



Application of Prison Penalty to Children in Conflict with the Law in the Criminal Act of Predictive Murder

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Abstract

The case of premeditated murder committed by a child in Kalimantan which became the public spotlight because the perpetrator's child committed a very sadistic premeditated murder, where in this case the victim was a family consisting of a father, mother, and their three children. Then the level of cruelty in this case surprised many parties, considering that not only one but five lives were lost in a very brutal way. The formulation of the problem in this study is (1)How is the application of prison sentences to children in conflict with the law for the crime of premeditated murder?(2)Has the imposition of imprisonment for children in conflict with the law in the crime of premeditated murder fulfilled justice? The method used is normative law, using a statutory, case and conceptual approach. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains that if it is proven that a child (underage) has committed a crime of premeditated murder, the trial process is in accordance with applicable provisions while the penalty is ½ (one half) of the adult penalty and children cannot be subject to the death penalty and life imprisonment. The imposition of imprisonment for children in conflict with the law in the crime of premeditated murder is considered not to fulfill the sense of justice for the general public, especially for the victim. The provision has caused controversy and debate among the public and legal experts. Many argue that the 10-year prison sentence is disproportionate to the seriousness of the crime committed, especially considering the extraordinary impact of losing five lives at once.

Keywords: *Children; Premeditated Murder; Justice*

Introduction

Background of the Problem

Indonesia with its various problems, all of which are so complex and form a connected and unbreakable chain, leaving behind a tragic story about the fate of the children of this nation. Due to various pressures of life, they are trapped in doing things that violate the legal norms that exist in society. Crime is a social phenomenon that is always faced by every society in this world. Crime in its existence is felt to be very disturbing besides that it also disrupts order and tranquility in society. Crime or criminal

acts are one form of deviant behavior that always exists and is inherent in every form of society, there is no society that is free from crime¹

One of the crimes or criminal acts that can be committed by children is the crime of murder, which is an act that is done intentionally to eliminate/take the life of another person. The crime of murder is very contrary to religious norms and customs, violates human rights, namely the right to life, and also contradicts the provisions of criminal law.²

Murder is an act that falls into the category of serious crimes. The criminal act of murder lies in its legal consequences, when this murder is done intentionally or planned in advance, then the responsibility and legal consequences that will be undergone will be heavier compared to unplanned or spontaneous murder. In Article 340 of the Criminal Code, it is stated that, whoever intentionally and with prior planning takes the life of another person, is threatened, because of murder with a plan (moord), with the death penalty or life imprisonment or for a certain period, a maximum of 20 years.

Premeditated Murder is not only committed by adults, many children lose their morals due to the influence of the environment, family, or economy. Children can behave badly so that they can harm themselves or others, this is because the child's emotional state is still unstable and their personality is easily influenced, so that not infrequently their actions have led to criminal acts that must be accounted for. However, considering that the perpetrators of the crime are still in the child age category, the law enforcement and criminalization process applied to children is carried out specifically.

More than 8,000 Children Face the Law as Suspects, Data from the EMP Pusiknas Bareskrim Polri shows that from January to July 10, 2024, 8,351 children have been named suspects in various cases of crime and violence. The data was obtained from the EMP Pusiknas which was accessed on Thursday, July 11, 2024. May was the month with the highest number of children named as suspects in criminal cases, namely 1,481 children. The number of children named as suspects has experienced a fluctuating trend. However, it should be noted that every month, more than a thousand children are named as suspects. The North Sumatra Police are the police that have taken the most action against children in conflict with the law. Since the beginning of the year, the North Sumatra Police have taken action against 1,046 children in conflict with the law as suspects. Meanwhile, the North Kalimantan Police are the police with the fewest number of children in conflict with the law, namely 17 children.³

For example a premeditated murder case committed by a child in Kalimantan that became the public spotlight because the perpetrator's child committed a very sadistic premeditated murder, where in this case the victims were a family consisting of a father, mother, and their three children. Then the level of cruelty in this case shocked many parties, considering that not only one but five lives were lost in a very brutal way. This murder was carried out with extraordinary cruelty, where the five victims were found dead in their homes with terrible injuries. The details of this incident reveal how sadistic and planned the premeditated murder crime was committed by the child. The victims were found in very dire conditions, and evidence at the scene of the crime showed that the perpetrator's child did not only act impulsively, but also with a clear intention to kill the entire family⁴.

Although the crime of premeditated murder committed by the child perpetrator above is very terrible and so sadistic, the perpetrator who still has the status of a child can only be prosecuted for 10 (ten) years in prison by the Public Prosecutor as regulated in Law Number 11 of 2012 concerning the Child Criminal Justice System (UU SPPA) which stipulates that children are sentenced to half the

¹Saparinah Sadli, 1997. Social Perception of Deviant Behavior, Jakarta: Bulan Bintang, page 38.

²Masyhur. 2018. Legal Review of Criminal Acts of Murder Committed by Children. journal.unmasmataram. 12, No. 2

³https://pusiknas.polri.go.id/detail_article/tiap_bulan,_cepat_1,000_anak_jadi_tersangka_kejahatan accessed on November 26, 2023,

⁴Nova Grid. (2024, February 11). House of perpetrator of murder of one family in Kalimantan demolished. Retrieved on June 16, 2024, from <https://www.novagrid.com/rumah-pelaku-pemkillan-kalimantan-dirubuhkan>

criminal threat of adults, and may not be sentenced to death or life imprisonment. Then this makes the community angry and feel that justice has been violated, especially for the victim's family, this is because the punishment given to the child perpetrator is not commensurate or in accordance with the cruelty of the crime that has been committed, namely premeditated murder that was carried out so sadistically and brutally against one family. The community also considers that the perpetrator does not deserve to only get a sentence of 10 years just because the perpetrator is a minor while the actions of the child perpetrator exceed the crimes committed by adults, so that the community at that time wanted the child perpetrator to be punished as severely as possible, namely life imprisonment or the death penalty, in order to achieve legal justice.

