



## Analysis of Criminal Disparities in Child Maltreatment Resulting in Death

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### **Abstract**

The crime of child maltreatment resulting in death in Case Decision Number 3/Pid.Sus-Anak/2020/PN. Pti and Case Decision Number 1/Pid.Sus-Anak/2020/PN.Kpn is an illustration of the disparity in judges' decisions from various provisions that exist in a similar case. This study aims to find out what is called criminal disparity and the reasons for the disparity of punishment and to find out the issues that arise in the difference in punishment of children who commit maltreatment crimes that result in death and efforts to solve them. It can be concluded that the criminal distinction is the use of the same punishment for similar crimes or for criminal applications for which the nature of the danger can be measured. The law is the root of criminal differences. The judge's decision in these two cases was caused by several elements, including the prosecutor's demands, the character of the defendant, and the decision of the person authorized to decide cases based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 48 of 2009 concerning Judicial Power. The disparity between the two rulings is a result of these factors. The problem that arises in the difference in the punishment of children who commit abuse that results in death in the two verdicts and efforts to resolve them. The specifics of these differences in punishment will have social and juridical impacts. In an effort to determine this issue, the legal organization of the police is coordinated in view of the law and enforced with the existence of legal institutions to enforce the law.

**Keywords:** *Disparity; Abuse Resulting in Death; Child*

### **Introduction**

Children are some of the things that are closely related to the survival of people and a nation and state. Children get the main guarantee from the constitution, this is contained in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia that each child has the right to protection from violence and discrimination and has the right to survival, growth, and development of the state.

Every child needs supervision from an early age, wide opportunities for self-development. In addition, childhood is a time when a person develops personality, character, and strength that allows him to develop throughout life (Gultom, 2008)

Although still young, children can sometimes act like adults. Children often imitate the behavior of adults. There are also behaviors that are against the law, such as adults following children in acting. In

managing and coping with the various activities and behaviors of children who ignore the law, should consider the place of children with all their unique characteristics and characteristics. Therefore, parents and the society in which children live play a greater role in solving problems and shaping children's behavior. This needs to be emphasized considering that children who deal with punishment actually have special security freedoms, as instructed in Government Regulation Number 23 of 2002 concerning Juvenile Justice which has been corrected by Law Number 35 of 2014, that children who face the law should not be subject to formal law, but regulations that are constructive and do not hinder child development (Ardianda, 2018). According to the Convention on the Rights of the Child, children who break the rules are considered to have committed juvenile delinquency, not a crime.

Every year juvenile crime increases. Therefore, efforts need to be made immediately in tackling juvenile delinquency. The juvenile criminal justice system is currently being implemented as one of the methods to prevent and control juvenile delinquency (juvenile criminal politics). The reason for the implementation of the *juvenile justice* framework not only leads to the termination of the punishment of children who commit crimes, but is more centered on the reason that the imposition of sanctions is a method to support the realization of welfare for children who commit crimes (Wahyudi, 2011).

National legal basis for legal protection of children within the framework of juvenile courts is the SPPA Law. Furthermore, Law No. 11 of 2012 on the Juvenile Criminal Justice System is intended to improve the set of laws and is adequate to provide guidance and punitive protection for children who are threatened with crime.

The minimum age to be submitted to the juvenile court is 12 (twelve) years because children who are less than that age are considered incapable of being responsible for their actions. This is supported by sociological, psychological, and academic factors. All of these national legal frameworks are designed to better protect children's rights when they are faced with punishment and when dealing with the legal system. Taking into account that the judge's choice will affect the child's chances of survival in the long run. The SPPA Law, among others, attempts to improve juvenile court rulings in Indonesia by improving penalties for children (Prakoso, 2013).

In practice, differences in conviction are the result of judges' rulings in juvenile cases. As a result, the issue of punishment is important not only for the person in charge of deciding the court procedure as a whole, but also for the procedure of constitutional rules as a whole, especially regarding the enforcement of legislation. Criminal prosecution is a problem in most countries in the world, not only in Indonesia. Legislatures and institutions involved in the framework of implementing criminal law try to overcome criminal differences (Marentek, 2018).

The crime of maltreatment resulting in death committed by children in Decision Number 3/Pid.Sus-Anak/2019/PN. Pti and Decision Number 1/Pid.Sus-Anak/2020/PN.Kpn is a good illustration of the differences in judges' decisions to see how different the decisions of people who try for the same case with different cases. In essence, in determining the punishment for the defendant. The judge considers a variety of elements, including disturbing and mitigating conditions, both legal and unlawful. Decision of Case 3/Pid. Sus-Children/2020/PN. Pti, the Panel of Judges set a prison sentence of three years and six months in LPKA Kutoharjo, while in Decision Number 1 / Pid. Sus-Anak/2020/PN.Kpn, the child was sentenced by the Panel of Judges to 1 year imprisonment at LKPA Darul Aitam Wajak, Malang Regency.

### **Problem Statement**

1. What are the provisions of the criminal disparity regulation in Indonesia?
2. How are efforts to resolve criminal differences in Indonesia?

## ***Theoretical Framework***

### **Penal Theory**

In sentencing sentencing is defined the part that determines the sentence and the part that imposes the sentence. The term "criminal" usually refers to the law, while "convict" refers to punishment. Formal and material criminal law are distinguished by doctrine. J.M. Van Bemmelen provides an understanding, namely that material criminal regulations contain progressive acts of lawbreakers, known guidelines that can be implemented on such acts, and enforced penalties. According to Marpaung (2005), formal criminal law determines the procedures and considerations to be taken during criminal proceedings.

According to Marpaung (2005), Tirtamidjaja explained the formal and material penal laws as follows:

1. Material criminal law is a set of regulations that can be used to determine criminal behavior, situations threatened with imprisonment, and threats of punishment that can be imposed.
2. Formal criminal law is a set of legitimate principles that govern how to regulate how material criminal law is interpreted or balances between criminal acts committed by certain individuals. The law of material penalties to obtain the choice of an authorized ruler and direct how to exercise the choice of that ruler.

In fact, considering the purpose of punishment is not a new idea, but it has been influenced by the ideas of thinkers or writers over the past centuries. There is no consensus among writers or thinkers as to the purpose of punishment. In essence, there are three fundamental elements regarding the achievements to be achieved from a crime, especially (Lamintang and Lamintang, 2010):

1. To deter individuals from committing violations.
2. For the reparation of the behavior of bad people.
3. In order to make a bad person not have the ability to commit different transgressions, such as a bad person who cannot be changed by different methods.

