

## **The Concept of Concursus Realis in Criminal Law; A Legal Study of The Crimes of Rape and Murder**

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### **Abstract**

Concursus realis in cases of rape accompanied by murder based on the provisions of criminal law in Indonesia in Article 65 of the Criminal Code (KUHP) provides for one sentence for perpetrators who commit two independent crimes simultaneously but have never had a previous court decision. The research method used is a normative legal approach by analyzing laws and regulations and accountability for related cases. The results of the study indicate that the application of concursus realis allows perpetrators to be subject to one sentence with a maximum sentence and can be increased by one third of the heaviest sentence, as long as there is an element of intent, the ability to be legally responsible, and the absence of a valid excuse. This principle is important to ensure justice in sentencing, not only based on criminal acts, but also the awareness and will of the perpetrator when committing the crime. In addition, the study highlights the need for caution and thoroughness of law enforcement officers and judges in implementing this provision, especially in cases related to human rights violations that have existed since birth which must be protected and respected. In cases involving human rights, such as rape and murder, the application of the law must be based on the national legal system. It is hoped that the results of this study can provide academic and practical contributions in supporting the enforcement of concurrent criminal law in Indonesia, as well as being a consideration for law enforcement so that the judicial process runs fairly and effectively.

**Keywords:** accountability, concursus realis, rape, murder

## Introduction

A crime is a form of violation of the law that has a major impact on order and justice in society<sup>1</sup>. One form of serious crime that often occurs is rape accompanied by murder, where two forms of human rights violations are committed almost at the same time. Murder is a very brutal act in society, where this act takes someone's life intentionally, even though life is a gift from God Almighty that no one should take. This action is clearly contrary to existing legal norms and cannot be justified under any circumstances<sup>2</sup>.

The crime of murder can be categorized into several types, including unplanned murder (ordinary murder) and premeditated murder. The legal provisions governing these various forms of murder are contained in specific articles of the applicable laws and regulations. For example, murder is regulated under Article 338 of the Criminal Code, while premeditated murder is regulated under Article 340 of the Criminal Code. The difference between these two crimes lies in the elements contained within them: "with prior planning (premeditation)." Murder occurs because of the intention or will to kill, which is then carried out together. In other words, there is a gap between the emergence of the will to kill and the execution of the act<sup>3</sup>.

Rape should not be considered a crime that is solely a problem for the individual victim. Rather, it should be considered a public issue because rape is an immoral and heinous form of behavior that violates human rights and causes physical, social, and psychological suffering for women.<sup>4</sup> The government also created the Sexual Violence Crimes Law (UU TPKS) to reduce such acts. Criminal acts such as murder and rape have a significant impact on disrupting social structures, a sense of security, and order in society. This indicates that these acts

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<sup>1</sup> Wardatun Nabilah, Ja'far Shodiq, dan Deri Rizal, *Basic Analysis of the Exercise of Judicial Power (Integration of Islamic Law and Positive Law)*, Jurnal Independent 12, no. 1 (2024), h.5

<sup>2</sup> Akhyar Adil, *Analisis Yuridis Tindak Pidana Pembunuhan Disertai Pemerkosaan*, Jurnal Ilmiah Metadata, Vol. 5, No. 3 (2023), h. 81

<sup>3</sup> Ahmad Royani, dan Fajar Seto Nugroho, *Legal Review of Decision No. 6/Pid. Sus-Anak/2023 of the Lamongan District Court regarding the Case of Drug Abuse by Children*, Jurnal Independent 12, no. 2 (2024): 145-156.

<sup>4</sup> Ja'far Shodiq, Isniyatin Faizah, Moh Aqil Musthofa, dan Aisyah Nur Mahdiyah, *The Criminal Law of Forced Marriage on Children as a Preventive Measure on Sadz Dzariah's Perspective*, Al-Jinayah: Jurnal Hukum Pidana Islam 10, no. 2 (2024), h. 222.

are inappropriate or reprehensible, and punishment has been imposed for one or more of these offenses<sup>5</sup>.

The concept of *concurus realis* emerged as a form of legal accountability for perpetrators who commit more than one crime in a single series of events. *Concurus realis* is often considered the same as a combination of crimes, namely when a person commits a single act that violates several laws or commits several independent crimes, but all are processed and tried simultaneously, without a final decision on any one of these acts. *Concurus realis* is regulated in the Criminal Code (KUHP) from Article 63 to Article 71. *Concurus realis* itself is regulated in Article 65 of the KUHP. This action is a violation of human rights that we must protect and must be respected among fellow human beings as stated in Article 1 of Law Number 39 of 1999 concerning Human Rights.

