

Judicial Disparities in Premeditated Murder Cases: Legal Certainty in the Interpretation of Articles 338 and 340 of the Indonesian Criminal Code

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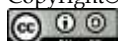
Abstract

Judicial disparities in homicide cases involving indications of premeditation continue to challenge legal certainty in Indonesia's criminal justice system. Previous studies have primarily examined sentencing disparity or the interpretation of Article 340 of the Indonesian Criminal Code (KUHP) in individual cases, but have not systematically explained the relationship between legal certainty, judicial discretion, and judicial reasoning through comparative analysis of judicial decisions. This study addresses that gap by analysing inconsistencies in the interpretation of the element "with prior planning" (dengan rencana terlebih dahulu) through a normative juridical method employing statutory, conceptual, case, and comparative approaches. The analysis focuses on Decision Number 230/Pid.B/2023/PN Sda and compares it with four homicide decisions rendered between 2021 and 2024 involving comparable factual circumstances. The findings reveal five principal factors contributing to judicial disparity: (1) the absence of objective parameters for interpreting Article 340 of the KUHP; (2) broad judicial subjectivity in assessing the offender's psychological condition; (3) the lack of interpretative guidelines issued by the Supreme Court; (4) inconsistency in judicial precedent concerning comparable cases; and (5) divergent interpretations regarding the interval between the formation of intent and the execution of the offence. These factors result in inconsistent legal qualifications and sentencing outcomes despite materially similar facts. The study's theoretical contribution lies in integrating the perspectives of legal certainty, judicial discretion, ratio decidendi, and sentencing disparity into a unified analytical framework for evaluating judicial interpretation of premeditation. Its practical contribution is the formulation of four cumulative objective indicators – weapon preparation, victim surveillance, preparation for escape or concealment, and sufficient time for rational reflection – as interpretative guidelines to support consistent application of Article 340. Accordingly, the study recommends the adoption of these indicators through a Supreme Court Regulation (Peraturan Mahkamah Agung – PERMA) to strengthen legal certainty while preserving judicial independence in homicide adjudication.

Keywords: Article 340 Of the Indonesian Criminal Code, Inconsistency Of Jurisprudence, Judicial Disparity, Legal Certainty, Premeditated Murder.

Abstrak

Disparitas putusan hakim dalam perkara pembunuhan yang mengandung indikasi perencanaan masih menjadi tantangan terhadap kepastian hukum dalam sistem peradilan pidana Indonesia. Penelitian-penelitian sebelumnya umumnya mengkaji disparitas pemidanaan atau penafsiran Pasal 340 Kitab Undang-Undang Hukum Pidana (KUHP) pada



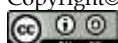
kasus-kasus individual, namun belum menjelaskan secara sistematis hubungan antara kepastian hukum, diskresi hakim, dan pertimbangan hukum melalui analisis komparatif terhadap putusan pengadilan. Penelitian ini mengisi kesenjangan tersebut dengan menganalisis inkonsistensi penafsiran unsur “dengan rencana terlebih dahulu” melalui metode penelitian yuridis normatif yang menggunakan pendekatan perundang-undangan, konseptual, kasus, dan komparatif. Analisis difokuskan pada Putusan Nomor 230/Pid.B/2023/PN Sda dan dibandingkan dengan empat putusan perkara pembunuhan yang diputus dalam kurun waktu 2021–2024 dengan keadaan faktual yang sebanding. Hasil penelitian menunjukkan adanya lima faktor utama penyebab disparitas putusan, yaitu: (1) tidak adanya parameter objektif dalam menafsirkan Pasal 340 KUHP; (2) luasnya subjektivitas hakim dalam menilai kondisi psikologis pelaku; (3) belum adanya pedoman penafsiran yang diterbitkan oleh Mahkamah Agung; (4) inkonsistensi preseden yudisial dalam perkara-perkara yang sejenis; dan (5) perbedaan penafsiran mengenai tenggang waktu antara terbentuknya niat dan pelaksanaan tindak pidana. Faktor-faktor tersebut mengakibatkan perbedaan kualifikasi hukum dan pemidanaan meskipun fakta-fakta material perkara relatif serupa. Kontribusi teoretis penelitian ini terletak pada integrasi perspektif kepastian hukum, diskresi hakim, ratio decidendi, dan disparitas pemidanaan ke dalam suatu kerangka analitis terpadu untuk mengevaluasi penafsiran hakim terhadap unsur perencanaan. Kontribusi praktisnya berupa perumusan empat indikator objektif yang bersifat kumulatif, yaitu persiapan alat, pengamatan terhadap korban, persiapan pelarian atau penyembunyian, serta adanya waktu yang memadai untuk melakukan perenungan secara rasional, sebagai pedoman penafsiran guna mendukung penerapan Pasal 340 KUHP secara konsisten. Oleh karena itu, penelitian ini merekomendasikan pengadopsian indikator-indikator tersebut melalui Peraturan Mahkamah Agung (PERMA) guna memperkuat kepastian hukum tanpa mengurangi independensi hakim dalam mengadili perkara pembunuhan.

