

---

---

## Disparity Analysis of Judge's Decisions of The Crime Of Premeditated Murder

Febrianti R. Sungo<sup>1</sup>, Fence M. Wantu<sup>2</sup>, Novendri M. Nggilu<sup>3</sup>

<sup>1</sup> Faculty of Law, Gorontalo State University, Indonesia. E-mail: sungofebrianti2@gmail.com

<sup>2</sup> Faculty of Law, Gorontalo State University, Indonesia. E-mail: fence\_wantu@gmail.com

<sup>3</sup> Faculty of Law, Gorontalo State University, Indonesia. E-mail: Novendrilawfaculty@ung.ac.id

---

### ARTICLE INFO

### ABSTRACT

#### **Keywords :**

*Disparity Analysis, Murder.*

#### **How To Cite :**

Sungo, F.R., Wantu, F.M., Nggilu, N.M. (2019). Disparity Analysis of Judge's Decisions of The Crime of Premeditated Murder. *Estudiante Law Journal 1 (1): 53-67*

#### **DOI :**

This study aims to find out the Disparity analysis of judges' decisions on the crime of premeditated murder in Decision Number 7/Pid.Sus-Anak/PN.Kbj and Decision Number 1/Pid.Sus-Anak/2016/PN.Gto. The method used in this research was normative legal research. The approach used a legal approach or a statute approach and a case approach. The judge in making a decision, of course, first sees whether the act committed by the child is intentional or unintentional so that it can be seen by a judge when enforcing Restitave Justice where one way to move the legal process through the courts is to become a legal settlement outside the court by involving the victim's family as the most important element in the settlement of a crime. However, if you look at the crimes against children that have been committed, diversion efforts are not enforced because the child has committed a very severe crime. The community needs to understand that inequality or disparity is not a bad thing but it is natural for clear legal reasons except arbitrarily, this is normal and is not prohibited by the legal system in Indonesia. The community needs to be informed in advance about the background of the emergence of disparities in decision-making.

@2019 Sungo, F.R., Wantu, F.M., Nggilu, N.M.

Under the license CC BY-SA 4.0

## INTRODUCTION

### A. Background

At the Preamble to the 1945 Constitution of the Republic of Indonesia, it is explained that one of them is to create a government that guards and protects all Indonesian people. Starting from understanding the term which states that humans are wolves for other humans or humans are predators of other humans or in the legal language, namely (*Homo homini lupus*), the meaning of *Homo homini lupus* is that humans are always selfish and do not want to see other people so that it is no longer impossible that it often happens when humans commit violations, whether intentional violations or unintentional violations, which result in these actions being detrimental to the general public and often even violating legal norms that apply in the general public, which is referred to as a criminal act or offense.<sup>1</sup> So that in modern times is an era where humans are required to develop themselves.<sup>2</sup> Norms that develop in society and are flexible as well as encourage creativity in providing public services.<sup>3</sup>

One of the goals of a state is to protect the entire Indonesian nation as stated in our constitution, namely the 1945 Constitution of the Republic of Indonesia. In practice in everyday life, if there are people who are negligent or intentionally not carrying out their obligations, it will result in the general public being harmed, it can be said that the citizen has violated the law because he is no longer carrying out his/her obligations to obey and comply the law. State involvement is also one of the characters of the conflict phenomenon.<sup>4</sup>

In line with the progress and the rapid pace of science and technology today<sup>5</sup>. Crimes are not only committed by adults but have penetrated or entered into children or to minors, it is not unmitigated that the crimes committed by them are already included in the category of the crime of premeditated murder. Furthermore, when talking about children, children are a potential regeneration of a nation in the future, because children have a large

---

<sup>1</sup> Novendri M. Nggilu dan Ahmad (2020). Denyut Nadi Amandemen Kelima Undang-Undang Dasar 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution. *Jurnal Konstitusi*, 202016(4), 785-808

<sup>2</sup> Bakung, Dolot Alhasni. (2020) Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right. *JALREV* 2 (1), 67

<sup>3</sup> Norma L.P. Wemben. (2010). "Kinerja Pelayanan Pada Kantor Badan Pertanahan Nasional Kabupaten Gorontalo." *Jurnal Legalitas* 3 (2), 131

