

**CRIMINAL SANCTIONS FOR PARTICIPATION IN ACTS OF VIOLENCE
LEADING TO MURDER IN ISLAMIC CRIMINAL LAW: A Case
Analysis of Verdict No. 170/Pid.B/2021/PN.Pwk"**

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Abstrak

Konsep turut serta dalam tindak pidana merujuk pada keterlibatan beberapa pihak dalam melakukan suatu kejahatan, baik secara langsung maupun tidak langsung, seperti melalui hasutan, perintah, bantuan, atau karena kelalaian. Dalam hukum pidana Islam, perbuatan ini tergolong dalam kategori *jarimah* yang bertentangan dengan prinsip *Maqāṣid al-Syārī‘ah*. Sanksi yang dikenakan dapat berupa *qīṣāṣ* (pembalasan setimpal) atau *diyāt* (denda). Penelitian ini bertujuan untuk mengkaji dasar pertimbangan hukum hakim dalam menjatuhkan pidana pada kasus turut serta dalam pembunuhan berencana, dengan fokus pada Putusan Nomor 170/Pid.B/2021/PN.Pwk. Metode yang digunakan adalah penelitian yuridis normatif dengan pendekatan deskriptif-analitis, menggunakan data primer dan sekunder. Hasil analisis menunjukkan bahwa terdakwa Rasta terbukti secara sah dan meyakinkan turut serta dalam pembunuhan terhadap korban Fransisco Tamalu, sehingga diberat dengan Pasal 338 KUHP juncto Pasal 55 ayat (1) ke-1 KUHP. Majelis hakim mempertimbangkan aspek yuridis dan nonyuridis, serta alat bukti berupa keterangan saksi, surat, dan pengakuan terdakwa. Implikasi dari penelitian ini menunjukkan pentingnya harmonisasi antara hukum positif Indonesia dan prinsip-prinsip hukum pidana Islam, khususnya dalam menangani keterlibatan pihak lain dalam tindak pidana. Penelitian ini dapat menjadi rujukan bagi hakim, akademisi, dan pembuat kebijakan dalam mengembangkan pendekatan pemidanaan yang lebih adil dan berkeadilan substantif.

Kata kunci: hukum pidana Islam, pembunuhan, putusan hakim, Pasal 55 KUHP

Abstract

The concept of participating in a criminal act refers to the involvement of several parties in committing a crime, either directly or indirectly, such as through incitement, orders, assistance, or due to negligence. In Islamic criminal law, this act is classified as *jarimah* which is contrary to the principle of *Maqāṣid al-Syārī‘ah*. The sanctions imposed can be *qīṣāṣ* (appropriate retribution) or *diyāt* (fine). This study aims to examine the basis of judges' legal considerations in imposing criminal penalties in cases of participating in premeditated murder, focusing on Decision Number 170/Pid.B/2021/PN.Pwk. The method used is normative juridical research with a descriptive-analytical approach, using primary and secondary data. The results of the analysis showed that the defendant Rasta was legally and convincingly proven to have participated in the murder of the victim Fransisco Tamalu, so he was charged with Article 338 of the Criminal Code in conjunction with Article 55 paragraph (1) 1 of the Criminal Code. The panel of judges considered juridical and non-juridical aspects, as well as evidence in the form of witness statements, letters, and confessions of the defendant. The implications of this study show the importance of harmonization between Indonesian positive law and Islamic criminal law principles, especially in dealing with the involvement of other parties in criminal acts. This research can be a reference for judges, academics, and policymakers in developing a more fair and substantive justice approach to punishment.

Keywords: Islamic criminal law, murder, judge's verdict, Article 55 of the Criminal Code

Introduction

Social development and changes in society in a country are normal, sometimes even abnormal because there is no change.[1] Similarly, the laws used by a state reflect the social life of the people involved. The concept of crime in criminal law is basically needed when there is a change and social development that occurs in a society. From these social changes and developments, it can have an impact on crimes that occur in the community. Crime as a social phenomenon is influenced by many aspects of social life such as politics, economy, socio-culture and problems related to the defense and security of the State.

A criminal act that is often heard every year is the occurrence of murder events. Basically, murder is not only carried out alone, but it can happen because of someone else's order or there is someone behind it as the brains of the murder occurred or the person can be said to be a helper or the one who ordered it to be done. Murder is the loss of life committed by another person that can result in the loss of all vital functions of the body due to the separation of the victim's soul from his body.

