

Legal Analysis of Criminal Child with Mental Retardation (Study of Rantauprapat State Court Decision No. 18/PID.SUS/ANAK/2016/PN-RAP)

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Abstract

The perpetrators of criminal acts today are not only dominated by adults, but children also have a great potential to commit criminal acts, even children who are abnormal or mentally retarded can commit crimes as known in the Rantauprapat District Court Decision Number: 18/Pid.Sus-Child. /2016/PN-Rap. This research was conducted normatively by discussing doctrines or principles as well as legal synchronization using the approach to legislation. This means that the principles and synchronization of law are used as benchmarks to provide an assessment of the judge's considerations on the sentencing of children with mental retardation in the Rantauprapat District Court Decision Number: 18/Pid.Sus-Anak/2016/PN-Rap. In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is very possible to apply non-penal policies through diversionary restorative justice instruments but this is not done, the judge's policy in providing legal protection to children with mental retardation is carried out through penal policies in the form of criminal imprisonment for 2 (two) years and 7 (seven) months and a fine of Rp. 100,000,000, - (one hundred million rupiah), provided that if the fine is not paid, it will be replaced with work training for 3 (three) months.

Keywords

punishment; children; mental retardation



I. Introduction

Legal accountability in Indonesian criminal law is contained in Law Number: 1 of 1946 concerning the Criminal Code (KUHP) which is enforced based on the principle of concordance (concordantie) according to article 75 Regerings Reglement, and Article 131 Indische Staatsregeling, in other words the Criminal Code is a legacy of the Dutch Criminal Code (straf weboek) which was made on March 3, 1881 and came into force on September 1, 1886 with adjustments to local situations and conditions.

The Criminal Code contains legal principles, especially those contained in Article 1 paragraph 1 of the Criminal Code which is known as the principle of legality and the principle of error. Andi Hamzah said that there are 2 (two) things that can be drawn from the principle of legality, namely:

- a. If an act is prohibited or the omission of something that is required and is threatened with punishment, then the act or omission must be stated in the Criminal Law Act,
- b. These provisions may not apply retroactively, with one exception listed in Article 1 paragraph 2 of the Criminal Code.

Andi Hamzah's opinion above is in line with Pompe's opinion quoted by PAF Lamintang which states that Article 1 of the Criminal Code contains 2 (two) regulations, namely first what is called a criminal act must be formulated in a criminal provision according to law, second is that the criminal provision must be existed before the act itself.

Besides the principle of legality, the principle of error is also one of the benchmarks to determine whether the perpetrator of a crime can be convicted or not. The principle of guilt states that a person can only be convicted because he has been proven guilty of committing a crime intentionally or due to negligence. RM Suharto said the same thing, namely not being punished if there are no mistakes, people who commit criminal acts can be punished if that person makes a mistake. This principle of error is closely related to sentencing and has generally adopted an adage (originally derived from the interpretation of Article 44 of the Criminal Code) which reads; "no punishment, no error = geen straf zonder schuld". To determine whether there was an error on the part of the perpetrator, several things related to the perpetrator must first be determined, namely; 1) the ability to be responsible. The principle of error according to Roelan Saleh and Moeljatno is an element of responsibility in criminal law, therefore the principle of error has elements, namely; 1) the ability to be responsible, 2) intentional or negligent, 3) there is no excuse for forgiveness. In general, the teachings of normative error by criminal law experts view error solely as a problem of a person's psychological state when committing a crime (psychological sculdegrip).

The normal state of mind is determined by the reasoning factor of the maker, his mind can distinguish between actions that can be done and actions that cannot be done. Thus it is the mind that determines the normality of a person's inner state, so that if the state of mind is normal, the mental state will be normal as well.

In general, children are actually considered not to have evil thoughts, therefore, there is no principle of wrongdoing in their actions against children, but over time it turns out that the quantity and quality of children committing criminal acts is increasing as mentioned at the beginning of this description, because it is deemed necessary to make exceptions that children are also considered to be responsible and can be punished for the criminal acts they have committed.