Regarding funding, there are several theories about this, including (Hamzah, 2008):

#### 1. Absolute Theory or *Theory of Retaliation (Vergeldings Theorien)*

The absolute theory (*vergeldings theorien*) states that punishment is not intended for various practical purposes such as giving reparations to the wicked. The crime itself has elements that can lead to the fall of the criminal. The perpetrator of the crime must be punished for each offense. As a result, this hypothesis is called the absolute hypothesis. Criminal is a permanent prosecution.

#### 2. Relative Theory or Goal Theory (*Doeltheorien*)

This hypothesis as whole sees that the imposition of punishment is expected to improve criminals turning into good people and not doing bad again. "There are three kinds of improvements to criminal offenders, especially improvements in the legal, intellectual, and moral fields. Juridical improvement focuses on the attitude of the wicked to obey the law. Intellectual improvement focuses on the criminal's way of thinking to make him realize how bad the crime he committed. Meanwhile, moral improvement is about the good feelings of the lawbreaker so that he turns into an individual who has high ethics.

#### 3. Teori Gabungan (*Vereniging's Theories*)

This hypothesis integrates both previous theories. Reciprocity and maintaining public order as a matter of principle form the basis of punishment in this combined theory. In other words, these two motives form the basis of punishment. These combined hypotheses can be classified into two groups, to be more specific as follows:

1. The combined theory puts forward the maintenance of public order, but the punishment of the convict is proportional to the evil act committed. Simons said that the imposition of a crime is proportional to the behavior committed. The primary basis of funding is special imprisonment and the secondary basis is special funding. The reason for funding is basically focused on general anticipation, which lies in the threat of danger in the laws and regulations, which if unable to handle it, then special deterrence is implemented by frightening, adjusting, and making criminals unable to act. Keep in mind that punishment must be based on or in accordance with the laws of society.
2. The combined theory places retaliation as the main thing, but what punishment is necessary and sufficient to maintain public order. This hypothesis was upheld by Pompe who accepted that punishment was merely retaliation against criminals, but also hoped to maintain legitimate control so that open interests could be saved and avoided wrongdoing. If it helps maintain public order (law), retribution can be justified;

Funding is a tool to achieve state goals, so the above various theories have not been satisfactory for a long time because changes are made in accordance with the philosophy of the state and the times. Indonesia adheres to a mixed theory because when released from prison, inmates receive education and training to become contributing members of society.

### **Theory of Judge's Authority**

The decision of the person authorized to judge is the culmination of a case being reviewed and resolved by the appointed case breaker. Thus, the designated party in making a choice must focus on all its parts, ranging from the necessity to be vigilant, avoiding the slightest potential for error, both formal and material to the special ability to make it. Naturally, it is expected that the Judge will be born, mature, and develop attitudes or traits of moral pleasure if his decision can later serve as a standard for similar cases or as a source of legal theory and practice. He would also feel better about himself if his choice was upheld, the higher court could not overturn it. The judge will be born and develop and acquire an attitude or sense of moral satisfaction if these unpleasant things can be avoided.

Each Judge is expected in a judges' consultative meeting to convey reflections or assumptions that have been prepared to be sought and made as a necessary part of the decision, as stated in Article 14 paragraph (2) of the Supreme Court of the Republic of Indonesia Regulation No. 48 of 2009. The body that makes decisions and enforces positive legal guidelines applied by judges through their rulings is known as the area of capacity of matters relating to law. If there is no free area of the capacity of judges who appear as just and free executors of law, which is one part of law and order, then at that time, no matter how great the rules and guidelines made by a state to ensure the security and assistance of the government to the people, the guidelines become meaningless. Because judges who are experts in the subject of these regulations and guidelines are the executors of legal power, this is done by the ruler appointed through his choice (Rifai, 2011).

Along with statutory evidence, judges' convictions in criminal cases are also based on high moral integrity. Conversely, the negative proof system, according to Rifai (2011), determines when a right, event, or mistake is considered provable. The main task of a judge is to make decisions on cases that have been submitted to him.

According to Gerhard Robbes (Rifai, 2011), the freedom of judges in exercising judicial power contains 3 (three) essences in this context:

1. The decision of the case depends on the rules and the judiciary,
2. No single individual or public authority can regulate the choices that will be made by the case breaker.
3. There is no repercussion for judges personally as they carry out their judicial duties and duties.

The ability of judges to consider and decide a case is their peak achievement, so no matter what happens, all panels must supervise and uphold it so that no party can interfere with the implementation of the judge's duties. When handing down a verdict, the court must consider the facts of the case, the perpetrator's actions and guilt, the interests of the victim and her family, and the general sense of justice in society.

According to Mackenzi, judges can evaluate a number of theories or methods when making decisions in a case (Rifai, 2011):

a. Equilibrium Theory

The definition of balance is the conformity between legal requirements and the interests of the parties involved or related to the case, including the community, the interests of the accused, and the interests of the victim.

b. Theory, Art Approach and Intuition

The authority or attention of the judge is needed so that the competent authorities can make decisions. Judges use their discretion to consider the appropriate circumstances and sentences for each criminal defendant before handing down a decision. In a criminal trial, the judge will also consider the circumstances of the prosecutor or defendant. The judge's decision-making process is influenced more by intuition than by information.

c. Theory of Scientific Approach

The cornerstone of this philosophy is the idea that sentencing procedures should be carried out deliberately and attentively, especially taking into account previous verdicts. This is done to ensure the consistency of the person who has the authority to decide. This scientific approach serves as a reminder that judges in addition to relying on instinct or intuition when making decisions, they must also master the law and have scientific insight.

d. The Theory of Experiential Approach

The expertise of an appointed judge is something that can assist the individual concerned in handling the situation well; With his experience, a judge can understand how the consequences of a particular choice in a violation case relate to the offender, the individual concerned, and the surrounding territory.

e. *Teori Ratio Decidendi*

According to this idea, philosophical principles became its basis. Judicial decisions must be motivated by a strong ability to defend the law and provide justice to litigants. Then, when deciding a case, judges look for rules and regulations relevant to the issue at hand.

## **Research Methods**

Here are the study techniques applied in making this thesis:

1. Jenis Studies

This legal writing is an empirical normative legal study that analyzes the relationship between regulations and presents sequential information on rules that protect specific regulations (Marzuki, 2011).

The interpretation and systematization of the rules contained in primary, secondary, and tertiary legal materials form the basis of this study. Empirical studies support normative studies.

## 2. Sifat Studies

The nature of the study utilized in this legal writing is descriptive analytical. That is, the data is presented and elaborated (explained) in a complete, detailed, and systematic manner. The information is analyzed based on legal principles, especially criminal law, laws and regulations, especially those related to differences in punishment of children who are victims of maltreatment crimes resulting in death.