As Allah SWT says in Surah al-Isra (17) verse 33:

وَلَا تَقْتُلُوا الْفَقَسَ الَّتِي حَرَمَ اللَّهُ إِلَّا بِالْحُقْقِ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لِوَالِيِّهِ سُلْطَنًا فَلَا يُسْرِفْ فِي الْقَتْلِ إِلَّهُ، كَانَ مَنْصُورًا

And do not kill a soul that Allah has forbidden (to kill him), except with a righteous reason. And whoever is killed unjustly, then verily We have given power to his heirs, but the heir shall not go beyond the limit of killing. Indeed, he is the one who gets help.[2]

One of the events involved in the murder that has obtained permanent legal force, one of which is listed in the District Court Decision Number 170/Pid.B/2021/PN.Pwk, which in January 2021, began with Ade Mustopa who borrowed a Suzuki Futura pickup car belonging to the defendant Rasta without permission and led to violence that resulted in murder. The article charged against the defendant in this decision is Article 338 Jo Article 55 Paragraph (1) 1 of the Criminal Code, because the Judge's legal considerations saw that some of the legal facts at the trial were in accordance with the actions committed by the defendant Rasta with members of the TNI. In this case, the defendant in fact knew and allowed the acts of Dandi, Hafiz, Bayu, Wahyu, Yakob and Sutan to beat the victim to be done deliberately with the intention of obtaining a confession from the victim regarding the loss of the defendant's pickup car.

This incident is certainly an act that can harm the defendant, because the defendant deliberately allowed the victim to be beaten without any intention to help the victim and took him to the hospital when the victim was declared unconscious. But the defendant actually gave travel

money to bury the victim far from the residential area, which included indications of participation. Another case is if the defendant does not panic and takes the victim to the hospital, it is possible that the victim can survive if treatment or surgery is immediately carried out with the wound in a matter of minutes, even though the chance of survival is below 50%.

As the defendant was charged with Article 338 Jo Article 55 Paragraph (1) 1 of the Criminal Code. The explanation of Article 338 of the Criminal Code regarding murder is "*Whoever deliberately takes the life of another person is threatened with murder with a maximum prison sentence of 15 (fifteen) years*". Apart from that, the judge's legal considerations in sentencing the defendant must first ensure that the defendant has fulfilled the elements in Article 338 Jo Article 55 Paragraph (1) 1 of the Criminal Code. The elements in Article 338 Jo Article 55 paragraph (1) 1 of the Criminal Code are: "(1) Whose goods are the elements; (2)Elements intentionally take the lives of others; (3)Elements participate in committing criminal acts".

Basically, the act of participating in the violence that resulted in this murder was not only decided in the District Court, but there were other perpetrators, namely Dandi's brothers, Hafiz, Bayu, Wahyu, Yakob and Sutan where they were tried to receive their sentences at the Military Court. Because the six people are members of the TNI, which when committing a criminal act must be punished in accordance with the regulations that have been determined, that the Military Court is the exercise of judicial power within the Armed Forces to uphold law and justice by paying attention to the interests of the implementation of state security defense.

Thus, in this verdict, the defendant has fulfilled the elements and the Judge sentenced him to 13 (thirteen) years in prison. The judge in considering the punishment of the defendant is because there is no reason that can eliminate criminal responsibility, either in the form of justification or excuse for forgiveness. Therefore, the defendant must be held accountable for his actions. However, the six of his comrades who were members of the TNI were tried at the Military Court. Where the punishment given is in accordance with their respective roles. For defendant one or Muhamad Dandi, he was sentenced to 13 years in prison, Hafiz was sentenced to 12 years, Bayu was sentenced to 11 years in prison, Wahyu was sentenced to 9 years in prison, Sutan was sentenced to 9 years in prison and Yakob was sentenced to 9 years in prison. In this case, the six defendants were found guilty in accordance with the indictment of Article 338 of the Criminal Code Jo Article 55 Paragraph 1 to 1.