<sup>4</sup> Yudha Chandra Arwana. "Jalur Mediasi dalam Penyelesaian Sengketa Pertanahan Sebagai Dorongan Pemenuhan Hak Asasi Manusia." *JALREV* 1 (2) 2019, 216

<sup>5</sup> Lakoro, A., Badu, L. W., Achir N. (2020). Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online, *JURNAL LEGALITAS*, Vol 13, No. 01(2020), 32

enough role in determining the direction of the nation and also as a reflection of the life behavior of a nation in the future.<sup>6</sup>

As an element that is expected to be able to carry out the successor of national development, children should be able to behave well in their time, but the changes and developments of the times sometimes make children often involved in doing different things and against the law, such behavior is very unnatural for their age who are still children, so this causes frequent delinquency where the perpetrator is a child. In essence, every human being, whether grown-up or still a child, cannot be separated from punishment if someone is proven to have committed a crime. The environment also sometimes causes changes in their mindset and behavior. Development is a strategic step to realize these national goals.<sup>7</sup>

Looking at the definition of children, it can be ascertained that children are one of the assets of the nation and state, where children are the successors who should be guarded and taught good things. So with that, when children get bad treatment, their rights should be protected through various regulations that have been made by the government.

The process of resolving a criminal act committed by children is regulated in a special law, namely Law Number 11 of 2012 which regulates how the juvenile justice process is carried out, which is effective starting on June 30<sup>th</sup>, 2014. As for some of the functions of the constitution, namely how Human rights are protected and this is guaranteed by law. So that this becomes the constitutional right of every Indonesian citizen.<sup>8</sup> This is because human rights are part of the administration of justice within the framework of an independent judiciary.<sup>9</sup> The right to life must be protected by the state, especially the rule of law state.<sup>10</sup>

The essence of Law Number 11 of 2012 is concerning the placement of children who are undergoing a judicial process, they cannot be placed or entrusted to a correctional institution but are placed in a special child development institution. The main thing in this law is regarding affirmations

---

<sup>6</sup> Wagianti Soetodjo, *Hukum Pidana Anak*, (Bandung: PT Refika Aditam, 2010), 5.

<sup>7</sup> Ahmad Rustan Syamsuddin. (July, 2020) Pembuktian Penyalahgunaan Wewenang Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang dan Jasa. *JALREV* 2 (2), 163

<sup>8</sup> Nggilu, N., & Wantu, F. M. (2020). Menapaki Jalan Konstitusional Menuju Zaken Cabinet: Ikhtiar Mewujudkan Pemerintah Berkualitas Konstitusi. *Jurnal Hukum Samudra Keadilan*, 15(1), 128

<sup>9</sup> Nabih Amer. (2020). "Analisis Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Negara Hukum." *Jurnal Legalitas*. 13 (1), 12

<sup>10</sup> Lisnawaty Badu. (2012). Euthanasia Dan Hak Asasi Manusia. *Jurnal Legalitas*. 5 (1), 1

related to restorative justice and diversion, this means that children are avoided and kept away from dealing with the law so that they can avoid being seen by children who are dealing with the law in the hope that the child can return to society naturally.

Efforts that can be made for this are to bring legal decisions closer to the sense of justice experienced by the community so that the implementation of the law creates more order in the community itself.<sup>11</sup> What is more important is that it is now one of the most efficient steps in doing business.<sup>12</sup> To cite as said by Fence M. Wantu in his Journal that the essence of justice is an assessment from one person to another, which is generally seen from the party receiving the treatment only.<sup>13</sup> So by looking at the implementation of the rules in question, of course, it has worked well according to the applicable procedures.

