

Analysis of Islamic Criminal Law Against Free Verdicts (*Vrijspraak*) (Study of Decision Number 454/ pid. B/ 2024/pn. Sby)

Yuli Kasmarani

Faculty of Sharia and Law, Raden Fatah State Islamic University, Palembang

E-mail: yulikasmarani_uin@radenfatah.ac.id

ABSTRACT

This study aims to analyze the free verdict (*Vrijspraak*) Number 454/Pid.B/2024/PN. Sby in the perspective of Islamic Criminal Law and answered the question of whether a judge can decide a case based on his own knowledge. Considering that many criminal offenders were acquitted by the judge because based on the results of the trial it was not legally proven and convinced the judge that the defendant had actually committed the crime. This research is a literature research obtained from court decision Number 454/Pid.B/2024/PN. Sby, Fiqh Islam Wa adillatuhu, Islamic criminal law books, and related articles as primary data sources. After the data is collected, it is then processed and analyzed in a qualitative descriptive manner. The results of the study concluded that from the perspective of Islamic criminal law, the actions of the defendant Gregorius Ronald Tanur in the verdict Number 454/Pid.B/2024/PN. Sby has fulfilled the elements of semi-intentional murder and sanctions in the form of diyat (fines that must be paid to the victim's family either in the form of camels, gold, silver, wheat, goats, and jewelry, according to the predetermined level of diyat) if the judge has doubts about imposing a diyat sentence, the judge can replace the diyat sentence with a ta'zir punishment, which is a repressive, preventive, and educational punishment. Judges' decisions based on their own knowledge are completely unacceptable at this time, as many judges today are not responsible.

Keywords: Islamic Criminal Law, acquittal verdict, *Vrijspraak*

Introduction

The 1945 Constitution is the source of all legal sources in Indonesia. Article 1 paragraph 3 states that Indonesia is a country of law based on Pancasila. This aims to realize a safe, peaceful, prosperous, and orderly way of life in a country. The law regulates social *control* and is strictly coercive, so that when a person violates the rule of law for his fault (*schuld*), he can be subject to punishment, including the imposition of criminal sanctions.¹ Quality law is a law that maintains legal certainty, and maintains the joints of justice that live in society.² To maintain the quality of law in the criminal justice system, judicial administrators, such as: police, prosecutors, judges, and correctional officers who work from the investigation and investigation process, arrest, detention, prosecution to finally the examination in court sessions.³

A judge is expected to act wisely and wisely in order to obtain the true truth of a criminal case and apply the legal provisions contained in the Criminal Procedure Code

¹ Josua Kelvin and Parningotan Malau, *Analysis of Free Verdicts for Convicts in Sadistic and Premeditated Murder Cases*, Journal of Law Samudra Keadilan 15, no. 2 (2020), pp. 318–34.

² Sri Nuryani, *Analysis of Judges' Considerations in Granting Free Verdicts in Murder Cases* (Thesis, Sultan Agung Islamic University, n.d.).

³ Ramot Lumbantoruan, *Juridical Analysis of Free Verdicts on Murder Cases*, Journal of Education, Humanities and Social Sciences (JEHSS) 2, no. 2 (December 19, 2019), pp. 399–411, <https://doi.org/10.34007/jehss.v2i2.100>.

to determine whether the defendant is proven to have committed a criminal act or not. If the defendant is proven to have committed a criminal act, he can be sanctioned, and if the defendant is not proven to have committed a criminal act, he can be given a verdict of freedom from punishment, all of which boils down to the sense of justice of both parties, and the verdict can be accounted for. The judge's decision will be correct and fair if the decision can encourage improvement in society and build social harmonization, not just as a decision that only maintains order and formality.

There are three forms of decisions that can be handed down by judges, namely decisions in the form of criminals⁴ or free or free from all lawsuits. A criminal verdict is a decision issued based on an examination at the court trial, the panel of judges is of the opinion that the defendant is legally and convincingly proven guilty of having committed the criminal act charged against him, then the court imposes a criminal sentence. A loose verdict, namely a criminal act charged by the public prosecutor, is indeed legally and convincingly proven according to the law, but the defendant cannot be convicted because the act committed by the defendant is not a criminal act but enters the realm of civil law, commercial law, or customary law. The acquittal occurred because the defendant was not legally and convincingly proven guilty of committing a criminal act as charged by the public prosecutor in the indictment.⁵⁶

In the decision, the judge must really carefully consider the arguments of the defendant's legal counsel, the public prosecutor, and valid evidence so that the judge has confidence in the legal event as the basis for imposing the sentence. If the judge has doubts, then the judge is obliged to release the defendant. However, on the other hand, if the judge erroneously decides to acquit or acquit the guilty, then he will face juridical liability for misapplying the law. The imposition of a free verdict should be supported by existing evidence. Judges' considerations play an important role in independent decisions. It is not impossible that a free verdict that has been handed down is not in accordance with the provisions of the applicable law and ignores the values of justice.⁷

Free verdicts against the defendant perpetrators that resulted in the death of the victim often occur, and cause pros and cons in the community. This is the basis for the researchers' thinking to analyze the free verdict. The following are some studies on the acquittal verdict against the defendant that caused the victim to die:

Joshua Kelvin and Parningotan Malau entitled *Analysis of Free Verdicts Against Convicts in Sadistic and Premeditated Murder Cases (Study of Decision Number: 35/PID. B/2012/PN. BTM)*, in this verdict, the defendant Mindo, who is the main perpetrator, was acquitted by the panel of judges, while the defendant Gugun and the defendant Ros, who acted as assistants and participated in the case, were found guilty

⁴ Criminalization means that the defendant is sentenced to a criminal sentence in accordance with the threat specified in the Criminal Offense Article charged against the defendant, the imposition of punishment against the defendant is based on the court's judgment. The forms of criminal decisions that can be handed down by judges are regulated in the Criminal Procedure Code, including: a) Principal crimes, which consist of the death penalty, prison sentence, imprisonment penalty, and fine penalty. b) Additional crimes, which consist of the revocation of certain rights, the confiscation of certain goods, the announcement of the judge's decision.