In addition to Article 338 which regulates murder, the criminal law enforcement process often involves Article 55 paragraph 1 to 1 of the Criminal Code. In the formulation of Article 55 of the Criminal Code and Article 56 of the Criminal Code, there is a division of participation

consisting of: (1). People who do it themselves (*pleger*). (2). The person who orders to do (*doenpleger*). (3). The person who participates (*medepleger*). (4). A person who moves others (*uitlokker*). (5). Helper or medeplichtige (Article 56).

In Islamic Criminal Law, participating in *performing jarimah* is doing *jarimah* at the same time, either due to an accident, incitement, telling others, or providing assistance. According to the *fuqaha*, the division of participation is divided into two, namely direct participation (*isytirak mubasyir*) and indirect participation (*istirak ghairu mubasyir*).^[3] Direct action can occur when the person commits an act that is considered to be the beginning of *jarimah*, with the aim of carrying out *jarimah*. Whereas those who are considered to participate in indirect acts are those who agree with others to do an act that can be punished or order others or deliberately help to do the act with consent and participate in providing assistance.

The research that researchers make is different from previous research.^[4] So that the novelty of the research conducted by this researcher is how the research conducted explains that the concept of *Maqashid al-Syariah* can be continuous with the case of sanctions for perpetrators who participate in violence that results in death based on the decision of the District Court number 170/Pid.B/2021/PN.Pwk and the concept can provide justice for perpetrators who have committed crimes.

The focus of this study includes: the position of the case in the decision, the judge's legal considerations in imposing sanctions for the crime of participating in violence that leads to murder, the analysis of the elements and sanctions according to Islamic Criminal Law, and assessing the extent of the effectiveness of the imposition of the sanction from a legal perspective Islamic Crime.

Research Methods

This research uses normative juridical research, which is legal research that examines written law from various aspects such as theoretical aspects, general explanations and article by article regarding sanctions for violent perpetrators that can result in murder. So in this study, it aims to find out more deeply how the regulations that have been set can be applied in accordance with the rules that bind a law in legal practice in Indonesia.

Meanwhile, the method used in this study is to use an analytical descriptive method,^[5] which describes how judges sentence in criminal acts of participating in violence that results in death when viewed from the perspective of positive law and Islamic Criminal Law. This method aims to obtain material in the form of legal theories and principles that are relevant to the research topic. The data sources in this study include court decisions, literature, document analysis, reading material review, and literature studies.

The types of data used in this study are primary and secondary data.[6] Primary data is a data source that directly provides data to data collectors. The data was obtained through the Purwakarta District Court decision Number 170/Pid.B/2021/PN Pwk. As for the reference, secondary data sources were taken from the Criminal Code, laws, books, the Quran, journals, articles, theses and other sources related to the needs of researchers in completing this research. In this study, the data collection techniques used by the researcher are: (a) Searching the directory of Supreme Court decisions, before conducting research, the researcher first analyzes the case related to participating in the murder and the researcher searches the data in the directory of decisions of the Purwakarta District Court. (b) Documents, after the completion of the search regarding the case of participating in the murder that the researcher will research, that is, the file is documented first, then by the researcher is printed out as material from the research that the researcher will use. (c) Decision Study, the topic of the research taken is in the form of a decision called a decision study, and the researcher takes one of the decisions of the Purwakarta District Court Number 170/Pid.B/2021/PN Pwk.

The data analysis carried out in this study is by: (a) Searching and collecting, the data analysis technique used by the researcher is descriptive analytical by searching and collecting various data, writings and information related to this research. (b) Selecting, then the researcher will examine the data obtained, in the form of primary data and secondary data, after which the researcher will group the obtained data according to the problem in this study. (c) Connecting, the next stage is the researcher connecting whether the data is one with the other that has been searched and selected in accordance with the research topic raised by the researcher. (d) Compare, after connecting one data with another, then the researcher will compare the truth of the data whether the research topic and the data that has been sought are suitable. (e) Analyzed, then the researcher will analyze the data with the research topic to be researched so that it can solve the problems in this study. (f) It is concluded that the last stage is that the researcher concludes that the data that has been sought on the topic of punishment research for the perpetrator to participate in the murder according to the judge's consideration is subject to imprisonment for 13 (thirteen) years, while in Islamic law the perpetrator is subject to qishash or ta'zir. The punishment can be seen from the type of crime he commits directly or indirectly.

