
Juridical Analysis of the Judge's Decision on the Case of Planned Murder Committed by a Child (Case study of decision 5/Pid.Sus-anak/2023/PN.Mks)

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ABSTRACT

Premeditated murder is the crime of taking the life of another human being, or killing, after planning the time or method, with the aim of ensuring the success of the murder or to avoid arrest. Many cases of premeditated murder which are prohibited acts and regulated in the Criminal Code contained in Article 340, however, this is certainly different if the murder is committed by a child who uses Law Number 35 of 2014 concerning Child Protection. Based on this, the researcher is interested in further examining whether the sanctions given have been justified and are in accordance with the applicable law. This article is prepared to examine and determine the suitability of the application of sanctions for premeditated murder committed by children in review of Decision Number 5/Pid.Sus-anak/2023/PN.Mks. In addition, this article also aims to find out the judge's consideration in imposing sanctions or punishment on the perpetrator. The writing of this article uses normative legal research methods based on the study of laws to answer the legal problems at hand. Based on this research, it is reviewed from the decision Number 5/Pid. Sus-anak/2023/PN. Mks. Then the perpetrator was sentenced to 10 (ten) years imprisonment. Based on Article 80 Paragraph (3) of Law of the Republic of Indonesia Number 35 of 2014 amending Law Number 23 of 2002 concerning Child Protection which explains that every person who commits violence against a child causing death is punishable with a maximum imprisonment of 5 (five) years.

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I. INTRODUCTION

Based on Law Number 8 of 1981 concerning Criminal Procedure Law Article 1 point 8 Judges are state judicial officials authorized by law to adjudicate. Meanwhile, judges according to Law Number 48 of 2009 concerning Judicial Power in Article 1 number 5 which reads that judges are judges at the Supreme Court and judges at the judicial bodies under it in the general judicial environment, religious judicial environment, military judicial environment, state administrative judicial environment, and judges at special courts within the judicial environment. A judge's decision is a decision given and pronounced by a judge in a criminal case trial that is open to the public which has gone through the process as well as the general criminal procedural law procedure which contains the ruling of punishment, acquittal or release from all legal claims made in written form which aims to

end and resolve a case.¹ In this case the Judge decides based on the principle of free, honest and impartial in court and based on the method regulated in the Law. The crime of premeditated murder is regulated and strictly prohibited by law.

This is regulated in the Criminal Code in Article 340 which reads "Whoever intentionally and with premeditation takes the life of another person, shall, being guilty of premeditated murder, be punished by death or life imprisonment or a maximum imprisonment of 20 years". This article can be categorized as the death penalty for terrorism. The article stipulates that every person who intentionally and with coercive power commits an act that causes great harm to the state and/or society and/or creates panic in the community, shall be punished with death penalty. The acts referred to in Article 340 of the Criminal Code include creating and/or spreading viruses, bacteria, poisons, explosives, biological weapons, chemical weapons, and nuclear weapons as well as spreading false news that can cause great harm to the state and/or society and/or cause panic in the community.²

This is certainly different if the premeditated murder is committed by children who are regulated in the Child Protection Law. In Article 76C of Law Number 35 of 2014 amending Law Number 23 of 2002 concerning Child Protection "Every person is prohibited from placing, allowing, committing, ordering to commit, or participating in violence against children." Based on this law, it is clearly explained that everyone is prohibited from committing violence against children, let alone killing them.

