

## PREMEDITATED MURDER ON SHIP WHEN SEEKING LIFE PRESERVES ACCORDING TO HUMAN RIGHTS PERSPECTIVE

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### ABSTRACT

*Sustaining life means a person is trying to save his life so that he can continue his daily life. Defense is not only in eating, drinking, exercising, maintaining a healthy body, and getting enough sleep but also in surviving in a state of urgency. Circumstances force a person to do anything in the hope of preserving their life. This study aims to find out in-depth the study of Force majeure, which has the meaning of a condition where a particular place can experience urges that cannot be prevented due to natural factors. Due to force majeure, such as goods, forced circumstances can still be forgiven due to natural factors. However, it is different from humans in terms of human rights if it is related to the Criminal Code (having a general character) and the Human Rights Law (having a unique character), following the Lex specialis derogat Legi generali principle. It is the rule of law that tends to be specific, which can contradict the general law. Premeditated murder is a crime against life regulated in Article 340 of the Indonesian Criminal Code. Premeditated murder is an act that stands alone with ordinary murder as regulated in Article 338 of the Indonesian Criminal Code. The provisions contained in the act of premeditated murder are a repetition of the act of murder in Article 338 of the Criminal Code. One more element is added, "with a prior plan." The approach used in reviewing this research is the approach through the law (statute approach) and conceptual approach. This research is legal (juridical normative) by understanding various sources. The primary is based on legislation, the secondary is based on book and journal studies, and the last is tertiary, based on dictionaries to find foreign languages that are difficult to understand.*

<b>Keywords</b>	<i>Sustaining Life; Natural Factors; Premeditated Murder</i>
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### INTRODUCTION

The sea is a collection of water that has a salty taste to bestow all areas of the earth in an accurate picture.<sup>1</sup> In contrast, according to the legal perspective, Article 1 of Law 23/2014 concerning the Sea reads, "*Laut adalah ruang perairan di muka bumi yang menghubungkan daratan dengan daratan dan bentuk-bentuk alamiah lainnya, yang merupakan kesatuan geografis dan ekologis beserta segenap unsur terkait, dan yang batas dan sistemnya ditentukan oleh peraturan perundang-undangan dan hukum internasional*" (Translate: The sea is a water space on earth that connects land with land and other natural forms of sea, which are geographical and ecological units and all related elements, and whose boundaries and systems are determined by statutory regulations and international law). In essence, the Indonesian islands associations from Sabang to Merauke mostly contain water.<sup>2</sup> Talking

<sup>1</sup> Sunyowati, D., & Narwati, E. (2013). *Buku Ajar Hukum Laut*. Airlangga University Press.

<sup>2</sup> Kurniawan, R., Habibie, M. N., & Suratno, S. (2011). Variasi bulanan gelombang laut di Indonesia. *Jurnal Meteorologi dan Geofisika*, 12(3).

about the waters surrounding the islands in Indonesia, there is a medium that will be used to carry transportation devices that use machine technology, namely ships.<sup>3</sup> The shape and the use are designed in proportion to achieve people's ambition.<sup>4</sup> There are three kinds of ship functions, including facilitating the exchange of the initial position to the place to be traveled, containing objects that will move places or communities. Since ships have expertise in specific fields, such as oil extraction drilling vessels, the last kind of ship is a semi-transportation ship. This ship can be used as a support for moving from one place to another, so that ship users can be used as a pusher or towing other ships such as tugboats.<sup>5</sup>

Following the theme discussed, the emphasis is on the first type of ship as a means of free movement of goods and people. Goods have their characteristics: easy to perish, perish, ignite by fire, destroy other objects, require different resolutions, and hardening.<sup>6</sup> Force Majeure means a condition where a specific place is under pressure that cannot be prevented due to natural factors.<sup>7</sup> If the goods are destroyed but against the will, Based on the Indonesian Criminal Code in the third book regarding the engagement, Article 1245 reads, "*Tidaklah biaya rugi dan bunga, harus digantinya, apalagi lantaran keadaan memaksa atau lantaran suatu kejadian tak disengaja si berutang beralangan memberikan atau berbuat sesuatu yang diwajibkan, atau lantaran hal-hal yang sama telah melakukan perbuatanyang terlarang*" (Translate: There is no cost of loss and interest, it must be replaced, especially because of compelling circumstances or because of an unintentional incident the debtor is unable to give or do something obligatory, or because of other reasons. The same thing has done a forbidden act). Actions against the will or inadvertently are reasonable arguments to avoid compensation.<sup>8</sup>