However, the punishment for children is distinguished by the criminal penalties set for adults. The punishment of a child can be in the form of being returned to his parents or guardian, or made as a child of the state in accordance with Article 45 of the Criminal Code.

Children in conflict with the law are classified into 3 (three) groups, namely children in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts. Thus, some of the child problems mentioned above can be mentioned as children in conflict with the law, namely children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime.

Law enforcement officials in dealing with children in conflict with the law cannot treat children like adults because all actions by law enforcement officers starting from investigations, investigations, prosecutions, adjudicating to implementing decisions must continue to prioritize the best interests of the child concerned.

Education is expected to be able to answer all the challenges of the times and be able to foster national generations, so that people become reliable and of high quality, with strong characteristics, clear identities and able to deal with current and future problems (Azhar, 2018).

According to R. Soesilo in providing an explanation of Article 45 of the Criminal Code, it is stated that alternative punishments can be imposed on children who commit crimes, namely:

1. The child is returned to the parent or guardian, without being sentenced to anything;
2. The child is made a child of the state, meaning that he is not sentenced, but is handed over to the Educational Home for Naughty Children to receive education from the state until the child is 18 years old. This can only be done if the child has committed a crime or violation as stated in this article and as a resident;
3. The boy was sentenced as usual. In this case the penalty is reduced by one third.”

The judge in determining one of the types of punishment mentioned above must be accompanied by legal considerations which pays attention to the lightness of the act, the child's personal condition, or the situation at the time the act was carried out or what happened later and considers the aspects of justice and humanity.

The criminal liability of the children mentioned above is only limited to normal children. This is certainly different from abnormal children such as children who have mental retardation.

Mental retardation is an Axis II disorder, defined in the DSM-IV-TR as (1) markedly below average intellectual functioning along with, (2) a lack of adaptive behavior, and (3) occurring before the age of 18 years. A normal IQ (intelligent quotient) is above the average score of 70, therefore below the score of 70 is included as a person with mental retardation. The adaptive functions mentioned above refer to the mastery of childhood skills such as using the toilet and dressing; understand the concept of time and are less able to use equipment, shop, and travel by public transport; and develop social responsiveness.

Seeing the classification of people with mental retardation above, it can be stated that the ability and thinking power of people with mental retardation are lower than normal, therefore the criminal liability that can be asked for abnormal children can be ascertained to be different from the criminal liability of normal children.

In this position, the role of the judge is very important to assess and consider the extent to which children suffering from mental retardation can be burdened with criminal responsibility and of course it must be related to the realization of the fulfillment of children's rights, especially regarding the best interests of children who suffer from mental retardation.

One of the cases of children with mental retardation dealing with the law occurred in the jurisdiction of the Rantau Prapat District Court as stated in the Rantau Prapat District Court's Decision Number: 18/Pid.sus.anak/2016/PN-Rap, dated December 15, 2016.

The child with mental retardation is suspected of committing a criminal act of sexual immorality against several minors (there are boys and there are girls) that occurred between 2010 and 2014 which was only discovered in 2016, which the Child Prosecutor prosecuted children with mental retardation. It is legally and convincingly proven to have committed a criminal act as referred to in Article 81 of Law Number 23 of 2002 concerning Child Protection, with imprisonment for 4 years and 6 months.

Then the child judge sentenced the child with mental retardation to imprisonment for 2 years and 6 months in accordance with the decision of the Rantau Prapat District Court Number: 18/Pid.sus.anak/2016/PN-Rap, dated December 15, 2016.

On the one hand, the decision is considered to have not prioritized the principle of the best interests of the child, but on the other hand, the decision has implemented the provisions of Article 81 of Law Number 23 of 2002 concerning Child Protection because the criminal threats are imprisonment and fines.