Criminal offenses committed by children or known as juvenile delinquency today is increasingly widespread and diverse, both in frequency and in the seriousness of the quality of the crime. This can be seen from the many cases that occur, including fights, extortion / stabbing, persecution and so on. The Indonesian National Commission for Child Protection (KPAI) noted that there were 2,008 cases of criminality committed by school-age children until 2022. This number includes various types of crimes such as theft, brawls, persecution and sexual harassment committed by school-age children and sexual harassment committed by junior high school to high school students. In 2021 there were 2,413 criminal cases of school-age children and in 2020 there were 2,508 cases, this shows an increase of 95 cases. Shows an increase of 95 cases. Criminal acts committed by children are a form of delinquency (gequalificeerde diefstal mistreatment). A child is not yet accountable for all of his/her mistakes because the surrounding environment also provides opportunities to commit violations of the law. Violation of law, so that the judicial process also has differences with the judicial process in general. Because in order to avoid psychological pressure on children who have violated the norms or laws in force. Violated the norms or the applicable law As stated in Law No. 11/2012 on the Juvenile Criminal Justice System.³

Based on previous research cited from (M. Iqbal: 2016) that for children who are not yet 16 years old committing a criminal offense, the judge can impose actions with the type of child punishment, expressly in Law No. 11 of 2012 Article 71, judges can provide alternatively into three types of punishment, namely, Returned returned to their parents or guardians without punishment, handed over to the government or social institutions to be educated as state children without punishment. The government or social institution to be educated as a child of the state without being sentenced to punishment for someone who is not yet an adult. Meanwhile, in Islamic Law, premeditated murder committed by a child, cannot be subject to punishment for the crime committed, because there is no such thing as a legal burden for a child. For example, children who children who have not reached the age of puberty, then the judge still has the right to reprimand the mistake or set some restrictions that will help correct and improve the situation. set some restrictions that will help correct and stop crimes in the future.⁴

Meanwhile, according to previous research (Kadek: 2019) states that the regulation of punishment and sanctions against children who commit the crime of murder is regulated in the Criminal Code. Who commit the crime of murder are regulated in Law No.11 of 2012 concerning the Juvenile Justice System. Criminal Justice System. The form of sanctions against children who commit the crime of murder is not explicitly regulated, but in Law No. 11 of 2012 it is regulated starting from Article 69 to Article 83 which essentially prioritizes diversion and imprisonment of ½ of the maximum penalty. Diversion and imprisonment ½ of the maximum sentence for adults imposed as a last resort (ultimatum). Imprisonment of ½ of the maximum adult sentence imposed as an ultimatum remedium depending on the elements of the accompanying criminal offense by also looking at whether

¹ Lilik Mulyadi, *Kompilasi Hukum Pidana Dalam Perspektif Teoritis dan Praktek Pradilan*, Mandar Maju, (2007): 127.

² Indra Purnama. 2023. *Kategori Kejahatan Yang Terjerat Hukuman Mati Pasal 340 KUHP* diakses pada tanggal 27 April 2023 dari <https://nasional.tempo.co/read/1680559/kategori-kejahatan-apa-yang-terjerat-hukuman-mati-pasal-340-kuhp>.

³ Chintia Ellara, *Pertimbangan Hakim dalam Menjatuhkan Sanksi Pidana terhadap Anak Pelaku Tindak Pidana Pembunuhan Berencana di Hubungkan dengan Asas Keadilan*, Bandung: 109.

⁴ Muhammad Iqbal Nuzulyansyah, *Pembunuhan Berencana Oleh Anak Dibawah Umur Dalam Perspektif Hukum Islam dan Hukum Positif*, Universitas Islam Negeri Ayarid Hidayatullah, (2016) : 90-91.

as a result of the act there is a victim who died or whether the victim is a minor. the victim died or whether the victim is still alive (in good health). Are still alive (in good health).⁵

Based on the object of this research, namely the judge's decision Number 5/Pid.Sus-anak/2023/PN. Mks regarding a case regarding the abduction and murder of an 11-year-old child committed by 17-year-old and 14-year-old suspects. Where in this case Article 340 on premeditated murder was charged, with the threat of death or life imprisonment. Based on this case, the murder was committed by a minor, so in this case the Child Protection Law is used as a form of protection for minors. Based on this, the author is interested in analyzing the sanctions imposed on the perpetrators of the crime of murder in review of Decision Number 5/Pid.Sus-anak/2023/PN. Mks and how the judge's consideration in imposing punishment on the perpetrator because in this case the perpetrator was still a minor.