⁵ Article 193 paragraph 2 of Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Law" (n.d.), www.djpp.kemendikham.go.id.

⁶ Article 191 paragraphs 1, 2, Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Law" (n.d.), www.djpp.kemendikham.go.id.

⁷ Lumbantoruan, *Juridical Analysis of Free Verdicts on Murder Cases*,

by the panel of judges in committing the premeditated murder. This decision does not meet the principles of justice, security and legal order. Yahdiani Ayu Azizah in her thesis entitled *Analysis of Free Verdicts (⁸Vrijspraak) in the Crime of Murder Preceded by the Crime of Rape (Study of Decision Number: 155/Pid/2020/PT TJK)*. It was concluded that the inconsistency of the evidence with the witness statement and the negligence of the Public Prosecutor in crosschecking the case caused doubts for the judge so that he gave an independent verdict against the defendant. Anaffisa, in the proceedings of Legal Science, outlined the results of her research that the Judge's Consideration of Imposing a Free Sentence on the Perpetrator of the Crime of Murder in the decision Number: 817/Pid.B/2018/PN PdG is based on juridical and non-juridical considerations and has succeeded in proving that the defendant is innocent based on the evidence submitted in the form of witness statements, *viosum et repertum*, and defendant's statement. The three studies have the same conclusion, namely the unproven demands and charges of the public prosecutor, and the negligence of the public prosecutor in terms of submitting evidence and witnesses, so that the judge handed down an acquittal.⁹¹⁰

Recently, the Surabaya Class IA District Court through decision Number 454/Pid.B/2024/PN. Sby decided to acquit the defendant Gregorius Ronald Tannur, the son of Edward Tannur, who committed the persecution and caused the death of Dini Sera Afrianti. This decision reaped pros and cons in the community until it received attention from Commission III members of the House of Representatives who considered that this decision needed to be reviewed and the need for an examination of the judge on duty who was allegedly cheating. Considering that positive law expressly prohibits the crime of persecution and causing death as per article 351 paragraph 3 of the Criminal Code: states that if the act of persecution results in the death of a person, the perpetrator is sentenced to a maximum of 7 (seven) years in prison. In the context of Islamic law, the perpetrator of persecution can be subject to the punishment of *qishash* (punishment similar to what was done), if the victim's family forgives, the *qishash* punishment will be replaced with *diyat* (a fine that must be paid by the perpetrator to the victim's family).¹¹

Criminal law and Islamic criminal law both adhere to the principle of justice (*al-'adl*) as the main basis for making legal decisions. Therefore, the author is interested in analyzing the free verdict (*Vrijspraak*) in the perspective of Islamic Criminal Law and Is it permissible for a judge to decide based on his own knowledge?.

Results and Discussion

A. Jarimah of Murder in Islamic Criminal Law

⁸ Kelvin and Malau, "Analysis of the Free Verdict of the Convict of Sadistic and Premeditated Murder Case."

⁹ Yahdiani Ayu Azizah, *Analysis of Free Verdict (Vrijspraak) in the Crime of Murder Preceded by the Crime of Rape (Study of Decision Number: 155/Pid/2020/PT TJK)* (Thesis, Sebelas March University, 2022).

¹⁰ Deskhia Anaffisa and Nandang Sambas, *Juridical Analysis of Judges' Considerations in Sentencing Perpetrators of Crimes of Punishment*, in *Proceedings of Legal Science*, 2021, 829–34.

¹¹ Rahmat Hakim, *Islamic Criminal Law (Fiqh Jinayah)*, (Bandung: Pustaka Setia, 2010), p. 125

Murder is the deprivation or deprivation of a person's life by another person which results in the malfunction of all vital functions of the limbs due to the separation of the soul from the victim's body. Murder is seen from the intention of the murderer to occur divided into three types, namely intentional murder, semi-intentional murder, and accidental murder.¹²

1. Intentional murder or *qathlu amdi*, which is the deprivation of someone's life that is done deliberately, the tool used is a common tool to take away the life of another person. A new murder can be said to be intentional murder if it meets the following elements:

- a. The one who is killed is a man whom Allah forbids to kill;
- b. It brings death;
- c. Aiming to eliminate a person's life.

Fiqh scholars state that the punishment for the perpetrator of the murder is the law of qisas. This law is based on Allah's provision in the Qur'an Surah Al Baqarah verse 178: "O you who believe, it is obligatory upon you to qishash with regard to those who are killed; free man with free man, slave with servant, and woman with woman. So whoever receives a forgiveness from his brother should follow it in a good way, and should pay (diyat) to the one who forgave in a good way. Such is a relief from your Lord and a grace. Whoever goes beyond the limit after that, then for him a very painful torment."

Furthermore, in Surah Al Maidah verse 45, Allah SWT said: "And We have stipulated to them in it (At-Torah) that the soul (retribution) with the soul, the eye with the eyes, the nose with the nose, the ears with the ears, the teeth with the teeth, and the wounds (even) have their spots. Whoever gives up his right will give up that right to atone for his sins. Whoever does not decide things according to what Allah has sent down, then they are the wrongdoers."