### **Research methods**

This research is a normative legal research using a statute approach. Data collection techniques are carried out through primary legal materials and secondary legal materials relevant to the formulated problem topic. Analysis will be conducted by interpreting statements contained in a statutory regulation regarding the issue to be resolved so that it can be analyzed comprehensively to answer the problem formulation. Primary legal sources in this research are: 1) the Criminal Code (KUHP), 2) Law Number 39 of 1999 concerning Human Rights, 3) Law Number 26 of 2000 concerning the Human Rights Court, 4) Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS)

### **Research Results and Discussion**

#### **1. Concurrent Crimes**

Concurrency is a term derived from the word *samenloop* or *concurus*, and is sometimes also referred to as combination. According to the law, concurrency occurs when a person commits a single act that violates more than one provision of criminal law, or commits several acts, each of which constitutes a separate crime, but are investigated and tried simultaneously, as long as there is no judge's decision on any of the acts. In cases of *concurus*, violations of two or more criminal provisions can occur in a single act.

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<sup>5</sup> Sri Jihan Akune, Fence M. Wantu, and Mohamad Taufiq Zulfikar Sarson, *Konsep Teori Samenloop Menurut Kuhp Dan Penerapannya Dalam Proses Peradilan Tindak Pidana Perbarengan (Concurus)*, *Journal of Comprehensive Science (JCS)*, Vol. 2, No. 4 (2023), h. 919

Concurrency is a term derived from the word *samenloop* or *concursum*, and is sometimes also referred to as combination. According to the law, concurrency occurs when a person commits a single act that violates more than one provision of criminal law, or commits several acts, each of which constitutes a separate crime, but are investigated and tried simultaneously, as long as there is no judge's decision on any of the acts. In cases of *concursum*, violations of two or more criminal provisions can occur in a single act.

*Concursum* can be divided into three types; 1) Idealist *concursum* is when someone commits an act that falls under more than one criminal rule, then only one of those rules will be imposed (Article 63 of the Criminal Code), 2) Continuing acts are when someone commits several criminal acts, each of which is an independent act (crime or violation) but between these acts there is a connection to each other which must be considered as one continuing act (Article 64 of the Criminal Code), 3). Realist *concursum* is when in the case of several acts that must be considered as independent acts together so that they constitute several crimes, which are threatened with the same main punishment, then only one punishment is imposed (Article 65 of the Criminal Code)<sup>6</sup>.

## 2. Criminal of Rape Accompanied by Murder

Rape is a heinous act that remains prevalent in various social circles and locations. Generally, the primary reason for this recurring occurrence is the relatively weak position of women within the social structure<sup>7</sup>. Because of this unequal status, women are often viewed as objects and become targets of sexual violence. In other words, as long as women remain in a subordinate social position, crimes like rape will continue to occur<sup>8</sup>.

According to Prodjodikoro, rape is a man who forces a woman who is not his wife to have sexual intercourse with him, so that she cannot resist, so she is forced to have sexual intercourse<sup>9</sup>. Article 285 of the Criminal Code stipulates that sexual intercourse with a person other than the wife must be accompanied by

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<sup>6</sup> Dr.Fitri Wahyuni, *Dasar-Dasar Hukum Pidana Indonesia*, Perpustakaan Nasional, PT Nusantara Persada Utama, Tangerang Selatan, 2017, h. 131.

<sup>7</sup> Rindy Kumala Sakti, Ja'far Shodiq, dan Enik Isnaini, *Abortion In Indonesia On Positive Law And Maslahah Theory Perspective*, JISRAH: Jurnal Integrasi Ilmu Syariah 5, no. 2 (2024), h. 183

<sup>8</sup> Adil, *Analisis Yuridis Tindak Pidana Pembunuhan Disertai Pemerkosaan*, Jurnal Ilmiah Metadata, Vol 5, No 3 (2023), h. 104

<sup>9</sup> Wirdjono Prodjodikoro, *Tindak-Tindak Pidana Tertentu Di Indonesia*, Eresco, Bandung, 1986, h. 28.

threats of violence. Rape is characterized by penile penetration of the vagina during sexual intercourse, accompanied by threats and physical violence against the victim by the perpetrator.

According to Muhammad Irfan, the factors causing rape are at least as follows: first, the influence of cultural developments that increasingly disregard clothing that covers the genitals, which can encourage others to commit indecent and evil acts. Second, the lifestyle or mode of social interaction between men and women is increasingly free, no longer able to distinguish between what should be done and what is prohibited in relation to the rules and morals regarding male and female relationships. Third, the low level of practice and appreciation of religious norms that are currently occurring in society. Fourth, the low level of societal control, for perpetrators, lack of response and supervision from society. Fifth, judges' decisions that are felt to be unfair, such as relatively light sentences that make perpetrators feel unafraid of the sanctions they will receive. Sixth, the inability of perpetrators to control their emotions and desires, and seventh, the perpetrator's desire for revenge<sup>10</sup>.