II. RESEARCH PROBLEMS

1. How is the application of sanctions against perpetrators of premeditated murder committed by children in review of Decision Number 5/Pid.Sus-anak/2023/PN. Mks?
2. What is the basis of consideration by the judge in imposing criminal penalties for perpetrators of premeditated murder committed by children in accordance with the decision in Case Number 5/Pid.Sus-anak/2023/PN. Mks?

III. RESEARCH METHODS

The type of research used in this research is normative legal research, normative research method is research that examines document studies, namely using various secondary data such as laws and regulations, court decisions, legal theories, and can be in the form of scholars' opinions. This research uses qualitative research methods in which this research is a type of descriptive analysis research using a normative juridical approach, therefore it is focused on examining normative law on legislation. There are several approaches used in this research, including, statutory approach is a research that prioritizes legal materials in the form of laws and regulations as a basic reference material in conducting research. This statutory approach is carried out by studying one law with other laws. Case approach In this case approach is done by examining cases related to the legal issues at hand. The cases examined are cases that have obtained court decisions that have permanent legal force. The main thing that is studied in each of these decisions is the judge's consideration to arrive at a decision so that it can be used as an argument in solving the legal problems at hand.

The data sources used in this legal research are secondary data sources. The secondary data includes binding materials that are still relevant, which are obtained from legal materials that have permanent legal force and are directly related to the problem under study. Books or other literature related to premeditated murder and internet sources. Data collection techniques used by means of literature studies (library research), namely a method used by studying and collecting materials in the form of books, official documents, laws and regulations, investigator decisions, jurisprudence and other library materials that have to do with the object under study, in this legal writing is the judge's decision in case number: 5/Pid.Sus anak/2023/PN.Mks.

Because the data used in this research is secondary data, in the form of documents, the data writing technique used is qualitative data analysis, which is a data analysis technique used without using numbers or statistical and mathematical formulations. The specific study in this study will be directed to the laws and regulations relating to premeditated murder, including: The Criminal Code, Law Number 35 of 2014 amending Law Number 23 of 2002 on Child Protection, Decision Number 5/Pid.Sus-anak/2023/PN.Mks).

IV. RESULT AND DISCUSSION

1. The Application of Sanctions Against Perpetrators of Planned Murder Committed by Children in Review of Decision Number 5/Pid.Sus-anak/2023/PN.Mks

Children in conflict with the law are part of society who are physically, mentally and socially helpless so that in handling it needs special attention, children who are well protected create a quality generation, which is needed for the future of the nation, because if children cannot be protected by parents, guardians and society then children will be very difficult to organize and guide, because children need special attention, guidance including legal protection both before and after birth.⁶ The judiciary is an institution that is a place for everyone to seek

⁵ Kadek Danendra Pratama, Komang Pradnyana, *Pemidanaan Terhadap Anak Yang Melakukan Tindak Pidana Pembunuhan*, Universitas Udayana, (2019) : 13-14.

⁶ Maisin Gultom. *Perlindungan Hukum Terhadap Anak dan Perempuan*. Medan, Refika Asitama. (2012): 77.

justice and resolve for children who commit criminal acts, juvenile criminal justice is devoted to children in conflict with the law and in juvenile criminal justice upholds the rights of children, both as suspects, and prisoners.

Based on the principle of legality is a juridical responsibility that is written, does not apply retroactively, its enforcement is not interpreted by analogy and its existence must have been regulated in advance in the Act before the act occurred. The most basic value in this principle is the guarantee of legal certainty for someone who commits a criminal offense. Meanwhile, the principle of guilt explains that a person can only be convicted because he has been proven guilty of committing a criminal offense intentionally or due to negligence. To determine that a person is truly guilty, there must be sufficient evidence, for example, that he has committed an unlawful act, as well as the elements of the article charged by the public prosecutor, there is conformity with the evidence presented in the trial. From these two principles, it can be concluded that the elements of guilt and the principle of legality cannot be separated.