Kata Kunci: Disparitas *Putusan*, Pembunuhan Berencana, Kepastian Hukum, Pasal 340 KUHP.

Introduction

Judicial consistency constitutes one of the fundamental prerequisites for maintaining the legitimacy of the rule of law. Criminal justice is expected not only to enforce statutory provisions but also to apply legal norms consistently in cases involving substantially similar factual circumstances. When courts produce significantly different legal qualifications or sentencing outcomes in comparable homicide cases, judicial disparity emerges as a phenomenon that threatens both legal certainty and public confidence in the administration of justice (Pangaribuan, 2025). Such disparity is particularly significant in Indonesia because the distinction between ordinary homicide under Article 338 of the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) and premeditated murder under Article 340 carries profoundly different legal consequences. While Article 338 prescribes a maximum sentence of fifteen years' imprisonment, Article 340 authorizes life imprisonment or even the death penalty, making the interpretation of the phrase "with prior planning" (*dengan rencana terlebih dahulu*) decisive in determining criminal liability (Ferynaldo, 2024).

The importance of consistency in judicial decision-making is inseparable from the theory of legal certainty. Gustav Radbruch identifies legal certainty (*Rechtssicherheit*) as one of the three fundamental values of law alongside justice and legal expediency (Borowski, 2024). According to this theory, legal rules should not merely exist in statutory form but must also be interpreted and applied consistently so that individuals are able to foresee the legal consequences of their conduct (Kristhy et al., 2023). In criminal law, legal certainty requires



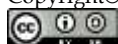
judges to employ coherent legal reasoning when interpreting statutory elements, thereby ensuring that similar factual circumstances receive similar legal treatment. Conversely, inconsistent judicial interpretation creates uncertainty concerning the applicable law and undermines the constitutional principle of equality before the law.

Judicial consistency is closely related to the doctrine of judicial discretion. Although criminal legislation provides general legal standards, judges inevitably exercise interpretative discretion when statutory provisions employ open-ended concepts that lack precise legislative definitions. Judicial discretion therefore enables judges to evaluate factual circumstances and determine whether the constituent elements of a criminal offence have been fulfilled (Dajović, 2023). Nevertheless, discretionary authority must remain constrained by objective legal reasoning because excessive reliance upon subjective judicial assessment may produce inconsistent legal outcomes. One of the principal mechanisms through which judicial discretion is exercised is the formulation of *ratio decidendi*, namely the legal reasoning that forms the essential basis of a judicial decision. The quality and consistency of *ratio decidendi* are therefore crucial in maintaining coherence among judicial decisions because they determine how statutory provisions are interpreted and subsequently applied in future cases (Permatasari et al., 2024). Where different courts formulate substantially different *ratio decidendi* despite materially similar facts, judicial disparity becomes unavoidable.

From the perspective of criminal law, judicial disparity has long been recognised as a consequence of inconsistent sentencing and legal qualification. Sentencing disparity theory explains that disparities become problematic when differences in criminal sanctions or legal qualifications cannot be objectively justified by differences in the facts or legal circumstances of individual cases (Levin, 2022). While limited variations may reflect individualized justice, unjustified disparity undermines legal certainty because judicial outcomes become dependent upon the personal interpretation of individual judges rather than consistent legal standards (Santi, 2021). Consequently, sentencing disparity should be distinguished from legitimate judicial discretion; the former reflects inconsistency in legal application, whereas the latter remains permissible only insofar as it is supported by rational and transparent legal reasoning.

These theoretical concerns become particularly evident in interpreting the phrase "with prior planning" (*dengan rencana terlebih dahulu*) contained in Article 340 of the Indonesian Criminal Code. Indonesian criminal legislation provides no statutory definition of this element, leaving its interpretation largely to judicial reasoning and criminal law doctrine. Classical Indonesian scholars generally argue that premeditation requires a sufficient interval between the emergence of criminal intent and the execution of the offence, allowing the perpetrator to reflect calmly before acting (Chazawi, 2010; Lamintang & Lamintang, 2022; Moeljatno, 2021). Nevertheless, these doctrinal formulations remain relatively abstract because they do not establish objective indicators capable of distinguishing spontaneous homicide from premeditated murder. Consequently, judges frequently rely upon subjective assessments of emotional condition, preparation of weapons, temporal intervals, and surrounding circumstances, thereby increasing the possibility of inconsistent judicial interpretation.