## 3. Data Collection Methods

Collect data using the following techniques:

### a. Studi kepustakaan (*Library Research*)

The activity of collecting information from written legal sources, such as laws and regulations, books, legal journals, and other writings that are considered related to the topics discussed in this legal literature is known as literature study.

### b. *Field Study (Field Research)*

The author asks structured questions directly to several related parties who know the topics discussed in legal writing.

## 4. Pengolahan Data

Qualitative processing of information, especially through the use of words and sentences, so as to produce discussion material that is organized, understandable, and accountable.

## ***Case Analysis and Discussion***

### **Identity of the Defendant**

Identity	Case Decision Number 3/Pid.Sus-Anak/2020/PN. PTI	Case Decision Number 1/Pid.Sus-Anak/2020/PN. KPN
Name	Zhandika Widya Virgi Pratama aka Joker bin Widarso	Mochamad Zainul Afandik als. Fandik bin Cement
Age/Region of Birth	17 Years/Starch July 13, 2013	17 Years/Malang January 18, 2012
Genital Classification	Man	Legal Law
Citizenship	Indonesian	Indonesian
Domicile	Wife	Malang Regency
Religion Practiced	Islamic	Islamic
Profession	Not working yet	Students

## Chronology

Case Study of Case Decision Number 3/Pid.Sus-Anak/2020/PN. PTI	Case Study Case Verdict Number 1/Pid.Sus-Anak/2020/PN.KPN
<p>Starting from witnesses Yoga, Dero, Gilang, Evenile, Bintang, Fajril, Dzakwan, Ikmal, and Armada met at Pak Cay's billiards located in the Plangitan area, Pati at 20.00 WIB. At 00:00 WIB, witness Alif met a child named Zhandhika and asked the child to come to biliard. The child is named Joker Tabung Widarso. Witness Alif and the child then rode to the workshop where witness Alif worked. The child consumed liquor until he got drunk (dizzy) when he got there.</p> <p>After finishing drinking, the child and Sdr Alif flocked to visit Pak Cay at around 21.00 WIB, but on the way, precisely on the road then Sekolah Menengah Pertama 2 Pati, anak met with witnesses Yoga, Dero, Gilang, Evenile, Bintang, Fajril, Dzakwan, and Ikmal.</p> <p>In addition, the boy and his colleagues traveled to the Pati ring road to watch wild races, the boy riding in a black Honda Vario SPM with Brother Alif or under the pseudonym Sulep. Then, Yoga rode a vehicle together with Sdr Evenile and Sdr Bintang riding SPM Honda Supra, and Dero Maulana Sirajudin Ilham riding with Brother Gilang Firnandy Asmoro.</p> <p>A group of people were heading to the ring road in front of the PLN Pati substation. One of the people in the group pointed at the group of children, but the children ignored him and continued to walk towards the ring road. The children did not see any wild racing when they reached the ring road. Since there was no wild racing, the children took the same road home, and a group of people gathered in front of PLN when they got there. One of the people reprimanded the crowd of children, but the children didn't say anything and continued to ride a motorcycle with two bicycles in front and two bicycles behind him.</p> <p>Sdr Yoga Pratama Kusuma's motorcycle arrived at Jalan Pati until Cork adjacent to Gg. LDII in Mustokoharjo Hamlet, Pati. Brother Evenile Nur Widyatmoko was piggybacked by Yoga Pratama Kusuma. Brother Muhammad Ajis stopped Brother Yoga Pratama Kusuma's motorcycle and stopped Bintang and took her away. By cutting (T-T), Muhammad Ajis and witness Tri hit the child from behind, but the child continued to ride</p>	<p>The victim Misnan was killed on September 8, 2019 at 19.30 WIB in Jl. Serangan Sugarcane Field, Dukuh Gondanglegi Kulon, Kec. Gondanglegi, Kab. Poor.</p> <p>The incident occurred when the litigant was riding with the observer's son and was in a sugarcane plantation area in Gondanglegi Kulon Village. The witness and defendant then stopped. Misnan and Mad then approached the defendant who was sitting next to the witness on a motorcycle. The keys to the defendant's motorcycle were then taken by Misnan. Misnan's victim then asked for all of the defendant's belongings, and the defendant handed over his mobile phone in anticipation of getting the motorcycle keys from the witness. However, the key is not returned. Misnan's victim asked for all of the defendant's belongings and the defendant's cell phone to be handed over in the hope that the keys were given back to witness Mad, but remained reluctant to give them. Mad and Misnan's victim discussed asking for the defendant's SPM key and the witness's cell phone, but the defendant was reluctant to hand over the witness' cellphone and gave money to the victim and Mad.</p> <p>The defendant had the opportunity to open his motorcycle seat after the victims, Misnan and Mad, had a conversation. After the seat was opened, the defendant took the knife he had brought from the house and hid it in his right hand and pointed it behind his back so as not to be seen by the victim. The defendants are waiting for Misnan and Mad, the victims who are still negotiating. When the victims came to the defendant, they were still asking for the defendant's belongings. Once the defendant realized this, he became angry and shouted, "jancuk, tak pateni kon," pointing the tip of the knife at Misnan's victim's chest once until it stuck there. Then, at that point, the reported person pulled the celurit from the victim's chest, and thereafter tried to chase the bystander frantically, but the victim Misnan and the confused bystander found a way to escape.</p> <p>After the defendant and witnesses fled the scene, Misnan was found dead the next day with injuries to his body.</p>

