








LEX JOURNAL: KAJIAN HUKUM DAN KEADILAN

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**POLICY FORMULATION OF EXPIRATION DATE FOR THE CRIME OF
MURDER IN INDONESIAN CRIMINAL LAW**

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ABSTRACT

Murder constitutes a grave crime against human life, regulated under Articles 338–340 of the Indonesian Penal Code (KUHP), with far-reaching impacts on individuals, families, and society. Within Indonesian criminal law, the statute of limitations, as governed by Article 78 of the KUHP and Article 136 of Law No. 1 of 2023, serves as a factor that may extinguish the right to prosecute, including for murder cases. This study aims to analyze the policy formulation of the statute of limitations for murder under the KUHP and Law No. 1 of 2023, as well as its implications for justice and human rights (HR), employing criminal law policy theory and punishment theory as analytical frameworks. Employing a normative legal research approach through statute, conceptual, and case methods, this study finds that Article 78 of the KUHP establishes a 12-year statute of limitations for ordinary murder, which potentially undermines victims' rights to justice by allowing perpetrators to evade punishment due to the passage of time. In contrast, Law No. 1 of 2023 extends the statute of limitations to 18 years and introduces flexibility by permitting recalculation of the limitation period upon the commencement of prosecution, thereby strengthening law enforcement and human rights protection. Nevertheless, the persistence of the statute of limitations continues to pose a barrier to achieving substantive justice in serious murder cases. This study recommends a reevaluation of the statute of limitations policy, advocating for its abolition in murder cases to uphold the retributive, preventive, and rehabilitative principles of punishment theory, while ensuring legal certainty and justice for victims.

Keywords: Statute of Limitations, Murder, Formulation Policy, Criminal Law

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1. INTRODUCTION

Expiry has the primary purpose of protecting individuals from endless prosecution and providing legal certainty. In this sense, the policy serves to prevent prolonged legal uncertainty, where an individual could be constantly threatened by the possibility of indefinite prosecution. However, when applied to murder, which is one of the most serious crimes in criminal law, these considerations become more complicated. Murder not only costs the life of an individual but also has a profound impact on the family and society at large.

The expiration period applies to all types of criminal offenses, including murder, so that if new evidence related to a murder case is found after the expiration period has passed, the perpetrator cannot be prosecuted for his actions. The application of expiration aims to anticipate the possibility of damage or loss of evidence due to the passage of time. However, in this modern era, technological advances have made it possible to store evidence for long periods of time, such as voice recordings, conversations on chat applications, photos, and videos. In addition, many technology experts can now support the investigation and investigation process by utilizing technological developments to find evidence related to crimes in the digital era (Brown & Lenz, 2019).

Christopher Geth explains that time has a significant influence on the justice system, both as an obstacle and a tool to achieve justice. One example is the concept of statutes of limitations, which are designed to ensure due process and provide legal certainty. However, for serious crimes, these rules are often extended or abolished because society considers that the gravity of the crime outweighs concerns about the passage of time (University of Basel, 2025).

Geth also highlighted how forgetting, both from individuals and communities, poses a challenge to legal efforts. However, technological advances, such as the use of DNA evidence, have helped overcome these limitations. The main challenge remains how to balance the need for accountability of criminals with fairness and protection of the rights of the accused. Therefore, Geth asserts that justice systems need to continue to

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develop a balanced approach, prioritizing the preservation of evidence and support for victims, to ensure that justice is not dependent on the passage of time. Time, he argues, should not be an excuse for the loss of the truth, but rather should be a tool to uncover it (University of Basel, 2025).

A clear example of the challenges of expiry policies can be seen in the Taslim murder case in the Riau Islands, which occurred on April 14, 2002. In this case, although two suspects had been sentenced to 15 years' imprisonment, five others were still on the wanted list. The investigation process was halted due to expiry after the stipulated period had passed. The victim's family felt that justice had not been fully served and applied to the Constitutional Court to extend the expiration period from 18 years to 36 years (Constitutional Court of the Republic of Indonesia, 2025). This request reflects the concern that perpetrators of serious crimes may avoid accountability due to the perceived shortness of the statute of limitations.