With the increasing number of murder cases, all parties have a role to eradicate such as the prosecutor's office, the police, and the judiciary.<sup>14</sup> As for children who commit crimes and violate the law, they must be held accountable for their actions before the court. Related to the problem in enforcing these rules, namely the disparity in the decisions given by the court. The following are some court decisions regarding the crime of premeditated murder in which the perpetrators are children and the verdicts given by the judges are different even though in the same case, one of them is Decision Number 7/Pid.Sus-Anak/2015/PN Kbj Kabanjahe Court Judges Child, ANDIKA PUTRA RAMADHAN TARIGAN also known as MADAN who was 15 years old was legally proven and committed a crime of premeditated murder as stated in Article 340 of the Criminal Code in conjunction with Article 55 paragraph (1) of the 1st Criminal Code in conjunction with Law Number 11 of 2012 concerning Juvenile Justice has been fulfilled. Sentencing the child, ANDIKA PUTRA RAMADHAN TARIGAN also known as MADAN with imprisonment of 7 (seven) years according to the facts and evidence that have been revealed in the trial and punishing the child, PUTRA RAMADHAN TARIGAN also known as MADAN by paying a court fee of IDR. 1,000.00;- (one thousand rupiah) and Decision Number 1/Pid.Sus-Anak/2016/PN. Gto sentenced a 17-year-old child named Nanda also known as Fifi with a sentence of 8 (eight) years in prison

---

<sup>11</sup>Ibrahim Ahmad. (2010). "Prinsip Keadilan Dalam Penyelesaian Sengketa Tanah Untuk Kepentingan Pembangunan." *Jurnal Legalilas* 3 (2), 21

<sup>12</sup>Mohamad Rivaldi Moha. (July, 2020). Urgensi Pendaftaran Penyelenggara Sistem Elektronik Bagi Pelaku Usaha E-Commerce. *JALREV* 2 (2), 115

<sup>13</sup>Fence M. Wantu. (Juni, 2013). Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata. *Jurnal Mimbar Hukum*. 25 (2), 206

<sup>14</sup>AdamiChazawi. *Kejahatan Terhadap Tubuh Dan Nyawa*. (Jakarta, Raja Grafindo Persada, 2010), 56

who has been legally proven to have committed premeditated murder as stated in Article 340 of the Criminal Code in conjunction with Article 55 paragraph (1) of the 1st Criminal Code in conjunction with Law Number 11 of 2012 concerning Juvenile Justice.

## **B. Problem Formulation**

How is the Disparity analysis of the judges' decisions on the crime of premeditated murder in Decision Number 7/Pid.Sus-Anak/PN.Kbj and Decision Number 1/Pid.Sus-Anak/2016/PN.Gto.

## **C. Research Method**

The type of research used in this research was normative legal research. The approach used a legal approach or a statute approach and a case approach. This is because the author used the constitution or the law as a basis to carry out the analysis.<sup>15</sup>

## **I. DISCUSSION**

### **Disparity Analysis of the Judges' Decisions on the Crime of Premeditated Murder in Decision Number 7/Pid.Sus-Anak/Pn.Kbj and Decision Number 1/Pid.Sus-Anak/2016/Pn.Gto**

In the implementation of the judge's decision, of course, it must be more proportional. The point is that the decision to be taken by a judge in a court, both in criminal and civil courts, must be truly objective and impartial to anyone. The judge's decision in a criminal act, of course, a judge must be active when the parties have submitted their dispute case to the judge.

#### **1. Analysis of Court Decision Number 7/Pid.Sus-Anak/2015/PN Kbj**

A criminal case involving a minor with a premeditated murder motive by the 15-year-old convict Andika Putra Ramadhan Tarigan also known as Madan has killed the victim, Krisna Wahyudi. At that time the perpetrator of the murder and witness Yospan Efendi Tarigan also known as Batu also known as Bokir planned this murder based on wanting revenge because the victim hit Yosphan Efendi Tarigan also known as Batu also known as Bokir who in this case acted as a witness, this incident began when the child and the victim experienced conflict and the victim intentionally hit the child who in this case is the brother of the perpetrator as well as a witness, because of this the witness reported the incident to the perpetrator and together planned to kill the victim with the witness taking the victim to a dark place while the perpetrator

---

<sup>15</sup>Johny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif*, (Malang: Boymedia Publishing, 2009), 30

prepared a knife to attack the victim by stabbing the tip of the knife into the victim's body repeatedly, proved that the perpetrator had the intention and plan to kill the victim, Krisna Wahyudi.<sup>16</sup>

