



## ANALYSIS ON ARTICLE 340 OF THE CRIMINAL CODE AND ARTICLE 388 OF THE CRIMINAL CODE IN THE JESSICA MIRNA CASE

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Article	Abstract
<p><b>Keywords:</b> <i>Murder; Premeditation; Autopsy; Laws</i></p> <p><b>Article History</b> Received: July19, 2022; Reviewed: July22,2022; Accepted: July 25,2022; Published: Aug10, 2022</p>	<p>Murders in Indonesia vary widely. The definition of murder is a criminal act that results in the loss of a person's life. Currently, murders occur a lot in various regions in Indonesia. Apart from being influenced by motives, this is also a picture of the moral decline of this nation. It is so easy for someone to take another person's life, the cause is worth investigating. The harshness of life and the fragility of religious education may also be factors in the ease with which someone can take another person's life. The crime of murder really requires the role and duties of the authorities, namely the Police. Murder committed intentionally in its basic form is contained in Article 338 of the Criminal Code, the formulation of which is "Whoever intentionally takes the life of another person, is threatened with a maximum imprisonment of 15 years for murder." The crime of premeditated murder is also formulated in Article 340 of the Criminal Code, the formulation of which is "Anyone who deliberately and plans to kill another person is threatened with premeditated murder, with the death penalty or life imprisonment, or life imprisonment. Certain period of time, a maximum of twenty years." In this case, the defendant Jessica Wongso was very depressed and in this trial, according to the author, there was no concrete and clear evidence because an autopsy was not carried out. Because, what is clear is that there must be an autopsy, not just sampling of stomach organs. Therefore, this case feels very strange and there is no clarity or clear evidence at all. And the family refused to carry out an autopsy because they were afraid it would cause damage to Mirna Salihin's body.</p>

### 1. INTRODUCTION

Jessica, Mirna, and Hani were close friends during their studies in Australia. However, upon completing their schooling, only Jessica remained in Australia while the others returned to Indonesia. On January 6, 2016, Jessica, who was visiting Indonesia, planned to meet her old friends, Mirna and Hani. She informed them via WhatsApp group and

arranged to meet at a cafe in Central Jakarta at 16:00 WIB. Jessica arrived at the cafe first, at 15:30 WIB, to make a reservation and select a table. She then left briefly to shop. Upon returning at 16:14 WIB, neither Mirna nor Hani had arrived yet. Jessica proceeded to order at 16:18 WIB and included drinks for Mirna and Hani. The drinks were served to Jessica at 16:24 WIB.

Mirna and Hani finally arrived at 17:16 WIB. The three friends chatted and enjoyed their drinks together. Unfortunately, Mirna experienced convulsions and shortness of breath after consuming the Vietnamese iced coffee ordered by Jessica. The Public Prosecutor identified Jessica as the suspect based on CCTV evidence, which has led to divided opinions within Indonesian society. Some believe Jessica is guilty, while others see her as an innocent scapegoat, given the uncertainties surrounding the evidence.<sup>1</sup>

## **2. RESEARCH METHODOLOGY**

The method used in this article is a normative juridical legal research method. Normative Juridical legal research is focused on finding a legal rule, legal principles, or legal doctrines to answer the legal problems faced.. This article was studied using primary legal materials consisting of legislation and secondary legal materials consisting of books, legal journals, opinions of scholars (doctrine), legal cases, jurisprudence, article, legal journal and related to research problems.<sup>2</sup>

There are four research question: What was the judge's basis for making the decision to impose articles 340 of the Criminal Code and 338 of the Criminal Code? Is the decision given by the judge a decision that has considered the evidence, witnesses and experts presented at the trial, what is the position of indirect evidence in the trial? And Does a judge not consider a victim's body that was not autopsied when making a decision in a premeditated murder case?

## **3. DISCUSSION**

### **3.1 Irregularities in the case**

Following the release of the documentary film "Ice Cold: Murder, Coffee, and Jessica Wongso" on Netflix, significant attention has been drawn to the case surrounding Jessica Wongso. The documentary has sparked widespread public interest and raised questions

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<sup>1</sup> Rosel, Tilawati (2017). *Analisis Framing Pemberitaan Sidang Kasus Kopi Sianida Jessica Kumala Wongso di Media Online* accessed in [www.kompas.com](http://www.kompas.com)

<sup>2</sup> Peter Mahmud Marzuki. *Penelitian Hukum*. Jakarta: Kencana Prenada Group, 2007, P. 35.

about the Cyanide Coffee case. It focuses on the anomalies within the case, leading many to reconsider Jessica Wongso's guilt and advocate for the reopening of the case.<sup>3</sup>

Otto Hasibuan, Jessica Wongso's lawyer, has expressed a high degree of confidence in her innocence, stating that he is 99% sure of her innocence and is prepared to submit a resubmission. Additionally, he has indicated his intention to take legal action against those who obstructed the autopsy process. During the court proceedings, Jessica Wongso testified that Inspector General Khrisna Murti urged her to confess, assuring her of a maximum sentence of seven years in prison. This revelation has added complexity to the case, prompting further scrutiny.