The practical implications of these theoretical issues are illustrated by Decision Number 230/Pid.B/2023/PN Sda. In this case, the defendant, Ainul Yaqin alias Budi, carried a sharp weapon in the form of a sickle before killing the victim, Deny Sulhariono, on 19 February 2023. From an objective perspective, bringing a weapon to the crime scene may reasonably indicate prior preparation. Nevertheless, the panel of judges concluded that the



element of prior planning had not been established and therefore convicted the defendant under Article 338 rather than Article 340 of the Indonesian Criminal Code. This reasoning differs from Decision Number 53/Pid/2023/PT DKI concerning the Brigadier Jhosua Hutabarat case, in which the court found the existence of premeditation and imposed the death penalty, as well as Decision Number 57/Pid.B/2021/PN Str, where the defendant's emotional condition was considered sufficient to negate the element of prior planning despite the defendant carrying a sharp weapon before the homicide.

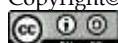
These contrasting judicial decisions demonstrate that the interpretation of the phrase "with prior planning" remains heavily dependent upon judicial subjectivity and lacks objective legal parameters. The absence of operational standards creates broad interpretative discretion and contributes to inconsistent judicial outcomes (Chazawi, 2010). As a consequence, judicial disparity affects not only defendants, who are exposed to substantially different criminal liability despite comparable factual circumstances, but also victims and their families, whose expectations of equal justice may remain unfulfilled (Azra et al., 2024). Moreover, judicial inconsistency reinforces the public perception that criminal responsibility is determined primarily by the identity of the adjudicating judges rather than by objective legal principles (Fitri, 2025). Such circumstances directly contradict the principle of legal certainty and diminish public confidence in Indonesia's criminal justice system.

Although previous studies have acknowledged the existence of judicial disparity in homicide adjudication, important research gaps remain. Santi (2021) primarily examined the factors contributing to sentencing disparity in premeditated murder cases but did not specifically analyse differences in the legal qualification between Articles 338 and 340 of the Indonesian Criminal Code. Fitri (2025) focused on disparities between Supreme Court decisions concerning premeditated murder but limited the analysis to two judicial decisions without developing objective interpretative standards capable of guiding future adjudication. Likewise, Siagian (2024) examined the role of motive in judicial consideration of premeditated murder but did not evaluate how inconsistent judicial reasoning influences legal certainty or contributes to disparities in legal qualification. Accordingly, existing scholarship has predominantly concentrated on sentencing outcomes, motives, or isolated judicial decisions, while leaving unresolved the broader issue of how judges should consistently interpret the element of prior planning in homicide cases involving comparable factual circumstances.

The differences between previous studies and the present research are summarized in Table 1.

Table 1. Previous Studies and Research Gap

Author	Research Focus	Research Limitation	Position of the Present Study
Santi (2021)	Factors causing sentencing disparity in premeditated murder cases	Focused primarily on sentencing disparity without analysing legal qualification under Articles 338 and 340 KUHP	Examines judicial disparity in the interpretation of statutory elements distinguishing ordinary homicide from premeditated murder
Fitri (2025)	Comparative analysis of two Supreme Court decisions	Limited comparative scope and no formulation of objective interpretative criteria	Analyses five comparable judicial decisions and formulates objective



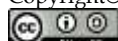
			indicators of premeditation
Siagian (2024)	Judicial consideration of motive in premeditated murder	Does not examine judicial disparity or legal certainty	Integrates legal certainty, judicial discretion, sentencing disparity, and ratio decidendi to explain inconsistent judicial interpretation

Based on these research gaps, this study offers three principal contributions. First, it comparatively analyses five homicide decisions rendered between 2021 and 2024 involving similar factual circumstances in order to identify consistent patterns of judicial interpretation concerning the element of prior planning. Second, it integrates the theoretical perspectives of legal certainty, judicial discretion, sentencing disparity, and ratio decidendi to explain why inconsistent legal qualifications continue to occur despite identical statutory provisions. Third, this study formulates objective legal criteria for assessing the element of prior planning and proposes that such criteria be institutionalised through a Supreme Court Regulation (*Peraturan Mahkamah Agung* – PERMA) as interpretative guidelines for judges. Through these contributions, the research seeks not only to explain the causes of judicial disparity but also to strengthen legal certainty and promote greater consistency in the application of Articles 338 and 340 of the Indonesian Criminal Code.

Methods Research

This study employs normative legal research using statutory, conceptual, case, and comparative approaches to examine the consistency of judicial interpretation concerning Articles 338 and 340 of the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) (Zainuddin & Karina, 2023). The statutory approach is used to analyse the legal framework governing homicide offences, while the conceptual approach examines the doctrines of legal certainty, judicial discretion, ratio decidendi, and premeditation. The case and comparative approaches are applied to compare judicial reasoning across homicide cases involving similar factual circumstances in order to identify patterns of judicial disparity. The legal materials consist of primary legal materials, namely the Indonesian Criminal Code, the Indonesian Code of Criminal Procedure (KUHP), and judicial decisions, as well as secondary legal materials including criminal law textbooks, scholarly journals, and previous studies relevant to judicial disparity in premeditated murder cases (Wahyuni, 2017).