According to the witness, the victim was stabbed with a knife, but the witness forgot when it happened. The victim died clashed with witness Andika also known as Madan who happened to be with witness Andika also known as Madan. Eyewitnesses said Andika also known as Madan brought a knife and Andika also known as Madan was the first to invite Yospan to kill Krisna Wahyudi. When Andika also known as Madan was about to kill Krisna Wahyudi or the victim, while they were at the wine shop, the witness told Andika that the witness had been beaten by the victim. At that time Andika was about to go to Tigabinanga for a while, so he told the witness to wait, and after returning to the wine shop, Andika Ramadhan also known as Madan there he showed the witness a knife.<sup>17</sup>

Witness Batu explained that after showing the knife, Andika then moved to invite Krisna Wahyudi to go home together by riding a motorbike, then in a place where there was no lighting, Andika and Batu immediately stopped the motorbike then Andika also known as Madan immediately got off his motorbike and immediately pointed the knife in his hand towards victim Krisna Wahyudi several times in the chest, stomach, neck, and hips. When the victim Krisna Wahyudi lay motionless then the witness named Batu asked for the knife from Andika also known as Madan and then the witness Batu also stabbed the victim Krisna Wahyudi until several stabs. After they left the victim at the incident site and went towards the *tigaberingin*, the witness and Madan took clothes, and then we went to our uncle's house in Perbesi Village. Then our uncle took us to the local police station to surrender.<sup>18</sup>

The Public Prosecutor charged that the defendant Andika Putra Ramadhan Tarigan would be charged with Law Number 11 concerning Juvenile Justice with the indictment of Article 320 of the Criminal Code in conjunction with Article 55 (1) to 1 of the first Criminal Code. After the consideration of the public prosecutor that all the elements of the first alternative indictment have proven the actions committed by the perpetrators, they must be tried and sentenced to prison for the actions that have been committed.<sup>19</sup>

---

<sup>16</sup> Putusan Pengadilan Nomor 7/Pid.Sus-Anak/2015/PN Kbj

<sup>17</sup> Putusan Pengadilan Nomor 7/Pid.Sus-Anak/2015/PN Kbj

<sup>18</sup> Putusan Pengadilan Nomor 7/Pid.Sus-Anak/2015/PN Kbj

<sup>19</sup> Putusan Pengadilan Nomor 7/Pid.Sus-Anak/2015/PN Kbj

Based on the facts that have been revealed in the Kabanjahe District Court trial, the judge examined the criminal elements that have been indicted, in connection with Article 340 in conjunction with Article 55 (1) to 1 of the Criminal Code that kills, executes, orders or participates in the lives of others and those who commit crimes. The judge stated that the child was still a minor under Law Number 11 of 2012 in conjunction with Article 55 (1) of the Criminal Code Article 340 of the Criminal Code where the child named Andika Putra Ramadhan Tarigan also known as Madan was legally proven. The child is guilty of premeditated murder. Andika Putra Ramadhan Tarigan also known as Madan was sentenced to 7 (seven) years in prison and the arrest of the child was commuted from the sentence handed down and the child, Andika Putra Ramadhan Tarigan as known as Madan was declared to remain in detention.

The brief explanation above showed that there are facts that have been revealed in the trial, namely under the Criminal Code related to the Crime of Murder as contained in Article 340 of the Criminal Code, namely the act of intentionally killing one's life by one person to another that violates Human Rights and of course also violates the existing law so that this act can make the defendant receive a death sentence, life imprisonment or imprisonment for a certain period according to his/her actions. This case involved a 15-year-old child named Andika Putra Ramadhan Tarigan who killed a victim named Krisna Wahyudi, generally in Indonesia when a child violates the law, it can be overcome with a diversion legal system that is specifically for minors where the child is involved. In the case of violations that can resolve cases outside the court, the purpose of diversion is to achieve peace for children and victims and their families.