Discussion

Case of Position in Decision Number 170/Pid.B/2021/PN.Pwk concerning Sanctions for Criminal Acts of Participating in Violence Resulting in Murder

The Purwakarta District Court has adjudicated a criminal case that resulted in Rasta as a defendant in the crime of participating in violence that resulted in the murder carried out jointly by Muhamad Dandi's brothers, Hafiz, Bayu, Wahyu, Sutan and Yakob on a day and date that the defendant no longer remembers in January 2021. This act was carried out deliberately because at the time of the incident the defendant was the mastermind of the murder because he committed murder by telling the other defendants to commit murder, thus causing the victim to die.

That at the beginning the defendant's Suzuki futura pickup car had been lost by Ade Mustopa's brother, but Ade Mustopa's brother was reluctant to replace the car and made Toni Manalu's brother as a replacement for the lost car. After learning that Ade Mustopa's brother was reluctant to pay the agreed compensation, the defendant Rasta on Saturday, May 29, 2021 at around 12.00 WIB called Dandi's brother when passing his house to tell him about his missing car and asked for help from Dandi and Hafiz to check the victim's place of work Fransisco Manalu alias Toni.

That on Saturday, May 29, 2021 at around 16.00 WIB, the defendant along with his brothers Dandi, Hafiz, and Bayu came to the victim's workplace Fransisco Manalu alias Toni which is located on Jl. IPIK gandamanah No.4 Kel. The victim was taken to the Gajah Mada Rowing Athlete Mess after being invited to chat by Dandi's brother to come forward and immediately get into the car. After arriving at the Gajah Mada Rowing Athlete Mess at 16.30 WIB. The victim Fransisco Manalu alias Toni was taken into room No. 3 and questioned about where the car belonging to the defendant Rasta had gone. In the room, the victim was interrogated and beaten on the back using a one-meter-long blue water hose by several people, including members of the Indonesian Armed Forces, with the intention that the victim confess. During the interrogation, Toni finally admitted that the car was not lost, but had been sold with Ade Mustopa.

After the confession, the defendant felt dissatisfied and decided to confront Ade Mustopa. In the meeting, the defendant Rasta and Ade Mustopa discussed the liability of the lost car whether it was really sold or lost and stolen, but in the conversation Ade Mustopa's brother chose to bring the case of the loss of the defendant's car to the legal track. After that, Ade Mustopa returned to his home, the continuous violent treatment carried out by TNI members against Toni turned out to lead to death due to the blunt violence he received. In this situation, the defendant felt panicked and had no intention to take the victim to the hospital, but the defendant and several members of the TNI

planned to dump Toni's body in the Bogor area and give him travel money to bury Toni as much as Rp2,000,000.00 (two million rupiah). On the way to Bogor, the condition of the hills they passed happened to be devoid of residents. So that the body of the victim Francisko Manalu alias Toni was taken to the middle of the forest and then stored in the middle of the forest, then closed and stockpiled using soil to avoid the attention of others.

Judge's Legal Considerations in Decision Number 170/Pid.B/2021/PN.Pwk concerning Sanctions for Criminal Acts of Participating in Violence Resulting in Murder

The criminal act of participating in this murder is regulated in Article 338 of the Criminal Code Jo Article 55 Paragraph 1 to 1 which explains that for a person who deliberately takes the life of another person, he is threatened with murder with a maximum prison sentence of 15 (fifteen) years. In passing a verdict on the case of participating in the violence that resulted in this murder, the judge must be careful and careful in imposing a sentence for the perpetrator and pay attention to the impact of the punishment that has been given, whether it is appropriate or not and whether the punishment given can deter the perpetrator and no longer be unsettling for the surrounding community.

Basically, the consideration of the judge's decision is one of the most important aspects to determine the implementation of the judge's decision value which contains justice and contains thorough, good and careful legal certainty. The provisions regarding the judge's consideration are regulated in Article 197 paragraph (1) letter d of the Criminal Code which determines: "*the consideration is summarized regarding the facts and circumstances along with the evidence obtained from the examination at the trial which is the basis for the determination of the defendant*".

Before imposing such a sentence, a judge must first consider the aggravating circumstances and mitigating circumstances of the defendant. As in the District Court decision Number 170/Pid.B/2021/PN PWK, the aggravating circumstances in the sentencing were because the defendant was convoluted in providing evidence, and the defendant's actions caused deep grief and suffering to the victim's family. Meanwhile, the mitigating circumstance is that the defendant regrets his own actions.