The provisions for giving or limiting the punishment do not provide sufficient deterrent effect, either for the child perpetrator or other potential child perpetrators. The deterrent effect is one of the main objectives of criminal punishment, so that the child perpetrator does not repeat his actions and other children are encouraged not to commit similar crimes. Gustav Radbruch, said that there are three objectives of the law, namely benefit, certainty, and justice. In implementing these three objectives of the law, the principle of priority must be used.⁵

According to Bentham, an English philosopher, he developed the theory of utilitarianism which assesses actions based on the benefits or happiness they produce for society, with the main principle of achieving "the greatest happiness for the greatest number".⁶, the punishment must be severe enough to deter similar crimes. Increasing the sentence to 20 years in prison is more likely to provide a strong deterrent effect, in accordance with the principle of utilitarianism to protect society. Sentences that are too light fail to provide a deterrent effect and harm the public's sense of justice, which reduces the sense of security and trust in the law.

The Sun refers to what should happen according to law or ideal norms. In the context of criminal law, Das Sollen emphasizes that children who commit serious crimes must be given punishments that are in accordance with the principles of justice, rehabilitation, and prevention. Das Sein refers to the existing reality or the reality that occurs. In this case, Das Sein reflects the fact that children who committed premeditated murder in Kalimantan were initially sentenced to 10 years in prison. Many in society consider this sentence to be too light considering the seriousness of the crime committed. Based on the background that has been described, the problems in this thesis proposal plan are (1) How is the application of imprisonment for children in conflict with the law in the crime of premeditated murder? (2) Has the imposition of imprisonment for children in conflict with the law in the crime of premeditated murder fulfilled justice? Writing scientific papers using a normative legal problem approach, a normative legal approach is an approach carried out based on primary legal materials by examining theories, concepts, legal principles and laws and regulations related to the Implementation of Imprisonment for Children in Conflict with the Law in the Crime of Murder as Fulfillment of Justice for Victims.

Discussion

1. Implementation of Prison Sentences Against Children Who in Conflict with The Law in The Crime of Premeditated Murder

Criminal acts are indeed not only committed by adults but children also take part in committing crimes that are no less than those committed by adults, it is unfortunate that criminal behavior is committed by children, because childhood is when children should be playing and studying, but in reality today's children are no less competitive with adults in committing criminal acts, but the State

⁵Sonny Pungus, Theory of Legal Purpose, <http://sonny-tobelo.com/2010/10/theoretica-jiwa-gustav-radbruch-dan.html>

⁶ Stanford Encyclopedia of Philosophy. (2024). Jeremy Bentham. Retrieved June 16, 2024, from <https://plato.stanford.edu/entries/bentham/>

distinguishes between criminal acts committed by adults and those committed by children, the State is more lenient in criminal acts committed by children because children are the shoots of the nation and the next generation of the nation so that every child perpetrator of a crime who enters the criminal justice system must be treated humanely as stated in Law No. 23 of 2003 concerning Child Protection, namely non-discrimination, the best interests of the child, the right to life, survival and development, and respect for the child's opinion.

The development of murder cases committed by minors, even the murders were carried out cruelly, attracting attention from various circles. Crimes committed by children, such as premeditated murder, must still be accounted for by the child. Regardless of the background, children can commit a crime that results in something very fatal.

The act of taking someone's life is classified as a crime of murder where there are two types of crimes against murder which can be based on mistakes and also life becomes the object in this case. Crimes against someone's life can be caused by mistakes where the mistakes are made intentionally or unintentionally. Based on the Criminal Code, crime is regulated in Articles 338 to 350 of the Criminal Code. Crimes in the form of murder committed intentionally are regulated in the Criminal Code in Chapter XIX Book II which consists of 13 articles, namely starting from Articles 338 to 350. While crimes against someone's life committed unintentionally are regulated in Chapter XXI Article 395.

Meanwhile, the type of premeditated murder crime is regulated in Article 340 of the Criminal Code which states "anyone who intentionally and with prior planning takes the life of another person, is threatened, because of premeditated murder (moord), with the death penalty or life imprisonment or for a certain period of time, a maximum of twenty years."⁷The two crimes have differences in whether there is a plan or not in committing the crime of murder. The difference is also seen from what happens in the perpetrator before committing the murder. The crime of premeditated murder is the most severe crime.⁸

According to data from the Indonesian National Police (Polri), the number of deliberate murder cases committed by children in Indonesia has increased year by year. In 2022, there were 1,256 cases of murder by children, up from 1,141 cases in 2021. This increase in criminal cases of murder by children has raised concerns in the community.

The number of cases of premeditated murder committed by children recorded by the Central Statistics Agency from 2011-2022⁹

Year	Murder incident
2011	1,467
2012	1.456
2013	1.386
2014	1.277
2015	1,491

⁷Arief, Syamsiar. "Legal Review of Premeditated Murder Crimes Committed by Children". *Petium*, Vol.4, No.1 April (2016): 65-72. 10

⁸Jabir, Jardianto, Hambali Thalib, and Dachran S. Busthami. "Judge's Considerations in Handing Down a Verdict on Premeditated Murder: A Study of Verdict No. Case 1259/Pid. B/2020/PN. Mks". *Journal of Lex Generalis (JLG)*, Vol.2, No.3 (2021): 1307-1317.