Law No. 11 of 2012 concerning the Child Criminal Justice System, where the law in its consideration explains that: "Children are a mandate as well as a gift from God Almighty, which we must always protect because they have inherent dignity and human rights that must be upheld. Children's human rights are part of the human rights contained in the 1945 Constitution and the United Nations Convention on the Rights of the Child. In terms of the life of the nation and state, children are the future of the nation and the next generation of the nation's ideals, so that every child has the right to survival, growth, and development, participation and the right to protection from violence and discrimination as well as civil rights and freedoms. So that to maintain the dignity and dignity of the child is entitled to special protection, especially legal protection in the justice system. The juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the guidance stage after serving the sentence. When a child is faced with a problem involving the law where the child places themselves as the perpetrator, in general they do this in a psychologically unstable condition, therefore judges who handle children's cases must be judges who have an understanding of children.

In order to maintain the rights and dignity of children, as stated in Law No. 39/1999 on Human Rights regarding children's rights, it is explained that the implementation of the obligations and responsibilities of parents, family, community, government, and the state to provide protection to children still requires a law on child protection as a juridical basis for the implementation of these obligations and responsibilities. Thus, the establishment of this law is based on the consideration that child protection in all its aspects is part of national development activities, especially in advancing the life of the nation and state. Parents, families and communities are responsible for safeguarding and maintaining these human rights in accordance with the obligations imposed by law. Similarly, in the context of organizing child protection, the state and government are responsible for providing facilities and accessibility for children, especially in ensuring their optimal and directed growth and development. There have been many cases that show how children have become targeted objects.⁷

The principle of legality is a guarantee of written legal certainty which is also a legal responsibility of the element of guilt that has been committed by the perpetrator of a criminal offense, violator or person who participates in the criminal offense. In principle, criminal offenses committed by children are the responsibility of the children themselves, however, because the defendant is a child, the presence of parents, guardians or foster parents cannot be separated. The responsibility of the child in committing a criminal offense is that the child is responsible and willing to be investigated, prosecuted and tried in court, however there are provisions where children are not processed the same as adults.

After the examination process at trial is complete, the judge must make an appropriate decision. For this reason, before the judge sentences the defendant, the judge is required to take action, namely to first examine the truth of the events submitted to him by looking at the existing evidence and accompanied by his belief. After the judge considers and provides an assessment of the facts in the trial and relates them to the applicable law and then provides a conclusion by determining a conclusion by determining a criminal sanction for the actions committed, the judge in imposing a decision must remember that the defendant is a minor. Talking about criminal sanctions imposed by judges against children is always associated with Indonesian Law Number 35 of 2014 Amendment to Law Number 23 of 2002 concerning Child Protection.⁸

⁷ Ningtyas, Nur Lyla Fitria. *Tinjauan yuridis penerapan pasal yang tidak didakwakan oleh penuntut umum dalam perkara tindak pidana pembunuhan terhadap anak (studi putusan nomor 1103/pid.sus/2019/pn.mks)*. Skripsi, Universitas Hasanuddin. (2020): 25.

⁸ Frans Salva Firdaus. *Analisis Putusan Hakim Dalam Menjatuhkan Hukuman Terhadap Anakp Sebagai Pelaku Tindak Pidana Pembunuhan Berencana*. Universitas Sumatra Utara, (2020) : 50-51.

The criminal responsibility of children who commit the crime of murder is in accordance with the provisions stipulated in the Criminal Code and Law No. 11/2012 on the Juvenile Justice System. If it is proven that the child (underage) committed the crime of murder, the trial process is in accordance with the provisions stipulated in Law No. 11 of 2012, while the penalty is ½ (one-half) of the adult penalty. This is also applied to cases of murder committed by children which are contained in Decision Number 5/Pid.Sus-anak/2023/PN.Mks based on the evidence and facts obtained, the defendant was sentenced to imprisonment for 10 (ten) years with various considerations of the judge. The imposition of these sanctions is also based on Indonesian Law Number 35 of 2014 Amendment to Law Number 23 of 2002 concerning Child Protection. This is because the perpetrators of the criminal act of premeditated murder were committed by minors who also have rights and obligations to be protected.