<b>Case Study of Case Decision Number 3/Pid.Sus-Anak/2020/PN. PTI</b>	<b>Case Study Case Verdict Number 1/Pid.Sus- Anak/2020/PN.KPN</b>
<p>the motorcycle. The boy heard a commotion behind him about three meters away, so he got off the motorcycle and ran towards the LDII alley in Mustokoharjo Village, Pati while taking out his mobile phone. Yoga Pratama Kusuma with Brother Evenile Nur Widyatmoko, Brother Bintang, and Brother Tri Candra Purnama who rides dengan Brother Antok Sugiyantoro was using a red Honda Beat motorcycle when stopped by Brother Muhammad Ajis Sulistiawan.</p> <p>Guntur as a witness and Satria as a victim rode on a black Suzuki Smash motorcycle to the scene of the commotion. Suddenly, the child saw the motorcycle from the front. When the boy saw this, he began to chase the motorcyclist while carrying a celurit. The victim Satriya Nugroho bin Pantono was then hacked on the left back by the child using the celurit he was holding. An important organ that is very dangerous, when the victim is about 2 (two) meters from the motorcycle. The victim's back began to bleed profusely when the child pulled out the celurit stuck there. Witness Guntur, who was riding with the victim, saw this and immediately took him away from the scene. Satria Nugroho bin Pantono was rushed to the hospital to get action, but died at 04.00 WIB.</p>	
<p>The plaintiff was sued to trial by the Public Prosecutor in accordance with the following letter of accusation:</p> <p>1. First:</p> <p>a. Primair</p> <p>Things that children do are regular and threatened with crime in Article 338 of the Criminal Code.</p> <p>b. Subsidiar</p> <p>Things committed by children are regular and threatened with crime in Article 351 paragraph (3) of the Criminal Code</p> <p>2. Kedua:</p> <p>Things committed by children are regular and threatened with crime in Article 351 paragraph (2) of the Criminal Code.</p>	<p>The defendant was brought to trial by the Prosecution Attorney based on the accompanying indictment:</p> <p>1. Kesatu:</p> <p>a. Primair</p> <p>The defendant's actions are regular and threatened with crime in Article 340 of the Criminal Code.</p> <p>b. Subsidiar</p> <p>The defendant's actions are regular and threatened with crime as stipulated and threatened with crime in Article 338 of the Criminal Code.</p> <p>c. Lebih subsidiar</p> <p>The defendant's actions are regular and threatened with Article 351 paragraph (3) of the Criminal Code.</p> <p>2. Kedua:</p> <p>The defendant's actions are regular and threatened with crime in Article 2 paragraph (1) of Emergency Law Number 12 of 1951.</p>
LPKA Kutoharjo sentenced him to 3 years and 6	sentenced the child to institutionalization for one



<b>Case Study of Case Decision Number 3/Pid.Sus-Anak/2020/PN. PTI</b>	<b>Case Study Case Verdict Number 1/Pid.Sus-Anak/2020/PN.KPN</b>
months in prison.	year at LKPA Wajak, Malang Regency.

### **Case Analysis of Case Decision Number 3/Pid. Sus-Child/2020/Pn. Pti and Decision of Case Number 1/Pid. Sus-Child/2020/Pn. Kpn**

The case that the author discusses is Case Decision Number 3 / Pid. Sus-Children/2020/PN. PTI with Case Decision Number 1/Pid Sus-Anak/2020/PN. KPN, the defendant was sued by the Prosecutor with several cumulative criminal actions.

Case Decision Number 3/Pid.Sus-Anak/2020/PN. PTI, the defendant was indicted by the Prosecutor on cumulative charges. Meanwhile, in Case Decision Number 1/Pid.Sus-Anak/2020/PN. Kpn, where the defendant was sued with subsistence charges and alternative charges by the Prosecutor's Prosecutor.

The letter of indictment is a significant reason in the regulation of the criminal justice system, because by looking at what is contained in the letter, the authorized official will see the case based on the charges filed (Hamzah, 2008). In Case Decision Number 3/Pid.Sus-Anak/2020/PN. PTI and Case Decision Number 1/Pid.Sus-Anak/2020/PN. KPN charges filed by prosecutors differ from each other. Where in Case Decision Number 3/Pid.Sus-Anak/2020/PN. PTI, the defendant was charged by the Public Prosecutor with several cumulative charges. A lawsuit document against a defendant who simultaneously committed several criminal acts each stand-alone is a type of cumulative indictment drafted by the Prosecutor. When a person commits several criminal acts, this type of charge is used. An indictment will usually be divided into first, second, and subsequent indictments. Therefore, this indictment is used when there is a combination of acts or perpetrators. By using the conjunction "and", the prosecutor applied the two articles simultaneously. Meanwhile, in terms of Decision Number 1/Pid.Sus-Anak/2020/PN. KPN, the defendant was sued by the JPU with mixed charges, namely the subsidair charge and the primair charge. Mixed charges are one of the forms of indictment used in legal practice in Indonesia. Combining alternative charges with subsidair charges, cumulative charges with subsidair charges, or alternative charges with cumulative charges are examples of combination charges. These forms of cumulation should be carefully considered before using the combined form of charge letter. This is very important because an indictment can be null and void if the criminal act is cumulative and the perpetrator is unclear.

In Case Decision Number 3/Pid.Sus-Anak/2020/PN. PTI and Case Decision Number 1/ Pid.Sus-Anak/2020/PN. KPN child behavior as stipulated in the Criminal Code, namely:

1. This is as stipulated in Article 338 of the Criminal Code as follows:

The maximum penalty of 15 years in prison is the penalty for murder, which is when a person intentionally takes the life of another person.

It can be concluded (Soesilo, 1989):

- a. Murder is intentional, meaning that the act is intended to kill;
- b. Murder is committed after a will to kill
- c. Murder is any act that causes the death of another person;

Based on the description above, according to the author, the use of Article 338 of the Criminal Code in Case Decision Number 3/Pid.Sus-Anak/2020/PN. PTI was considered inappropriate because the defendant did not intend to kill Satriya Nugroho at the time of the persecution that resulted in death, even though the defendant carried a long celurit wrapped in a sarong cloth and placed beside him a black Honda Vario motorcycle carried by Witness Alif and the child. This could have happened because

Zhandika's son was frightened and upset when he saw the fight between his group and Muhammad Ajis's group, and did not think about the consequences of his actions. Meanwhile, the decision of Case Number 1/Pid.Sus-Anak/2020/PN. KPN is also inappropriate because based on the legal facts of the trial, the defendant stabbed the victim with the aim of terrorizing the victim and the bystander named Mamat so that they leave and not disturb the defendant and his girlfriend. Therefore, it can be concluded that the litigant did not plan or believe that the victim would kick the bucket.

2. The following is the sound of paragraph 3 of Article 351 of the Criminal Code:

If it results in death, it is punishable by imprisonment for a maximum of seven years.

According to the author, this accusation is appropriate, arguing that it is based on valid legal facts in Case Decision Number 3/Pid.Sus-Anak/2020/PN. PTI, described that the actions of Zhandika's son had caused injuries to the back of the victim Satriya Nugroho, resulting in the death of the victim and Case Decision Number 1/Pid.Sus-Anak/2020/PN. KPN, that the victim died as a result of injuries sustained as a result of the defendant's crime. Thus, the requirements of cruel treatment leading to death have been met.

3. Article 351 paragraph (2) of the Criminal Code reads:

Perpetrators face a maximum sentence of five years in prison if their actions cause significant physical injury.