⁹ <https://www.bps.go.id/id/statistics-table/2/MTMwNiMy/nomor-case-kejahatan-pemkillan-pada-satu-tahun-terakhir.html>

2016	1.292
2017	1.150
2018	1,024
2019	964
2020	898
2021	827
2022	832

Source: Central Statistics Agency

News about cases of premeditated murder of children is increasing and has received a lot of attention from the public, both those committed by adults and children. With the increase in cases of murder, members of the public are demanding that judges impose severe sanctions on the perpetrators of these crimes.

The application of criminal penalties for minors who commit premeditated murder is in accordance with the provisions stipulated in the Criminal Code and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. If it is proven that a child (minor) has committed a crime of premeditated murder, the trial process is in accordance with the provisions stipulated in Law No. 11 of 2012, while the penalty is $\frac{1}{2}$ (one half) of the adult penalty and children cannot be subject to the death penalty and life imprisonment. This means that in this case children can only be subject to a maximum or heaviest sentence of a maximum of 10 years in prison and this applies to any type of crime committed by children without any distinction, including even though children commit premeditated murder which is classified as sadistic and brutal and greatly injures the victim and the general public, even traumatizing the community for the act.

Like one of the premeditated murder cases that occurred in JND's sentence was increased to 20 years in prison by the Penajam Panel of Judges, which previously the Public Prosecutor's demand had been a maximum of 10 years as stipulated in Law Number 11 of 2012 concerning SPPA, this reflects an effort to get closer to the principles of Das Sollen in achieving more balanced justice, prevention, and rehabilitation. Revision of the law is still needed to ensure that the legal system can provide punishments that are more in accordance with the severity of the crime, provide a strong deterrent effect, and guarantee security and justice for the wider community.

The relationship between Das Sollen and Das Sein in this case shows a discrepancy between what is idealized by law and ideal norms with the reality that occurs in the field. Ideal law (Das Sollen) wants balanced justice and ensures security and a sense of justice in society. However, reality (Das Sein) shows that the punishment initially imposed is not commensurate with the severity of the crime committed, which creates a sense of injustice and dissatisfaction in society. This discrepancy shows that law enforcers are exploring norms in sentencing children who commit premeditated murder even though in this case the law determines otherwise, until later if there is an amendment or change to Law Number 11 of 2012 concerning the SPPA, to then be sure that the punishment imposed truly reflects the principles of justice, and crime prevention and the greatest benefit for victims and society as stated in Jeremy Bentham's utilitarianism theory.¹⁰ the provisions governing the Limitation of criminal penalties for children in Law Number 11 of 2012 concerning SPPA are considered ineffective and no longer appropriate considering

¹⁰ Sultan Agung Islamic University. (2024). There was a conflict between Das Sein and Das Sollen. Retrieved on June 16, 2024, from <https://www.unissula.ac.id/pertanganan-das-sein-das-sollen>

the many cases of premeditated murder committed by children in a sadistic manner. Thus, the legal system can be more effective in creating a just and safe society, as well as providing an adequate deterrent effect to prevent future criminal acts.

The signal and *das sollen* is a philosophical concept originating from Martin Heidegger. *Das sein* is an existential condition, while *das sollen* is a condition that is expected or that should exist. In the context of the problem of human values in Article 340 of the Criminal Code concerning premeditated murder, there is a gap between *das sein* and *das sollen*.

The signal in this context is the reality that premeditated murder occurred and there were victims who died. This shows that premeditated murder is a crime that is detrimental and damages human values. *Das sein* shows that premeditated murder is a reality that must be faced and handled legally. However, *das sollen* in this context is the hope that premeditated murder never occurs and that human values are always respected and maintained. This shows that premeditated murder should not occur and that human values must be upheld

In this context, the gap between *das sein* and *das sollen* can be seen from the fact that although premeditated murder is a crime that damages human values, it still occurs in society. This shows that *das sollen* has not been achieved and there is still work to be done to maintain human values and prevent crimes such as premeditated murder.

Therefore, the role of law is important in enforcing *das sollen* and reducing the gap between *das sein* and *das sollen*. The law must provide firm and adequate sanctions for perpetrators of premeditated murder even though the perpetrator is a minor, so that it can be a deterrent effect for the child perpetrator and provide a sense of justice for the victim and his family. In addition, education and socialization also need to be improved to encourage the community to respect and maintain human values and avoid criminal acts such as premeditated murder.

Benefit in law refers to how much the punishment given can provide benefits to the wider community. In this case, a sentence that is too light does not provide adequate protection to the community from perpetrators of serious crimes.¹¹ This can trigger a sense of insecurity and distrust of the legal system. The community needs assurance that the legal system can provide effective protection and appropriate punishment for perpetrators of serious crimes. In addition, rehabilitation of child perpetrators of crimes must be carried out without neglecting justice for victims and the benefits for the wider community. This rehabilitation must be balanced with the need to ensure security and a sense of security in the community.