2. What are the Basic Considerations of Judges in Imposing Sanctions on Perpetrators of Planned Murder Committed by Children in Review of Decision Number 5/Pid.Sus-anak/2023/PN.Mks

In examining a case, the judge must pay attention to the evidence, because the results of the evidence will later be used as a consideration to decide the case. Proof is a very important stage in the examination at trial. The purpose of proof is to obtain certainty that an event / fact submitted really happened, in order to get a correct and fair judge's decision.⁹ Rusli Muhammad suggests that the judge's consideration can be divided into 2 (two) categories, namely: juridical considerations and non-juridical considerations. Juridical considerations are considerations of judges based on juridical facts revealed in the trial and by law stipulated as things that must be contained in the decision, for example the indictment of the public prosecutor, criminal charges, testimony of the defendant, witness testimony, evidence, and articles in the criminal law regulations. Meanwhile, non-juridical considerations can be seen from "the background, the consequences of the defendant's actions, the condition of the defendant and the defendant's religion"¹⁰

The judge's decision is the culmination of a case that is being examined and tried by a judge in a trial. Therefore, of course the judge making a decision must pay attention to all aspects of it, starting from the need for caution, avoiding as little as possible inaccuracies, both formal and material in nature to the technical skills of making it. If these negative things can be avoided, of course it is hoped that the judge will be born, grow, and develop an attitude or nature of moral satisfaction if later his decision can become a benchmark for the same case, or can become a reference material for legal theorists and practitioners as well as his own conscience satisfaction if his decision is upheld and not canceled by a higher court.¹¹

The considerations of the judge before handing down the defendant's verdict are as follows as follows:

- a. Considering, that the Child has been charged by the Public Prosecutor with an alternative charge, so that the Judge by taking into account the legal facts mentioned above, the Judge immediately chooses the first alternative charge as regulated in Article 80 Paragraph (3) of Law No. 35 of 2014 Concerning the Amendment to Law No. 23 of 2002 concerning Child Protection has been fulfilled;
- b. Considering that the opinion of the child's parents presented at the trial, the judge considered that because the child's actions were very sadistic and hurt human values as well as the negligence of parents in supervising, moreover the victim was a child who was still 11 years old, it was better if the child was placed in a Special Development Institute for Children;
- c. Considering that in this case the child has been subject to lawful arrest and detention, the period of arrest and detention shall be deducted in full from the sentence imposed;
- d. Considering, that in order to impose sentence against the Child, it is necessary to first consider the aggravating and mitigating circumstances of the Child;

Aggravating circumstances:

- The actions of the child who tricked the child victim by promising money.
- The actions of the child are very damaging to human values

Mitigating circumstances:

- The child regretted his/her actions and promised not to repeat such actions;

⁹ Deti Rahmawati, dkk. Pertimbangan Hakim Dalam Menjatuhkan Pidana Terhadap Pelaku Tindak Pidana Pembunuhan Berencana. *Widya Yuridika Jurnal Hukum*. Universitas Bandar Lampung. Vol. 4, Nomor 1. (2021): 209-210.

¹⁰ Rusli Muhammad. 2007. *Hukum Acara Pidana Kontemporer*. PT Citra Aditya Bakti, Bandung, Hlm. 212-221.

¹¹ Mohammad Syaifun Nur. *Tinjauan Yuridial Tindak Pidana Pwmbunuhan Berencana Yang Dilakukan Oleh Anak*. Universitas Islam Walisongo Semarang, (2022) : 124.

