

Judges' Consideration Analysis of The Crime of Murder Performed by Child

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Abstract. This article aims to determine the punishment of children who commit murder crimes and the basis for judges' considerations in sentencing children who commit murder crimes. The approach method used is normative juridical with qualitative descriptive analysis. In addition, the provisions governing the crime of murder in the Criminal Code in Chapter XIX book II which consist of 13 articles, starting from Article 338 of the Criminal Code to Article 350 of the Criminal Code, are charged to children. The judge's basic considerations in imposing a sentence on a child who commits a crime of murder include juridical considerations, philosophical considerations and sociological considerations. Juridical considerations are considerations based on formal legislation relating to the judicial process of criminal acts committed by children, namely the crime of murder, including Law Number 48 of 2009 concerning Judicial Power, Criminal Procedure Code, SPPA Law, Criminal Code and indictments. Philosophical considerations are considerations given by the judge that the punishment given to perpetrators of criminal acts is an effort to improve behavior through the sentencing process and the side of justice for victims and the community, namely the extent to which punishments given to children can provide good behavior change and do not repeat violations. law and provide justice for victims and society.

Keywords: Consideration, Children, Murder, Sentencing

1. Introduction

Children are the next generation of the nation that must be protected and protected in their growth and development. Children viewed from the linguistic aspect have a definition as the second offspring from the result of a marital relationship between a man and a woman. The definition of a child according to juridical aspects or legal aspects, especially positive law in Indonesia is defined as a person who is not yet an adult, people who are underage/underage circumstances (inferiority) or often called children who are under age. under the supervision of their parent[1]. The definition of a child from the legal aspect is oriented to the age of the child and the relationship between his ability to carry out legal actions so that the child is legally viewed as a legal subject who is under the supervision of his guardian.

Children as well as citizens in general have the same position before the law. Based on this, as citizens in general, there are consequences that all actions and actions of a child can also be held accountable under the law[2]. The same position before the law for all citizens without exception for children is contained in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Although all actions and actions of children can be held accountable before the law, there are restrictions on legal liability to children, especially from the aspect of criminal law. The limitation of criminal liability against children is mainly based on the age limit of the child. Criminal legal accountability to children is based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA)

The limitation of criminal liability against children based on the age of the child is in accordance with the provisions of Article 1 to 3 of the SPPA Law which states that a child in conflict with the law, hereinafter referred to as a child, is that the child is 12 (twelve) years old, but is not yet 18 (eight) years old. twelve) years who are suspected of committing a crime. Furthermore, according to the provisions of Article 21 paragraph (1), it is stated that if a child is not yet 12 (twelve) years old, commits or is suspected of committing a crime, investigators, Social Advisors and Professional Social Workers shall make a decision to hand it back to parents/guardians; or include them in education, coaching, and mentoring programs at government agencies or Social Welfare Organizing Institutions (LPKS) in agencies dealing with social welfare, both at the central and regional levels, for a maximum of 6 (six) months. Furthermore, Article 69 paragraph (2) states that children who are not yet 14 (fourteen) years old can only be subject to action.

Based on the provisions of Article 1, Article 21 paragraph (1) and Article 69 paragraph (2) of the SPPA Law, it can be said that the age limit for children who can be criminally processed is 12 (twelve) years old but not yet 18 (eighteen) years old. Meanwhile, the age limit for children who can be held criminally accountable or can be sentenced for criminal acts they have committed is 14 (fourteen) years up to 18 (eighteen) years. Meanwhile, children under the age of 14 (fourteen) years cannot be held criminally accountable because they can only be subject to action.

Children whose behavior is deviant or whose actions meet criminal elements or can be said to be children who violate the law can be caused by various factors[3]. These factors include negative consequences arising from the rapid pace of development, the rapid flow of globalization and information, the rapid development of science and technology and the changing lifestyles of parents. These factors have made fundamental changes in social conditions in people's lives. Changes in social conditions have an influence on the values and behavior of children.