It would be different if the loss of a person's life were due to premeditated murder over the struggle for the buoy on the ship because life has no substitute. Under Article 48 of the Criminal Code, "*Barangsiapa melakukan perbuatan karena pengaruh daya paksa, tidak dipidana*" (Translate: Whoever commits an act due to the influence of coercion will not be punished). So this research was born. It has an element of novelty different from the previous one, the existence of a group of people who committed premeditated murder intending to seize a life vest. However, the forced circumstances due to force majeure, such as goods, can still be forgiven. However, the case with humans is different from the perspective of Human Rights if it is related to The Criminal Code (which has a general character). The Human Rights Law has a unique character because, under the principle of *Lex specialis derogat legi generali*, a legal concept that leans towards a specific direction can turn the legal concept towards a general direction.<sup>9</sup>

Criminal law is the unity of the whole law. It is helpful for society or regions where some principles and rules prohibit acts of bringing suffering or threats in the form of suffering to people who violate the prohibition.<sup>10</sup> This rule regulates violations and crimes against the public interest, including threats of punishment or suffering for those who violate

<sup>3</sup> Nobi, N. C. (2019). Jenis-Jenis Penentuan Survey Untuk Kapal Layak Laut Sesuai Jenis Kapal Yang Ada Di Pelabuhan Tanjung Emas Semarang Dengan Aturan Biro Klasifikasi Indonesia. *KARYA TULIS*.

<sup>4</sup> Setiawan, I. (2016). Beragam Tindak Pidana Laut Dalam Hukum Pidana Indonesia. *Jurnal Ilmiah Galuh Justisi*, 4(1), 115-126.

<sup>5</sup> Awwalin, R., & Nugroho, S. (2018). Studi Penambahan Fungsi Kapal Melalui Pemanfaatan Kapal Tipe Lighter Aboard Ship (LASH) untuk Pulau-Pulau Kecil: Studi Kasus Kepulauan Kangean Kabupaten Sumenep. *Wave*, 12(2), 61-72.

<sup>6</sup> Radiks, P. (1997). *Angkutan Muatan Laut 2*. Jakarta: PT Rineka Licipa.

<sup>7</sup> Wulandari, D. A. (2016). Wanprestasi Debitur Akibat Force Majeure (Bencana Alam) Dalam Perjanjian Kredit (Studi Putusan Nomor: 25/PDT. G/2010/PN. SMI).

<sup>8</sup> Rasuh, D. J. (2016). Kajian Hukum Keadaan Memaksa (Force Majeure) Menurut Pasal 1244 Dan Pasal 1245 Kitab Undang-Undang Hukum Perdata. *Lex Privatum*, 4(2).

<sup>9</sup> Irfani, N. (2020). Asas Lex Superior, Lex Specialis, Dan Lex Pesterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum. *Jurnal Legislasi Indonesia*, 17(3), 305-325.

<sup>10</sup> Saputra, G. D. (2020). Eksekusi Pembakaran/Penenggelaman Kapal Tindak Pidana Illegal Fishing Berbendera Asing Dalam Perspektif Sistem Peradilan Pidana. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 9(4), 752-766.

the rules. Murder is then added with premeditated intentions. It can be said that the form of a vile character related to the soul is compiled under Article 340 of the Indonesian Criminal Code. The act of premeditated murder is an act that stands alone with ordinary murder as regulated in Article 338 of the Criminal Code. The description that lies in the act of premeditated murder is an imitation of the murder act, which is located in Article 338 of the Criminal Code. Then it is expanded with one more point, namely "with a prior plan." It is in contrast to mass murder, as stated in Article 339 of the Criminal Code, which uses the definition of immediate murder from the murder act.<sup>11</sup> Usually, the actions listed in the Criminal Code target the legal subject of "people." In the parable of the subject of actions in Article 340 of the Criminal Code, "whoever" means a person. So it can be said that one person, but in reality, the crime is not always committed by one person. Sometimes, a crime is committed by two or more people to complete an action. Thus, based on the material of criminal law, a sign of an attitude is carried out by one or more people for whom each person commits certain forms of action. From that character arises a criminal act that is considered inclusion or *deelneming*.<sup>12</sup> By the explanation above, the problems are: How are human rights in legal perspective on premeditated murder that occurred on a ship due to the seizure of buoys if it is related to Article 28A of the Indonesian 1945 Constitution?; and 2) What are the appropriate criminal sanctions against the perpetrators of the premeditated murder?. This article aims to research and find out the differences between the Indonesian Civil Code Article 1245, which reads, "*Tidak ada penggantian biaya, kerugian dan bunga, bila karena keadaan memaksa atau karena hal yang terjadi secara kebetulan, debitur terhalang untuk memberikan atau berbuat sesuatu yang diwajibkan, atau melakukan suatu perbuatan yang terlarang baginya*" (Translate: There is no reimbursement of costs, losses, and interest, if due to compelling circumstances or due to coincidences, the debtor is prevented to give or do something that is required, or performs an act that is prohibited for him), and the Indonesian Criminal Code in Article 48 reads "*Barangsiapa melakukan perbuatan karena pengaruh daya paksa, tidak dipidana*" (Translate: Anyone who commits an act due to the influence of coercion will not be punished). Even though the perpetrator is protected by law, can Article 48 of the Criminal Code still protect perpetrators who commit premeditated murder due to forced circumstances if it is related to human rights? However, it should not be equated because in civil law goods still have replacements, it is different if a person's life is lost, this must take into account the principle of *Lex specialis derogat legi*.