According to fiqh scholars, if the victim's family forgives the perpetrator of the murder, the qishash punishment will be lost and the punishment of diyat will apply. This is based on the narration of Imam Ath-Tahbrani from Amr bin Hazm Al-Anshari where the Prophet PBUH said: "The revenge of a deliberate killer is qisas." If the heir forgives the murderer, the murderer is obliged to pay the diyat *mughalazhah* (great diyat) taken from the murderer's property.

2. Accidental murder or *qathlu ghairul amdi/qathlu khata'* is a mistake in doing something that results in the death of a person. Although intentional, the act was not directed at the victim. So, the death of the victim was not intended. The perpetrator of unintentional murder is required to pay diyat mukhafafah (light diyat) to the heirs of the killed, which can be paid in installments of up to three years. In accordance with the words of Allah SWT in Surah An Nisa verse 92 which reads: *And it is not appropriate for a believer to kill a believer (another), except because of a mistake (unintentionally) and whoever kills a believer because of a mistake (shall) free a believing servant and pay the diyat that is handed over to his family (the one killed), unless they (the family is killed) release the payment...*
3. Murder is like deliberate or *qathlu syighul amdi*. The majority of scholars admit that it is a form of murder. According to Sayyid Sabiq, who was corroborated by a number of companions, such as Umar bin Khattab, Ali bin Abi Talib, Uthman

¹² Fitri Wahyuni, *Islamic Criminal Law (Actualization of Islamic Criminal Law Values in the Reform of Indonesian Criminal Law)*, (Tangerang: PT Nusantara Persada Utama, 2018), p. 30

bin Affan, Zaid bin Tasbit, Abu Musa Al-Ash'ary, and Al-Mughirah, intentional murder is an act that is deliberately committed in the object in question, but does not want the death of the victim. The intention may be just to teach a lesson to the victim, not to take a life. The sanction for the perpetrator of intentional murder is diyat mughalazah, the same as intentional murder, only not subject to the qisas law

B. Analysis of Islamic Criminal Law on Free Verdicts (*Vrijspreek*) Number 454/PID. B/2024/PN. SBY

A court decision is a statement of a judge pronounced in an open court session, which may be criminal, or free, or free from all lawsuits in the case and in the manner provided for in this Law."¹³ The judge's foresight and meticulousness in analyzing the arguments submitted by the prosecutor, both regarding the defendant's fault, the acts charged against the defendant, and the available evidence, as well as the arguments of legal counsel in defending the defendant are very necessary in order to gain confidence whether the defendant is really wrong or not. If, after the trial, the judge still has doubts, the judge may give a free verdict against the defendant,¹⁴ as article 183 of the Criminal Procedure Code stipulates that the judge may not impose a criminal sentence on a person unless with at least two valid pieces of evidence he has obtained confidence that a criminal act really occurred and that the defendant is guilty of committing it. The article has determined two conditions that must be met to be able to declare a person guilty and impose a criminal sentence, namely: the existence of at least two valid evidences, and the existence of the judge's confidence obtained based on these valid evidences. Valid evidence is Witness Testimony, Expert Testimony, Letters, Instructions, and Defendant's Testimony.¹⁵

If examined the decision Number 454/Pid.B/2024/PN. Sby, the public prosecutor, has brought in CCTV footage of the Mall where the case occurred, the witnesses, witness Ivan Sianto, witness Rahmadani Rifan Nadifi, and witness Hidayati Bela Afista alias Bela as friends who participated in karaoke before the unfortunate incident experienced by the victim Dini Sera Afrianti. Then Steven Yosefa Bin Asep Saipudin as an employee of the Blackhole KTV where the victim and his friends were doing karaoke. Furthermore, witness I Nyoman Budi Darma Kangin who was about to go out was blocked by the defendant's car, and the person who told the witness Mubarok that "*there is a woman lying down, please help*" then the witness Mubarok told the witness Agus Santoso as the supervisor of the parking secure, then the witness Mubarok together with the witness Fajar Fahrudin, witness Imam Subekti and witness Agus Santoso went to the victim Dini Sera Afrianti who was lying in the middle of the basement parking road, and saw the defendant's car that was still on, then the witnesses asked the defendant if the defendant knew the victim Dini Sera Afrianti and the defendant answered that he did not know, so the witnesses tried to contact Steven

¹³ Andi Hamzah, *Indonesian Criminal Procedure Law*, (Jakarta: Sinar Grafika, 2010), p. 286

¹⁴ R V Korua, *Legal Study of Free Verdicts (*Vrijspreek*) in Criminal Cases*, *Lex Crimen* IX, no. 4 (2020).

¹⁵ Richard Lokas, *Evidence and Evidence in the Criminal Procedure Code*, *Lex et Societis Journal* Vol. III No. 9, 2015.

