

ABSTRAK

Penelitian ini membahas pertanggungjawaban pidana pelaku pembunuhan dari kelompok homoseksual (gay) dalam perspektif hukum pidana positif Indonesia. Isu ini penting karena orientasi seksual pelaku kerap dikaitkan dengan motif kejahatan dan berpotensi memengaruhi objektivitas penegakan hukum. Padahal, hukum pidana Indonesia tidak membedakan pertanggungjawaban berdasarkan identitas pribadi, melainkan pada terpenuhinya unsur delik dan kesalahan yang dapat dipertanggungjawabkan secara hukum. Penelitian bertujuan menganalisis pengaturan tindak pidana pembunuhan bagi pelaku homoseksual serta upaya pencegahan tindak pidana dalam kerangka hukum yang objektif dan non-diskriminatif. Metode yang digunakan adalah yuridis normatif, deskriptif analitis, melalui studi kepustakaan terhadap KUHP, UU No. 1 Tahun 2023 tentang KUHP Nasional, KUHAP, UU HAM, serta literatur, doktrin, dan jurnal hukum. Hasil penelitian menunjukkan bahwa Pasal 338 dan 340 KUHP bersifat netral dan tidak membedakan pelaku berdasarkan orientasi seksual. Pertanggungjawaban pidana didasarkan pada *actus reus* dan *mens rea*; orientasi seksual tidak relevan sebagai dasar pemberat atau peringan pidana. Dalam pencegahan, hukum positif menerapkan strategi penal dan non-penal yang universal tanpa menjadikan orientasi seksual sebagai kategori yuridis. Dengan demikian, penegakan hukum harus berpegang pada asas legalitas, *equality before the law*, dan non-diskriminasi, sehingga hukum menilai perbuatan, bukan identitas pelaku.

Kata kunci: pertanggungjawaban pidana, pembunuhan, homoseksual, non-diskriminasi, hukum pidana.

ABSTRACT

This study examines the criminal liability of murder perpetrators from the homosexual (gay) community within the framework of Indonesian positive criminal law. This issue is significant because the perpetrator's sexual orientation is often associated with the motive of the crime and may influence the objectivity of law enforcement. In fact, Indonesian criminal law does not differentiate criminal liability based on personal identity, but rather on the fulfillment of the elements of the offense and legally accountable culpability. This research aims to analyze the legal regulation of murder offenses concerning homosexual perpetrators and to examine crime prevention efforts within an objective and non-discriminatory legal framework. The method employed is normative juridical with a descriptive-analytical approach through library research of primary legal materials, including the Criminal Code (KUHP), Law Number 1 of 2023 on the New Criminal Code, the Criminal Procedure Code, and the Human Rights Law, as well as secondary materials such as legal doctrines, literature, and journals. The findings indicate that Articles 338 and 340 of the Criminal Code are neutral and do not distinguish perpetrators based on sexual orientation. Criminal liability is based on the elements of actus reus and mens rea; sexual orientation has no juridical relevance as an aggravating or mitigating factor in sentencing. In terms of prevention, Indonesian positive law applies universal penal and non-penal strategies without categorizing sexual orientation as a juridical variable. Therefore, law enforcement in murder cases must adhere to the principles of legality, equality before the law, and non-discrimination, ensuring that the law evaluates the act committed rather than the identity of the perpetrator.

Keywords : *criminal liability, murder, homosexual, non-discrimination, criminal law.*