The use of this article in Case Decision Number 3/Pid.Sus-Anak/2020/PN. According to the author, PTI is not right because of the fact that Satriya Nugroho as a victim died due to Zhandika's actions.

4. Article 340 of the Criminal Code, which states:

Guilty of premeditated murder is punishable by death, life imprisonment, or a maximum of twenty years in prison, for anyone who kills another person intentionally.

According to Anwar (1989) Premeditated murder is the act of killing a person with the aim of ensuring his death or evading capture after planning his time or method. The most serious type of murder is premeditated murder, which can be punishable by death for the perpetrator.

One of the conditions listed in Article 340 of the Criminal Code is the element of intentionally and premeditatedly depriving another person of life. According to its maker, the prosecutor's first primair indictment in case No. 1/Pid. Sus-Children/2020/PN. KPN is inappropriate, because based on the existing legal facts, the litigant has injured the victim and frightened the victim witness and Mamat witness in order to make the victim witness and Mamat witness disappear and not force the defendant and not trouble the defendant. Thus, it can be concluded if that the litigant did not plan or believe that the victim should kick the bucket.

5. According to Emergency Law Number 12 of 1951, Article 2 paragraph (1) reads:

Objects that are clearly to be used for agricultural work, family needs, heavy work, or that are clearly treasures, ancient objects, or objects that are still hidden (*merkwaardigheid*) are not included in the definition of sharp weapons, cutting weapons, or weapons that can injure in this article.

The Second Indictment of the Prosecutor in case Number 1/Pid.Sus-Anak/2020/PN. KPN, the thing done by the defendant is stated and threatened with funding in Article 2 paragraph (1) of Emergency Law No. 12 of 1951.

According to the author, the use of the article is also inappropriate, arguing that based on the legal facts available at trial, the knife carried by the litigant was not intended to commit a criminal act, but the knife was brought by the defendant to make a pencil holder made of frozen yogurt sticks.

In Case No. 3/Pid.Sus-Anak/2020/PN. PTI, prosecutors charged Zhandhika Widya Virgi Pratama alias Joker bin Widarso with imprisonment for four years and seven months at LPKA Kutoharjo. Mochamad Zainul Afandik alias Fandik bin Saruji, was sentenced to one year in prison and one year of coaching at LKSA Darul Aitam in Wajak, Malang Regency. The Community Advisor (PK) was instructed by the prosecutor to follow, guide, and supervise the child during his training at LKSA and report the child's progress to the public prosecutor at the Malang State Attorney's Office.

Children who commit criminal acts may be subject to two types of sanctions, including criminal sanctions and actions, in accordance with Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The two-lane system of punishment is used in two categories of punishment in criminal law. This legal sanction in addition to serving to reprimand and educate perpetrators of criminal acts, also aims to intimidate or threaten individuals who commit criminal acts.

Although the distinction between criminal sanctions and action sanctions is often blurry at the practical level, they are fundamentally different at the conceptual level. Action sanctions depart from the basic concept of why punishment is imposed, while criminal sanctions come from this basic concept. Thus, action sanctions are receptive to an action, while criminal sanctions are more expectative of the perpetrators of the act (Sholehuddin, 2003).

The foundation of penal theory, also known as relative theory or goal theory, is the philosophy of determinism. This overall hypothesis then frames the activity that validates. According to relative theory, punishment is not intended as retribution for the perpetrator's guilt, but rather as a means to achieve useful goals to protect society (Sholehuddin, 2003). Therefore, according to the relative theory, sanctions are not only used as retaliation against evildoers but also have other useful purposes. People are sanctioned not because they have committed a crime, but rather so that they do not commit a crime in the future.

The focal point of criminal sanctions is directed at the bad behavior that a person has committed through the burden he bears so that the person concerned turns into a hindrance. The focal point of sanctioned action centers more on efforts to provide assistance to the culprit in order for him to change. According to Pragyetyo and Barkatullah (2005), it is clear that retaliation is the main focus of criminal sanctions, whereas the basic concept of criminal sanctions is to protect the community and foster or treat perpetrators of criminal acts.

In accordance with the provisions of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, the application of action sanctions against people who commit criminal acts, especially against children, is an attempt to achieve the objectives of this relative theory. It is evident that "act" refers to punishment given to criminals who do not cause harm to others or something that does not constitute recompense for the crime without causing suffering to the evildoer of the state.

Sanctioned actions have a more educational purpose. When viewed from the point of view of criminal speculation, the authorization of the activity is an authorization that does not resist. According to Pragyetyo and Barkatullah (2005), the only purpose it serves is special prevention, which is to protect the community from threats that can harm its interests.

Based on the description above, according to the author, the criminal charges of the Public Prosecutor are appropriate, arguing that with the detention in Decision Number 3/Pid. Sus-Children/2020/PN. PTI and funding guidance in terms of Option Number 1 / Pid. Sus-Children/2020/PN. KPN, it is hoped that children who commit criminal acts can learn from their mistakes and become better people.

The panel of judges must take the right decision after the trial examination process. Therefore, the panel of judges must take action before imposing criminal sanctions, i.e. investigate. The court will determine whether the perpetrators are guilty or not based on the available evidence and their own opinions. Finally, conclude by determining whether the perpetrator is responsible for his actions by considering, evaluating, and relating the events that occurred to the relevant regulations.

### **Provisions of the Criminal Disparity Regulation in Indonesia**

Penal disparity is a practice in which a judge or other law enforcement official decides something using the discretion given to him. On the other hand, these criminal differences also give rise to distrust of the judiciary and social jealousy, which manifests in society as a lack of interest in law enforcement. In addition, as public trust in the judiciary declines, the criminal justice system becomes dysfunctional because the judiciary is no longer seen as the home of justice for the community.

In accordance with the requirements stipulated in the first paragraph of Article 1 of Law No. 14 of 2009 concerning Judicial Power:

The authority of the free state to direct equity in accordance with Pancasila and the Constitution of the Republic of Indonesia is known as legal authority.

Since the appointed authority or board of judges has impressive autonomy in sentencing, in the case of the same crime, it is conceivable that a jury or a panel of judges will impose a change of conviction on the litigant, this is called the criminal distinction.

Different sentences for the same crime lead to disparities in the criminal justice system. This punishment is clearly a punishment imposed by the judge on the wrongdoer, so it can be said that the policy of the appointed authority in case of the emergence of criminal differences is very conclusive. More clearly, according to Harkristuti Harkrisnowo, criminal differences can occur in several classifications (Harkrisnowo, 2003):

1) Differences between similar crimes; 2) The difference between crimes of equal value; 3) The difference in sentences imposed by a panel of judges; 4) The difference in sentences handed down by multiple judges for the same crime.