Yosefa from the Blackhole KTV to ask about the victim Dini Sera Afrianti, Steven Yosefa said that the victim came with the defendant Gregorius Ronald Tannur and finally the defendant admitted to knowing the victim Dini Sera Afrianti.¹⁶

The defendant Gregorius Ronald Tannur took the victim Dini Sera Afrianti to the Orchard Tanglin Apartment and while in the lobby, the defendant took a wheelchair and put the victim Dini Sera Afrianti in the wheelchair and was entrusted to the security officer, namely the witness Mohammad Mustofa, then the witness Mohammad Mustofa asked for the identity of the Defendant but the Defendant refused and the Defendant immediately left. Then witness Hermawan bin Adi saw from the CCTV of the car the defendant went up to the car parking floor and the defendant entered the room of Orchard 31-12 belonging to the victim Dini Sera Afrianti then the witness Mohammad Mustofa and the witness Hermawan Bin Adi went up to the room of the victim Dini Sera Afrianti to follow the defendant then the defendant was asked for information and accountability for the victim Dini Sera Afrianti who was in the lower lobby then the defendant went down to the lobby and saw the condition of the victim Dini Sera Afrianti no longer breathing. Next, the witness Retno Happy Purwaningtyas who knew the victim Dini Sera Afrianti took the initiative to take the victim Dini Sera Afrianti to the hospital, then the witness Hermawan Bin Adi lifted the victim Dini Sera Afrianti to be put in the Innova milk car The defendant was in the front seat next to the driver, then left for the National Hospital.

An expert witness from the National Hospital ER was dr. Felicia Limantoro who examined and confirmed that the victim Dini Sera Afrianti had died and was advised to conduct an autopsy at Dr. Soetomo Hospital because dr. Felicia Limantoro categorized an unnatural death. Then Dr. Soetomo Hospital dr. RENNY SUMINO, Sp.F.M., M.H. and in accordance with Visum et Repertum No. KF. 23.0465 It is concluded that:

1. The body was female, between twenty years old and thirty years old, one hundred and fifty-nine centimeters long, tanned skin color
2. On external examination it was found:
 - a) Dilation of blood vessels in the lining of the eyelid and the dura mater of the eyeball;
 - b) Bleeding spots on the lining of the eyelid and the dura mater of the eyeball;
 - c) Bluish on the fingertips and nails of the right and left hands;
 - d) Pale on the fingertips and toenails of the right and left feet. This result is commonly found in suffocation;
 - e) Abrasions on the chest, abdomen, left upper arm, right and left upper limbs, left lower leg due to blunt force;
 - f) Bruises on the head, left ear, neck, chest, abdomen, back, right upper limbs, left upper arm and left upper limb due to blunt force.
3. On internal examination it was found:
 - a) dilation of blood vessels in the brain, small intestine, colon due to suffocation;
 - b) Blood infiltration on the skin on the inside of the head. Blood infiltration on the inner skin of the neck. Blood diffusion to the chest muscles. Blood diffusion on the second, third, fourth and fifth right ribs;

¹⁶ "Decision Number 454/Pid.B/2024/PN. Sby" (n.d.).

- c) Bruises on the lower part of the right lung and liver due to blunt force;
 - d) Lacerations to the liver due to blunt force;
 - e) Bleeding in the abdominal cavity approximately 1200 ml
4. On additional examinations it was found:
- a) Alcohol was found in the stomach and blood;
 - b) Dilation of blood vessels in the cerebrum, liver, right kidney and left kidney;
 - c) Bleeding at the place of air exchange in the lower right lung and upper left lung;
 - d) The cause of death was due to compound lacerations to the liver due to blunt violence resulting in severe bleeding.

Based on the facts obtained from the CCTV footage, the testimony of the witnesses and the statements of the expert witnesses, the public prosecutor charged the defendant with Article 338 of the Criminal Code,¹⁷ Article 351 Paragraph 3 of the Criminal Code,¹⁸ and Article 359 of the Criminal Code,¹⁹ Article 351 paragraph 1 of the Criminal Code.²⁰ However, the judge stated that the defendant, Gregorius Ronald Tannur, the son of Edward Tannur, was not legally and convincingly proven guilty of committing a criminal act as charged in the indictment. To release the defendant from all charges of the Public Prosecutor, to release the defendant from custody after the verdict has been pronounced, and to restore the rights of the defendant in his ability, position and dignity as well as dignity. In this decision, the judge only considers mitigating matters for the defendant²¹ without paying attention to the matters submitted by the prosecutor and the victim's family, so this decision is not a decision based on the principle of justice. The judge made article 183 of the Criminal Procedure²² Code and article 191 paragraph 1 of the Criminal Procedure²³ Code as legal legality to criminalize the victim's family.

Acts that can take the life of others with any motive are prohibited acts in Islamic criminal law. As Allah says in Surah al-Isra' verse 33 :

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيهِ سُلْطَانًا فَلَا يَسْرِفُ فِي الْقَتْلِ
إِنَّهُ كَانَ مَنصُورًا

¹⁷Article 338 of the Criminal Code: "Whoever deliberately takes the life of another person, is threatened with murder with imprisonment for a maximum of fifteen years."

¹⁸ Article 351 Paragraph 3 of the Criminal Code: "Persecution causing death, threatened with imprisonment for a maximum of seven years."

¹⁹ Article 359 of the Criminal Code: "Whoever by his fault (negligence) causes the death of another person. Threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year."

²⁰ Article 351 paragraph 1 of the Criminal Code: "Persecution is threatened with imprisonment for a maximum of two years and eight months." or a maximum fine of four thousand five hundred rupiah,

²¹ One of the things that mitigated the defendant, obtained from the witness Calvin Irawan submitted by the defendant stated that: Almh Dini Sera Afrianti had a stomach disease, when Dini Sera Afrianti was drunk she had a fight with her friend and her temperament liked to be angry.

²² 183 of the Criminal Code: "A judge shall not impose a criminal sentence on a person unless with at least two valid pieces of evidence he has obtained conviction that a criminal act actually occurred and that the defendant is guilty of committing it."

²³ Article 191 paragraph 1 of the Criminal Procedure Code: "If the court is of the opinion that from the results of the examination at the trial, the defendant's fault for the acts charged against him is not legally and convincingly proven, then the defendant is acquitted."