In Constitutional Court Decision Number 86/PUU-XX/2022, the Constitutional Court emphasized that the principle of expiration is a form of recognition of the principle of due process of law, which is an important element in a constitutional state of law. The Constitutional Court also emphasized that the expiry provision is a tool to create a balance between the interests of perpetrators, victims, and society in the legal process. It aims to prevent the state from exercising prosecutorial power indefinitely, which can create legal uncertainty and injustice (Constitutional Court of the Republic of Indonesia, 2025). However, for victims of serious crimes such as murder, time limitations are often perceived as a denial of justice.

From a legal perspective, expiry plays a role in ensuring legal certainty and efficiency in the justice system. However, many legal experts argue that an expiration date that is too short can provide opportunities for criminals to escape legal responsibility. According to Rudy Antow, the provisions regarding the elimination of criminal prosecution authority in murder cases due to expiration are regulated in Article 78 in conjunction with Article 338 of the Criminal Code, which states that the right to prosecute

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a criminal will be lost after a certain period has passed (Antow, 2019). This reflects that although the regulation aims to create legal certainty, on the other hand, it can have a negative impact on the rights of victims and their families to obtain justice.

Although Article 78 of the Criminal Code and the expiry provisions have been regulated, their application poses problems when faced with murder crimes that have a serious impact on human rights. In this case, the juridical issue is the normative vacuum, as seen from the absence of a flexible mechanism to remove or extend the expiration period in cases of serious or complex murders that require a long time to disclose evidence. This leads to a legal loophole where perpetrators of criminal acts can avoid legal responsibility due to expiry limitations. In addition, although Article 136 of Law No. 1 of 2023 has extended the expiry period to 20 years, this has not fully addressed the need for substantive justice for victims and their families, as reflected in the Taslim murder case in the Riau Islands (Antow, 2019).

In the international context, some countries do not impose an expiry for serious crimes such as murder. This policy is based on the principle that serious crimes, especially those involving loss of life, are offenses that are too serious to be left without legal consequences simply because of the passage of time (Schünemann, 2020). This approach shows the philosophical differences between Indonesian criminal law and other countries in determining the time limit for criminal prosecution.

Based on the description above, there is a need to review the expiry formulation policy, especially in murder cases. This review is not only important to analyze the provisions and policies in the Criminal Code and Law No. 1 of 2023, but also to compare them with approaches applied in other countries. Thus, an expiry formulation policy that is more in line with the principles of justice and protection of human rights can be formulated.

2. RESEARCH METHODS

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Solving a problem becomes the subject of discussion, in this study, using normative legal research, normative legal research is normative legal research by comparing norms, legal concepts, and regulations in both sources of law and analyzing them using the interpretation method. Normative legal research is a study whose data source is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials (Amiruddin & Asikin, 2006). The characteristic of normative legal research is the approach used to examine legal products, both based on literature and laws and regulations, legal principles, and rules governing civil relations related to the problem under study.

3. DISCUSSION

Prosecution expiration, known in Dutch as *verjaring* and in English as statute of limitations (Garner, 2004)/Expiration is an important principle in criminal law that establishes a certain time limit for the state to prosecute the perpetrator of a criminal offense. The application of this concept aims to ensure the creation of legal certainty, protect human rights, and encourage the creation of an efficient and responsive criminal justice system.

The regulation on the expiry of prosecution is explicitly stated in Articles 78 to 80 of the Criminal Code (KUHP). However, in order to gain a more comprehensive understanding of the historical and philosophical basis of these provisions, it is important to refer to *Memorie van Toelichting* (MvT), the official explanatory text accompanying the drafting of the Criminal Code by the Dutch colonial government. This document provides the context and normative considerations behind the adoption of the concept of *verjaring* in the Indonesian legal system.

The concept of *verjaring* in the MvT is based on the principle of legal certainty (*rechtszekerheid*), which was central to the Dutch legal system in the 19th century. In the view of colonial lawmakers, the expiration of prosecution was necessary to prevent prolonged legal uncertainty for individuals suspected of crimes (Moeliono, 2021). By

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setting a specific time limit, in this case 12 years for ordinary murder (Article 338 of the Criminal Code) and 18 years for premeditated murder (Article 340 of the Criminal Code), the perpetrator will not constantly live under the threat of prosecution after a long time has passed. MvT explains that without this time limit, law enforcement can be misused for revenge or political purposes, which is contrary to the principle of the rule of law (*rechtsstaat*).