Murder is a crime that violates a person's right to life. Murder occurs when someone intentionally causes the death of another person. To be considered murder, the perpetrator must commit an act or series of acts that result in death, and these acts must be committed with the intent to cause the victim to lose their life<sup>11</sup>. According to Leden Marpaung, "killing comes from the word 'kill', which means to take life, to kill." Murder is divided into two categories: intentional homicide and culpable homicide. Intentional homicide is an act with the intent to inflict harm and results in the loss of life or the soul of the person being harmed, whether or not the harm was intended to kill. Whereas culpable homicide is an act that results in death without the intention of inflicting harm<sup>12</sup>.

According to Article 338 of the Criminal Code, murder is a crime committed intentionally with the intent to take the life of another person. This act can include hitting, shooting, poisoning, stabbing, or other forms of violence. Essentially, as

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<sup>10</sup> Abdul Wahid dan Muhammad Irfan, *Perlindungan Terhadap Korban Kekerasan Seksual (Advokasi Atas Hak Asasi Perempuan)*, Refika Aditama, Bandung, 2011, h. 72.

<sup>11</sup> Lamintang P.A.F, *Kejahatan Terhadap Nyawa, Tubuh, Dan Kesehatan*, Sinar Grafika, Jakarta, 2012, h. 1.

<sup>12</sup> Leden Marpaung, *Unsur-Unsur Perbuatan Yang Dapat Dihukum*, Grafika, Jakarta, 2011, h. 22.

long as the act is done intentionally and with the intent to cause death, it falls under the category of murder. Factors influencing the occurrence of murder include:<sup>13</sup>

a. Revenge

A person can plan a murder very carefully and be classified as sadistic, because the perpetrator has a grudge against the victim or the victim's family and ends up venting and planning the murder.

b. The Effects of Alcohol (Drunkenness)

One factor that can drive someone to commit murder is the influence of alcohol or being intoxicated. In such a state, a person becomes more easily provoked, feels offended, angry, and harbors resentment, which can ultimately lead them to commit murder.

c. Factor of Economic Capacity

A person who is raised in a family environment that is lacking in everything often experiences unpleasant or discriminatory treatment from the people around him.

d. Low Level of Education

Education plays a crucial role in shaping a person's personality, enabling them to live responsibly. When family education is inadequate, individuals are more likely to fall into deviant or delinquent behavior, both within the family and within society.

### **3. Rules and Accountability of *concursum realium* in Cases of Rape Accompanied by Murder**

Regulations are rules that bind members of society and serve as guidelines, order, and controls for appropriate and acceptable behavior. Every member of society is obliged to follow the existing rules, which serve as a measure or rule used to assess and compare certain things. According to Anshari, regulations are a mental attitude with awareness and awareness to comply with or obey existing regulations or prohibitions regarding something, because of a full understanding of the importance of certain commands and prohibitions that must be obeyed<sup>14</sup>.

From the outset, legislation, as written law, was expected to provide legal certainty in its application. Although written law has a number of weaknesses, it also has advantages compared to unwritten law. In general, the purpose of

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<sup>13</sup> Leden Marpaung, *Proses Penanganan Perkara Pidana (Penyidikan Dan Penyelidikan)*, Sinar Grafika, Jakarta, 2011, h. 51.

<sup>14</sup> Anshari, *Pengantar Ilmu Pendidikan*, Usaha Nasional, Surabaya, 1983, h. 30.

establishing legislation is to regulate and structure the life of the state so that the people bound by the law can obtain certainty, benefits, and justice in their national and social lives. Therefore, one of the main pillars of governance in a state based on the rule of law is the creation of sound, balanced, and easily accepted legislation<sup>15</sup>.

Hans Kelsen, in his theory of legal responsibility explains that: "a person is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of a contrary act. Hans Kelsen further states that: "Failure to exercise the care required by law is called negligence; and negligence is usually seen as another kind of mistake (*culpa*), although not as serious as the mistake that is fulfilled because of anticipating and intending, with or without malice, harmful consequences"<sup>16</sup>.

The decision of whether or not a person can be punished depends largely on the element of culpability in their actions. If it is proven that the act was culpable, the person can be held criminally responsible and subject to sanctions in accordance with applicable law.