It means: " Do not kill a person whom Allah forbids, except for a right reason. Whoever is persecuted is killed, indeed We have given power to his guardian. However, he (the guardian) should not go beyond the limit in killing (kisas). Indeed, he is the one who gets help. (QS. al-Isra' : 33).

In this verse, Allah swt forbids His servants to kill souls that Allah forbids. The meaning of "killing the soul" is to take away human life. Meanwhile, what is meant by "what Allah forbids to kill" is killing for reasons that are not valid or justified by religion. The reason why Allah swt forbids His servants to take human lives for unjustified reasons is:²⁴

1. Murder causes damage. Islam prohibits any act that causes damage. The prohibition applies generally to all kinds of actions that cause damage, so murder is also a prohibited act. Allah swt said: "Do not do any harm to the earth after it has been created well" (al-A'raf/7: 85).
2. The murder endangered others. The main rule in religion is that all actions that cause harm to oneself and others are forbidden. Allah swt said: Whoever kills someone, not because he kills others, or because he does not do damage on the earth, then it is as if he has killed all humans. (al-Ma'idah/5: 32) The Prophet (peace and blessings of Allaah be upon him) said: The loss of the world to Allah is less valuable than killing a Muslim. (Narrated by at-Tirmidhi from 'Abdullah bin 'Umar)
3. Disrupting community security which leads to the destruction of the community itself. Because if murder is allowed, it is not impossible that there will be acts of mutual killing among humans, which in the end will perish. And whoever kills a believer willfully, then the reward is Hell, he remains in it. Allah was angry with him, and did his deeds and provided him with great punishment. (an-Nisa'/4: 93).

In al-Isra' verse 33, Allah swt makes an exception for those who can be killed through His word, "except for some reason that is justified by religion." Among them are men or women who commit adultery after being bound by the law of the marriage contract and people who deliberately kill believers who are protected by the law. The exception mentioned above is mentioned in the hadith of the Prophet: It is not permissible for the blood of a person who has said two sentences of the shahada, except for one of three things: A person is killed because he kills, a widow or widower who commits adultery, and a person who leaves his religion separates himself from the Muslims. (Narrated by al-Bukhari and Muslims from 'Abdullah) Then Allah swt explained what action should be taken by the heirs of the killed, and who should carry out the action if by chance the killed person does not have any heirs. Allah swt stipulates that whoever is wrongfully killed, i.e. without a good reason, then Allah has given the authority or right to his heirs to determine the choice of punishment for the murderer, namely between the law of qishash or receiving diyat (ransom), as stipulated in His words: O you who believe! It is obligatory on you to perform qisas in relation to the murdered person (al-Baqarah/2: 178).²⁵

²⁴ Tafsir Tahlili, <https://quran.nu.or.id/al-isra'/33>

²⁵ Tafsir Tahlili, <https://quran.nu.or.id/al-isra'/33>

According to Zainuddin Ali, murder when viewed from the nature of the actions of a person and/or several people in committing murder, can be classified into three types, namely: intentional murder, unintentional murder, and semi-intentional murder. Intentional murder is an act committed by a person with the aim of killing another person by using a tool that is considered worthy of killing. Meanwhile, accidental murder is an act committed by a person without any element of intentionality that results in the death of another person.²⁶ Semi-intentional murder is a person who deliberately beats another person with tools that are believed not to cause the death of a person, such as whips, wood, hands, and so on, but the act causes the death of the victim of the beating.²⁷ In line with the opinion of Imam Abu Hanifah, semi-intentional murder is the perpetrator deliberately hitting the victim, but by using something that does not fall into the category of weapons, such as murder with blunt objects such as sticks, stones, wood, etc.

According to Shafi'iyah scholars, semi-intentional murder is any act that is not intended to kill but causes death. Some Shafi'iyah scholars define it as an act with the intention of injuring using something that is usually not lethal but causes death. Therefore, the punishment is not the same as the punishment of intentional murder. Meanwhile, according to scholars Hanabilah defines semi-intentional murder as an intentional and usually non-lethal act, but causing death, either because of unlawful intent or providing education, but the act is excessive, for example, hitting with a whip, stick, small stone, hand, putting the victim in shallow water, shouting at a child or an idiot who is on the roof and then falls, or reprimanding sensible people by shouting at them until they fall.²⁸

Semi-intentional murder in Islamic criminal law is the same as beating causing death in positive law, but the definition of semi-intentional killing in Islamic criminal law is more precise and more complete, namely murder that is carried out by being hit, injured, poisoned, drowned, burned, bumped, strangled, and any act that includes intentional murder if the perpetrator does not intend to kill even though he intends to attack.²⁹

Based on the opinion of expert witnesses who stated that there were bruises on the head, left ear, neck, chest, abdomen, back, right upper limbs, left upper arm and left upper leg, on the lower right lung and liver due to blunt violence. There were abrasions on the chest, abdomen, left upper arm, right and left upper limbs, left lower leg due to blunt violence, and lacerations to the liver due to blunt violence. This indicates that the victim Dini Sera Afrianti experienced persecution until she finally died. In the perspective of Islamic criminal law, the act of the defendant Gregorius Ronald Tannur includes the jarimah (criminal act) of murder that causes death or can also be referred to as the jarimah of semi-intentional murder, because the defendant Gregorius Ronald Tannur did not have the intention to kill the victim but had the intention to commit certain acts, namely in the form of strangling, kicking, and hitting the victim's head using a Tequilla bottle (a bottle of drink that they consumed while in room 7 KTV blackhole) carried by