The case above was carried out intentionally and planned which caused the perpetrator to be legally prosecuted, there were also internal factors on the part of the perpetrator where there was involvement from the perpetrator's family who knew about the murder, then the perpetrator's family ordered the perpetrator to immediately surrender to the local police station. Indonesia is one of the countries that put forward the constitution in every aspect of the life of the nation and state.<sup>20</sup> The existence of human rights (HAM) will not have any meaning if it is not followed up with the law that regulates the relationship of these rights, meaning that it is the law that formalizes human rights into a set

---

<sup>20</sup>Fakhris Lutfianto Hapsoro. (July, 2020). Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan The Living Constitution. JALREV 2 (2), 145

of rules to guards and protect so that they do not become clashes in the life of society and state.<sup>21</sup>

In Indonesia, the act of premeditated murder is regulated in Article 340 of the Criminal Code with the threat of a life sentence with a maximum imprisonment of 20 years, for children half of the punishment is determined for adults. The defendant Andika Putra Ramadhan Tarigan has been sentenced to 7 years in prison with strong evidence in the form of the defendant's confession. Based on the facts and evidence in court, the judge decided that the perpetrator was legally guilty according to the indictment of the public prosecutor. The judge's decision is seen from the aspect of justice, because of the facts that have been revealed in the trial. This has fulfilled the element of justice because the decision was determined on a true and definite legal basis, therefore everything that has been decided can be accounted for. The government through the law has provided a starting point for justice, which is carried out for the sake of justice based on God Almighty.<sup>22</sup> Protect basic rights or human dignity, especially for justice seekers.<sup>23</sup>

## **2. Analysis of Court Decision Number 1/Pid.Sus-Anak/2016/PN.Gto**

The child named Nanda is the biological daughter of the victim Nasir Mahmud, who has been in a relationship with Opin Heda for about two weeks planning to kill her father. Coinciding on Saturday, May 7<sup>th</sup>, 2017, the clock showed at 20.30 WITA (Central Indonesia Time) Opin Heda came to visit Nanda's house and began to discuss the murder they were going to commit, then at around 22.00 WITA, Opin Heda said goodbye to go home after that, Nanda the daughter of the victim immediately entered the room and by that time her father was asleep. After that, she communicated with her boyfriend via BBM around 23.00 Nanda told her boyfriend to come back to Nanda's house and while waiting for Opin Heda, Nanda was still in the room. At around 00.30 WITA Opin Heda went to Nanda's house by walking and at that time directed her boyfriend how to get into the house. After that a few moments later Nanda came out of the room to get a knife and sharpened the knife using sandpaper then brought the knife into the room and placed it near the television.

---

<sup>21</sup>Tijow, Lusiana. Perlindungan Hak Asasi Manusia Terhadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah. *Jurnal Legalitas* 3 (2), 80

<sup>22</sup> Fenty Puluhulawa, Lusiana M, Tujow, Sutrisno. (2020). "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim." *Jurnal Gorontalo Law Riview*. 3, (2) Oktober, 184

<sup>23</sup> Dian Ekawaty Ismail. (2009). "Upaya Perlindungan Hak-Hak Tersangka/Terdakwa Melalui Mekanisme Praperadilan di Kota Gorontalo." *Jurnal Mimbar Hukum*. 21 (1) Februari, 85



Then after that Opin Heda came and entered the house where Nanda had guided Opin Heda via a BBM message that the house key had been placed by her above the door vent, after being inside the house, Opin Heda hid behind the sofa chair while she saw the situation in the room and turned off the room light then Nanda took a knife and invited Opin Heda into the room and then handed the knife to Opin and about 10 minutes passed the knives to each other until finally Nanda and Opin decided Opin would commit the murder. Opin Heda climbed onto the bed where the victim was sleeping on his right side while facing the television and Opin Heda in a squatting position stabbed the knife repeatedly towards the victim's neck while the victim's daughter was behind Opin Heda and at that time the victim's daughter heard the voice of the victim and immediately took the pillow and held the victim's head but at that time the victim struggled so that he was dragged under the bed and the victim's daughter still smothered the victim with a pillow. At that time there was a lot of blood from the victim on the bed then she removed the pillow and Opin Heda again pointed the knife at the victim's chest and stabbed the knife back into the victim's neck and at that time witness Zubaedah Labolo woke up from her sleep and knocked on the victim's room door and asked the victim's daughter why did your father call and the victim's daughter said it was okay then the victim's daughter immediately closed the door. From the results of the examination on the exploration of the wound, it was found an open wound with flat wound edges, no tissue bridge was seen with the number of skin incision wounds as many as six incisions, each measuring ten centimeters long and ten centimeters wide, eleven centimeters long and five centimeters wide, seven centimeters long and zero point one centimeter wide, nine centimeters long and zero point one centimeter wide, eleven centimeters long and zero point one centimeter wide, eight centimeters long and zero point five centimeters wide.<sup>24</sup>