Philosophically, MvT attributes *verjaring* to the idea that as time passes, the relevance of criminal prosecution diminishes as evidence becomes difficult to gather, witnesses' memories fade, and the social impact of the crime dims. In the context of murder, MvT argues that after a certain period, society tends to “forget” the crime, so prosecution no longer has social urgency. This approach reflects the influence of legal positivism, which emphasizes the importance of a clear and definitive rule of law to maintain social stability, even if this may come at the expense of justice for victims (Moeliono, 2021).

Historically, the concept of *verjaring* in the MvT was influenced by Continental European legal traditions, particularly the French Code Pénal (1810) and the previous Dutch legal system. During the colonial period, the Dutch government wanted to create a uniform criminal law system in its colonies, including the Dutch East Indies, to facilitate legal administration. MvT explains that expiry was adopted as a compromise between the need to enforce the law and the need to protect individuals from unfair prosecution after a long time (Moeliono, 2021).

Overall, the concept of *verjaring* in the MvT reflects a colonial legal outlook that was rigid and oriented towards administrative efficiency, rather than victim-centered justice. Although the MvT provides a strong historical foundation for legal certainty, its application to murder creates an imbalance between the perpetrator's right not to be indefinitely prosecuted and the victim's right to justice. In the modern Indonesian context, where awareness of human rights is increasing, the concept of *verjaring* in the MvT needs

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to be reviewed to ensure that justice for murder victims is not sacrificed in favor of outdated legal certainty.

Expiration is an active rule in criminal law, with the urgency of expiration in criminal cases, which are divided into two categories (Hiariej, 2014):

- a. Material law, not all criminal cases ultimately need to be prosecuted when they are in different time zones; the relevance is almost questionable. Is it necessary to prosecute a suspect who did this several years ago?
- b. Formal law, if the time limit has passed, how can the witnesses and evidence be remembered to conduct an investigation?

The regulation of prosecution expiry in the Criminal Code (KUHP) is the result of a long development in the history of criminal law, especially those rooted in the Continental European legal system. The historical background shows that since the Ancient Roman era, the principle of limitation of prosecution time has been recognized as an effort to protect individual rights from the threat of endless prosecution. In this case, expiration was adopted as a legal mechanism to provide legal certainty for every citizen, while limiting the state's power to prosecute a person for criminal acts after a certain time has passed.

This time limitation on prosecution arises from the belief that the passage of time leads to a decline in the quality of evidence. Over time, evidence can be lost, witnesses can forget or die, and people's memories of criminal events fade. Therefore, prosecutions conducted after a very long time risk creating injustice, both for the victim and for the perpetrator. This is the main consideration in formulating the rules of prosecution expiration in the Criminal Code, so that the judicial process continues to run fairly and proportionally (Remmelink, 2003).

If examined deeper philosophically, the expiration of prosecution is closely related to the principle of legal certainty. Every individual has the right to know how long he or she can be pursued by the threat of criminal prosecution. Without a firm time limit, a person will live in prolonged uncertainty and fear, which ultimately contradicts the

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principles of justice and protection of human rights. With the existence of expiration, the law provides a guarantee that after a certain period, the state's right to prosecute will be canceled in order to create stability, order, and social justice (Hanif, 2018).

In addition to the aspect of legal certainty, expiry also contains the value of social justice. In society, the passage of time often brings about changes in attitudes towards criminals. After many years, people may forget or forgive the perpetrator's actions, so prosecution carried out after a long time has the potential to cause new unrest. In this case, expiration reflects the value of collective forgiveness and prevents the emergence of prolonged social grudges, so that the law is not only retributive but also promotes resocialization.

The urgency of the expiration regulation in the KUHP is also based on practical considerations in law enforcement. The longer the time elapses since the occurrence of a criminal offense, the more difficult it is for law enforcement officials to collect valid evidence. The evidentiary process in court becomes ineffective, even potentially resulting in an unfair verdict. Therefore, expiration serves to prevent prosecution failures caused by evidentiary difficulties due to the passage of time, so that the judicial process continues to run efficiently and accountably (Kaligis, 2018).

The expiration provisions in the Criminal Code also take into account the different levels of crime. The expiration period is differentiated based on the severity of the crime, ranging from one year for minor offenses to eighteen years for serious crimes punishable by death or life imprisonment. This division is based on the principle of proportionality, where more serious crimes are given a longer time for prosecution, while minor crimes are given a shorter time. This shows that there are rational considerations in determining the time limit for prosecution (Kaligis, 2018).

