as the basis for the panel of judges to sentence the defendant Ferdy Sambo. In the decision by the panel of judges with No. 796/PID.B/2022/PN JKT.SEL, the panel has considered that there are no elements of sexual harassment towards the defendant's wife, Putri Chandrawati, as alleged by the panel.¹⁶

If it were to be summarized, for this reason, the judge considered that related to the absence of acts of sexual harassment, first, the judge referred to Perma No. 3 of 2017 concerning Guidelines for Prosecuting Women in Conflict with the Law, that in the context of the criminal act that the defendant was accused of and accomplices in, this is very unlikely because if you look at the existing facts, Putri Chandrawati, who is the defendant's wife, has a higher social status than the victim.¹⁷

The principle is that the subject of the investigation regarding the act of sexual harassment as alleged by the victim Johsua Hutabarat was not proven according to the law. So that something that should be used as an alibi cannot be used as a justification to forgive the perpetrator. Apart from that, from a variety of perspectives, justifying or forgiving reasons can only be applied in certain

¹⁵ Muhammad Anwar Suhada, "Pemberian Vonis Ringan terhadap Tindak Pidana Pembunuhan Berencana yang Dilakukan Bersama-Sama (Studi Putusan Nomor 798/Pid. B/2022/PN. Jkt. Sel)" (B.S. thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2018), <https://repository.uinjkt.ac.id/dspace/handle/123456789/77135>.

¹⁶ De Had, *MENGADILI ALIBI MENGUJI BUKTI* (guedpedia), diakses 6 Juni 2024, <https://books.google.com/books?hl=id&lr=&id=439KEAAAQBAJ&oi=fnd&pg=PA3&dq=Tidak+Ada+Unsur+Pelec+Terhadap+Istri+Terdakwa+Sebagaimana+Alibi+Terdakwa&ots=Dop2XiL1eK&sig=25RLJQCNhpZwd6D9wOY5HYuCVYc>.

¹⁷ Adi Pratama Pangaribuan, "DASAR PERTIMBANGAN HAKIM TERHADAP PELAKU PENYERTAAN TINDAK PIDANA PEMBUNUHAN BERENCANA (Analisis Putusan Nomor: 798/Pid. B/2022/PN. Jkt. Sel)" (PhD Thesis, Hukum Pidana, 2024), <https://repository.unja.ac.id/59371/>.

circumstances, such as carrying out regulatory orders, or a position, or because someone is considered incapable of being responsible for their actions.

In the criminal justice system adopted in Indonesia, the judicial process starts from the level of inquiry, inquiry, to examination in court. When the case is in court, the first stage that will be carried out is reading the indictment by the prosecutor, raising objections by the defendant if any, examining evidence, prosecution, defense by the defendant, and reaching a verdict. . In practice, the panel of judges can refer to existing evidence and must also refer to the formulation of existing norms to decide a criminal case, especially the Ferdy Sambo case. On the other hand, according to the Law on Judicial Power, the panel of judges examining cases is also required to explore the values that exist in society as a reference in providing considerations.¹⁸

Referring to the prosecution's demands, he was charged with life imprisonment. Meanwhile, the panel of judges who examined Ferdy Sambo's case with case number 796/Pid.B/2022/PN JKT.SEL, sentenced the defendant to the death penalty. Between the prosecutor's demands and the decision by the panel of judges, there are differences in terms of the punishment given. If you look at the various factors considered by the panel of judges who examined and tried the Ferdy Sambo case, the judge did not only assess the juridical (legal) factors as regulated in 340 of the Criminal Code concerning premeditated murder in conjunction with Article 55 paragraph (1) 1st of the Criminal Code subsidiary Article 338 of the Criminal Code in conjunction with Article 55 paragraph (1) 1 of the Criminal Code, but there are also non-juridical factors as stated above, namely that the act was committed against a subordinate, causing deep sorrow for the victim's family, so that the act caused unrest in society.¹⁹

4. Conclusion

Based on the analysis presented in the previous chapter, several points can be concluded as follows:

First, in case No. 796/PID.B/2022/PN JKT.SEL involving Ferdy Sambo, the judge's consideration stated that the actions taken by the defendant against his subordinate fulfilled the elements of premeditated murder, and there was no element of harassment against the defendant's wife as claimed by the defendant. However, from

¹⁸ AYU CAHYANI FUTRI, "ANALISIS DASAR PERTIMBANGAN HAKIM DALAM MENJATUHKAN PUTUSAN LEBIH RINGAN DARI TUNTUTAN JPU TERHADAP PELAKU TINDAK PIDANA PEMBUNUHAN BERENCANA (Studi kasus Putusan Nomor 798/Pid. B/2022/PN JKT. SEL)," 2024, <http://digilib.unila.ac.id/79900/>.

¹⁹ Tri Septianingsih, Achmad Irwan Hamzani, dan Kus Rizkianto, *Problematika Keterangan Saksi yang Memiliki Hubungan Perkawinan dalam Tindak Pidana* (Penerbit NEM, 2024), <https://books.google.com/books?hl=id&lr=&id=DB0FEQAAQBAJ&oi=fnd&pg=PR1&dq=Putri+Chandrawati+yang+merupakan+istri+terdakwa+memiliki+status+social+yang+lebih+tinggi+dari+korban.&ots=tfoNb7s4hQ&sig=JlpMjA6GIno-HiSNVilvO1QaK2I>.

the perspective of justice for the perpetrator, the judge should conduct an independent and impartial trial. This is crucial because the analysis of the decision tends to disregard justice for the perpetrator. Second, the judge's decision in case No. 796/PID.B/2022/PN JKT.SEL has significant implications. First, the decision allows the general public to be involved or influence the judge's ruling. Second, the decision does not provide the defendant with the opportunity to serve a probation period, even though the new Criminal Code stipulates that a defendant has the chance to undergo a probation period for up to 10 years.

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