Based on the legal facts proven in the trial, the judge first considers responsibility under the provisions of article 340 of the Criminal Code in conjunction with article 55 (1) and Article 56 (1) which can be considered first, killing, committing, ordering, or participate in the crimes being committed and intentionally provide support. Based on the results of the judge's observations during the trial, it turned out that there were no actions or statements in the child to forgive or justify things to eliminate criminal liability.

Judging from the analysis of the two decisions above, there was a criminal disparity, this is not only seen from the form of the policy that the law has given

---

<sup>24</sup> Putusan Pengadilan Nomor 1/Pid.Sus-Anak/2016/PN.Gto

to law enforcement, namely the judge to make a decision.<sup>25</sup> As contained in Law Number 14 of 2009 concerning Judicial Power, which is contained in Article 1 number 1 states: "judicial power is the power of an independent state to declare justice to enforce law and justice based on the Pancasila constitution and the unitary state of the Republic of Indonesia". It can be concluded that judges have the freedom to impose a different decision in the relatively same case which has an impact on the emergence of criminal disparities. Legal considerations are based on known facts and the applicable law in the prosecutor's indictment.<sup>26</sup> This pressure is a little more likely to cause a significant reaction to the existence of the community, so the government is careful in solving a problem that has to do with the community.<sup>27</sup>

The disparity in sentencing that occurred in the two decisions above can be seen from the facts revealed in court, there is a match between the statements of the litigating parties, the explanations of witnesses, and the evidence revealed as a result of this case being legally proven and convinced that they had committed a crime of premeditated murder and referred to in the Law Number 3 of 1997 concerning juvenile courts which have been regulated, namely the imposition of crimes against children. Regarding the issue of making hard and light decisions against the defendant, it is closely related to the decision-making power and freedom of judges.<sup>28</sup>

The explanation of the crime of premeditated murder is clearly stated in Article 340 of the Criminal Code, namely that the criminal threat against a child who commits premeditated murder is  $\frac{1}{2}$  of the punishment for adults. Judging from Decision Number 7/Pid.Sus-Anak/2015/PN.Kbj and Decision Number 1/Pid.Sus-Anak/2016/PN.Gto, the settlement of cases outside the court is not enforced or is often known as the case settlement process with a Restorative Justice approach with a diversion system as regulated in articles 5 and 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.<sup>29</sup>

The process of resolving a case with a restorative justice system focuses on restoring the mindset of the victim and the victim's family, resolving criminal

---

<sup>25</sup> Sandy Dayoba Alexander dan Widowaty. (2020). Faktor Penyebab Timbulnya Disparitas dalam Putusan Hakim Terhadap Anak Pelaku tindak Pidana Pencurian dengan Pemberatan, Indonesia Jurnal of Criminal Law And Criminology, 1 (2),76

<sup>26</sup> Rahmi Zilvia, Haryadi. (2020). Disparitas Pidana Terhadap Pelaku Kasus Tindak Pidana Penganiayaan. Jurnal Of Criminal, 1 (1), 101

<sup>27</sup>Fitriyadi, Ahmad Adi. (2020). Diferensiasi Pengungsi dan Pencari Suaka dalam Hukum Pengungsi Internasional dan Hubungannya dengan Prinsip Non-Refoulement. JALREV 2 (2), 127

<sup>28</sup>Seno Aji, Hukum-Hukum Pidana. (Jakarta: Erlangga, 1984), 8

<sup>29</sup>Hasuri, (2018). Restorative Justice Bagi Anak Pelaku Tindak Pidana Pembunuhan Dalam Prefektif Pidana Islam , Jurnal Ilmu Hukum, Vol. 2, No.1, Juni, 55

cases through counseling or deliberation to reach a mutual agreement and solution. However, in the decision described above, diversion cannot be carried out because the indictment given to the child is charged with a threat of 7 years or more. As regulated in Article 7 of the SPA (Juvenile Criminal Justice System) Law at the level of investigation, prosecution, and examination of children's cases, diversion must be sought but provided that the crime committed is punishable by imprisonment of 7 years or more and this is not a repetition of the crime.