²⁶ Zainuddin Ali, *Islamic Criminal Law*, (Jakarta: Sinar Grafika, 2018), pp. 24-35

²⁷ Rahmat Hakim, *Islamic Criminal Law (Fiqh Jinayah)*, (Bandung: Pustaka Setia, 2010), p. 122

²⁸ Wahbah Zuhaili, translated by Abdul Hayyie al-Kattani, et al, *Fiqh Islam wa Adillatuhu Volume 7*, (Jakarta: Gema Insani, 2011), pp. 648-649

²⁹ Abdul Qadir Audah, translated by Tim Tsalisah, *Encyclopedia of Islamic Criminal Law Volume III*, (Bogor: PT. Kharisma Ilmu), p. 255

the defendant and caused the victim Dini Sera Afrianti to die.³⁰ The elements of semi-intentional murder are as follows:

1. The Perpetrator's Actions Resulted in the Death of the Victim

The perpetrator's actions resulted in the death of the victim, be it in the form of beatings, injuries, and other forms of persecution. It does not matter whether the perpetrator uses a certain tool or not in the beating and injury because sometimes the perpetrator does not use tools, such as slapping, punching, biting, and kicking. It could be that the perpetrator uses a blunt tool, a sharp object, or an object that can pierce, such as a stick, sword, axe, knife, spear, or large needle. It is also possible that the perpetrator threw the victim with something, such as a stone, arrow, or bullet. Perpetrators can also provide stimulants with wild animals such as wolves or tame animals such as dogs. Then the act has an effect on the body and soul resulting in death.³¹

If seen in the decision of decision Number 454/Pid.B/2024/PN. Sby, in the description of the chronology of the incident, explained that when in front of the elevator to go down to the car parking lot there was a fight between Dini Sera Afrianti and the defendant. While in the elevator, Dini Sera Afrianti slapped the defendant, then the defendant strangled the victim Dini Sera Afrianti and tried to distance himself from the victim's punch. The defendant kicked the victim's left leg Dini Sera Afrianti so that the victim fell, then the victim Dini Sera Afrianti pulled the defendant's clothes which made the defendant immediately hit the victim Dini Sera Afrianti on the head using a Tequilla bottle brought by the defendant.

While in the car park, the defendant Gregorius Ronald Tannur saw the victim Dini Sera Afrianti sitting on the left side of the car at the front door and then the defendant immediately got into the Innova car in the driver's part and when the defendant was already in the car asked the victim Dini Sera Afrianti *if he wanted to go home or not?*" but because there was no response or answer from the victim Dini Sera Afrianti, the Defendant was even more upset and emotional, so the Defendant deliberately ran his Innova car to the right where at that time the Defendant knew the position of the victim Dini Sera Afrianti was leaning on the left car. The Defendant should be able to know the consequences of his actions if the Defendant runs his car to the right with the position of the victim Dini Sera Afrianti leaning on the car body will make the victim's body move along with the speed of the car, but because the Defendant feels upset and emotional, the Defendant continues to run his car so that the car driven by the Defendant runs over the victim Dini Sera Afrianti.

Based on the criminal incident, it can be concluded that the defendant Gregorius Ronald Tannur's actions of strangling, kicking, hitting the victim's head with a blunt object (Tequilla bottle), and knocking the victim out of the car and running over the victim Dini Sera Afrianti with his car are acts that are not justified by Islamic criminal law and positive law.

³⁰ Asadulloh Al-Faruk, *Islamic Criminal Law in the Islamic Legal System*, (Bogor: Ghalia Indonesia, 2009), p. 49

³¹ Abdul Qadir Audah, translated by Tim Tsalisah, *Encyclopedia of Islamic Criminal Law Volume III*, (Bogor: PT. Kharisma Ilmu), p. 256

2. There is Intentionality in Committing Acts

The perpetrator was hinted to have committed an act deliberately that resulted in death without any intention to kill. To find out the intention of the perpetrator is to know the tool or method he uses. If the tool used is usually not lethal, then the act is considered a semi-intentional murder.³² If seen in the decision of decision Number 454/Pid.B/2024/PN. Sby, in the description of the chronology of the incident, explained that there was a deliberate intention from the defendant Gregorius Ronald Tannur to suffocate, kick, and hit the victim's head with a blunt object (Tequilla bottle), not using a tool that is usually deadly. Furthermore, while in the parking lot, the defendant drove his car to the right even though the defendant knew that the victim Dini Sera Afrianti was sitting on the left side of the car at the front door following the speed of the car and causing the victim to fall, because the defendant was upset and the defendant's emotions continued to run his car so that the car driven by the defendant ran over the victim Dini Sera Afrianti.

3. Between Actions and Death There is a Causal Relationship

Between the actions of the perpetrator and the death of the victim, there must be a causal relationship. This means that the act is an *illat* (cause) directly to death or is the cause of death. If there is no causal relationship, the perpetrator is not responsible for the death of the victim, but the perpetrator must be responsible for the injury or beating.³³

If seen in the decision of decision Number 454/Pid.B/2024/PN. Sby, the actions of the defendant Gregorius Ronald Tannur caused the victim Dini Sera Afrianti to die. This can be seen from the description of the chronology of the incident explaining that there was a deliberate intention of the defendant Gregorius Ronald Tannur to suffocate, kick, and hit the victim's head with a blunt object (Tequilla bottle) while in the elevator. Furthermore, while in the parking lot, the defendant drove his car to the right even though the defendant knew that the victim Dini Sera Afrianti was sitting on the left side of the car at the front door following the speed of the car and causing the victim to fall, because the defendant was upset and the defendant's emotions continued to run his car so that the car driven by the defendant ran over the victim Dini Sera Afrianti.

