

CHAPTER V

CLOSING

A. Conclusion

Based on the research that has been conducted by the author, it can be concluded that the basis for the judge's consideration states the Dissenting Opinion and Majority Opinion:

1. The basis for the majority judge's consideration in imposing a criminal sentence in case Number 59/Pid.B/2021/PN Lbh is that the element of intentionality in Article 338 KUHP is not fulfilled. The majority judge believed that the defendant's actions were not intended to take the victim's life, but were carried out out of lust to have sex with the victim and only aimed at weakening the victim. Therefore, the majority judge handed down a verdict based on Article 351 paragraph (3) KUHP regarding persecution that causes death, taking into account that the death occurred as a result of an act of violence that was not intended to kill.
2. The minority judge considered that the defendant's action of repeatedly hitting the victim with sticks on vital body parts (neck, head, and chin) showed the defendant's awareness of the possibility of death. Therefore, the minority judge used the approach of *dolus eventualis* (intentionality as a possibility) or *dolus als zekerheidsbewustzijn* (intentionality as certainty) as the basis for his consideration that the defendant

committed murder and should be sentenced in accordance with Article 338 KUHP.

3. The author has opinion that the dissenting opinion delivered by Judge Tito Santano Sinaga, S.H., is more juridically appropriate and reflects the application of criminal law in accordance with the principles of certainty and justice. The Defendant's attack on the victim's vital parts using hardware shows intentionality in the form of *dolus eventualis*. This approach is in line with Supreme Court jurisprudence which affirms that proof of motive is not necessary in the crime of murder. Therefore, the author concludes that the Defendant's actions are more worthy of being qualified as murder based on Article 338 of the Criminal Code, not just persecution that resulted in death. Therefore, it is important for the judge to assess this event in its entirety, not only based on the perpetrator's initial intentions, but also on the actual consequences of his actions and the accompanying pattern of violence.

B. Suggestion

1. For judicial institutions, it is important to clarify the criteria for the application of the element of intentionality in the crime of murder and gross persecution resulting in death. Firmness in distinguishing between direct intentionality and intentionality is likely to help prevent differences in interpretation between judges that can cause significant dissenting opinions in serious criminal cases.

2. For law enforcers, especially public prosecutors, it is necessary to be careful in describing and proving the element of intentionality based on evidence and a series of events. This is important in order to support the claim proportionately and prevent multiple interpretations in court hearings.
3. For the academic world and policymakers, there is a need for updates and affirmations in the KUHP that explicitly regulate forms of intentionality (such as *dolus eventualis*, *dolus indirectus*, and others) so that in practice they can become a more concrete and uniform reference among judges and other law enforcement officials.