Therefore, to find out in depth related to matters relating to the punishment of children with mental retardation, the authors are interested in conducting an in-depth and comprehensive study by looking at it from the point of view of criminal responsibility theory, punishment theory and physical restorative theory.

II. Research Method

Research on legal analysis of punishment for children with mental retardation (Study of the Rantauprapat District Court Decision Number: 18/Pid.Sus.anak/2016/PN-Rap) is normative by discussing doctrines or principles in legal science. Because this research is in the form of juridical-normative, the method of approach is descriptive-analytical by conducting an assessment of the principles and norms as well as legal doctrine regarding the punishment of children with mental retardation and then used as a reference in conducting description-analysis of District Court Decisions. Rantauprapat Number: 18/Pid.Sus.anak/2016/PN-Rap, therefore this research is only based on secondary by using primary and secondary legal materials, therefore it does not require social facts.

To get a good and correct understanding of the punishment of children with mental retardation, legal materials or data are needed, both primary and secondary legal materials. Primary legal materials are legal materials that have authority (automotive), which consist of statutory regulations, official records or minutes in making a statutory regulation, as well as judge's decisions.

Secondary legal materials are all publications about law which are unofficial documents, which consist of; a) text books that discuss a punishment for children with mental retardation, b) legal dictionaries, c) legal journals and d) comments on judges' decisions.

All of the legal materials mentioned above were obtained by means of library research, namely reviewing and analyzing primary legal materials in the form of laws and regulations and the Decision of the Rantauprapat District Court Number: 18/Pid.Sus.anak/2016/PN-Rap and enriched with other secondary legal materials related to the punishment of children with mental retardation.

III. Results and Discussion

3.1 The Analysis of the Judge's Considerations on the Punishment of Children with Mental Retardation in the Rantauprapat District Court Decision No. 18/Pid.Sus/Anak/2016/PN-Rap

a. Position Case

The Child Public Prosecutor accused the child Defendant, born in xxxxxx on xx xxxxx 1998 (17 years old), residing in Pintu Padang Village, Paromburan Village, Sei Kanan District, South Labuhanbatu Regency (hereinafter referred to as the Defendant), committing an obscene crime against 5 (five) children (some boys and some girls), occurred in Pintu Padang Village, Sei Kanan District, Labuhan Batu Selatan Regency between 2011 and 2014 as referred to in Article 82 of the Republic of Indonesia Law. Indonesia Number 23 of 2012 concerning Child Protection in conjunction with Article 65 of the Criminal Code in conjunction with the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System.

By expert Dr. Freddy Subastian, SpKJ, explained at the request of the Labuhanbatu Police that they had carried out a psychiatric test in the form of mental status on the defendant which was carried out from 29 September 2015 to 12 October 2015 at the Rantauprapat Hospital with the conclusion that the defendant had moderate to severe mental retardation. Then the witness of the Defendant's child as the defendant's biological mother explained that the defendant only attended school up to grade 2 (two) junior high school and had stayed in class because he was retarded and when the defendant was 6 (six) years old he was treated to the Mantri.

b. Amar Decision of the Rantauprapat District Court Number: 18/Pid.Sus-Anak/2016/PN-Rap, 15 December 2016

After considering the facts or circumstances as in the case of the position above, the judge renders a decision with the following ruling:

1. Declaring that the child accused has been legally and convincingly proven guilty of committing a criminal act "Intentionally making threats of violence, forcing the child to commit an obscene act which is seen as an independent act" as stated in the single indictment of the Public Prosecutor;
2. Sentencing a child therefore with a prison sentence of 2 (Two) Years and 7 (Seven) Months and a fine of Rp. 100,000,000,- (one hundred million rupiah), provided that if the fine is not paid, it will be replaced with work training for 3 (three) months;
3. Ordered Siregar's friend Muhammad's son to be arrested immediately;
4. Charges a case fee to the child in the amount of Rp. 5,000, - (Five thousand rupiah);

c. Analysis of the Sentencing of Children with Mental Retardation in the Decision of the Rantauprapat District Court Number 18/PID.SUS-ANAK/2016/PN-RAP, December 15, 2016

To analyze the sentencing of children with mental retardation in the Rantauprapat District Court Decision Number 18/Pid.Sus-anak/2016/PN-Rap, dated December 15, 2016, it was carried out using the legality principle and the principle of criminal responsibility.