Such a child's social condition will further worsen the child's behavior when the child's parents, guardians or foster parents do not provide love, care, guidance or coaching towards the development of attitudes, behavior, self-adjustment and supervision. Such a situation will make it easier for the child to be carried away in an unhealthy social environment and detrimental to the growth and development of the child's personality.

Efforts to prevent and overcome deviations in actions and behavior of children, it is necessary to consider the position of children who have distinctive characteristics and characteristics[4–7]. The characteristics and characteristics of the child in question are that although the child based on his thoughts, feelings and will can make his own determination of the steps of his actions, however, the situation and conditions around the child can have an influence on the child's behavior. Based on this, parents and the surrounding community Children should have more responsibility for the guidance, education and development of the child's behavior in dealing with the problem of child behavior deviations.

Children can be brought before a court if they commit a crime. If the child who is brought before the trial is proven legally and convincingly guilty of committing the crime charged with him, then he can be subject to legal sanctions as determined by the SPPA Law.

The imposition of legal sanctions, both criminal penalties or actions for children who are suspected of being perpetrators of criminal acts or also called children in conflict with the law, efforts need to be made so that the child is not separated from his parents. The imposition of a crime or action against a child who is a perpetrator of a crime should take into account that the separation is intended for nothing other than the healthy and reasonable growth and development of the child or in the best interest of the child. This is by remembering that the relationship between parents and children is an essential relationship, both psychological and mental spiritual relationships, considering the characteristics and characteristics of the child.

In addition to the considerations referred to above, for the sake of the child's growth and development and in the best interest of the child, it is necessary to determine differences in the treatment of procedural law and criminal threats for children who commit criminal acts. Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) has made arrangements for exceptions and provisions for the length of detention which are determined in accordance with the interests of the child and the Criminal Code (KUHP) has made arrangements for distinguishing criminal threats for children, namely determining the imposition of Criminal penalties for children are set at (half) of the maximum criminal threat, in addition to regulating the length of punishment that can be applied to children, the Criminal Code also determines that the death penalty and life imprisonment are not applied to children.

The SPPA Law as a special criminal procedure for children other than the Criminal Procedure Code regulates the exception of criminal threats against children who commit criminal acts as stipulated in Article 79 paragraph (2) and paragraph (3) which states that the punishment for limiting freedom imposed on children is no longer than 1/2 (half) of the maximum imprisonment imposed on adults. The special minimum imprisonment does not apply to children.

Special treatment for children who are perpetrators of criminal acts, such as differences in the threat of imprisonment for children, which is lighter than the threat of imprisonment for adults as part of the protection of children against imprisonment which is a criminal deprivation of children's freedom. The future of the child and or in the best interest of the child must be the most important consideration in imposing imprisonment for a child. It must be understood by all parties, especially judges, that imprisonment is a last resort in sentencing children who are perpetrators of criminal acts. This has become a concern in the SPPA Law, namely Article 71 paragraph (1) which positions imprisonment as the last principal crime that can be imposed, in addition to other crimes. The penalties that can be imposed on children as referred to in Article 71 paragraph (1) are a. warning penalty; b. criminal offense with the following conditions: 1) coaching outside the institution; 2) community service; or 3) supervision. c. work training; d. coaching within the institution; and e. prison.

The imposition of criminal witnesses, especially imprisonment for children, requires careful and careful consideration by considering the characteristics and characteristics of children. Judging from all aspects of life, children are weak creatures both physically and mentally. Based on this, the application of imprisonment for children must be carried out with great care and carried out as nothing but the last resort in efforts to combat crime.

In addition to considering the aspects of the child's self, giving criminal sanctions, especially imprisonment for children, must consider the level of delinquency committed by the child, whether the child is still in school or not, reside (repetition of a crime), causative factors and so on. This means that the consideration in giving sanctions to children in addition to considering the condition of the child also considers other things outside of the child.