The victim was left for a while by the defendant Gregorius Ronald Tannur and the defendant pretended not to know the victim. Until finally the witness Steven Yoseva told the witness Mubarok, Fajar Fahrudin, Imam Subekti, and Agus Santoso that he saw the victim Dini Sera Afrianti coming to the KTV Blackhole along with the defendant Gregorius Ronald Tannur. Finally, the defendant admitted to knowing the victim and took the victim to the victim's Orchard Tanglin Apartment. Upon arrival at the apartment, the defendant left the victim in the lobby so that the apartment officer looked for the defendant's

³² Abdul Qadir Audah, translated by Tim Tsalisah, *Encyclopedia of Islamic Criminal Law Volume III*, (Bogor: PT. Kharisma Ilmu), p. 260.

³³ Abdul Qadir Audah, translated by Tim Tsalisah, *Encyclopedia of Islamic Criminal Law Volume III*, (Bogor: PT. Kharisma Ilmu), p. 261.

whereabouts to hold him accountable because the victim Dini Sera Afrianti was seen not breathing. Then, witness Retno Happy Purwaningtyas who knew the victim took the victim to the national hospital and was examined by witness dr. Felicia Limantoro, when examined the victim was in a state of not breathing anymore so that the witness dr. Felicia Limantoro conducted an examination using a defibrillator (electric shock device) which functions to check the rhythm of the victim's heart rate and the result is the condition of the victim's heart "Asystole" which means that the victim Dini Sera Afrianti no longer has a heart rate. Furthermore, to ensure that the witness dr. Felicia Limantoro examined the victim's pupils and found out the victim's eye reflex to negative light, so dr. Felicia Limantoro suggested to the victim's escort, Dini Sera Afrianti, to be taken to the IKF of Dr. Soetomo Hospital for an autopsy because it was included in the category of unnatural death

Based on the description above, it can be seen that the actions of the defendant Gregorius Ronald Tannur have met the elements of semi-intentional murder and can be subject to semi-intentional murder sanctions. According to Shafi'iyah scholars, the penalty of semi-intentional murder is not the same as the penalty of intentional murder. There are three types of punishment for perpetrators of semi-intentional murder, including the main punishment, substitute punishment, and additional punishment.³⁴ The main punishment for semi-intentional murder is to pay diyat and kafarat. There is no threat of qisas punishment in semi-deliberate murder but it is mandatory to pay diyat mughallazah (large diyat) charged to close relatives killed, which can be paid for three years.³⁵

According to Imam as-Shafi'i, the mandatory diat in semi-intentional murder is the same as the diat in deliberate murder and the obligatory diat is only a camel. According to Imam Malik and Imam Abu Hanifah, there are three types of mandatory diat: camel, gold, and silver. According to Imam Ahmad bin Hanbal, Abu Yusuf, and Muhammad who must be used in diyat there are six types: camel, gold, silver, wheat, goat, and jewelry. Regarding the mandatory level of each type of diyat in semi-intentional murder is the same as the mandatory level of diyat in intentional killing. As for the party who is obliged to pay the diyat, according to Imam Abu Hanifah, Imam Shafi'i, and Imam Ahmad bin Hanbal are of the opinion that those who are obliged to pay the diyat for semi-intentional murder are the family and not the property of the perpetrator. In contrast to Imam Malik, Ibn Shirin, az-Zuhri, Harits al-'Akali, Ibn Shubramah, Qatadah, Abu Tsaur, and Abu Bakr al-Asham, argued that diyat is a semi-intentional murder obligatory on the murderer's property, because diyat is the result of his intentional act.³⁶

The 2nd main punishment for the perpetrator of semi-intentional murder is kafarat, which is to free the slave of the believer, if he does not have a slave of the believer or does not have excess property to free the slave or indeed does not find a slave and is not found, then it is mandatory to fast for two consecutive months. The punishment in lieu of semi-intentional murder is in the form of a ta'zir punishment set

³⁴ Marsaid, *Al-fiqh Al-Jinayah (Islamic Criminal Law)*, (Palembang: CV. Amanah, 2022), pp. 116-117

³⁵ Fitri Wahyuni, *Islamic Criminal Law (Actualization of Islamic Criminal Law Values in the Reform of Indonesian Criminal Law)*, (Tangerang: PT Nusantara Persada Utama, 2018), p. 35

³⁶ Abdul Qadir Audah, translated by Tim Tsalisah, *Encyclopedia of Islamic Criminal Law Volume III*, pp. 338-341

by the judge. Then, the perpetrator of semi-deliberate murder was subject to additional punishment in the form of revocation of inheritance rights and inheritance rights.³⁷

From the above description, it can be concluded that in Islamic criminal law, the defendant Gregorius Ronald's actions have fulfilled the elements of semi-intentional murder and the sanction is in the form of diyat (a fine that must be paid to the victim's family in the form of camels, gold, silver, wheat, goats, and jewelry, in accordance with the predetermined diyat level) if the judge has doubts in the imposition of the diyat penalty, the judge can replace the diyat sentence with a penalty Ta'zir is a punishment that is repressive, preventive, and educational.