The five judicial decisions were selected through purposive normative sampling because they constitute the core legal materials for analysing judicial disparity. The selected cases satisfy three criteria: (i) they involve homicide prosecuted under Articles 338 or 340 of the Indonesian Criminal Code; (ii) they contain factual indications of prior planning, particularly the preparation or carrying of weapons



before the offence; and (iii) they resulted in different legal qualifications or sentencing outcomes despite comparable factual circumstances. Accordingly, Decision Number 230/Pid.B/2023/PN Sda, Decision Number 53/Pid/2023/PT DKI, Decision Number 57/Pid.B/2021/PN Str, Decision Number 356/Pid.B/2023/PN Bta, and Decision Number 191/Pid.B/2023/PN Bta were selected because they provide an appropriate normative basis for examining inconsistencies in judicial interpretation of the element "with prior planning".

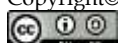
The legal materials were analysed qualitatively using a prescriptive legal analysis focusing on the ratio decidendi of each judicial decision. The analysis compared how judges interpreted the element of "with prior planning" by examining the preparation of weapons, the interval between intent and execution, the offender's emotional condition, and other evidence of planning. To evaluate the consistency of judicial reasoning, this study employed grammatical, systematic, and conceptual interpretation of Article 340 of the Indonesian Criminal Code, followed by comparative analysis of the selected decisions. The findings were subsequently assessed through the perspectives of legal certainty, judicial discretion, and sentencing disparity to formulate objective criteria for interpreting premeditation in homicide cases.

Results and Discussion

Analysis of Judicial Considerations in Decision Number 230/Pid.B/2023/PN Sda

Decision Number 230/Pid.B/2023/PN Sda serves as the principal case examined in this study because it illustrates the interpretative difficulties surrounding the element of "with prior planning" under Article 340 of the Indonesian Criminal Code. The defendant, Ainul Yaqin alias Budi, was prosecuted under alternative indictments, namely Article 340 concerning premeditated murder and Article 338 concerning ordinary homicide. The prosecution argued that the defendant intentionally brought a sickle before approaching the victim, Deny Sulhariono, and subsequently used the weapon to inflict fatal injuries. During the trial, it was established that the defendant and the victim had previously been involved in personal disputes relating to debt. On the day of the incident, the defendant arrived at the victim's residence carrying the sickle, an argument ensued, and the defendant attacked the victim, causing fatal wounds to the neck and head (Decision Number 230/Pid.B/2023/PN Sda, 2023).

The panel of judges concluded that these facts were insufficient to establish the element of "with prior planning" required under Article 340. According to the court, premeditation requires not merely the preparation of a weapon but also convincing evidence that the perpetrator had sufficient time to reflect calmly and deliberately upon the intention and method of killing. The court further emphasized that the homicide occurred during an emotional confrontation and accepted the defendant's explanation that the sickle had been carried because he had previously been working in the rice fields. Consequently, the judges held that the killing was spontaneous rather than premeditated and therefore convicted the defendant under Article 338,



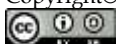
imposing a sentence of twelve years' imprisonment (Decision Number 230/Pid.B/2023/PN Sda, 2023).

From a normative perspective, however, the court's reasoning warrants critical examination. Although Indonesian criminal law doctrine indeed recognizes that premeditation requires a period of calm reflection (Lamintang & Lamintang, 2022; Moeljatno, 2021), the judgment appears to place disproportionate emphasis on the defendant's emotional condition while giving insufficient consideration to objective evidence indicating prior preparation. The undisputed fact that the defendant intentionally carried a deadly weapon before confronting a person with whom he had an existing conflict constitutes a legally significant circumstance that should not be dismissed merely because the fatal attack occurred during a subsequent emotional altercation. Emotional escalation immediately before the attack does not necessarily eliminate the possibility that the perpetrator had already formed the intention to use the weapon if the confrontation developed unfavourably. Consequently, the existence of emotional disturbance should be treated as one evidentiary factor rather than as conclusive proof negating premeditation.

Furthermore, the court's acceptance of the defendant's explanation that the sickle was carried solely because he had been working in the rice fields raises questions concerning the standard of judicial proof. Although the judges themselves acknowledged that this explanation could not be independently verified, they nevertheless relied upon it to weaken the inference of prior planning. From the perspective of criminal evidence, an uncorroborated explanation should not automatically outweigh objective factual circumstances, particularly where the defendant deliberately travelled to the victim's residence while carrying the very weapon later used to commit the homicide. Such reasoning risks shifting the assessment of premeditation from objective indicators to speculative assumptions concerning the defendant's subjective intention.