Although the state through the government has made every effort to protect children through various laws and regulations as well as facilities and infrastructure in development so

that children are protected from deviant acts, children cannot be separated from criminal acts committed by adults. There are still children whose actions harm others and can be classified as criminal acts. It can be seen that there are still many criminal acts whose perpetrators are children, even crimes committed to cause fatalities such as the crime of murder. This certainly makes everyone concerned because a child can commit a crime of murder.

The problem is that children in terms of crime and sentencing get legal protection in the form of leniency which is applied to children when the child is legally and convincingly proven guilty of committing a crime. What if the child turns out to be the perpetrator of the crime of murder, which in fact is a serious crime with the threat of severe punishment. Such a situation is certainly a dilemma, considering that on the one hand protection of children from the bad effects of punishment must be carried out, on the other hand the interests of murder victims, especially their families, cannot be ruled out or simply ignored.

Based on the above, the government must take an important role through the judicial power which has the authority to adjudicate a case. In this case the judge as an official who hears cases is required to be able to provide a court that can create a sense of justice in society. The judge's consideration has a fairly important position in the imposition of criminal sanctions in the crime of murder with child perpetrators. The judge must be able to make considerations relating to aspects of the child's condition and without neglecting the victim's sense of justice, especially the victim's family who are still alive. Judges in carrying out legal considerations for criminal cases of children, will also consider what actions a child has committed, including the crime of murder. The problems that can be formulated in this paper are as follows : How is the punishment for a child who commits a crime of murder?, and What is the basis for the judge's consideration in sentencing a child who commits a crime of murder?

2. Method

This research is a type of descriptive research or research that only describes the implementation of laws and regulations. The approach used in the research is normative juridical, namely legal research as a norm. The normative legal research method is a research that examines the law from an internal perspective with the object of research namely legal norms. Normative legal research serves to provide juridical arguments when there are vacancies, ambiguities and conflicts of norms. This study uses secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials. This is because this research is a normative juridical research so that it only uses secondary data sources

3. Result & Discussion

Sentencing can be defined as the stage of imposing sanctions and also the stage of imposing sanctions in criminal law. The word "criminal" generally gets the meaning of a law, while "criminalization" itself is defined simply as punishment. Sentencing is an act for someone who commits a crime or someone is a criminal, can be justified normally, not especially because the sentence contains positive consequences for the person who gets a criminal or convict, the victim, and also the community. Based on this, the theory in question is also called the theory of consequentialism. The imposition of a crime or punishment is not due to having committed a criminal act or evil act, but so that the perpetrator of the crime does not commit another evil act and is intended so that other people are afraid to commit the same crime or crime.

Sudarto stated that the word punishment is equivalent to punishment. Punishment according to the origin of the word comes from the basic word of law, so that it can be interpreted as an attempt to make a legal determination or decide about the law (berechten). Determination of law for an event is not only related to the field of criminal law, but also related to the field of civil law. Considering that this discussion is related to punishment in the field of criminal law, the term must be limited in meaning, namely the punishment of criminal cases, which often have the equivalent of a sentence with a sentence or the awarding or imposition of a crime by a judge. Punishment in this context has the same meaning as sentence or *veroordeling*. According to Andi Hamzah, punishment is also referred to as an effort to impose a sentence or to give a sentence, it can also provide punishment. In Dutch it is called *strafvoemeting* and in English it is called sentencing.

Punishment is a criminal imposition, or the imposition of suffering on a person who violates the law by an authorized officer as stipulated in the applicable provisions. What is meant by the provisions that apply here are in the form of regulations or legal norms in their form as statutory regulations. The imposition of suffering in punishment as something that is not good/untrue (violates human rights/something immoral) even though it is carried out in the name of the state, then seek justification (from various justifications, the philosophical basis is known), the justification is finally placed on the reasons for the punishment given (this is what developed into the theory/philosophy of punishment). Based on this, the laws and regulations governing actions that can be punished and the threat of punishment or legislation in the field of criminal law are actually justifications or the legal basis for justifying the provision of the intended punishment as suffering.