Legal certainty demands consistency in law enforcement. Sentences must be consistent with the severity of the crime. The law must provide clear and fair guidance on punishments that are commensurate with the crime committed. Legal certainty is one of the main pillars of law enforcement, and uncertainty can reduce public confidence in the justice system. There needs to be a review and revision of existing laws in order to provide fairer and more balanced punishments, without ignoring the aspect of child rehabilitation. This revision must consider various aspects including justice for victims, public safety, and the potential for child rehabilitation. The current legal uncertainty can cause confusion and distrust of the existing legal system.¹²

Justice is an important element in law enforcement that must be felt by all parties, including victims, victims' families, and the community. Sentences that are too light for serious crimes harm the sense of justice of victims and the community. Justice must be felt by all parties, including victims,

¹¹ Muhammadiyah University of Pontianak. (2024). Construction of justice, certainty, and legal benefits in Indonesia. Retrieved on June 16, 2024, from <https://www.umpontianak.ac.id/bangun-keadilan-kepastian-kebesaran-Hukum-indonesia>

¹² Online Law. (2024). Legal certainty, conflicting decisions and judicial independence. Retrieved on June 16, 2024, from <https://www.Hukumonline.com/kepastian-Hukum-bangunan-bertanganan-independensi-hakim>

victims' families, and the community. Punishment that is commensurate with the crime committed is important to maintain the integrity of the legal system and public trust. Proportionality of punishment must be considered to ensure that the punishment is in accordance with the severity of the crime committed, even if the perpetrator is a child. This is to ensure that substantive justice is achieved and to provide a clear message regarding the consequences of serious criminal acts. This proportionality is also important to provide a sense of justice to victims and their families, as well as to the wider community who observe the judicial process.¹³

Jeremy Bentham, an English philosopher, developed the theory of utilitarianism which judges actions based on the benefits or happiness they produce for society, with the main principle of achieving "the greatest happiness for the greatest number."¹⁴ In the case of the murder of a family by a child in Kalimantan, the punishment must be analyzed in terms of how much it contributes to the happiness of society. The initial sentence of 10 years in prison is considered inadequate to provide a deterrent effect. According to Bentham, the punishment must be severe enough to prevent similar crimes. Increasing the sentence to 20 years in prison is more likely to provide a strong deterrent effect, in accordance with the principle of utilitarianism to protect society.

According to Bentham's utilitarian approach, murder, regardless of who the perpetrator is, is generally considered a harmful act because it reduces happiness (by taking a person's life and causing suffering to others, such as the victim's family). Therefore, such an act is less likely to conform to the principles of utilitarianism. Jeremy Bentham's utilitarian theory, the effects of a child's murder on the victim, the perpetrator, and society at large are evaluated based on the greatest happiness principle.

Sentences that are too light fail to provide a deterrent effect and harm the sense of justice of the community, which reduces the sense of security and trust in the law. Changing the classification of the provisions for imposing the length of imprisonment in Law Number 11 of 2012 concerning the SPPA for the crime of premeditated murder can reflect the justice expected by the community, increasing the sense of security and trust in the legal system. However, although severe punishment is needed for serious crimes, the system must consider the potential for rehabilitation, especially for child perpetrators that can be carried out while the child is serving the prison sentence. This can provide a sufficient period to foster and rehabilitate children in accordance with the objectives of punishment adopted by the Republic of Indonesia, namely fostering (relative theory) which previously Indonesia had abandoned the theory of retributive, compared to if a child who commits a serious crime such as premeditated murder as described above and is sentenced to 10 years in prison, then from the 10 years of prison there will be several reductions in the prison term such as the submission of remission and conditional release, then the child undergoing a period of fostering and rehabilitation is not effective and does not guarantee that it will provide a deterrent effect on the child. Furthermore, there is no guarantee that in a short time the child will not repeat the crime committed when he returns to society. Then in this case, the victim will feel very violated because the punishment is not comparable to the lives of the family that have been sadistically killed by the child, and this also makes society angry with law enforcement and distrustful of law enforcement.

Longer sentences allow more time for intensive rehabilitation, with the hope that the offender can return to society as a changed and harmless individual. Thus, increasing the sentence is more effective in achieving the greatest happiness for the greatest number through security, justice, and social order. This case shows the urgent need to revise the SPPA Law so that the sentence is more in accordance with the severity of the crime, ensuring sufficient deterrence, and justice for all parties.

¹³ Andalas University. (2024). Problems of enforcing just law in Indonesia. Retrieved on June 16, 2024, from <https://www.unand.ac.id/problematika-penegakan-Hukum-berkeadilan-indonesia>

¹⁴ Stanford Encyclopedia of Philosophy. (2024). Jeremy Bentham. Retrieved June 16, 2024, from <https://plato.stanford.edu/entries/bentham/>

The principle of social justice for all Indonesian people contains the values that every legal regulation, both laws and court decisions reflect the spirit of justice. The justice in question is the spirit of social justice, not justice that is centered on one individual. This justice must be felt by the majority of Indonesian society, not by a handful of certain groups.

The government's urgency to review the provisions of the Child Criminal Justice System Law (hereinafter abbreviated as the SPPA Law), and in this case, law enforcement officers must also not be rigid, but must also be able to explore the norms that arise and are born in terms of determining criminal penalties for children who commit premeditated murder in order to fulfill or uphold justice for victims and the community, because this is an obligation for law enforcement officers.

The purpose of law and law enforcement is merely for legal certainty itself. Normative and procedural law enforcement does not provide space for constructive alternative resolutions as in the resolution of criminal cases outside the criminal justice system. Normative and procedural law enforcement in the criminal justice system is not yet oriented towards justice.

The crime of premeditated murder is a serious crime and is classified as sadistic, so it not only harms the victim but also disturbs the community. This can provide a sufficient period to foster and rehabilitate children in accordance with the objectives of punishment adopted by the Republic of Indonesia, namely fostering (relative theory) which previously Indonesia had abandoned the theory of retributive, compared to when a child commits a serious crime such as premeditated murder as described above and is sentenced to 10 years in prison, then from the 10 years in prison there will be several reductions in the prison term such as the submission of remission and conditional release, then the child undergoing a period of fostering and rehabilitation is not effective and does not guarantee that it will provide a deterrent effect on the child.