According to Diamond (Rahayu, 2005), differences in punishment can be caused by:

1. Lack of consistency in the evidence presented during the trial as a result of differences in the judge's perspective in viewing the evidence presented;
2. No dynamic interaction is normalized.

The reason for the difference in the choice of judges is not only because of the freedom of judges in choosing, but also because of differences in sentencing cases that are comparable or have the same reality, for no apparent reason. The difference between the maximum and minimum criminal threats that are much different can also lead to differences in verdicts (Adriano, 2016).

According to Muladi and Barda Nawawi Arief (Ekaputra and Khair, 2016), factors derived from the law and those from judges can result in disparities in punishment:

#### **1. Factors Sourced from the Law**

As a result of the prevalence of elective procurement, Indonesia has various options for choosing the procurement method, including *strafsoort*. In specific terms, Article 188 of the Criminal Code, described below, is an example:

If a fire, explosion, or flood is caused by the negligence of others, they will be punished with a maximum sentence of five years in prison, a maximum sentence of one year in prison, or a fine of three hundred dollars if there is a general risk to life or death.

From the provisions of the article, it is clear that perpetrators of the same crime are often threatened with several complementary basic punishments. As a result, the judge can only impose one of the sentences, and it is up to the judge to determine how severe the sentence (strafmaat) will be, since the law only stipulates maximum and minimum sentences. This is regulated in the Criminal Code Article 12 Paragraph 2:

Detention for a certain period of time, the shortest is one day and the longest is fifteen years.

Each criminal offense article provides a specific maximum (for each felony) in addition to the general minimum and general maximum. Theft is regulated in Article 362 of the Criminal Code, which prescribes a special maximum penalty of five years in prison. Within the minimum and maximum ranges, courts are allowed to choose the punishment to be applied to obtain the appropriate sentence.

## 2. Matters Originating from the Judge

A judge's social background, education, religion, experience, temperament, and social behavior are often factors that have a greater impact on the type and severity of a sentence than the nature of the crime or the personality of the criminal. The following examples are given by Muladi and Barda Nawawi Arief (Ekaputra and Khair, 2016):

- As an outrageous model, the consequences of Reid's perception of racial segregation by the competent authorities and their implementation of punishment in the United States state that, individuals with dark skin ( ) are often treated unfairly in punishment. Often, sentences are more severe, and rarely is there probation or parole. Compared to white offenders, they rarely received pardons and rarely compensation for the death sentences imposed on them;
- b. In sentencing, the judge's perception of the philosophy of punishment and the purpose of punishment, which Cheang calls fundamental difficulty, plays an important role. A judge may believe that imprisonment is the only way to achieve deterrence. In any case, with the same goal, an appointed official will argue that the burden of fines will be stronger. Judges who view the old school as better than the positive school will impose harsher sentences, arguing that their view is to allow punishment according to guilt and on the other hand those who hold the latest view (positive school) will impose lighter sentences because they believe that punishment is appropriate for the lawbreaker.

Criminal differences can also occur due to outside factors influencing the choice of the appointed authority to implement impressive penalties. Criminal differences can arise as a result of differences in how much public attention is paid to a particular crime. For example, rape committed by a public figure will almost certainly receive greater attention than rape committed by a non-public figure. Judges can be influenced by public pressure to impose severe sentences on public figures who commit criminal acts, which can lead to differences in sentences.

The morale and integrity of law enforcement officials can also play an important role in criminal disparities. When investigating, examining, or trying a case, law enforcement officers who have good morals and integrity will not be affected by various negative influences. They may be influenced by various interests, both material and non-material, in contrast to law enforcement officials who lack morals and integrity. The honesty and honesty of law enforcement officials in exploring, seeing, or solving a case should distance themselves from differences in funding knowledge.

Regarding the punishment of children in Case Decision Number 3/Pid.Sus-Anak/2020/PN. PTI and Case Decision Number 1/Pid.Sus-Anak/2020/PN. KPN, the law enforcement framework for children must focus on a supportive justice approach. As indicated by Article 81 paragraph (5) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, detention of children is only carried out if all other efforts have failed. This implies that children should be avoided from detention as much as possible. This is evident from the fact that Law Number 11 of 2012 concerning the Juvenile Criminal Justice System includes various sentences that are lighter than prison sentences.

The juvenile justice system should also be used for diversion. Diversion is a procedure for resolving juvenile legal disputes outside the judicial system. Diversion is carried out when the crime is not repeated and is threatened with a sentence of less than seven years in prison, in accordance with Article 7 Paragraph 2 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

A criminal case is transferred when the perpetrator, victim, and family agree to move it from the criminal justice system to an out-of-court or out-of-court process. The purpose of using diversion in juvenile cases is to keep the child out of jail and not classified as a criminal. It is a good idea to teach children to take responsibility for their activities. Resolving a situation intentionally outside the normal path is basically what is meant by the term "diversion".

Diversion has been regulated in SPPA since 2012 to prevent children who are in trouble with the law from being stigmatized by the judicial process they have to undergo. The basic standard in carrying out the idea of diversion is a convincing activity or methodology that is not reformatory in nature and provides an open door for someone to correct mistakes. Diversion tries to give equality to examples of young people who have previously committed criminal offences to the police. Second, appropriate sanctions or measures (appropriate treatment) are determined through investigation of situations and conditions.

Based on paragraph 2 of Article 81 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, the maximum crime that can be imposed on a child is half of the maximum crime that can be imposed on an adult. This is stated in Article 81 paragraph (6) which reads as follows: If a child is found guilty of a crime punishable by death or life imprisonment, they will get a maximum sentence of 10 (ten) years imprisonment. As a result, the threat of punishment for each article of the charge becomes:

1. Initial charges: maximum sentence of ten years in prison;
2. Second offense: sentence of seven years and six months imprisonment;
3. Third charge: detention for a maximum of 10 years (one decade);
4. The fourth charge is specific to defendant Dani: a maximum sentence of four years and six months in prison.

For minors, the diversion requirement does not pose a problem because with diversion, the crime committed is a crime that is punishable by imprisonment for a maximum of 7 (seven) years, making it impossible to circumvent the justice system. This is so that children do not need to serve a prison sentence of more than 7 (seven) years. Children sentenced to detention in LPKA as per Decision Number 3/Pid. Sus-Children/2020/PN. PTI assuming that the condition and activities of children will endanger the local area are also protected by Article 81 paragraph (1) of Government Regulation Number 11 of 2012 concerning the Juvenile Criminal Justice System. Because the defendant's activities that caused the death of the victim are very risky, the child must get a prison sentence.