The punishment of a child who commits a crime must take into account the best interests of the child in the future or in the future. It is possible for a child to have the will or intention to do something, even more so in the current situation and condition a child can do what adults do in a positive or negative context. Children today have thoughts that are not in accordance with their age, which causes it to be said that children actually have the ability to make a distinction between right and wrong. Intentions or intentions may already be owned before a child commits a crime

The crime of murder as an act of eliminating a person's life is called murder. The crime of murder can be classified into 2 acts, namely criminal acts or crimes against life which are carried out based on the element of error and based on the element of the object in this case in the form of a person's life. The crime of murder or crimes against life is based on the element of error, namely crimes committed intentionally and crimes committed unintentionally which are regulated in the Criminal Code in Chapter XIX book II which consists of 13 articles, starting from Article 338 of the Criminal Code to Article 350 of the Criminal Code. Crimes against lives that are committed unintentionally are regulated in Chapter XXI Article 359. Crimes based on the element of the object in this case that can be said to be stealing the souls of others (other people's lives) there are several theories, namely 1. Equivalence Theory / Theory of *Conditio Sine Qua Non* (von Buri); 2. Adequate Theory or Balance Theory (Van Kries); 3. Individualization Theory (Birk Meyer).

The elements of the crime of murder are as determined by Article 338 of the Criminal Code which provides regulations regarding ordinary murder. As for the sound regarding The crime of ordinary homicide is referred to, namely "Whoever deliberately takes the life of another person is punished for murder with a maximum imprisonment of fifteen years". Based on the sound of the article, it can be explained its elements, which include an objective element in the form of "eliminating the life of another person", and a subjective element: carried out "on purpose". Article 338 of the Criminal Code regarding the act of taking the life

of another person must meet 3 (three) conditions, namely the existence of a form/form of an act, the existence of a consequence of the act in the form of the death of another person (death), there is a causal relationship between the act and the consequences that result in the form of death from it. The form of action is not focused on one particular action. The form of the act of taking another person's life according to the Criminal Code can be in the form of various actions (which are abstract in nature) such as hitting, slashing, shooting, and can also include acts that only move the limbs a little. Article 338 also requires that there will be a consequence in this case, namely the loss of one's life (other people) (opzet). Article 338 also stipulates that there is an element of intentionality, which must be interpreted broadly which includes 3 elements, namely intentionally as an intention, intentionally because of the conviction of certainty and necessity, and deliberately aware of the possibility.

The punishment of the legal subjects of criminal acts is carried out through the criminal justice process. The criminal justice process is carried out through long stages starting from the stage of investigation, prosecution and examination in court. A legal subject in a trial in a court that is legally and convincingly found guilty of a crime committed can then be imposed on him a crime. The legal subjects referred to here are anyone, both adults and children, both male and female.

In particular, the punishment of children, apart from being guided by the Criminal Procedure Code as a general rule in criminal proceedings, specifically uses the SPPA Law as a special rule for juvenile criminal proceedings. To give a criminal sentence against a child, it is necessary to consider the age limit in order to be held accountable for a criminal act committed by a child to be subject to a crime. According to the SPPA Law, the age of a child who can be accounted for is a crime due to a crime he has committed, namely the age of 14 to 18 years. Children under 14 years of age cannot be subject to a crime, only subject to action, while children who are 18 years of age will be subject to criminal penalties as adults or in other words, children who are 18 years of age are legal subjects of adults and are subject to criminal procedure law like adults in general.

Children as perpetrators of criminal acts or perpetrators of crimes or referred to as children in conflict with the law related to the crime of murder committed if they are aged 14 to 18 years can be held criminally accountable against them so that they can be subject to punishment through the stages of trial in court. Regarding the severity of the crime, it is the responsibility of the judge based on the SPPA Law. The criminal sanctions determined for child perpetrators of criminal acts according to the SPPA Law, namely 1/2 of the criminal period of adults and in imposing criminal penalties for child perpetrators of criminal acts, the SPPA Law holds the principle that imprisonment is a last resort or what is often referred to as an *ultimum remedium*. In the best interests of the child, in sentencing children as perpetrators of criminal acts, child criminal placement is carried out at the Special Child Development Institution (LPKA) with adequate quantity and quality of services and infrastructure and must also respect and fulfill their rights as a child.