C. Can a judge decide based on his own knowledge.

A judge is a person who carries a mandate from society that aims to uphold justice and eliminate tyranny, because tyranny is the source of the collapse of civilization and the destruction of the social order. Judges should not lean towards one party and judges must prioritize symbols of truth, justice, foster a sense of security and peace to all levels of society, foster trust, calmness, willingness and love. Decision-making must be in accordance with established procedures, such as testimony, pledges, oaths, and indications (qarinah). Judges may not issue laws in one particular case based on their own will.³⁸

In Decision Number 454/Pid.B/2024/PN. Sby about the acquittal verdict against the perpetrator of the murder, namely the defendant Gregorius Ronald Tanur, has been in accordance with trial procedures such as bringing witnesses, expert witnesses, accompanied by evidence such as CCTV footage, and so on, to prove that the defendant's actions are really against the law. However, the judge's decision is not in accordance with the legal rules charged by the public prosecutor article 338 of the Criminal Code,³⁹ Article 351 paragraph 3 of the Criminal Code,⁴⁰ and Article 359 of the Criminal Code,⁴¹ Article 351 paragraph 1 of the Criminal Code,⁴² and the evidence during the trial, the judge tends to use his own opinion. This is based on Article 191 paragraph 1 of the Criminal Procedure Code: "If the court is of the opinion that from the results of the examination at the trial, the defendant's fault for the acts charged against him is not legally and convincingly proven, then the defendant is acquitted. To be able to prove legally and convincingly, at least two pieces of evidence and the judge's belief that a criminal act really occurred and that the defendant was guilty of committing it. The clause that the judge must have confidence is what can be abused by the judge to release the defendant Gregorius Ronald Tanur from all lawsuits.

Allow the judge to decide the case based on his own knowledge. According to the opinion of the scholars of madhhab Maliki and Hanbali, a judge should not make a

³⁷ Topo Santoso, *Principles of Islamic Criminal Law*, (Jakarta: Rajawali Pers, 2016), p.169

³⁸ Wahbah Zuhaili, translated by Abdul Hayyie al-Kattani, et al, *Fiqh Islam wa Adillatuhu Volume 8*, (Jakarta: Gema Insani, 2011), p. 93

³⁹Article 338 of the Criminal Code: "Whoever deliberately takes the life of another person, is threatened with murder with imprisonment for a maximum of fifteen years."

⁴⁰ Article 351 Paragraph 3 of the Criminal Code: "Persecution causing death, threatened with imprisonment for a maximum of seven years."

⁴¹ Article 359 of the Criminal Code: "Whoever by his fault (negligence) causes the death of another person. Threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year."

⁴² Article 351 paragraph 1 of the Criminal Code: "Persecution is threatened with imprisonment for a maximum of two years and eight months." or a maximum fine of four thousand five hundred rupiah,

decision based on his own knowledge, either in matters of limitation or others, whether he knew it before the court proceedings or during the court session, for example, the accused confessed voluntarily before him. This is based on the words of the Prophet in the case between al-hadrami and al-Kindi: "Bring in two witnesses who corroborate you or the oath that he is accused of not doing it. There is no way for you except that." This shows that the prophet decided the case based on what he heard and witnessed.⁴³

According to Abu Hanifah, if the case handled is a limited punishment that is purely related to the rights of Allah, the judge's decision is invalid if it is based on the knowledge of the judge only, because Allah's rights are built on the basis of convenience and leniency. If the case being handled is related to human property rights, the judge's knowledge obtained before he served as a judge, then his knowledge cannot be used as the basis for determining the law. If his knowledge is obtained after he is in charge of becoming a judge, it can be used as a basis for determining cases. The opinion that is *mu'tamad* that is used as a fatwa in madhhab Hanafi is the opinion of the muta'akhirin group of scholars of madhhab Hanafi who argue that judges' decisions based on their knowledge are completely unacceptable today, because many judges today are irresponsible.⁴⁴

According to Shafi'iyah scholars, in addition to pure hudud cases that concern the rights of Allah, a judge may decide cases based on his own knowledge, whether his knowledge was obtained before serving as a judge or after becoming a judge, or his knowledge was obtained outside the area where he was assigned, whether in the legal process there was evidence presented or not.⁴⁵

Of the four opinions of the imam scholars of the madhhab, the author agrees with the opinion of the muta'akhirin group of scholars of the Hanafi madhhab who argue that judges' decisions based on their knowledge are completely unacceptable today, because many judges today are irresponsible. This can be seen from the many free verdicts against criminals. One of them is Decision Number 454/Pid.B/2024/PN. Sby about the acquittal of the perpetrator of the murder committed by the defendant Gregorius Ronald Tanur.

Conclusion

In the perspective of Islamic criminal law, the defendant Gregorius Ronald has fulfilled the elements of semi-intentional murder and the sanction is in the form of diyat (a fine that must be paid to the victim's family in the form of camels, gold, silver, wheat, goats, and jewelry, in accordance with the predetermined diyat level) if the judge has doubts in the imposition of the diyat penalty, the judge can replace the diyat sentence with the ta'zir punishment, which is a punishment that repressive, preventive, and educational. Judges' decisions based on their own knowledge are completely unacceptable today, because many judges today are irresponsible.

⁴³ Wahbah Zuhaili, translated by Abdul Hayyie al-Kattani, et al, *Fiqh Islam wa Adillatuhu* Vol. 8, (Jakarta: Gema Insani, 2011), p. 114

⁴⁴ Wahbah Zuhaili, translated by Abdul Hayyie al-Kattani, et al, *Fiqh Islam wa Adillatuhu* Vol. 8, (Jakarta: Gema Insani, 2011), p. 116

⁴⁵ Wahbah Zuhaili, translated by Abdul Hayyie al-Kattani, et al, *Fiqh Islam wa Adillatuhu* Vol. 8, (Jakarta: Gema Insani, 2011), p. 116

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