In practice, the judge in addition to imposing a sentence under the maximum normative provisions of the laws and regulations, there are also differences in sentencing. The sentencing disparity is also identified with the character, values, and mentality of a judge. As has been noted in the decision-making process, judges who have been appointed in certain cases also require careful thought. Several elements influence, in particular, the capacity to think logically, character, gender, age, and work experience. In practice, the mental atmosphere of a judge can have the impact of causing conflicts in the legal translation or interpretation of the law, especially in the offense of premeditated murder involving a child in their respective work environments.<sup>30</sup>

According to the researcher, the disparity is not only about the same crime or crimes with the dangerous nature of which can be compared, but even criminal acts that are different but the nature of the reproach of the crime can be compared. Such as a serious crime but sentenced to a light sentence as well as a light crime but sentenced to a heavy sentence. According to the author, the essence of criminal disparity is not only unequal punishments but also from a casuistic perspective.

Decisions that are considered fair or a measure of punishment that is considered fair for a case with the same juridical qualifications, if applied equally to other cases, can be interpreted as unfair in terms of criminal penalties. This requires a casuistic approach because each case has a different motive and so on. The law cannot regulate all variations of incidents separately, the law can only regulate generalizations based on juridical qualifications including criminal threats. In terms of criminal law that applies in Indonesia, Article 340 of the Criminal Code stipulates a maximum criminal penalty of 20 years for adults, but in criminal acts committed by children, the penalty is half

---

<sup>30</sup>Iriyanto Tiranda. (July, 2019). Konsep Ideal Penanganan Perkara Tindak Pidana Korupsi Pungutan Liar Berdasarkan Asas Peradilan. JALREV 1 (2), 132

of the criminal threats committed by adults. Within that range, judges have the opportunity to try according to the rules that have been set.

## II. CLOSING

### A. Conclusion

The disparity of the two existing decisions can also be seen from the motives of the crimes that have been committed, in Decision Number 7/Pid.Sus-Anak/2015/PN.Kbj the motive for the murder is that the defendant murdered because based on wanting to take revenge against the victim because the victim has beaten the defendant several times and in Decision Number 1/Pid.Sus-Anak/2016/PN.Gto the defendant committed premeditated murder assisted by her boyfriend planning this murder for approximately two weeks, according to the defendant's confession before committing the murder, the victim had intercourse with the defendant 3 (three) times, the first in Jakarta when the defendant was in the second grade of Junior High School and the second and third occurred in Gorontalo when the defendant slept in the same room with the victim so that the child felt tortured and depressed.

### B. Suggestion

Judges are obliged to give consideration one by one in imposing a criminal must take into account the mistakes of the perpetrators, considerations about motives and goals, considerations about mental attitudes, so that later the differences in the disparity of judges' decisions can be considered rationally or reasonable. In this case, it can be seen why there is disparity for the same crime. These kinds of sentencing guidelines are needed as sentencing guidelines, with general sentencing guidelines the law already regulates the considerations for decisions.

## REFERENCES

### Book

- Adami Chazawi. *Kejahatan Terhadap Tubuh Dan Nyawa*. Jakarta: Raja Grafindo Persada, 2010.
- Johny Ibrahim. *Teori dan Metode Penelitian Hukum Normatif*. Malang: Boymedia Publishing, 2009.
- Seno Aji. *Hukum-Hukum Pidana*. Jakarta: Erlangga, 1984
- Wagianti Soetodjo. *Hukum Pidana Anak*, Bandung: PT Refika Aditam, 2010