As for the types of criminal sanctions that can be imposed on children who are perpetrators of crimes based on the age of the child, namely for children aged 14 (fourteen) to the age of 18 years, they can be punished, while for children aged 8 years to under 14 years, the child can only be punished. may be subject to action sanctions. Based on this, for children who are perpetrators of the crime of murder, the provisions in question apply. This has the consequence that a child who commits a crime of murder can only be subject to criminal sanctions if he is not yet 14 years old. This of course can lead to various public responses because the crime of murder is a crime in which the victim's life is lost but the child is only given action, not given a crime.

The types and forms of sanctions against children who are perpetrators of criminal acts according to the SPPA Law can be found in Chapter V which is contained in Article 69 to Article 83 which provides regulations regarding criminal acts and actions as sanctions that can be imposed. given to children who have committed crimes. As for the child who commits the crime of murder, he is subject to sanctions based on the provisions of Article 338 of the Criminal Code which states that "Whoever deliberately takes the life of another, is threatened with murder with a maximum imprisonment of fifteen years". Given the threat of imprisonment that can be imposed on children who are perpetrators of criminal acts, namely of the maximum threat of imprisonment given to adults, the perpetrators of the crime of murder are threatened with imprisonment that can be imposed on children for about 7 years.

A child who commits a crime, especially a crime of murder, which is a serious crime with victims of life, is juridically attached to his legal protection as legal subjects in general and children in particular. However, in imposing sentences on children, the interests and rights of the victims, both the victims who died and the families left behind, were still alive.

In principle, the implementation of punishment for the perpetrators of criminal acts must consider the effectiveness of the implementation of law and justice as legal objectives. In cases of murder committed by children, judges must be able to consider the extent to which criminal penalties can create a sense of community justice. On the one hand, the child as the perpetrator of the crime of murder, considering the unique nature and characteristics of the child, must receive protection, and on the other hand, the murder victim and his family must also receive justice. This means that the sentencing of children who are perpetrators of criminal acts must be realized in a balance in a fair judicial process.

There are several basic considerations of judges in sentencing a child who commits a crime of murder, including juridical considerations, philosophical considerations and sociological considerations.

1. Juridical considerations

Juridical considerations are considerations based on formal legislation relating to criminal acts committed by children, namely the crime of murder. As for the laws and regulations that can be guided by judges in imposing sentencing decisions on children who are perpetrators of the crime of murder, among others.

a. Law Number 48 of 2009 concerning Judicial Power.

Article 6 paragraph 2 states that no one can be sentenced to a crime, unless the court, because of a valid evidence according to the law, is convinced that a person who is considered to be responsible has been guilty of the act he is accused of. From the provisions of the article, it can be said that the judge in imposing a sentence must be guided by the evidence and his belief about the guilt of the defendant. Furthermore, in Article 8 paragraph 2 it is stated that in considering the severity of the crime, the judge must also pay attention to the good and evil nature of the defendant.

b. KUHAP

KUHAP is a formal criminal law, namely procedural law to enforce material criminal law, namely the Criminal Code. The Criminal Procedure Code is used as the basis for how the criminal justice process is carried out which includes several stages, namely the stages of investigation, prosecution, examination in court trials, and implementation and supervision of judge decisions. In imposing a sentence, the judge must pay attention to how the criminal justice process is carried out.

Based on the Criminal Procedure Code as the basis in the implementation of the criminal justice process, it will be through evidence that the facts will be revealed at trial about the defendant's actions. Furthermore, based on the facts revealed at the trial, the judge can be used

as a judge in deciding the sentence for the child who is the perpetrator of the crime of murder as well as determining the severity of the crime. Based on article 183 of the Criminal Procedure Code, it is explained that: a judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the belief that a criminal act has actually occurred and it is the defendant who is proven to have committed it. This provision is to ensure the establishment of truth, justice and legal certainty for a person. Therefore, the judge in the criminal procedure law is obliged to determine:

- 1) Which acts can be considered proven according to a court examination.
- 2) What has proven that the defendant is guilty of the acts charged.
- 3) What crimes have been committed in connection with these acts.
- 4) What punishment should be imposed on the defendant.
- 5) Implementation, inhibition and supervision.