This judgment also demonstrates an inconsistent application of judicial discretion. As Hart's theory of open texture suggests, judges inevitably exercise interpretative discretion when statutory concepts are indeterminate. Nevertheless, such discretion should remain constrained by coherent legal principles rather than subjective evaluation of individual circumstances (Widiartana & Hussain, 2025). Likewise, MacCormick argues that the legitimacy of judicial decisions depends upon the quality and consistency of their ratio decidendi (Mitidiero, 2025). In the present case, the ratio decidendi places decisive weight on the defendant's emotional condition while providing limited explanation as to why the objectively established act of bringing a deadly weapon to the victim's residence was considered legally insufficient to indicate prior preparation. This imbalance weakens the transparency of judicial reasoning and makes it difficult to distinguish the present case from other homicide decisions in which weapon preparation has been treated as evidence supporting premeditation.

Accordingly, this study argues that the preparation or carrying of a weapon should not automatically establish the element of "with prior planning", as correctly recognized by the court. However, neither should such evidence be regarded as



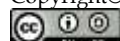
legally insignificant. Instead, weapon preparation should constitute a strong objective indicator that must be assessed cumulatively with other surrounding circumstances, including the relationship between the offender and the victim, the purpose of approaching the victim, the interval available for rational reflection, and any conduct demonstrating anticipation of the consequences of the offence. Such a cumulative assessment would better reflect the principles of legal certainty and proportional judicial reasoning while reducing excessive dependence upon subjective judicial interpretation. The absence of explicit objective standards in Article 340 therefore illustrates the need for interpretative guidelines capable of ensuring greater consistency in distinguishing ordinary homicide from premeditated murder.

Comparison of Judicial Decisions and Factors Contributing to Disparity in Homicide Cases Involving Indications of Premeditation (2021–2024)

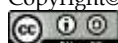
In order to identify patterns of judicial disparity, this study compares Decision Number 230/Pid.B/2023/PN Sda with four other judicial decisions rendered between 2021 and 2024 involving similar principal facts, namely that the defendants carried weapons prior to committing homicide. In Decision Number 53/Pid/2023/PT DKI concerning the murder of Brigadier Jhosua Hutabarat, the court imposed the death penalty upon the defendant, Ferdy Sambo, on the basis of carefully arranged premeditation demonstrated through the preparation of a scenario and the involvement of other parties in the execution of the crime, notwithstanding the fact that the defendant did not personally carry out the killing. The court held that the existence of sufficient time for calm reflection and the orchestration of the roles of the perpetrators constituted proof of the fulfillment of the element of “with prior planning” (dengan rencana terlebih dahulu) as stipulated under Article 340 of the Indonesian Criminal Code (KUHP) (*Putusan Nomor 53/Pid/2023/PT DKI*, 2021).

Table 2. Comparative Analysis of Judicial Decisions on Premeditated Murder (2021–2024)

Decision Number	Principal Facts	Indicators of Premeditation	Article Applied	Sentence Imposed	Ratio Decidendi
230/Pid.B/2023/PN Sda	Defendant carried a sickle to the victim's residence following a prior personal dispute and fatally attacked the victim during an argument.	Carrying a weapon before the encounter; prior conflict; no proven evidence of deliberate planning according to the court.	Article 338 KUHP	12 years' imprisonment	The court held that carrying a weapon alone did not establish premeditation because the killing occurred during an emotional confrontation without sufficient time for calm reflection.



53/Pid/2023/PT DKI	Defendant organized the murder of Brigadier Jhosua Hutabarat through a planned scenario involving several participants	Planned scenario; coordination of perpetrators; preparation before execution; sufficient time for deliberation	Article 340 KUHP	Death penalty	Premeditation was established because the homicide resulted from deliberate planning, careful preparation, and coordinated execution, demonstrating conscious reflection before the offence
57/Pid.B/2021/PN Str	Defendant carried a sickle before attacking the victim following a spontaneous dispute	Carrying a weapon; emotional confrontation; no evidence of prior planning	Article 338 KUHP	14 years' imprisonment	The court considered the emotional circumstances sufficient to negate the element of prior planning despite the defendant's preparation of the weapon.
356/Pid.B/2023/PN Bta	Homicide involving preparation of a weapon under circumstances similar to other comparable cases.	Limited evidence of planning; factual circumstances relatively similar to other homicide cases.	Article 338 KUHP	6 years and 6 months' imprisonment	The judgment provided limited justification for the relatively lenient sentence despite the seriousness of the offence.
191/Pid.B/2023/PN Bta	Homicide with factual characteristics broadly comparable to Decision No. 356/Pid.B/2023/PN Bta.	Similar factual indications; no comprehensive discussion regarding premeditation.	Article 338 KUHP	9 months' imprisonment	The court imposed a substantially lighter sentence without clearly distinguishing the factual or legal circumstances from comparable cases.