## RESEARCH METHOD

This research wants to explore the position of written law synchronically until it reaches an even stage.<sup>13</sup> The research method used is normative juridical or legal research, carried out by seeking the truth of coherence, examining the application of the rule of law, legal norms, and applicable legal principles, and is associated with legal issues.<sup>14</sup> This research is qualitative because it aims to explain a situation entirely<sup>15</sup> and according to the legislation through a people's representative institution with the arrangements being carried out.<sup>16</sup> Philosophical regulations function to understand the emergence of specific regulations.<sup>17</sup> When within reasonable limits, research can be separated into two parts,

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<sup>11</sup> Chiazawii, A. (2013). *Kejahatan Terhadap Tubuh dan Nyaiwa*. Jakiarta: Rajaiwali Piers.

<sup>12</sup> Puspita, P.Y. (1997). *Kamus Hukum Edisi Lengkap*. Jakarta: Aneka Ilmu.

<sup>13</sup> Disemadi, H. S. (2021). Urgensi Regulasi Khusus dan Pemanfaatan Artificial Intelligence dalam Mewujudkan Perlindungan Data Pribadi di Indonesia. *Jurnal Wawasan Yuridika*, 5(2), 177-199.

<sup>14</sup> Marzuki, P.M. (2014). *Penelitian Hukum*, Jakarta: Kencana Prenada Media Grup.

<sup>15</sup> Tan, K., & Disemadi, H. S. (2022). Politik Hukum Pembentukan Hukum yang Responsif dalam Mewujudkan Tujuan Negara Indonesia. *Jurnal Meta-Yuridis*, 5(1), 60-72.

<sup>16</sup> Rofiq, A., Pujiyono, P., & Arief, B. N. (2021). Eksistensi Tindak Pidana Ta'zir dalam Kehidupan Masyarakat Indonesia. *Journal of Judicial Review*, 23(2), 241-256.

<sup>17</sup> Marzuki, P.M. (2010). *Penelitian Hukum*: Jakarta, Kencana.

namely through direct involvement in the field and sourced from reading references.<sup>18</sup> This research was assessed through reading references to obtain primary data under the Human Rights Law and the Criminal Code. The goal is to facilitate the truth on studied issues. Furthermore, this research data comes from secondary data, including books and journals. Finally, the data is obtained from tertiary data, namely translators, to simplify foreign languages into Indonesian correctly and precisely so that they do not have double meanings.

## RESULT AND DISCUSSION

### 1. The view of Human Rights on premeditated murder that occurred on a ship due to

#### the seizure of buoys when is connected with Article 28A of the 1945 Constitution

Life is started from the pleasure given by God Almighty from birth. Life means moving as it should.<sup>19</sup> The meaning of life, if it is associated with Human Rights, is to carry out various kinds of activities. However, it is not allowed to act based on the physical or background because if there is a violation, a person has the right to obtain self-protection from the State.<sup>20</sup> Human rights are inherent in the human body, natural and fundamental as gifts from God Almighty, and must be respected, cared for, and supervised by every individual, society, and State.<sup>21</sup> This right is not only given by the State but has existed before the State and community organizations were formed.<sup>22</sup> Indonesia adopted human rights in Article 1 Paragraph 1 of Indonesian Law Number 39/1999 concerning Human Rights, which reads "*seperangkat hak yang melekat pada hakikat dan keberadaan manusia sebagai makhluk Tuhan Yang Maha Kuasa dan merupakan anugerah-Nya yang wajib dihormati, dijunjung tinggi dan dilindungi oleh negara, hukum, Pemerintah dan setiap orang, demi kehormatan serta perlindungan harkat dan martabat manusia.*" (Translate: a set of rights inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the State, the law, the government, and everyone, for the sake of honor and protection of human dignity). It is similar to Pancasila, where each precept contains a deep meaning regarding human rights, which is the Indonesian State guideline.<sup>23</sup>