The public response to the documentary has been significant, with the hashtag #JusticeForJessica gaining traction across various media platforms.<sup>4</sup> Otto Hasibuan has acknowledged the widespread concern surrounding Jessica Wongso's case and has committed to seeking evidence for a review the documentary has provided a platform for the public to explore the truth behind the case and has elicited diverse opinions and possibilities regarding Jessica Wongso's involvement.

### **3.2 International Response to the Verdict**

Murder incidents in Indonesia are indicative of societal moral decline and varied motives behind such acts. These occurrences necessitate thorough investigation into the underlying reasons and factors contributing to such violence. Disorderly lifestyles and inadequate religious education are cited as potential catalysts for individuals resorting to taking another's life. The role of law enforcement agencies, particularly the Police, is paramount in addressing and mitigating the incidence of murders. Article 338 of the Criminal Code stipulates a maximum prison sentence of 15 years for intentional murder, underscoring the severity of the offense.

International media, notably from Australia, closely followed developments in the case of Jessica Kumala Wongso, particularly after her sentencing to 20 years in prison in October 2016. Outlets such as DailyMail and News.com.au.Sydney provided commentary on the case, expressing concerns over the perceived shortcomings of Indonesia's legal system. Foreign media highlighted Jessica's prevention from traveling abroad and reported testimonies from Australia regarding the case. However, the Indonesian Broadcasting

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<sup>3</sup> Awal, H. (2019). *Perancangan Prototype Smart Home Dengan Konsep Internet Of Thing (IoT) Berbasis Web Server*. Majalah Ilmiah UPI YPTK, hlm. 65-79.

<sup>4</sup> A, Restu Wahyuning (2023). *Instagram Jokowi Dibanjiri Komentar #Justice for Jessica, Akankah Kasus Dibuka Kembali?*. Kabar24 accessed in <https://kabar24.bisnis.com/read/20231010/16/1702729/instagram-jokowi-dibanjiri-komentar-justiceforjessica-akankah-kasus-dibuka-kembali>

Commission (KPI) cautioned media outlets against shaping public opinion during the trial proceedings. Despite international criticism questioning the adequacy of evidence against Jessica, she was sentenced to a lengthy prison term under Articles 340 and 338 of the Criminal Code. Post-sentencing, scrutiny was placed on Jessica's mental health, with Article 44 of the Indonesian Criminal Code allowing for a reduction in her sentence if she is deemed mentally unwell at the time of the crime, thereby underscoring the complexities surrounding legal responsibility and mental health in Indonesia's judicial system.

Jessica's case has its own uniqueness that needs to be examined together. From a legal perspective, the case of M's death is a multifaceted case, because there are many legal aspects that can be used as material for analysis. There are at least 3 (three) dimensions<sup>5</sup> that can be used: the **first** being seen from the legal side of evidence. In this case, the object being analyzed is whether the evidence collected is sufficient and sufficient to bring this case to court. The **second** dimension is the type of offense committed by the perpetrator, whether the offense of assault that causes death, simple murder or premeditated murder, this type of offense is largely determined by the level of guilt of the perpetrator. Finishing off, the **third** dimension would be the dimension of causality. This part is rarely debated, considering the fact that it would be the most difficult part. Causality is in the empirical and metaphysical area, which requires legal reasoning and logic to solve it.

According to Aristotle, "The concept/theory of causality clearly explains that everything that happens is a series of causes and effects."<sup>6</sup> Similar to the analogy of heating iron, the iron will melt and someone who studies well will get achievements. Events start from occurring until they cause the next event. Causal relationships between humans do not always have positive endings but can also be negative, thus influencing the factors therein. Causality is a cause and effect relationship that occurs automatically and does not require the intermediary of science or knowledge.<sup>7</sup> In proving the crime of murder there is a material offense, where the investigator must prove that the cause is another person, there must be an element of intent, and in the case of murder requires some evidence to answer it. , and sometimes investigators cannot provide the evidence, so a science is needed,

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<sup>5</sup> Nuzan, N, Diffany, dkk (2023) *Analisis Kasus Kopi Sianida Mirna Salihin: Implikasi Hukum Pidana dan Prosedur Hukum Indonesia*. Jurnal Kewarganegaraan. Vol. 7. No. 2.

<sup>6</sup> Aristotle, *Aristotle on Causality*. Stanford Encyclopedia of Philosophy accessed in <https://plato.stanford.edu/entries/aristotle-causality/>

<sup>7</sup> Awal, H. (2019). *Perancangan Prototype Smart Home Dengan Konsep Internet Of Thing (IoT) Berbasis Web Server*. Majalah Ilmiah UPI YPTK, hlm. 65-79.

namely the teaching of causality. The teaching of causality can also function as a filter for actions that are the main cause.