2. The Imposition of Prison Sentences for Children in Conflict with the Law in Premeditated Murder Crimes Has Fulfilled Justice

Criminal punishment is a suffering or misery given to a person who violates an act that is prohibited and formulated by law. Criminal punishment is also related to the criminal system, the criminal system is part of the penitentiary law which contains the types of criminal penalties, the limits of criminal penalties, how to impose criminal penalties, how and where to carry them out, as well as regarding reductions, additions, and exceptions to criminal penalties.¹⁵

The application and form of criminal sanctions for children who commit crimes in Law No. 11/2012 are contained in Chapter V starting from Article 69 to Article 83 concerning criminal acts and actions. Sanctions for children who commit the crime of murder are in accordance with Article 340 of the Criminal Code "Anyone who intentionally takes the life of another person, is threatened for murder with a maximum imprisonment of fifteen years" with the provision of ½ of the total maximum sentence for adults, then for children will be subject to criminal sanctions of imprisonment for +/- 10 years, and based on the provisions of Law Number 11 of 2012 concerning the SPPA, children cannot be subject to the death penalty or life imprisonment.

Taking another person's life is an act beyond the limits of children's behavior in general. Taking another person's life can be classified as juvenile delinquency. Therefore, if the murder is committed by a minor, the perpetrator is still subject to Article 338, or 339, or 340. The application of Article 338, or 339, or 340 can be justified because until now there are no regulations that specifically regulate murder committed by minors. This is because murder is a crime regulated in the Criminal Code (general crimes). Therefore, if a minor commits a crime of murder. Then the application of the law is in accordance with that in the Criminal Code and will be elaborated with the juvenile justice system law. However, the

¹⁵Adami Chazawi, Criminal law lessons. . (Jakarta: Raja Grafindo Persada, 2008), page 25.

criminal threat in Article 340 of the Criminal Code applies to adults, while the threat of imprisonment for children who commit crimes is half of the maximum threat of imprisonment for adults as regulated in Article 81 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely "The maximum prison sentence that can be imposed on a child is 1/2 (one half) of the maximum threat of imprisonment for adults."

Dissatisfaction with the legal treatment that reduces the punishment for minors in serious cases such as murder often arises, especially if the community views the act as very cruel and planned. This perspective highlights the disparity between the impact of the crime committed and the legal consequences received, so it is normatively unfair to the victim.

As in the case that occurred in The Penajam Paser Utara District Court increased JND's sentence to 20 years in prison, which is twice the prosecutor's demand. The panel of judges considered that a heavier sentence was needed to provide a sense of justice for the victim's family and the wider community, as well as to provide a stronger deterrent effect. This consideration was based on the level of cruelty and the psychological and social impact of the crime, even though the defendant was still under 18 years old. This decision shows that there is an urgent need to revise the articles in the SPPA Law so that it can provide a sentence that is more in accordance with the severity of the crime committed, and ensure justice and public safety.¹⁶

Murder committed by a child occurred in Kalimantan, it is explained that the perpetrator is a 16-year-old teenager with the initials J and is still in grade 3 of vocational high school (SMK). From the perpetrator's confession, before carrying out his actions, the perpetrator had a drinking party with a number of his friends. Then at around 12 midnight, the perpetrator went home accompanied by his friend. However, as soon as he arrived home, the intention to commit murder emerged. The perpetrator then took a 60-centimeter machete from his house and went to the victim's house which was about 20 meters away. Before entering the house, the perpetrator deliberately turned off the electricity in the victim's house. In the house there are five family members, namely Waluyo (35 years old) father and head of the family, SW (34 years old) mother, RJS (15 years old) eldest daughter, VDS (11 years old) second son, and ZAA (3 years old) youngest son. But that night, Waluyo as the head of the family was not at home. After turning off the electricity, the perpetrator entered through the window and shortly after, Waluyo entered the house. That's when the perpetrator immediately attacked the victim with a machete. After arriving at the house, Waluyo was immediately crushed, killed near the door of the house, while Waluyo's wife woke up and was crushed too. Then his child woke up and was crushed again.

The task of judges in realizing justice cannot be separated from the quality of the decisions produced. It is the judges who give life to the sound of the articles of the law with an application that does not stop at the sound of the context of the law but also considers aspects of justice, benefit and legal certainty. Judges make legal discoveries because they are faced with concrete events or conflicts that must be resolved, so that their nature is conflictive.

In a country that upholds democratic rights and human rights, the practice of Judicial Activism is used as a legal adaptation to social change by developing principles taken from constitutional texts and existing decisions in order to progressively implement the basic values of the constitution.¹⁷The term Judicial Activism was first introduced by Arthur Schlesinger in January 1947 in Fortune magazine.¹⁸In

¹⁶ Antara News Kalteng. (2024, February 27). Teenage murderer of a family in Penajam faces death penalty. Retrieved on June 16, 2024, from <https://www.antarakalteng.com/jual-pemkill-penajam-dunia-mati>

¹⁷Buck, Christopher G., Judicial Activism in Gary L. Anderson and Kathryn G. Herr, editors, *Encyclopedia of Activism and Social Justice*, (California: SAGE Publication), 2007, 785.

¹⁸Kmiec, Keenan D. "The Origin and Current Meanings of Judicial Activism", *California Law Review*, Volume 92, Issue 5, (October 2004): 1446.

general, judicial activism is always attached to the context in which judges create legal rules (Judges Making Law) in their decisions.