Jan Materson argues that human rights are "could be generally defined as those rights which are inherent in our nature and without which we can not live as a human being."<sup>24</sup> It means that human rights are inherent in the human being, and without these rights, this human cannot live as a human being. Therefore, anyone cannot arbitrarily remove or even revoke this right. The government must ensure no human rights violations, and anyone who violates them must be subject to the strictest sanctions. Living on earth is a human right. The right to be given life is categorized as one part of human rights to use the mind's capacity to fulfill various ways.<sup>25</sup> The right to life is a fundamental human right, non-derogable right. If there is no right to live, other human rights issues will arise.<sup>26</sup> The explanation in Article 9 of the Law on Human Rights affirms that "*setiap orang berhak atas kehidupan, mempertahankan kehidupan, dan meningkatkan taraf kehidupannya*" (Translate: everyone has the right to life, maintain life, and improve his standard of living). That is, anyone is not

<sup>18</sup> Tan, D. (2022). Metode Penelitian Hukum: Mengupas dan Mengulas Metodologi dalam Kajian Ilmu Hukum. *Amanna Gappa*, 15-36.

<sup>19</sup> Rana & Suharsono. (2011). *Kamus Besar Bahasa Indonesia*, Semarang: Widya Karya.

<sup>20</sup> Wajdi, F., & Imran, I. (2022). Pelanggaran Hak Asasi Manusia Dan Tanggung Jawab Negara Terhadap Korban. *Jurnal Yudisial*, 14(2).

<sup>21</sup> Sulisworo, D. (2012). *Hak Azasi Manusia*, Yogyakarta: Universitas Ahmad Dahlan.

<sup>22</sup> Hutapea, B. (2017). Alternatif Penjatuan Hukuman Mati di Indonesia di Lihat dari Perspektif HAM", *Jurnal Penelitian HAM*, 7(2).

<sup>23</sup> Aswandi, B., & Roisah, K. (2019). Negara hukum dan demokrasi pancasila dalam kaitannya dengan hak asasi manusia (HAM). *Jurnal Pembangunan Hukum Indonesia*, 1(1), 128-145.

<sup>24</sup> Hidayat, E. (2016). Perlindungan hak asasi manusia dalam negara hukum indonesia. *ASAS*, 8(2).

<sup>25</sup> Umanailo, M. C. B. (2019). Strategi Bertahan Hidup Petani Padi Gogo Di Pulau Buru. *Jurnal Ekonomi Pertanian Dan Agribisnis*, 3(1), 50-58.

<sup>26</sup> Zulfa, E. A. (2015). Menelaah Arti Hak Untuk Hidup Sebagai Hak Asasi Manusia. *Lex Jurnalica*, 2(2), 17975.



allowed to prevent someone from being able to live the life they want, as long as they are in normal conditions and do not go against the rules available in society. This affirmation has previously been included in Article 28A of the 1945 Constitution, which states, "everyone has the right to live and has the right to defend his life and life." The article emphasizes "in order to maintain their life" automatically becomes a command for humans to fulfill their right to life.

Sustaining life means that a person tries to save his life to continue his daily life by eating and drinking, exercising, maintaining a healthy body, getting enough sleep, and surviving in an urgent or emergency. Circumstances that force someone to do anything to save their life can occur in a premeditated murder in seizing the buoy on the ship. Premeditated murder is stated in Article 340 of the Indonesian Criminal Code, which states, "*barangsiapa dengan sengaja dan dengan rencana terlebih dahulu merampas nyawa orang lain, diancam karena pembunuhan dengan rencana, dengan pidana mati atau pidana seumur hidup atau selama waktu tertentu, paling lama dua puluh tahun*" (Translate: Whoever deliberately and with premeditated plans takes another person's life, is threatened with premeditated murder, with a death penalty or life imprisonment or for a certain period, a maximum of twenty years). This article means that an act carried out in a sane condition accompanied by the intention of forcibly taking another person's life will receive the death penalty or a life sentence of at least twenty years in prison.<sup>27</sup> Premeditated murder, if judged from the perspective of human rights and linked to Article 28A of the 1945 Constitution and the Criminal Code, is an inappropriate act because murder is a cruel act.<sup>28</sup>