Judging from the criminal law literature, there are 3 (three) doctrines that are most prominent in determining actions that give rise to prohibited consequences. The first doctrine is called *conditio sine qua non*, the second doctrine is generalizing and the third doctrine is called individualizing. The *conditio sine qua non* doctrine is the oldest doctrine discovered by the Chief Justice of the Supreme Court M. Adityo Andri Cahyo Prabowo & Hadi Purnomo. In this doctrine, all factors must be taken into account in order to determine the action that is the causal factor. He emphasized that when one factor is removed, it will interfere with other factors. All factors are equal, meaning that there is no dominant factor in determining the cause that causes the effect.<sup>8</sup> If the Von Buri doctrine is used in the case of M's death, then it cannot be just one factor that provides attribution of criminal responsibility, but must be several factors at once. As explained below:

- a. The first factor is the cyanide seller (because selling is a causal factor, if cyanide is not available/sold then the cyanide will not cause M's death).
- b. The second factor is the actions of the person selling/trading coffee. (selling and serving kopo also provides attribution for M's death).
- c. The third factor is the act of putting cyanide in the coffee. (These three factors are a chain that is related and sequential)

In the process of investigating the JW case, it was discovered that an autopsy was not carried out on M's body, for the main reason, namely rejection from the family, but apart from that, quoted in Purnomo (2013) explaining that precisely at the 16th (sixteenth) trial, Prof. Budi Sampurna, a forensic expert who was summoned to be a witness in the JW case, said that apart from the rejection of the autopsy that came from M's family, Prof. Budi also questioned the public's trust regarding forensic autopsy technology in Indonesia, which is gradually decreasing, besides Prof. Budi also said that the autopsy would be in vain because there was no CCTV footage at the crime scene. Because an autopsy was not carried out, it can be said that the investigation process in proving JW's case was flawed and there was no concrete evidence to be presented at trial. Because autopsy is a crucial and very mandatory forensic stage. (Purnomo, STIK, 2023).

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<sup>8</sup> Handayanti, H. (2019). *Vonis 20 Tahun Terhadap Jessica Kumala Wongso*. Jurnal Kewarganegaraan, 3(2), hlm. 109-113.

In forensic theory, an autopsy cannot be carried out only partially.<sup>9</sup> However, a complete autopsy must be carried out so that comprehensive conclusions can be drawn about what actually happened to the corpse. It is known that what the forensics did was only take a sample from M's stomach, which was then checked in the laboratory, the results of the forensic laboratory check showed that there was cyanide liquid in M's stomach and then the laboratory results were used as evidence for the investigation of JW's case. Based on this, the case investigation process increasingly appears unclear, the "most important" thing that must be collected to uncover a murder case, namely evidence, has become unclear.<sup>10</sup> JW's legal process continued and in October 2016, Jessica Wongso (JW) was found guilty of the murder of Wayan Mirna and sentenced to life imprisonment. This decision was then defended at the appeal level in 2017. This case created widespread polemics and discussions in Indonesian society regarding the upholding of justice.

#### 4. CONCLUSION

This sentence is in accordance with the demands of the Prosecutor. The panel stated that the things that aggravated Jessica were that the defendant's actions resulted in the victim's death, Jessica's actions were cruel and sadistic because they were done to her own friend, the defendant never regretted it, and did not admit his own actions. Meanwhile, the mitigating factor is that Jessica is still young and has the opportunity to improve her actions in the future. This article was used because it was strongly suspected that Jessica had violated Article 340 of the Criminal Code, which regulates murder with elements of planning, not ordinary murder as regulated in Article 338 of the Criminal Code. Even though Article 340 of the Criminal Code does not explicitly mention motive, the judge considered that motive is very important in cases of premeditated murder. In this case, the legal facts that cannot be denied fulfill the three elements of premeditated murder, namely intentional, premeditated, and taking the life of another person.

The judge did not consider it because according to experts and legal representatives, Mirna's body was not autopsied because Mirna's family did not allow an autopsy to be carried out and that was part of Mirna's family's rights, however, there were several things that had to be considered and questioned because there were several forensic experts such

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<sup>9</sup> Fungsi Otopsi Forensik Dankewenangan Kepolisian Republik Indonesia Berdasarkan Kuhap. Lex Privatum, 4(5).Ngo, F. T., & Jaishankar, K. (2017). *Commemorating a decade in existence of the international journal of cyber criminology: A research agenda to advance the scholarship on cyber crime. International Journal of Cyber Criminology*, 11(1),

<sup>10</sup> Ekaputra, M., & Kahir, A. (2010). *Sistem Pidana di dalam KUHP dan pengaturannya menurut Konsep KUHP Baru*. USUpress.

as DR. Djaja at the trial stated that there were none and did not show any signs of cyanide poisoning.

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