Brian Galligan defines Judicial Activism as the control or influence by the judiciary over political and administrative institutions.¹⁹ Meanwhile, according to Black's Law Dictionary, Judicial Activism is defined as a concept where a judge's decision on a policy obtained from a democratic process is taken from his personal view. Such a decision is usually strengthened by the judge's knowledge and understanding so that he can find violations of the constitution, the judge can reject the policy that has been decided.²⁰

The judge's belief is one of the legal theories of evidence. At least 3 types of legal theories of evidence are known, namely:²¹

1. The theory of law of proof according to positive law;
2. The theory of proof according to the judge's belief; and
3. The theory of legal proof according to the law is negative.

The judge's belief in proof is needed to assess the evidence or legal facts revealed in court. In fact, if we trace the theory of the law of proof according to the judge's belief conventionally, a judge can make a decision based on "belief" alone without being bound by a rule (bloot gemoediljke overtuiging, conviction intime). So that by referring to the judge's belief, the practice of judicial activism can be brought to life in line with the principles of the rule of law which are more reflected in the way, nature, attitude and atmosphere of freedom of the judges in resolving the cases they face, because judges in deciding cases use practical reason which is certainly greatly influenced by the background of each individual. While no one is able to assess practical reason except themselves through their conscience.

Judges who give life to the sound of the articles of the law with an application that does not stop at the sound of the context of the law but also considers aspects of justice, utility and legal certainty. Therefore, judges "are forever condemned for the rest of their lives to continue studying the law." The practice of judicial activism for judges in resolving environmental cases opens up opportunities for legal sources that are material in nature from sociological anthropological factors. One of the problems faced in environmental disputes is the strong penetration of capitalist economic interests and supported by corrupt bureaucratic government patterns. A transformative foothold for judges in resolving environmental disputes with a transcendental perspective. Transcendence has a theological meaning, namely divinity, meaning believing in God as the highest authority.

The development of society that is faster than the development of laws and regulations becomes a problem related to matters that have not been or are not regulated in laws and regulations, because based on this statement, a conclusion can be drawn that it is impossible for laws and regulations to regulate all aspects of human life completely, thus allowing a situation to occur where the existing rules in a country are considered incomplete and do not guarantee legal certainty for its citizens, resulting in a legal vacuum in society.

The Penajam Paser Utara District Court increased JND's sentence to 20 years in prison, which is twice the prosecutor's demand. The panel of judges considered that a heavier sentence was needed to provide a sense of justice for the victim's family and the wider community, as well as to provide a stronger deterrent effect. This consideration was based on the level of cruelty and the psychological and

¹⁹Galligan, Brian, *Judicial Activism in Australia* in Kenneth M. Holland, editor, *Judicial Activism in Comparative Perspective*, (London: Macmillan), 1991, 71.

²⁰Garner, Brian A. and Henry Campbell Black, *Black's Law Dictionary*, (Minnesota: West Group), 2004.

²¹Faqih, Mariyadi. 2016. "Construction of Belief of Constitutional Court Judges in Election Dispute Decisions". *Constitutional Journal* 10 (1):117-42

social impact of the crime, even though the defendant was still under 18 years old. This decision shows that there is an urgent need to revise the articles in the SPPA Law so that it can provide a sentence that is more in accordance with the severity of the crime committed, and ensure justice and public safety.²²

This verdict has caused controversy because although the sentence has been increased, it is thought that the sentence may not be enough to reflect the severity of the crime committed. Sentences that are too light, even if increased, do not fully reflect the severity of the crime and can create a bad precedent in handling similar cases in the future. If light sentences continue to be applied, this can be seen as a weakness in the legal system that can be exploited by juvenile perpetrators. They may feel that the law will not punish them severely just because of their age, so they feel emboldened to commit serious crimes on the assumption that the punishment imposed will not be too severe.

This light sentence does not provide a sufficient deterrent effect, both for the perpetrator and other potential perpetrators. The deterrent effect is one of the main objectives of criminal punishment, so that the perpetrator does not repeat his actions and others are encouraged not to commit similar crimes. In this case, a sentence of 20 years in prison may not be enough to prevent similar actions in the future and does not send a strong message to the community about the consequences of serious criminal acts. If the perpetrator or others see that the sentence for a serious crime is only 20 years, then this does not provide a strong enough incentive to prevent similar crimes. This weak deterrent effect can result in an increase in the potential for similar crimes in the future, because the perpetrator does not feel that there are severe consequences for their actions. This decision shows that there is an urgent need to revise the articles in the SPPA Law so that they can provide sentences that are more in accordance with the severity of the crime committed, and ensure that justice and public security are guaranteed.²³.

This opinion highlights one of the problems in the implementation of the Child Protection Law, especially related to the regulation of punishment for children who commit crimes. In Indonesia, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System provides leniency in punishment for minors, usually half the punishment for adult perpetrators. This aims to protect children as individuals who are considered not yet fully capable of mature thinking, so that they are given the opportunity for rehabilitation and reintegration into society.

The public sometimes feels that this provision is unfair, especially if the case involves a serious crime or a victim who has suffered a lot. This argument is rooted in the view that justice should take into account the rights of the victim, the deterrent effect, and the interests of the wider community. When the perpetrator receives significant leniency, the public may feel that the sentence is not enough to provide a sense of justice for the victim.

To bridge this gap, some legal experts suggest a more flexible approach to sentencing child offenders, especially in serious cases. Another alternative is to increase stricter rehabilitation programs for child offenders and provide more optimal assistance, so that leniency does not immediately reduce the deterrent effect or harm the sense of justice for victims and society.