## Journal

- Ahmad, Ibrahim. *Prinsip Keadilan Dalam Penyelesaian Sengketa Tanah Untuk Kepentingan Pembangunan*. Jurnal Legalilas 3 No. 2, (2010).
- Arwana, Yudha Chandra. *Jalur Mediasi dalam Penyelesaian Sengketa Pertanahan Sebagai Dorongan Pemenuhan Hak Asasi Manusia*. JALREV 1 No. 2 (2019), 212-236.
- Badu, Lisnawaty. *Euthanasia Dan Hak Asasi Manusia*. Jurnal Legalitas. 5 No. 1 (2012), 1-11.
- Bakung, Dolot Alhasni. *Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right*. JALREV 2 No. 1 (2020), 65-82.
- Dian Ekawaty Ismail. *Upaya Perlindungan Hak-Hak Tersangka/Terdakwa Melalui Mekanisme Praperadilan di Kota Gorontalo*. Jurnal Mimbar Hukum. 21 No. 1, Februari (2009), 81-92.
- Fence M. Wantu. *Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata*. Jurnal Mimbar Hukum. 25 No. 2, Juli (2013). 205-218.
- Fenty Puluhulawa, Lusiana M, Tujow, Sutrisno. *Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim*. Jurnal Gorontalo Law Riview. 3 No. 2, Oktober (2020), 168-187.
- Fitriyadi, Ahmad Adi. *Diferensiasi Pengungsi dan Pencari Suaka dalam Hukum Pengungsi Internasional dan Hubungannya dengan Prinsip Non-Refoulement*. JALREV 2 No. 2 (2020), 120-138.
- Hapsoro, Fakhris Lutfianto. *Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan The Living Constitution*. JALREV 2 No. Juli (2020). 139-160
- Hasuri. *Restorative Justice Bagi Anak Pelaku Tindak Pidana Pembunuhan Dalam Prefektif Pidana Islam*, Jurnal Ilmu Hukum. 2 No. 1 Juni (2018), 55-66
- Lakoro, A., Badu, L. W., Achir N. *Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online.* JURNAL LEGALITAS. 13 No. 1 (2020). 31-50.
- Moha, Mohamad Rivaldi. *Urgensi Pendaftaran Penyelenggara Sistem Elektronik Bagi Pelaku Usaha E-Commerce*. JALREV 2 No. 2 Juli (2020), 101-119.
- Nabih Amer. *Analisis Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Negara Hukum*. Jurnal Legalitas. 13 No. 1 (2020), 1-15.
- Nggilu, N., & Wantu, F. M. *Menapaki Jalan Konstitusional Menuju Zaken Cabinet: Ikhtiar Mewujudkan Pemerintah Berkualitas Konstitusi.* Jurnal Hukum Samudra Keadilan, 15 No. 1 (2020), 126-140.

- Novendri M. Nggilu dan Ahmad. *Denyut Nadi Amandemen Kelima Undang-Undang Dasar 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution*. Jurnal Konstitusi. 16 No. 4 (2020)
- Rahmi Zilvia, Haryadi. *Disparitas Pidana Terhadap Pelaku Kasus Tindak Pidana Penganiayaan.*" Jurnal Of Criminal. 1 No. 1 (2020)
- Sandy Dayoba Alexander dan Widowaty. *Faktor Penyebab Timbulnya Disparitas dalam Putusan Hakim Terhadap Anak Pelaku tindak Pidana Pencurian dengan Pemberatan, Indonesia.*" Jurnal of Criminal Law And Criminology. 1 No. 2 (2020), 72-78.
- Syamsuddin, Ahmad Rustan. *Pembuktian Penyalahgunaan Wewenang Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang dan Jasa*. JALREV 2 No. 2, Juli (2020), 161-181.
- Tiranda, I. (). *Konsep Ideal Penanganan Perkara Tindak Pidana Korupsi Pungutan Liar Berdasarkan Asas Peradilan*. JALREV 1 No 2, July (2019).
- Tijow, Lusiana. *Perlindungan Hak Asasi Manusia Terhadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah*. Jurnal Legalitas. 3 No. 2 (2010)
- Wemben, Norma L.P. *Kinerja Pelayanan Pada Kantor Badan Pertanahan Nasional Kabupaten Gorontalo.*" Jurnal Legalitas 3 No. 2 (2010)