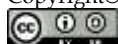
Conversely, in Decision Number 57/Pid.B/2021/PN Str, the defendant was sentenced to 14 years' imprisonment for a homicide committed using a sickle. The court held that although the defendant had carried a sharp weapon, the act was committed in an emotional state arising from a spontaneous altercation, such that the element of premeditation was deemed unfulfilled and Article 338 of the KUHP was applied instead. This reasoning is similar to that adopted in Decision Number 230/Pid.B/2023/PN Sda; however, the difference in sentences of 12 years and 14 years respectively in two cases involving nearly identical facts demonstrates the existence of sentencing disparity. An even more striking disparity is evident in Decision Number 356/Pid.B/2023/PN Bta, which imposed a sentence of 6 years and 6 months' imprisonment, compared with Decision Number 191/Pid.B/2023/PN Bta, in which the court imposed only 9 months' imprisonment for a similar case, despite both decisions originating from the same court.

A comparison of these five decisions demonstrates that judicial interpretation of the element of "with prior planning" under Article 340 of the KUHP varies considerably. In the Ferdy Sambo case, premeditation was inferred from the existence of a planned scenario and the involvement of other parties, whereas in the Sidoarjo and Simpang Tiga Redelong cases, the emotional condition of the perpetrators was considered sufficient to negate the element of premeditation despite the established fact that the defendants had carried weapons. In the two Bantaeng cases, the courts imposed substantially different sentences without providing adequate explanation regarding the differences in legal reasoning. This condition reflects the absence of uniform standards in assessing the element of premeditation (Firmansyah et al., 2025), thereby granting excessively broad interpretative discretion to judges and potentially resulting in legal uncertainty.

Based on the foregoing analysis, this study identifies several principal factors contributing to judicial disparity. First, there is an absence of objective parameters within Article 340 of the KUHP, which merely employs the phrase "with prior planning" without providing a clear operational definition. Doctrinal views, such as P.A.F. Lamintang's opinion concerning the necessity of sufficient time for calm reflection (Lamintang & Lamintang, 2022) and Moeljatno's view regarding the heightened level of awareness possessed by perpetrators of premeditated murder (Moeljatno, 2021), remain abstract and difficult to apply concretely. Second, there is a predominance of judicial subjectivity in assessing the psychological and emotional condition of the perpetrator in the absence of measurable standards (Ilham & Fithri, 2025). Third, there are no technical guidelines issued by the Supreme Court in the form of a Supreme Court Regulation (PERMA) or Supreme Court Circular Letter (SEMA) governing the criteria for assessing the element of premeditation (Santi, 2021). Fourth, inconsistency exists within the jurisprudence of the Supreme Court itself, as reflected in the differences between Decision Number 813 K/Pid/2023 and Decision Number 498 K/Pid/2017 (Fitri, 2025). Fifth, there are differing judicial interpretations concerning the interval between the formation of intent and the execution of the homicide, indicating the absence of a clear temporal standard in assessing premeditation (Siagian, 2024).

Implications of Judicial Disparity on Legal Certainty

Judicial disparity in homicide cases involving indications of premeditation has significant implications not only for legal certainty but also for the constitutional balance between judicial independence and judicial discretion within Indonesia's criminal justice system (Rahmasari & Firmansyah, 2026). As explained by Gustav Radbruch, legal certainty constitutes one of the fundamental values of law because legal rules must be applied consistently and predictably in comparable circumstances (Hamzah, 2017). In criminal



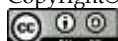
adjudication, legal certainty is achieved not merely through clear statutory provisions but also through coherent judicial interpretation. Consequently, when courts interpret identical statutory elements differently despite materially similar facts, the predictability of legal outcomes is diminished, public confidence in the judiciary declines, and the law's function as a mechanism for regulating social behaviour becomes less effective (Febrianti & Tarigan, 2025).

Nevertheless, the pursuit of legal certainty should not be understood as limiting judicial independence. Judicial independence is a constitutional guarantee that enables judges to decide cases impartially, free from external influence or political intervention. Such independence is indispensable for protecting the rule of law and ensuring that judicial decisions are based exclusively upon law and evidence. However, judicial independence does not imply unlimited interpretative freedom (Smith, 2022). Rather, it is exercised through judicial discretion, namely the authority of judges to interpret statutory provisions when legislation contains open-ended concepts or normative ambiguity. As Hart's theory of the open texture of law explains, judicial discretion is unavoidable because legislation cannot anticipate every factual situation that may arise (Fuady et al., 2026). At the same time, Dworkin argues that judicial discretion must remain constrained by coherent legal principles rather than personal preferences or subjective intuition (Chaturvedi & Tomar, 2026). Accordingly, judicial independence and judicial discretion should be viewed as complementary rather than contradictory concepts: independence protects judges from improper influence, while discretion enables them to resolve legal uncertainty through principled legal reasoning.