Justice and certainty are the basic values regarding what we want from the existence of law. Law with values aims to realize that its presence is to protect and realize the values that are upheld by society. Therefore, the existence of these two basic legal values should ideally complement each other and not exclude each other.

Law is the basis for public order that is useful for maintaining justice and the sustainability of life together. The existence of law in society is very important in order to achieve the goals of welfare and

²² Antara News Kalteng. (2024, February 27). Teenage murderer of a family in Penajam faces death penalty. Retrieved on June 16, 2024, from <https://www.antarakalteng.com/jual-pemkill-penajam-dunia-mati>

²³ BBC Indonesia. (2024, February 8). Penajam Paser Utara Murders: How the chronology and what. Retrieved on June 16, 2024, from <https://www.bbc.com/indonesia/pemkillan-penajam-paser-utara>

justice. Therefore, in enforcing the law, it is mandatory to pay attention to all aspects, both from the perpetrator's side and from the victim's side. In making a decision, a judge is expected to make a decision in accordance with legal facts, objectively, and without any influence from other parties. Judges in determining the severity of a sentence must consider the aggravating and mitigating reasons for the occurrence of the crime. The aggravating and mitigating reasons can usually be found in the judge's decision letter. This is done in order to ensure that the perpetrator's rights are not violated, and in making a decision, the perpetrator's condition when the crime occurred is still considered. The imposition of imprisonment for children in conflict with the law in the crime of premeditated murder is considered not to fulfill the sense of justice for the general public, especially for victims so far. The provision has caused controversy and debate among the public and legal experts. Many argue that the 10-year prison sentence is not commensurate with the severity of the crime committed, especially considering the extraordinary impact of losing five lives at once. The public feels that the sentence given does not provide an adequate deterrent effect and does not reflect a sense of justice for the victim and his family. In decision making in court there are 3 things that are used as references, namely:

1. Principle of Legal Certainty;
2. Principle of Justice;
3. Principle of Benefit.

For legal certainty, what must be considered are the laws and regulations, especially Law No. 11 of 2012 concerning the Juvenile Justice System, namely considering that in this case the defendant is a child. The principle of justice here tends to be more towards the attitude of society, how to restore/restore the social conditions of society in relation to this case, this is also to be a deterrent effect on others so that it is not repeated. The principle of benefit is usually directed at the convict, so don't let the punishment given be of no benefit to the defendant. Moreover, in relation to this case the defendant is a child where the defendant is charged with Article 340 of the Criminal Code in accordance with the indictment of the Public Prosecutor, the Judge is tasked with receiving, examining, and deciding the case. In addition, the threat of punishment for children who commit the crime of premeditated murder is in accordance with their actions.

The Judge's Decision is a product of the court process. While the court is the last refuge of justice seekers, so the judge's decision should be able to meet the demands of justice seekers. As explained above, there are 3 things that are used as references in decision making in court, namely the principle of legal certainty, the principle of justice, and the principle of benefit.

Judge's decision that reflects justice is indeed not easy to find a benchmark for the disputing parties. Because fair for one party is not necessarily fair for the other party. The Judge's task is to uphold justice according to the *irah-irah* made in the head of the decision which reads "For Justice Based on the Almighty God Justice". The justice intended in the Judge's decision is one that does not favor one party. In making a decision, the Judge must comply with the applicable laws and regulations so that the decision can be in accordance with the justice desired by the community.

In order to uphold justice, the judge's decision in court must be in accordance with its true purpose, namely to provide equal opportunities for the parties to the case in court. The value of justice can also be obtained when the case resolution process is carried out quickly, simply, and at low cost because delaying the resolution of the case is also a form of injustice. This light verdict also harms the public's sense of justice. The public expects a heavier sentence for serious crimes, even if committed by children. The public's sense of justice is disturbed because the sentence given is not comparable to the suffering experienced by the victim's family and the psychological impact caused in the community where the incident occurred.

The judge's decision that reflects legal certainty certainly in the process of resolving cases in court has a role in finding the right law. Judges in making decisions do not only refer to the law, because

it is possible that the law does not regulate clearly, so that judges are required to be able to explore legal values such as customary law and unwritten law that live in society. In this case, the judge is obliged to explore and formulate it in a decision. The judge's decision is part of the law enforcement process which has one of the goals, namely legal truth or the realization of legal certainty. The legal certainty stated in the judge's decision is a product of law enforcement based on trial facts that are legally relevant from the results of the case resolution process in court.

The application of the law must be in accordance with the case that occurs, so that judges are required to always be able to interpret the meaning of laws and other regulations that are used as the basis for decisions. The application of the law must be in accordance with the case that occurs, so that judges can construct the case being tried in a complete, wise and objective manner. A judge's decision that contains elements of legal certainty will contribute to the development of science in the field of law. This is because a judge's decision that has permanent legal force is no longer the opinion of the judge himself but rather the opinion of the court institution which will be a reference for the community.

A judge's decision that reflects benefits is when the judge not only applies the law textually, but the decision can be executed in real terms so that it provides benefits for the interests of the parties to the case and benefits for society in general. The decision issued by the judge is a law which must maintain balance in society, so that society again has complete trust in law enforcement officers. Judges in their legal considerations with good reason can decide a case by placing the decision when it is closer to justice and when it is closer to legal certainty. Basically, the principle of benefit is located between justice and legal certainty, where judges assess the purpose or usefulness of the law in the interests of society. The emphasis on the principle of benefit tends to have an economic nuance. The basic idea is that law is for society or many people, therefore the purpose of life must be useful for humans.