However, even though both children were found guilty of criminal maltreatment causing death in Case Decision 3/Pid. Sus-Children/2020/PN. PTI and Case Decision Number 1/Pid. Sus-Children/2019/PN. PTI, the panel of judges handed down quite different sentences to the two children. In the decision of case number 3/PID. Sus-Children/2020/PN. KT. KT. PST, Zhandhika Widya Virgi Pratama alias Joker bin Widarso was sentenced to imprisonment for four years and seven months, while

in Case Decision Number 1/Pid. Sus-Children/2020/PN. KPN, the child was sentenced to imprisonment for 1 (one) year with placement at the Darul Aitam Children's Correctional Institution, Wajak, Malang Regency. "Disparity punishment" is a punishment that differs from one another. Disparity in punishment is one of the characteristics of judicial independence in the legal system in Indonesia as long as there are strong and not arbitrary legal reasons.

The considerations regarding aggravating and mitigating circumstances before passing a verdict against the child defendant are:

1. In the decision of case number 3/Pid.Sus-Anak/2020/PN. PTI:

a. Aggravating matters:

1) Residents' anxiety about the actions of children

b. Mitigating things:

- 1) The child has never been punished; 2) The child regrets his actions; 3) The child wants to continue school. 4) Between the child and the victim witness tri Chandra peace has been agreed and has apologized for the child's actions; 5) The child's actions are triggered by the actions of the victim group;

2. In Case Decision Number 1/ Pid.Sus-Anak/2020/PN.KPN:

a. Aggravating matters:

- 1) The victim's minor child must live without the care of his father as a result of the child's actions; 2) The child's actions can have a negative impact on society.

b. Mitigating things:

- 1) The child has potential and talents that are useful for his future; 2) The child behaves politely during the trial process; 3) Children have a good personality in the school environment and their home environment. 4) The child has never been punished;

If all these factors are considered, it is evident that the judiciary decided to give a greater sentence to the defendant Zhandika alias Joker compared to the defendant Mochamad Zainul Afandik als. Both of them committed heinous acts that caused Fandik bin Saruji to die. For Zhandika aka Joker, this clearly causes injustice.

The concept of justice is not the same for everyone. Most people imagine that victory in the legal process implies that it is fair, and there are also certain people who feel disappointed with the choice given by the judge and feel unjustified. The general consensus is that every instance of breaking the same law should result in the same punishment. But in practice, judges do not always give the same sentence because they have the discretion to decide a case based on the evidence presented at trial and their own convictions. If discrimination results in death, justice cannot be fully determined because God has true justice.

### **Efforts to Resolve Criminal Disparities in Indonesia**

The difference in punishment between criminal offenders is one of the problems that arise when solving cases. The judge's decision is at the root of the matter. The difference in the choice of judges, who on the one hand gave heavy sentences and on the other hand gave light sentences, made it difficult to control criminal cases.

The rule of law as a free and autonomous state power greatly influences policing in Indonesia (Muladi, 2011). Hkim does not stand alone. Despite the fact that their choice may not be influenced by different legal entities or powers, as a general rule, the choice of judges is clearly influenced by instructive foundations, virtues, financial requirements, social climate, and others. In the end, this influence can influence the judge's decision (Mangkusubroto, 2013). As a result, the expression "judge's judgment by order" is often used in society. Incidentally, these "orders" often come from other legitimate elements or from people who have power (Mangkusubroto, 2013).

The opportunity for judges to make their own choices also has unfavorable consequences, namely the emergence of criminal differences. In this case, criminal disparity (disparity of sentencing) refers to the application of different punishments for the same crime or crimes of comparable severity (Mangkusubroto, 2013).

Difference is basically a subtraction from the idea of equality, and it implies fairness of number or value. Equality refers to the same level of punishment for comparable offences committed in comparable circumstances in the context of punishment. According to Pinarta and Mertha (2020), difference is the difference in punishment between the same crime (same offense) and comparable circumstances. The idea of uniqueness itself cannot be separated from the rule of proportionality, the penal guidelines put forward by Beccaria where it is natural that the punishment imposed on the perpetrator of the crime is in accordance with the mistakes he committed. Parity and proportionality can be viewed as one concept that can lead to different sentences when the same punishment is given to people who commit crimes with different levels of seriousness (Pinarta and Mertha, 2020).

Differences in punishment or uniqueness in punishment turn into problems when there are differences in imposed sentences among the cases being compared, with the aim that it is seen as embarrassing and may raise doubts locally. As a result, the purpose of discussing the differences in punishment in criminal law and criminology has never been to reduce the range of differences in punishment, but rather to eliminate the differences in punishment of perpetrators of crimes.

Based on the picture above, it can be said that criminal differences have actually occurred for a long time. The uniqueness of this crime shows that in handing down decisions, judges are influenced by different interests. According to Sudarto, the Criminal Code only contains penal rules (*strafvoetblijfsleiddraad*) and does not contain general penal guidelines (Sudarto, 2006). *Strafvoetblijfsleiddraad* sentencing guidelines are rules made by the framer of the law that contain principles that must be considered by judges in imposing crimes. Criminal differences can also occur when two or more defendants who commit a criminal offense jointly (inclusion) get different crimes without considering them. Therefore, according to Sudarto, the problem is not how to eliminate the disparity altogether, but how the difference must be reasonable.

Judges are free to choose the type of sentence, method of execution, and severity of punishment because there are no general sentencing guidelines. It is possible that the same offense or dangerous nature results in different penalties. In any case, this occasion does not mean that the appointed authority is allowed to impose penalties of its own free will without a certain measure.

In accordance with their responsibilities and responsibilities, judges are the main actors who exercise judicial power and guardians the practice of law enforcement and justice. The judge, through his choice, can change, transfer, or even deny citizens privileges and opportunities, and it is all done to preserve order and justice. In reality, decision-making efforts by judges in upholding law and justice are not easy.

The rule of law is a power that is free and cannot be hindered by other state powers, because it will affect the value of justice. However, the independence of judges does not necessarily make judges free from deviant behavior, so the behavior of judges must be monitored. Both internally and externally,



the Judicial Commission and the Supreme Court have the authority to oversee the conduct of judges. At the fundamental level, the position to supervise the way judges behave in viewing the set of rules and handling cases remains in the hands of the High Court as the holder of judicial power. Outside supervision is necessary as a controllability within the scope of judicial power, although basically the Judicial Commission is not the bearer of judicial power. However, the supervision carried out by the Law Commission is not an element of the rules governing within the scope of legal powers.