The panel of judges decided based on the facts revealed in the trial where the evidence submitted by the public prosecutor was witness statements, letters, and statements of the defendant. In the District Court decision No.170/Pid.B/2021/PN.Pwk, the Judge stated that the defendant's actions were subject to Article 338 Jo Article 55 Paragraph (1) 1 of the Criminal Code and Law Number 8 of 1981 concerning the Criminal Procedure Code, where the Judge assured that the

actions of the Defendant Rasta Bin Alm. Tasim was wrong and stated that he participated in the murder and sentenced him to imprisonment for (13) years. The sentence is deducted entirely from the sentence imposed.

The purpose of the sentence imposed by the Panel of Judges is not only an attempt at revenge but is focused on education and teaching to improve the character of the Defendant and other community members, on the other hand, it is hoped that after the Defendant has completed his sentence and when he returns to the community, he will no longer commit similar acts or other criminal acts.

Elements and Sanctions of Criminal Acts of Participating in Violence Resulting in Murder in Decision Number 170/Pid.B/2021/PN.Pwk Islamic Criminal Law

In Islamic criminal law, a person's involvement in violence that leads to someone's death is considered a serious criminal offense and involves several important elements. First, there must be active participation or conscious contribution from the perpetrator in committing violence that causes the loss of the victim's life. This involvement can be direct or indirect, but it must meet the conditions for a causal relationship between the perpetrator's actions and the death. In addition, the element of intention (*qasd*) or intentionality is the main factor in determining the level of wrongdoing of the perpetrator, where the perpetrator must be aware of the fatal consequences of his actions or at least want the consequences to occur in accordance with sharia principles that place intention as a fundamental element in the imposition of punishment.

In addition, there are three main elements that must exist in order for an act to be sanctioned in Islamic Criminal Law, namely: (1). Formal Element (Rukun *Syar'i*), this element refers to the existence of a provision of nash (*postulil shar'i*) that clearly prohibits an act and establishes sanctions for the perpetrator. In this case, an act must have a clear nash, because in an Islamic crime an act will not be considered if there is no clear nash. (2). Material Element (Rukun Madani), this element is related to the existence of real acts committed by the perpetrator who violates the provisions of the nash. The intention is that the act must be in accordance with the definition of criminal acts that have been stipulated in the sharia. (3). Moral Element (Rukun Adabi), this element emphasizes the capacity of the perpetrator to be held legally accountable. In this case, the perpetrators who violate the criminal act must meet the conditions that have been adjusted to Islamic law.

The criminal act of participating in violence resulting in murder in Decision Number 170/Pid.B/2021/PN.Pwk in this study is regulated in Article 338 Jo Article 55 Paragraph (1) 1 of the Criminal Code, where it is stated that the perpetrator has met the elements of participating in the

murder. The elements in Article 338 Jo Article 55 paragraph (1) 1 of the Criminal Code are: 8 "(1) Whose goods are the elements; (2) Elements deliberately taking the life of another person; (3) Elements participating in committing criminal acts". In the element of "who's who's goods," this term refers to a person or legal subject who commits a criminal act. Any individual who commits a criminal act that may harm others or the public interest, regardless of gender, age, or status, may be subject to sanctions. The element "intentionally depriving another person's life" refers to the act of a legal subject who knowingly and intentionally causes harm to another person or

public interest, without considering the impact it will have on itself. Meanwhile, the element of "participating in committing a criminal act" means that the legal subject does not act alone in committing the criminal act. In this case, there is the involvement of one or more other people in the execution of the criminal act.

The provision of sanctions according to Islamic Criminal Law is seen from the firmness or fairness of the punishment given. As in Islamic criminal law, the division of punishment is divided into three, namely *qishash*, *diyat* and *ta'zir*. As is the case in the decision Number 170/Pid.B/2021/PN.Pwk, the sanction for the perpetrator of participating can be seen whether the perpetrator participates directly, which means that participating directly is a person who is directly bound or participating in committing violent crimes. The sanctions given to the perpetrators who participate directly are given *qishash punishment*. While indirect participation is any person who enters into an agreement with another person to commit an act of violence or instructs (persuades) another person or provides assistance in the act accompanied by intentionality in the agreement. The sanction of this indirect perpetrator is only sentenced to *ta'zir* because his act is categorized as a criminal *ta'zir*, even though the indirect participation is included in the criminal acts of *hudūd* and *qishash*.