## **2. Appropriate criminal sanctions against premeditated murder due to the seizure of Life Preserves**

The Indonesian Criminal Code not only gives orders regarding the imposition of punishments that should be criminalized to perpetrators but also regulates actions or acts against the law that cannot be criminalized.<sup>29</sup> In other words, the Criminal Code regulates the abolition of criminal acts committed by perpetrators for actions that should be sentenced to criminal penalties. The omission of a criminal act is a situation that makes a person commit a criminal act but is not sentenced to a crime.<sup>30</sup> According to M. Sulaksmo, an accident is "an unexpected and unwanted event that disrupts an activity that has been regulated." It means that it can happen at any time regardless of time.<sup>31</sup> Disasters sometimes require someone to try to save themselves, as happened in a ship in the middle of the sea, which can be anticipated by wearing a life jacket on the ship's passengers. The life vest must have a shape that can support the body weight of every human being so that it can float.<sup>32</sup> Based on a related theme, buoys are the main target for passengers who want to save themselves, so excessive grabbing of the object can occur and result in the death of other passengers. This action can lead passengers to criminal acts of premeditated murder. According to Moeljatno, criminal acts are divided into four types: behavior, the character of denying the rules, the potential for carrying out responsibilities, and bullying through criminal or criminal penalties.<sup>33</sup> Premeditated murder fulfills the element of "there is an unlawful nature," which means that the act is contrary to what is permitted by law or the act

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<sup>27</sup> UTOMO, N. P. (2013). Pertimbangan Hakim Dalam Menjatuhkan Pidana Penjara Seumur Hidup Terhadap Pelaku Tindak Pidana Pembunuhan Berencana (Studi Kasus Di Pengadilan Negeri Sleman). *Jurnal Ilmiah Ilmu Hukum*, 1-15.

<sup>28</sup> Dariyo, A. (2013). Mengapa seseorang mau menjadi pembunuh. *Jurnal Penelitian Psikologi*, 4(1).

<sup>29</sup> Nofrel, D. P., & Edorita, W. (2016). *Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Pembunuhan Karena Membela Diri Yang Melampaui Batas (Noodweer Excess)* (Doctoral dissertation, Riau University).

<sup>30</sup> Dumgair, W. (2016). Pembelaan Terpaksa (Noodweer) Dan Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Axcen) Sebagai Alasan Penghapus Pidana. *Lex Crimen*, 5(5).

<sup>31</sup> Estiyantara, N. F., Wardani, R. P., & Fitriyono, R. A. (2021). Faktor Kriminolog Penyebab Terjadinya Kejahatan Perompakan Kapal Laut. *Gema Keadilan*, 8(3).

<sup>32</sup> Setiyanto, I., & Hartoko, A. (2005). Pengembangan Bahan Polyurethane Pada Rompi Pelampung.

<sup>33</sup> Agung, A. A. G., Dewi, A. A. S. L., & Widyantara, I. M. M. (2021). Perlindungan Hukum terhadap Pelaku Pembunuhan Begal atas Dasar Pembelaan Terpaksa. *Jurnal Interpretasi Hukum*, 2(1), 1-7.

is not appropriate. However, when viewed from the situation, they did this because they were in coercion.