Regarding the decision of the Panel of Judges that sentenced the defendants, the Indonesian mass media is always decorated with various comments and opinions, both in the form of views and assessments from various circles of society. True human qualities, obligations and commitments, as well as others, must all be considered when deciding which attitudes and behaviors to take. An attitude of free will is acceptable only if it reflects this objective responsibility. The judge's ability to think and decide freely should guide decisions on cases at hand, but those decisions should also be accountable to society without compromising objectivity. According to Loqman (2012), the judge's decision is influenced by various factors, including internal factors, interpretation factors, political factors, and social factors.

Judges can consider legal factors in criminal cases based on this, resulting in different criminal verdicts. The creation of criminal disparities and inconsistencies in criminal verdicts is supported by two things, namely the formulation of criminal threats and duplication of criminal arrangements. To elaborate on the above issues, it is important to show an overview of the regulation of criminal defamation in Indonesia, especially as stipulated in Law No. 1 of 1999. The following discussion outlines a few contributors to the problems in Government Regulation No. 1 of 1999 that are considered to have an impact on the emergence of funding differences and irregularities in choices. The judge's conviction is another factor that can result in different criminal convictions. These beliefs are influenced by the personality traits of judges such as religion, education, the values they uphold, as well as their morals and mentality. The social environment also has an impact on the judge's conviction. This social climate includes politics, finance, and various other elements. It is very difficult for a judge to completely avoid being affected by these things.

The absence of High Court Guidelines on sentencing principles is the second factor contributing to sentencing disparities. Judges cannot rely on sentencing guidelines to assist them in making decisions, especially when dealing with minor offenders. A national penal system with sentencing patterns and criteria does not yet exist under Indonesian law. For example, rules of procedure are used as guidelines or as points of reference by legislators when creating or preparing laws and regulations involving criminal threats. Other names for penal patterns are legislative guidelines and formulative guidelines. Judges are instructed by sentencing guidelines, often known as judicial guidelines or applicable guidelines. Based on its purpose, the pattern of punishment should have existed before the existence of criminal laws, including the Criminal Code.

After distinguishing the things that cause differences in funding, here is a legitimate approach to limit the uniqueness of punishment. Some of the things that can be done are:

#### 1. The need for the Criminal Code to define the purpose and guidelines of punishment

Various efforts have been made to eliminate differences in punishment and bring about uniformity (punishment parity). According to Article 4 paragraph (3) of Law Number 14 of 1970 concerning the Main Provisions of Judicial Power is not to limit the discretion of judges, but to ensure that the punishment imposed is reasonable, proportionate, and proportionate to the guilt of the perpetrator, is the guideline and purpose of punishment anticipated and / or must be determined in the penal system.

The independence and freedom of judges is not eliminated by the guidelines and objectives of sentencing but rather provides a philosophical foundation for sentencing and protects judges from being misled by the principle of freedom. In addition to providing direction to judges in sentencing

criminals, the guidelines and objectives of sentencing also concern the balance of interests that must be protected in criminal law.

## 2. Reconstructing (reconstructing) the Judge's pattern of thought and ethical behavior

The process of rebuilding, recreating, or rearranging something is referred to as reconstruction. Reconstruction of Ethical Behavior and the Mindset of Judges The mentality of judges is something that is desirable. Therefore, the reproduction of judges' perspectives based on moderate regulation means the most common way to correct the mentality of judges in handling a case by considering the assumptions, ideas, and standards of moderate regulation to recognize legitimate qualities in choosing cases.

These legal properties are removed and further represented in the title (*irah*) in each judge's choice, more specifically "on the basis of *acyl* and based on divinity". According to Article 197 paragraph 1 of the Criminal Code, every judge's decision must include a title (*irah-irah*), and if not, then the decision is null and void. Meanwhile, in Article 2 paragraph (1) of Government Regulation Number 48 of 2009 concerning Judicial Power which determines: "For Justice Based on the One and Only God," the trial is carried out. In addition, the third paragraph of Article 8 of Law No: The prosecutor prosecutes cases that result in the decision of a conviction based on lawful evidence for the upholding of law and justice based on the Supreme Godhead.

Presenting a law that is fair, practical, and defends the interests of society becomes difficult in the situation (research results) handling cases by judges in the current courts (social justice) underscores the importance of a new construction of the mindset of judges. A progressive new mindset in the court should be used to build and reimagine the mindset of optimistic judges.

From the picture above, we can trace the similarity of purpose and soul between moderate regulation and *interessenjurisprudenz*, to some extent in five things, in particular first, the soul to place the interests and needs of people/individuals as the main motivation behind regulation; second, the determination to use the law creatively; third, the importance of sensitivity, empathy, and dedication in law enforcement and administration; fourth, the key to achieving justice is human-officer wisdom; fifth, not anti-regulation but constantly trying to embed new meanings into the appropriate time and space (Pinarta and Mertha, 2020).

In handling a case, Judgment cannot be separated from the choice of value. Based on how they interpret these values, judges choose values that are considered meaningful. In practice, the choice of value is strongly influenced by the interests of the judge, the needs of life, climate and trends, and personality. The choice of judges' values can change in practice, shifting from ideal, objective legal values to pragmatic subjective values prioritized by judges in handling certain cases. This implies that the treatment of a case can turn into a wellspring of product for individual improvement, both politically and financially.

## 3. Strive to select cases that are free from tendencies

Give a decision by bearing a very heavy obligation in choosing a case. The judge's decree must not only be accountable to man, but also to God. The presence of the *irah* "for the sake of justice in the sight of Allah Almighty" in every choice is not just a habit, but carries a deep meaning The judge's decision must actually involve justice based on the attributes of goodness.

To reach a fair conclusion, the judge's attitude must be free from bias or tendency to take sides with either party when reviewing and judging cases. In the examination of cases in court, parties who are plaintiffs and defendants in the civil field, as well as parties who are claimants and defendants and their legal representatives, must be treated equally. Judges should be impartial and look at the whole, not sacrifice individuals.

## Conclusion

1. Penalties for criminal differences are different. One type of policy carried out is criminal distinction, when a ruler or law enforcer makes decisions using the power or authority given to him (judge's discretion). According to Article 1 of Law No. 14 of 2009 concerning Judicial Power, judges or judicial institutions are independent in imposing sentences. This allows judges to impose different sentences on plaintiffs in the same criminal case.
2. The need for criminal law objectives and criminal norms to reshape the mentality and ethical behavior of judges, and striving to try cases without bias is a way to address criminal inequality in Indonesia.

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