The crime of murder is regulated in Article 338 of the Criminal Code (KUHP), namely: "Whoever intentionally takes the life of another person, is threatened, because of murder, with a maximum prison sentence of fifteen years." Another crime is the act of rape which is regulated in Article 285 of the Criminal Code (KUHP), namely: "Whoever with violence and the threat of violence forces a woman to have sexual intercourse with him outside of marriage, is threatened because of committing rape with a maximum prison sentence of twelve years."

The provisions in this article explain the prohibition of committing the crime of rape against women outside of marriage and the government also created Law Number 22 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) to protect women from being looked down upon as indicated by Article 6:

- a) The provisions in the article explain the prohibition of committing the crime of rape against women outside of marriage and the government also made Law Number 22 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) to protect women so that they are not looked down upon as indicated by Article 06:

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<sup>15</sup> Maria Farida Indrati S., *Ilmu Perundang-Undangan*, Kanisius, Yogyakarta, 2007, h. 2.

<sup>16</sup> Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Disertasi Dan Tesis*, Rajawali Press, Jakarta, 2009, h. 7.

Every person who commits physical sexual acts aimed at the body, sexual desires, and/or reproductive organs with the intention of degrading a person's dignity and honor based on their sexuality and/or morality which is not included in other more severe criminal provisions with a maximum prison sentence of 4 (four) years and/or a maximum fine of IDR 50,000,000.00 (fifty million rupiah).

- b) Any person who commits a physical sexual act directed at the body, sexual desire, and/or reproductive organs with the intention of placing someone under his/her control in an unlawful manner, whether within or outside of marriage, shall be punished by imprisonment for a maximum of 12 (twelve) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).

Any person who abuses position, authority, trust or influence arising from deception or a relationship of circumstances or takes advantage of a person's vulnerability, inequality or dependency, forces or by misleading that person to commit or allow sexual intercourse or indecent acts to be committed with him or with another person, shall be punished with a maximum prison sentence of 12 (twelve) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).

Article 65 of the Criminal Code (KUHP) explains:

- a) In the case of several acts occurring together which must be seen as separate acts and thus constitute several crimes, which are subject to the same basic punishment, only one punishment shall be imposed.

The maximum penalty imposed is the maximum penalty threatened for the act, but may be more than the maximum penalty plus one third.

The article explains that committing several crimes that are threatened with similar principal penalties is only punished with one sentence and added to the heaviest one-third sentence. Committing a crime is a crime that violates human rights where a person has rights that he has had since birth in the world that must be respected, maintained and protected by all parties, be it individuals, community groups, or the government. Which is contained in Law Number 26 of 2000 on Human Rights Courts in Article 37, "Any person who commits an act as referred to in Article 9 letters a, b, d, e, or j shall be punished with the death penalty or life imprisonment or a maximum imprisonment of 25 (twenty five) years and a minimum of 10 (ten) years".

#### **4. The Role of the Judge**

A judge is a state official who exercises judicial power in accordance with the provisions stipulated in law. Judges are the embodiment of the judicial institution, and in deciding a case, they are required not only to possess intellectual prowess but also to uphold morality and possess strong integrity, so that the decisions rendered reflect a sense of justice, ensure legal certainty, and provide benefits to society.

Judges play a crucial role in assessing the criminal responsibility of perpetrators, particularly in cases of *concursum realis*. Judges' considerations are based not only on the legal text, but also on the social context, the victim's psychology, and the perpetrator's intentions. In practice, the criminal justice system used is a more refined system, which imposes the harshest sentence with an additional one-third of the maximum penalty.<sup>17</sup>

In issuing a verdict, a judge is bound by applicable legal provisions, particularly regarding the criminal penalties established in legal regulations. Judges are not permitted to impose a sentence below the established minimum standard, as this could undermine the principles of justice and legal certainty. Similarly, judges are not permitted to impose a sentence exceeding the specified maximum limit, as this would exceed the authority granted by law. This provision aims to ensure that every criminal verdict is rendered fairly and in accordance with applicable legal norms.

#### **Conclusion**

The application of *Concursum Realis* in cases of rape and murder indicates that the perpetrator can be subject to one sentence for two separate crimes as long as there is no previous court decision. In this case, Article 65 of the Criminal Code serves as the primary legal basis, affirming that the perpetrator can still be punished to the maximum, and the sentence can even be increased by one-third of the maximum sentence. Criminal responsibility for the perpetrator in the context of *Concursum Realis* requires deliberate fault, the ability to be legally responsible, and the absence of excuses. The discovery of these elements is important to ensure that

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<sup>17</sup> Ahmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Sinar Grafika, Jakarta, 2011, h. 104.

punishment is not based solely on the act itself, but also on the perpetrator's awareness and will when committing the crime.

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#### Legislation

##### Criminal Code

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Law Number 26 of 2000 concerning Human Rights

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