Forced power or *overmacht* is regulated in Article 48 of the Criminal Code, which reads, "*tidaklah dapat dihukum barangsiapa telah melakukan sesuatu perbuatan di bawah pengaruh dari suatu keadaan yang memaksa*" (Translate: it cannot be punished whoever has committed an act under the influence of a coercive condition). Forced power is defined as a situation that is beyond human ability, as well as forcing anyone so that it can put the position awry. *Overmacht* comes from the Dutch language, which means a situation that everyone in any form of business cannot avoid.<sup>34</sup> According to *Memorie van Toelichting*, "coercive power is a force, impulse, or coercion that cannot be resisted." In addition, Simons also provides the view that coercive power must be separated into two, namely narrow and emergency. Narrow coercion means that there are no mistakes in the act. In comparison, the force of an emergency means that the act eliminates the position being against the law.<sup>35</sup> R. Sugandhi states that in understanding coercive power, the scope is limited to three, namely absolute; is relative, and is an emergency.<sup>36</sup> Based on this elaboration, when a passenger snatches another passenger's life vest and kills a life, it does not against the law due to an emergency. This situation leads to the non-fulfillment of the element of premeditated murder in Article 340 of the Criminal Code. This absolute compulsion is a condition where a person cannot do anything else so that they experience something that is entirely unavoidable and does not allow taking another path.<sup>37</sup> In particular, the passenger's intention is only to save himself, and there can be no punishment without any action against the law. Indonesian criminal law does not condemn the crime of murder committed because of *overmacht*. It is the same with human rights.<sup>38</sup> The proper argument for tolerating people who take the buoy, driven by force, is because the situation inside becomes panicky and abnormal. Therefore, a person who murders because of coercion can be sentenced to acquittal. The meaning of Article 28A of the 1945 Constitution has been answered. It requires a person to survive without taking action against the law, with a note that if he is in coercion, there is no other choice to survive. In this case, Human Rights and the Criminal Code provide reasons for forgiveness if the act of defending life must take the life of other people. The act is only limited to sustaining life. It cannot be more than that, such as stealing in a state of urgency and other sinister intentions. The Law on Human Rights tends to be specific, and the Criminal Code towards the general, according to the principle of *Lex specialis derogat legi generali*.

The perpetrator's act has been categorized as a crime and must be given a sanction because it takes the life of someone who has the right to live, but the perpetrator cannot be sentenced because there are forgiving reasons. The action taken by the perpetrator was encouragement from *Overmarcht*, which was carried out due to a forced urge so that he took action due to internal pressure that came from outside or an unexpected direction. Therefore this internal function became abnormal.<sup>39</sup> Based on the principle of no crime without mistakes, giving criminal penalties against humans can be carried out by looking at the element of delinquency in the perpetrator.<sup>40</sup> This principle is the same as the proverb, "there is no smoke without the presence of fire." It means that an act will not arise without a cause, but in premeditated murder, in the case of fighting over a life vest to save one life, one can still get legal protection.

<sup>34</sup> Sudarsono. (2007). *Kamus Hukum*, Jakarta: Rineka Cipta.

<sup>35</sup> Tahir, B. (2018). Pertanggungjawaban Pidana Menurut Hukum Pidana Tentang Daya Paksa (*Overmacht*). *E-Jurnal SPIRIT PRO PATRIA*, 4(2), 115-124.

<sup>36</sup> Prasad, G., Dewi, A. A. S. L., & Widyantara, I. M. M. (2021). Tinjauan Yuridis terhadap Tindak Pidana Daya Paksa dan Pembelaan Terpaksa. *Jurnal Konstruksi Hukum*, 2(3), 483-488.

<sup>37</sup> R. Soesilo. (n.d). *Kitab Undang-Undang Hukum Pidana*. Bogor: Politeia.

<sup>38</sup> Lubis, F., & Siregar, S. A. (2020). Analisis Penghapusan Pidana Terhadap Perbuatan Menghilangkan Nyawa Orang Lain Karena Alasan Adanya Daya Paksa (*Overmacht*). *JURNAL RETENTUM*, 1(1), 9-17.

<sup>39</sup> *Ibid*.

<sup>40</sup> Asikin, Z. (2016). *Pengantar Tata Hukum Indonesia*. Jakarta, PT Raja Grafindo Persada.

## CONCLUSION

Human rights regulate the right to life of a human being owned from birth, without exception. Based on Article 28A of the 1945 Indonesian Constitution which reads, "*setiap orang berhak untuk hidup serta berhak mempertahankan hidup dan kehidupannya*" (Translate: everyone has the right to live and has the right to defend his life and life), it can be concluded that a person who has a life vest or other means of safety has the right to live before the means is taken by someone else, so that person loses his life and result in a premeditated murder. However, due to a forced emergency or *Overmacht*, the act is not categorized as premeditated murder. The sentence is abolished, even though the victim also has the right to live according to Article 28A of the 1945 Constitution.

Sanctions given to people who have murdered under forced circumstances or *Overmarcht* are protected by Article 48 of the Criminal Code, which reads, "*tidaklah dapat dihukum barangsiapa telah melakukan sesuatu perbuatan di bawah pengaruh dari suatu keadaan yang memaksa*" (Translate: Whoever has committed an act under the influence of a coercive condition). It means that in a situation that is beyond human capacity, and it threatens his life or his own life, in a state of stress that cannot be resisted, or in a situation where there is no way out other than doing this, and it can be proven, then the person is legally free and gets criminal abolition. Even though there is the principle of *Lex specialis derogat legi generali*, they are still forgiven in a state of urgency.

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