Thus, the judge's decision in an ideal court must fulfill the three principles. However, in every judge's decision, sometimes there is a certain emphasis on one dominant aspect. This does not mean that the decision has ignored other related principles. It is clear that the three principles are closely related to each other in order to make the law a guideline for behavior in every legal act. However, if the three principles are linked to the existing reality, justice often clashes with legal certainty, or legal certainty clashes with utility.

Conclusion

From the results of the discussion regarding the research that the author has conducted, by reviewing the theories used, the author can draw several conclusions, namely:

1. The application of criminal penalties for minors who commit premeditated murder is in accordance with the provisions stipulated in the Criminal Code and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. If it is proven that a child (minor) has committed a crime of premeditated murder, the trial process is in accordance with the provisions stipulated in Law No. 11 of 2012, while the penalty is $\frac{1}{2}$ (one half) of the adult penalty and children cannot be subject to the death penalty and life imprisonment. This means that in this case children can only be subject to a maximum or heaviest sentence of a maximum of 10 years in prison and this applies to any type of crime committed by children without any distinction, including even though children commit premeditated murder which is classified as sadistic and brutal and greatly injures the victim and the general public, even traumatizing the community for the act. Thus, the government's urgency to review the provisions of the Child Criminal Justice System Law (hereinafter abbreviated as the SPPA Law), and in this case, law enforcement officers also so that they do not become rigid, but must also be able to explore the norms that arise and are born in terms of determining criminal penalties for children who commit premeditated murder to fulfill or uphold justice for victims and the community, because this is an obligation for law enforcement

officers. this is needed today because there needs to be a classification of the limitations of criminal law committed by children, especially against premeditated murder as has happened before. There must be a classification of what is meant by juvenile delinquency and which juvenile crimes are minor and serious crimes. The classification must be clarified, so that which juvenile crimes can be punished exceeding the provisions as stipulated in Law Number Law No. 11 of 2012 concerning the SPPA, namely more than 10 years in prison. This is because premeditated crime is not just a delinquency or minor crime. However, the crime of premeditated murder is a serious crime and is classified as sadistic, so that it not only harms the victim but also disturbs the community. This can create a sufficient period for fostering and rehabilitating children in accordance with the objectives of criminal punishment adopted by the Republic of Indonesia, namely fostering (relative theory) where previously Indonesia had abandoned the theory of retributive punishment. compared to when a child commits a serious crime such as premeditated murder as described above and is sentenced to 10 years in prison, and then from the 10 years in prison there will be several reductions in the sentence such as a request for remission and conditional release, then the child undergoing a period of guidance and rehabilitation is not effective and does not guarantee that it will have a deterrent effect on the child.

2. The imposition of prison sentences for children in conflict with the law for premeditated murder is deemed not to fulfill the sense of justice for the general public, especially for the victims so far. The provision has caused controversy and debate among the public and legal experts. Many argue that the 10-year prison sentence is not commensurate with the seriousness of the crime committed, especially considering the extraordinary impact of losing five lives at once. The public feels that the sentence given does not provide an adequate deterrent effect and does not reflect a sense of justice for the victim and her family. This concern is compounded by the possibility that the perpetrator, after serving his sentence, could return to society without any guarantee that he will not repeat his actions. In the end, the Penajam Paser Utara District Court increased JND's sentence to 20 years in prison, which is twice the prosecutor's demand. The panel of judges considered that a heavier sentence was needed to provide a sense of justice for the victim's family and the wider community, as well as to provide a stronger deterrent effect. This consideration was based on the level of cruelty and the psychological and social impact of the crime, even though the defendant was still under 18 years of age. This decision shows that there is an urgent need to revise the articles in the SPPA Law so that it can provide a sentence that is more in accordance with the severity of the crime committed, and ensure justice and public security.

This light sentence also hurts the public's sense of justice. The public expects a heavier sentence for serious crimes, even if committed by children. The public's sense of justice is disturbed because the sentence given is not comparable to the suffering experienced by the victim's family and the psychological impact caused in the community where the incident occurred. In fact, other countries such as the United States, England, and Australia provide sentences that take into account the level of premeditated murder committed by child perpetrators even though the child perpetrator is still a minor to fulfill the public's sense of justice, especially for victims, while Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is "The maximum prison sentence that can be imposed on a child is 1/2 (one half) of the maximum prison sentence for adults without any clear classification for the category of criminal acts committed, especially for premeditated murder, so that the application of criminal penalties for child perpetrators who commit premeditated murder so far has not fulfilled justice.

Recommendation

1. Judges in making decisions against children should not only think from a normative perspective, but also must consider the interests of various aspects, law enforcers are capable because they are given the ability by the state to close the gap or (gap) to build a bridge connecting *das sollen* and *das sein* through the activity of finding law or legal discovery that can be seen from their decisions as findings if legal research activities are carried out. Judges from the perspective of the theory of dignified justice make the law always new (up to date) and that can be seen in the judge's decision. Judges through legal discovery reconcile conflicts or differences in rules that arise in a legal system again through their decisions. Judges are the ones who clarify concepts that are still unclear through legal discovery.
2. To the Members of the House of Representatives (DPR) as the holder of the power to form laws, it might be good to review the application of prison sentences for children in conflict with the law in terms of committing premeditated murder, so that the families of the victims and the community can feel justice for what the child perpetrators have done. Then, it is also possible to conduct a judicial review to the Constitutional Court of the Republic of Indonesia or revise Law Number 11 of 2012 concerning the Criminal Justice System regarding the provisions on punishment for premeditated murder committed by children, where these provisions are considered no longer in accordance with the justice that is growing in society today.

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