- The child behaved politely in court
 - The child is young and has never been convicted before;
- e. Considering, that because the Defendant is sentenced, the Child must also be burdened to pay court costs; Noting, Article 80 Paragraph (3) of Law Number 35 of 2014 Concerning the Amendment to Law Number 23 of 2002 Concerning Child Protection, Law Number 11 of 2012 Concerning the Child Criminal Justice System and Law Number 8 of 1981 Concerning Criminal Procedure and other relevant laws and regulations;

Based on this, corroborated by the evidence that has been obtained, the Judge rules:

- 1) Declare that the child has been legally and convincingly proven guilty of committing the crime of "Committing cruelty to a child causing death";
- 2) Sentenced the juvenile to 10 (ten) years imprisonment;
- 3) Ordering the juvenile to be placed in the Special Development Institute for Children (LPKA) Maros Regency;
- 4) Determining that the length of arrest and detention period served by the juvenile shall be fully deducted from the punishment imposed;
- 5) Ordered that the juvenile shall remain in detention;
- 6) Stating that the evidence that has been obtained.

The Judge's decision is based on the actions of the defendant in the case that the Defendant is sentenced so the Child must also be burdened to pay court costs with due regard to Article 80 Paragraph (3) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 11 of 2012 concerning the Juvenile Justice System. Based on this, the defendant was sentenced to 10 years imprisonment. This certainly raises problems in punishment in achieving justice which wants the perpetrators of premeditated murder to be given a sentence that is proportional to the consequences of their actions, this is where the role of the Judge is very important as an arbiter between the parties to the case.

Criminal sanctions against children who commit criminal acts in the perspective of criminal responsibility for children who commit premeditated murder, namely the defendant is proven to have fulfilled the elements of Article 80 Paragraph (3) of Law Number 35 of 2014 Amendment to Law Number 23 of 2002 concerning Child Protection. The Panel of Judges based on conviction with sufficient evidence, in order to realize the ideals of law, namely legal certainty, usefulness and legal justice, the judge's verdict focuses more on the actions of the perpetrator who is too cruel and sadistic so that he is sentenced to imprisonment for 10 (ten) years.

The Panel of Judges imposed a sentence with the maximum threat as well as consideration of the decision in mitigating and aggravating circumstances and based on the theory of punishment which states that punishment is not a form of retribution but rather guidance for defendants who have done wrong. However, in essence, the judge must further examine and understand the concrete facts in the trial. Because of the sense of justice for the defendant, the judge must be able to give consideration in accordance with a sense of justice. The value of law and the judge's sense of justice are far more prioritized when compared to legal certainty.

V. CONCLUSION

Criminal responsibility for children who commit the crime of 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 (underage) commits the crime of murder, then the judicial process is in accordance with the provisions stipulated in Law No. 11 of 2012, while the punishment is $\frac{1}{2}$ (one-half) of the adult punishment. This is also applied in the case of murder committed by a child contained in Decision Number 5/Pid.Sus-anak/2023/PN.Mks based on the evidence and facts obtained, the defendant was sentenced to imprisonment for 10 (ten) years with various considerations of the judge.

Criminal sanctions against children who commit criminal acts in the perspective of criminal responsibility for children who commit premeditated murder, namely the defendant is proven to have fulfilled the elements of Article 80 Paragraph (3) of Law Number 35 of 2014 Amendment to Law Number 23 of 2002 concerning Child Protection. The Panel of Judges based on conviction with sufficient evidence, in order to realize the ideals of law, namely legal certainty, benefit and legal justice, the judge's decision focuses more on the actions of the perpetrator who is too cruel and sadistic so that he is sentenced to imprisonment for 10 (ten) years. Sanctions against children who commit the crime of premeditated murder are proven to fulfill the elements of Article 80 Paragraph (3) of Law Number 35 of 2014 Amendment to Law Number 23 of 2002 concerning Child Protection. The Panel of Judges based on conviction with sufficient evidence, in order to realize the ideals of law, namely legal certainty, legal expediency and justice, so that he was sentenced to imprisonment for 10 (ten) years.

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