The findings of this study demonstrate that the principal challenge lies not in the existence of judicial discretion itself but in the absence of objective interpretative standards governing the element "with prior planning" under Article 340 of the Indonesian Criminal Code. In the absence of operational criteria, judges inevitably rely upon individual assessments concerning emotional condition, preparation of weapons, temporal intervals, and other surrounding circumstances. Such reliance produces different ratio decidendi in cases involving comparable facts, thereby expanding the possibility of judicial disparity. From the perspective of MacCormick's theory of legal reasoning, differences in judicial outcomes are legitimate only where they are supported by materially distinguishable facts and adequately justified legal reasoning (Citrawan, 2024). Where comparable cases produce substantially different legal qualifications without convincing justification, judicial discretion risks becoming arbitrary and inconsistent with the principle of legal certainty.

Judicial disparity also has important implications for the constitutional principle of equality before the law, as guaranteed by the 1945 Constitution of the Republic of Indonesia. This principle requires that individuals in substantially similar legal and factual circumstances receive comparable legal treatment (Apaut & Fallo, 2025). When two defendants who commit materially similar homicide offences receive different legal qualifications or substantially different punishments solely because judges interpret the statutory element of premeditation differently, equality before the law is weakened (Apel, 2022). Such inconsistency creates uncertainty not only for defendants but also for prosecutors, legal practitioners, and society regarding the circumstances under which Article 340 should properly be applied.

Furthermore, judicial disparity affects both defendants and victims. For defendants, inconsistent interpretation may result in sanctions that are either disproportionately severe or unduly lenient compared with offenders who commit comparable acts (Jumiati et al., 2026). For victims and their families, inconsistent judicial decisions may generate perceptions that



justice depends more upon the individual judge hearing the case than upon objective legal principles, thereby diminishing confidence in the legitimacy of criminal adjudication (Arifia et al., 2023; Fitri, 2025). Such consequences illustrate that judicial disparity is not merely a procedural issue but also a substantive challenge to fairness and equal justice.

Therefore, this study argues that strengthening legal certainty does not require restricting judicial independence. Instead, it requires the development of objective interpretative guidelines that provide a common analytical framework for exercising judicial discretion. Such guidelines would preserve judicial independence by allowing judges to evaluate the unique circumstances of each case while simultaneously promoting consistency in the interpretation of the element "with prior planning." In this way, legal certainty, judicial independence, and judicial discretion become mutually reinforcing principles rather than competing values within Indonesia's criminal justice system.

Solutions to Minimize Judicial Disparity: Formulation of Objective Criteria for the Element of Premeditation

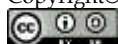
In order to address the problem of judicial disparity, this study recommends the formulation of objective criteria that may be utilized by judges in assessing the fulfillment of the element of "with prior planning" (dengan rencana terlebih dahulu) under Article 340 of the Indonesian Criminal Code (KUHP) (Sirait et al., 2025). Such criteria should ideally be formulated in the form of a Supreme Court Regulation (Peraturan Mahkamah Agung / PERMA) binding upon all judges throughout Indonesia.

The proposed objective criteria encompass four principal aspects. First, the aspect of preparation of tools or weapons, whereby judges should assess whether the perpetrator carried or prepared a specific tool or weapon for the purpose of killing the victim. If the tool or weapon carried is one commonly used in the perpetrator's daily activities (for example, a sickle carried by a farmer), additional evidence should be required to establish that the item was specifically prepared for the purpose of committing the killing. Conversely, where the tool or weapon carried is not ordinarily associated with the perpetrator's routine activities (for example, a firearm or poison), such circumstance may constitute a strong indication of premeditation (Chazawi, 2010).

Second, the aspect of surveillance or observation of the victim. Judges should assess whether evidence exists showing that the perpetrator monitored the victim's habits, observed the intended crime scene, or gathered information concerning the victim prior to committing the homicide. Evidence of surveillance demonstrates that the perpetrator devoted time to contemplating the manner in which the homicide would be carried out, thereby constituting a strong indication of premeditation (Chazawi, 2010).

Third, the aspect of anticipating escape or destruction of evidence. Judges should consider whether the perpetrator prepared a plan to flee following the commission of the homicide, arranged an alibi, or attempted to destroy evidence. Such preparations indicate that the perpetrator had contemplated the consequences of the act and planned methods to evade legal responsibility (Prodjodikoro, 2003).

Fourth, the aspect of a sufficient interval for rational reflection. Judges should evaluate whether there was an adequate lapse of time between the emergence of the intention to kill and the execution of the homicide. Although there is no definitive standard concerning the precise duration required, judges may assess whether, within such interval, the perpetrator had the opportunity to reflect calmly and reconsider the intention to commit the act. Where the homicide is committed immediately during an altercation or in an intensely emotional



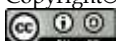
condition without any interval for calm reflection, the element of premeditation may be excluded (Lamintang & Lamintang, 2022).