Expiry also serves as a mechanism to protect the rights of suspects or defendants. Without a time limit, a person may be pursued by the threat of criminal prosecution for the rest of his or her life, even when evidence and witnesses are no longer relevant or reliable. This contradicts the principles of justice and the protection of human rights that

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are the foundation of the modern legal system. Thus, expiry becomes an important instrument to maintain a balance between the interests of the state and the rights of individuals (Sofyan & Azisa, 2016).

The expiration regulation in the Criminal Code also regulates the mechanism for termination and postponement of expiration. For example, if during the expiration period there is a prosecution action known by the suspect, the expiration period is stopped and a new period begins. Then, if there is a pre-judicial dispute that must be decided first, the expiration process can be postponed until the dispute is resolved. This arrangement aims to maintain a balance between the interests of law enforcement and the protection of individual rights, as well as preventing abuse of the procedure by criminals.

In practice, expiration is often an excuse for law enforcement to stop the prosecution process that is no longer effective or relevant. However, expiration can also be utilized by criminals to avoid legal accountability by delaying the legal process until the expiration period expires. Therefore, the application of expiration must be carried out carefully and proportionally, taking into account the interests of justice and legal certainty.

From the victim's perspective, expiry provides certainty about how long they can pursue justice through legal channels. However, in some cases, expiration can also be an obstacle for victims to obtain justice, especially if the reporting or prosecution process experiences administrative or psychological obstacles. Therefore, expiry arrangements need to be critically reviewed so as not to create new injustices, especially for victims of criminal acts who experience trauma or difficulties in accessing the justice system (Rosalina, 2022).

Expiration is also not a form of forgiveness or elimination of the offender's guilt, but rather a legal mechanism to regulate the state's rights and authority to prosecute criminals. In other words, expiration does not eliminate the criminal act itself, but only eliminates the state's right to prosecute the perpetrator after a certain period has passed.

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This understanding is important to avoid misunderstandings in the application of criminal law, especially in communities that are still unfamiliar with the concept of expiration.

In certain cases, such as gross human rights violations, the principle of expiry is overridden in the interests of universal justice. Law No. 26/2000 on Human Rights Courts expressly excludes expiry for crimes of genocide and crimes against humanity. This exception is based on the consideration that these extraordinary crimes are violations of universal principles that should not be left without legal accountability, so expiry does not apply in this context (Helmi, 2016).

Prosecution expiry serves as an instrument to balance the state's interest in enforcing the law and the individual's interest in obtaining protection from the threat of prolonged prosecution. This balance is considered important to maintain the legitimacy of the criminal justice system while preventing abuse of power by law enforcement officials. With expiry, the state is reminded to act promptly in prosecuting crimes and not to procrastinate in enforcing the law.

The expiry regulation in the Criminal Code is part of the criminal law codification efforts aimed at creating an organized, clear, and predictable legal system. With a firm time limit for prosecution, everyone can know their rights and obligations, and can plan their lives without being haunted by endless legal uncertainty. This is also in line with the purpose of law to create order and justice in society, so that criminal law does not become a tool of oppression.

Over time, expiry arrangements also need to be adjusted to the dynamics of increasingly complex crimes, such as transnational crimes, corruption, and cybercrime. In some cases, an expiration period that is too short can become a loophole for criminals to escape the law. Therefore, the renewal of expiration regulations must take into account the characteristics and complexity of criminal offenses that develop in society, so that they remain relevant and effective in facing the challenges of the times.

The expiration regulation in the Criminal Code also has implications for the effectiveness of law enforcement. In practice, expiration is often used as an excuse to stop

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the prosecution process that is no longer effective or relevant. However, if not properly regulated, expiration can be a loophole for criminals to avoid legal responsibility. Therefore, the application of expiration must be carried out in a balanced manner, taking into account the interests of victims, perpetrators, and society as a whole.

It is important to note that the expiry provisions in the Criminal Code are the result of a compromise between various legal, social, and humanitarian interests. Expiration is not only a matter of procedural technicalities, but also reflects the values of justice, legal certainty, and protection of human rights. Thus, expiration must be understood as an integral part of the criminal law system that serves to maintain a balance between the interests of the state, society, and individuals.