The Effectiveness of Imposing Sanctions for Criminal Acts of Participating in Violence Resulting in Murder in Decision Number 170/Pid.B/2021/PN.Pwk According to Islamic Criminal Law

The effectiveness of imposing sanctions in the criminal act of participating in violence resulting in death in Islamic Criminal Law is highly dependent on the application of sharia principles that balance justice and mercy. The imposition of *qishash* punishment that is firm and commensurate is believed to be able to provide a deterrent effect for the perpetrator and the wider community so that they do not repeat similar actions. In addition, the provision of the option of *diyat* or ransom payment as an alternative to sanctions allows for a reconciliation mechanism that can improve social relations between the perpetrator and the victim's family. Thus, the enforcement

of Islamic Criminal Law is not only oriented towards retribution but also towards restoration and broader social justice.

However, in practice, the effectiveness of these sanctions is also greatly influenced by implementation factors in the field, such as the firmness of the judge in applying punishment and public awareness of Islamic law. If the imposition of sanctions is inconsistent or there is a discrepancy in the application of *ta'zir* as a *discretionary* punishment, then the purpose of deterrence and justice can be disturbed. Therefore, the Islamic criminal law system requires strong institutional support and legal education that encourages public awareness to respect and obey these legal norms so that sanctions can run effectively as a tool of prevention and social recovery.

Analysis and Arguments of the Researcher: From the above statement regarding the research on participating in violence that resulted in murder, it can be analyzed that the Defendant Rasta's actions against Francisco Manalu were a cruel act, because the Defendant Rasta had the heart to allow the Victim Francisco Manalu to be tortured continuously by the Defendant's colleagues and resulted in the victim losing his life, where at the time the victim was told that the Defendant Rasta was unconscious chose to remain silent without providing a solution to be taken to the hospital and chose to tell his colleagues to throw away the victim and bury him and participate in giving money of Rp2000,000.00. In this case, the defendant should be given a maximum sentence, which is 15 (fifteen) years in prison. As in the explanation of Article 338 about murder "*Whoever deliberately takes the life of another person is threatened with murder with a maximum prison sentence of 15 (fifteen) years*". If it is associated with Islamic criminal law, then the punishment is given in accordance with the defendant's actions, namely in *the form of qishash* (appropriate retribution) so that the defendant is deterred from the crime he committed and will never repeat it.

Conclusion

The judge's legal considerations in imposing a criminal sentence in decision Number 170/Pid.B/2021/PN.Pwk are based on normative juridical aspects and the panel of judges decides based on the facts revealed in the trial where the evidence submitted by the public prosecutor is witness statements, letters, and statements of the defendant. In addition, the sentencing was focused on education and teaching to improve the character of the Defendant and other community members. In the verdict Number 170/Pid.B/2021/PN.Pwk, the defendant Rasta was found guilty of committing the crime of participating in murder as in Article 338 Jo Article 55 Paragraph (1) 1. In this case, the Judge convinced that the Defendant Rasta's actions were wrong and stated that he participated in the murder and sentenced him to imprisonment for (13) years. The sentence is

deducted entirely from the sentence imposed. The judge's legal considerations in decision Number 170/Pid.B/2021/PN.Pwk are based on the circumstances that aggravate and mitigate the defendant's self-defense.

It is recommended for law enforcers in handling criminal cases, namely first being able to apply the principle of accountability, namely being able to take responsibility for the actions and decisions taken and be ready to accept the consequences. Second, justice where everyone has the right to get justice without discrimination and get the same protection. Third, the rule of law is that everyone who has a position or has power has the right to be subject to the law without exception, so that there is no abuse of authority. In addition, for the perpetrators of criminal acts, the punishment given should be made more deterrent as in Islamic criminal law which in accordance with research researchers can be *punished qishash* which means that they are given appropriate punishment so that they are deterred and do not want to commit crimes again. This research contributes to the discourse of integration between the positive legal system and the values of justice in Islamic criminal law, especially related to the role of intention and intentionality in cases of collective murder."

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