The four objective indicators proposed in this study are not intended to create new substantive elements of the offence of premeditated murder but to provide interpretative guidance for applying the phrase "with prior planning" under Article 340 of the Indonesian Criminal Code. Their formulation is supported by comparative criminal law and reflects principles that have long been recognised in both civil law and common law jurisdictions. Consequently, the proposed criteria represent a synthesis of Indonesian criminal law doctrine and internationally recognised approaches to assessing premeditation rather than a departure from the existing legal framework. These four aspects should be assessed cumulatively rather than alternatively. In other words, the greater the number of fulfilled aspects, the stronger the indication of premeditation. Nevertheless, not all aspects must necessarily be fulfilled in order to establish the existence of premeditation. What is essential is that judges possess clear guidelines in conducting such assessments, thereby enabling judicial decisions to become more consistent and predictable (Fitri, 2025).

In common law jurisdictions, premeditation is generally assessed through objective evidence demonstrating that the offender had an opportunity for deliberate reflection before committing the homicide. Courts do not rely exclusively on the offender's subjective intention but consider surrounding circumstances such as weapon procurement, planning activities, surveillance of the victim, preparation for escape, and the interval between the formation of intent and the commission of the offence (Ploeg et al., 2024). United States jurisprudence, for example, consistently distinguishes impulsive killings from premeditated murder by examining whether the accused engaged in conduct indicating prior deliberation, including obtaining a weapon in advance, selecting the place or time of the offence, or taking steps to avoid detection (Tsai, 2025). Likewise, English criminal law treats planning and preparation as important evidentiary indicators for establishing intention and deliberation, although each case continues to be assessed on its individual facts (Lee, 2025).

A comparable approach is also evident in civil law systems. Dutch criminal law (*voorbedachte raad*), which historically influenced Indonesian criminal law, requires evidence that the offender had sufficient opportunity to calmly reflect upon the intended killing before acting (Liu, 2021). Similarly, German criminal law differentiates aggravated forms of homicide by considering objective manifestations of planning and deliberation rather than relying solely upon the perpetrator's subsequent explanation of emotional condition (Davaanyam et al., 2021). Across these jurisdictions, preparation of a weapon, observation of the victim, anticipation of the consequences of the offence, and the availability of time for rational reflection are frequently regarded as relevant indicators supporting the existence of premeditation. Accordingly, the four indicators proposed in this study are consistent with broader comparative criminal law principles rather than being unique to Indonesian legal doctrine.

In addition to the formulation of objective criteria, this study recommends the implementation of continuous judicial training to ensure more uniform application of the element of premeditation in concrete cases. The Supreme Court may cooperate with legal education institutions to organize training programs and workshops for judges throughout Indonesia in order to harmonize understanding regarding such criteria (Santi, 2022). Furthermore, a monitoring and evaluation mechanism concerning decisions on premeditated murder cases is required through the establishment of a special task force within the Supreme Court to analyze judicial decisions and provide feedback to courts demonstrating inconsistency (Santi, 2021).



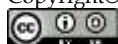
The implementation of these recommendations requires strong commitment from all stakeholders within the criminal justice system, including the Supreme Court, judges at both trial and appellate levels, public prosecutors, advocates, and legal academics. Nevertheless, such efforts are essential to ensure that Indonesia's criminal justice system is capable of delivering justice that is both consistent and predictable, thereby preserving public confidence in the law (Santi, 2021).

Conclusion

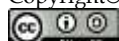
This study demonstrates that judicial disparity in homicide cases involving indications of premeditation primarily arises from the absence of objective interpretative standards for the element "with prior planning" under Article 340 of the Indonesian Criminal Code. As a result, judges exercise broad judicial discretion in assessing factors such as weapon preparation, the offender's emotional condition, and the interval between the formation of intent and the commission of the offence, leading to inconsistent legal qualifications and sentencing outcomes in cases involving materially similar facts. Such inconsistency undermines legal certainty and weakens the constitutional principle of equality before the law. The study makes both theoretical and practical contributions. Theoretically, it integrates the perspectives of legal certainty (Radbruch), judicial discretion (Hart and Dworkin), ratio decidendi (MacCormick), and sentencing disparity into a unified analytical framework for evaluating judicial interpretation of premeditation in Indonesian criminal law. Practically, it proposes four objective indicators – weapon preparation, victim surveillance, preparation for escape or concealment, and sufficient time for rational reflection – as cumulative interpretative guidelines that may support the development of a Supreme Court Regulation (Peraturan Mahkamah Agung – PERMA) or other judicial guidance to promote greater consistency while preserving judicial independence. Future research should extend beyond normative legal analysis by incorporating empirical methods, including interviews with judges, prosecutors, and criminal law practitioners, to examine how judicial discretion is exercised in practice. Comparative studies involving additional jurisdictions would also provide valuable insights into the development of more consistent standards for interpreting premeditation and contribute to ongoing criminal law reform in Indonesia.

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