This means that the urgency of regulating the expiration of prosecution in the Criminal Code lies not only in the technical aspects of law, but also in the broader philosophical and sociological dimensions. Expiration becomes an important instrument to ensure that law enforcement runs fairly, humanely, and by the principles of the rule of law. Therefore, the expiration provision in the KUHP must be continuously reviewed and adjusted to the times, so that it remains relevant and effective in realizing the objectives of criminal law in Indonesia.

a. Philosophical Dimension

The philosophical dimension in the regulation of prosecution expiration relates to the essence of justice and the purpose of criminal law within the framework of the rule of law. The expiration of prosecution reflects the principle that punishment does not solely aim to provide a deterrent effect, but also to maintain a balance between legal certainty and the protection of human rights. In the context of the crime of murder, maintaining the expiration can be considered as a form of respect for humanitarian principles, where the perpetrator is not pursued indefinitely to maintain the stability of their social life after a certain period. However, the idea of eliminating the expiry date for the crime of murder rests on the philosophical view that retributive justice should be prioritized for serious crimes, because murder takes away the

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fundamental right to life, so prosecution without a time limit is considered a more proportional form of justice (Muladi & Arief, 2018).

Philosophically, expiry is also related to the concepts of forgiveness and rehabilitation. Modern criminal law focuses not only on punishment, but also on restoring social relations between offenders, victims, and society. With expiry, offenders are allowed to improve themselves after a certain period without prosecution, which reflects humanitarian values in legal philosophy. However, in the case of murder, the abolition of expiry may be based on the argument that the crime has irreversible permanent effects, so justice should continue to be served without considering time as a limitation. This reflects the view that the value of distributive justice is more important than forgiveness in the case of serious crimes (Rahardjo, 2000).

The philosophical dimension also involves consideration of legal certainty as a pillar of the rule of law. Expiration ensures that the law enforcement process is not protracted, thus providing certainty for the perpetrator and the community. However, the idea of abolishing expiry for the crime of murder emphasizes that legal certainty should not come at the expense of justice for victims. In this perspective, justice is considered a higher value than legal certainty, as murder violates basic rights that cannot be compromised. Therefore, expungement is considered an effort to ensure that the criminal law remains faithful to its primary purpose, which is to protect fundamental human values (Chazawi, 2005).

b. Sociological dimension

From the sociological dimension, the regulation of prosecution expiration in the Criminal Code reflects the dynamics of the relationship between law and society. Expiration is considered a mechanism that maintains social stability by preventing overly long law enforcement, which can disrupt public order due to conflicts that continue to be revived. In the context of homicide offenses, maintaining expiry can help society to “move on” from collective trauma, especially if the case has long passed

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and the perpetrator has been reintegrated into society. However, the proposed abolition of the expiry for murder reflects the sociological need of society to ensure that perpetrators of serious crimes do not escape justice, as this can fuel distrust of the legal system and increase social tensions (Arief, 2005).

Furthermore, expiry also serves to maintain the efficiency of law enforcement in a sociological context. Prosecutions conducted after a very long time often face obstacles such as the disappearance of evidence or witnesses, which can undermine the judicial process and lead to social discontent. However, in murder cases, the removal of the statute of limitations can be justified by society's need to see justice served, especially with advances in forensic technology that allow for the discovery of new evidence even after a long time. This reflects the law's response to the expectations of a modern society that increasingly demands accountability in cases of serious crime (Soekanto, 2013).

The sociological dimension also includes aspects of public trust in the legal system. Expiration can be considered a form of social compromise to avoid enforcing laws that are considered irrelevant after a long time. However, in murder cases, the elimination of expiry can strengthen public trust in the law, as it shows that the state is serious in dealing with crimes that claim lives. This is important to maintain the legitimacy of the legal system in the eyes of society, especially when murder cases often lead to collective trauma and strong demands for justice from victims' families and the wider community (Atmasasmita, 2012).

4. CLOSING

The policy formulation of the expiration of the crime of murder in the Old Criminal Code still shows fundamental weaknesses. The expiration of prosecution and criminal execution in both ordinary and premeditated murder overemphasizes legal certainty, without considering justice for victims and the development of forensic technology that can reveal old evidence. The expiry provisions open a loophole for perpetrators of serious

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crimes to escape punishment when time passes without legal proceedings, thus ignoring the rights of victims and the principle of justice. Murder, as a serious violation of human rights, should not be limited by time.

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