This evidence will shed light on the crime being charged and increase the judge's belief that the defendant is really guilty and as a perpetrator and to determine the severity of the sentence to be imposed.

c. SPPA Law

In addition to the Criminal Procedure Code, the criminal procedure regulations that are specifically used to punish children who are perpetrators of the crime of murder in particular and criminal acts generally use the SPPA Law. The SPPA Law has regulated how to proceed with criminal proceedings to resolve criminal cases committed by children as well as the forms and types of punishments that can be given to children. The types and penalties that can be given to children according to the SPPA Law are criminal and action.

d. KUHP

The Criminal Code is a material criminal law regulation that contains criminal acts and criminal threats. For the crime of murder, the judge can use the provisions of Article 338 of the Criminal Code which provides regulations regarding the crime of murder accompanied by the threat of punishment.

e. indictment.

The judge in giving his consideration determines the punishment for the child who is the perpetrator of a crime in particular and the subject of criminal law in general must be based on the article charged with the defendant which regulates the actions that can be punished and the criminal threats both contained in the Criminal Code and outside the Criminal Code. The provisions of the Criminal Code which regulates the crime of murder, namely Article 338 of the Criminal Code which states that "Whoever deliberately takes the life of another person, is threatened with murder with a maximum imprisonment of fifteen years".

If the child who is the perpetrator of the crime of murder is charged with violating Article 338 of the Criminal Code and the child is legally and convincingly proven guilty of committing the crime charged, the judge cannot give a sentence in the form of imprisonment outside of the provisions of Article 338 of the Criminal Code regarding murder charged with a child, namely imprisonment. a maximum of fifteen years to about 7.5 years in prison considering the threat of imprisonment for children is of the maximum penalty imposed on adult criminals.

Thus, the provisions for imprisonment as referred to in Article 338 of the Criminal Code are the main punishments that can be given to children who are perpetrators of the crime of murder. Furthermore, the judge can give other penalties as additional penalties as stipulated by the SPPA Law.

The laws and regulations governing which actions are criminal acts that can be punished both in the Criminal Code and outside the Criminal Code are related to the "dangerous nature"

of the acts committed by the maker. "The dangerous nature of the act can be used as a judge in determining the severity of the crime. The higher the "dangerous nature" of the act, the higher the penalty imposed as determined in the laws and regulations governing the crime.

2. Philosophical considerations

Philosophical considerations are considerations given by the judge that the punishment given to criminal acts is an effort to improve behavior through the sentencing process. This implies that the philosophy of punishment or punishment is the guidance of criminals who are expected to be able to make self-improvement after serving a crime and not to repeat the crime. Philosophical considerations are considerations or elements that focus on the value of justice for the defendant and the victim. Meanwhile, according to Bagir Manan, reflecting the philosophical values or values contained in legal ideals (*rechtssidee*). Necessary as a means of ensuring justice.

In line with the philosophical considerations referred to, the judge must be able to consider that the imposition of punishment for children must be able to provide guidance for children who are perpetrators of criminal acts so that the punishment imposed on them can provide a change in the attitude and behavior of children so as not to repeat the crime of murder in particular and other crimes in general. Based on this, the judge can give the main punishment as referred to in Article 338 of the Criminal Code and other punishments that are coaching in nature such as job training to provide provisions for children who have committed crimes so that they can be independent after serving their sentences.

On the victim's side, the judge must also be able to consider justice for the victim and her family as a result of the crime experienced by the victim. This is an important matter to provide a means of justice for victims and society in general. This means that in giving punishment to children who are perpetrators of the crime of murder, the judge must look at all sides, namely from the side of the perpetrator's child, the victim and his family as well as the community.

3. Sociological considerations

Sociological considerations, namely the judge in imposing a sentence based on the social background of the defendant and paying attention that the sentence imposed has benefits for the community. What is meant by a decision that provides fulfillment of sociological considerations, namely a decision that does not conflict with the law that lives in society (society habits). Meanwhile, according to M. Solly Lubis, sociological considerations are a reflection of the demands or needs of the community that require a necessary settlement which is a means of guaranteeing benefits.

Based on sociological considerations in giving punishment to children who are perpetrators of the crime of murder, the judge considers the circumstances and social background of the child. The situation and social background of the child can be obtained from the Community Research Report (*Litmas*) made by the Correctional Center (BAPAS) as well as the facts in the trial. The circumstances and background of the child's social life include the factors causing the occurrence of a crime, how the crime was committed to the impact or consequences arising from the crime committed by the child against the victim.

In addition, the situation and social background of the child also involves the good and evil nature of the child as a consideration. Regarding this, it can be based on Article 8 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power which states that in considering the severity of the crime, the judge must also pay attention to the good and evil nature of the defendant.

Considering the giving of a sentence related to the severity of the sentence, the judge must take into account the nature and seriousness of the crime that occurred, the circumstances

which include the acts that were faced against him. The judge must consider the personality of the perpetrator, the actions of his age, level of education, as well as gender whether male or female, his environment, his character as a nation and other things. A judge in considering the sentence to be imposed on the perpetrator has the freedom to determine the severity of the punishment, the like and the legal modalities. However, the determination of the severity must still be guided by the juridical aspect, of course, on the article being charged. This means that the freedom of judges in their considerations is limited by the juridical aspect.

In addition, the good and evil nature of the accused, in this case the child who is the perpetrator of the crime of murder, is closely related to how the crime of murder was carried out or how to commit the crime. For example, the crime of murder is carried out with a plan or carried out in sadistic ways outside of human values, of course the punishment imposed is heavier than the crime of ordinary murder.

In addition, there are certain things in the judge's consideration to give punishment to a defendant, including a child who is a perpetrator of the crime of murder. There are certain things outside the provisions of laws and regulations that are considered by the judge to determine the severity of the crime, namely: a. The mitigating factors are 1) The existence of a frank attitude in the trial; 2) Have not enjoyed the results of their actions; 3) There is regret not to repeat it; 4) There is responsibility as the backbone of the family; 5) Polite in court; 6) Never been convicted or not a recidivist. 7) Having a lot of family responsibilities with children who are still small and b. The aggravating factors include 1) Showing a convoluted attitude in giving statements at trial; 2) Disrespect and disrespect for the trial; 3) Has been convicted or in a similar case; 4) That the act is troubling the community; 5) That the act endangers a person's life and body; 6) The act has such a great consequence; 7) Have been convicted or recidivist.

4. Conclusion

The punishment of children who commit the crime of murder is carried out based on the Criminal Procedure Code as a general provision for criminal proceedings and the SPPA Law as a special provision for children in criminal proceedings which distinguishes them from criminal proceedings for adults. In addition, the provisions governing the crime of murder in the Criminal Code in Chapter XIX book II which consist of 13 articles, starting from Article 338 of the Criminal Code to Article 350 of the Criminal Code, are charged to children.

The judge's basic considerations in imposing a sentence on a child who commits a crime of murder include juridical considerations, philosophical considerations and sociological considerations. Juridical considerations are considerations based on formal legislation relating to the judicial process of criminal acts committed by children, namely the crime of murder, including Law Number 48 of 2009 concerning Judicial Power, Criminal Procedure Code, SPPA Law, Criminal Code and indictments. Philosophical considerations are considerations given by the judge that the punishment given to perpetrators of criminal acts is an effort to improve behavior through the sentencing process and the side of justice for victims and the community, namely the extent to which punishments given to children can provide good behavior change and do not repeat violations. law and provide justice for victims and society. Sociological considerations, namely the judge in imposing a sentence based on the social background of the defendant and paying attention that the sentence imposed has benefits for the community.

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