The principle of legality sees that it is related to the fulfillment or non-fulfillment of the formulation or elements of the articles charged with the defendant based on the evidence and the judge's belief in the trial.

In the case of the position described at the beginning of this discussion, the Child Public Prosecutor indicted and demanded that the defendant was legally and convincingly proven to have violated Article 82 of Law of the Republic of Indonesia Number: 23 of 2002 concerning Child Protection in conjunction with Article 65 of the Criminal Code in conjunction with Law of the Republic of Indonesia Number: : 11 of 2012 concerning the Juvenile Criminal Justice System.

The elements of Article 82 of the Law of the Republic of Indonesia Number: 23 of 2002 concerning Child Protection in conjunction with Article 65 of the Criminal Code in conjunction with Law of the Republic of Indonesia Number: 11 of 2012 concerning the Juvenile Criminal Justice System are as follows:

1. Each person;
2. Commit violence or threats of violence, coerce or induce children to commit or allow obscene acts to be carried out;
3. Seen as one's own actions.

Ad. 1. Everyone

In order to consider the elements of each person in Article 82 of Law of the Republic of Indonesia Number: 23 of 2002 concerning Child Protection in conjunction with Article 65 of the Criminal Code in conjunction with Law of the Republic of Indonesia Number: 11 of 2012 concerning the Juvenile Criminal Justice System, it must first be known what the element "each person". Everyone is defined as an individual or a corporation.

According to experts, an individual is a human being on the grounds that humans have subjective rights and have legal authority, namely the ability to become legal subjects, namely as supporters of rights and obligations. Therefore, the element of "everyone" as referred to in Article 82 of the Law of the Republic of Indonesia Number: 23 of 2002 concerning Child Protection is a natural person, that is, who acts as the perpetrator or subject of a crime.

The definition of the "everyone" element as referred to in Article 82 of the Republic of Indonesia Law Number: 23 of 2002 concerning Child Protection is intended in general and furthermore in general it is specifically stated in Law Number: 11 of 2012 concerning the Juvenile Criminal Justice System. Thus, the subject of criminal acts in the Law of the Republic of Indonesia Number 23 of 2002 are individuals who are over 18 (eighteen) years old and individuals who are 12 (twelve) years old, but not yet 18 (eighteen) years old.) years who committed the crime (Child nomenclature).

In the Decision of the Rantauaprat District Court Number 18/Pid.Sus-Anak/2016/PN-Rap, dated December 15, 2016, it was concluded that this element has been fulfilled because everyone in Article 82 of Law of the Republic of Indonesia Number: 23 of 2002 concerning Child Protection Jo Article 65 The Criminal Code in conjunction with the Law of the Republic of Indonesia Number: 11 of 2012 concerning the Juvenile Criminal Justice System in this case is the Defendant Muhammad Iman Siregar, his age at the time of the crime (between 2011 and 2014) was 13 (thirteen) years old and when the case was tried the defendant was 17 (seventeen) years old.

However, even though the element of each person in this case has been determined to be Muhammad Iman Siregar, this does not mean that this element has been proven because in the formulation of Article 82 of Law of the Republic of Indonesia Number: 23 of 2002 concerning Child Protection in conjunction with Article 65 of the Criminal Code in conjunction with Law of the Republic of Indonesia Number: 11 of 2012 concerning the Juvenile Criminal Justice System, after the word "everyone" is followed by the word "deliberately", then to be able to state that the element of "everyone" is proven, it must first be considered whether or not "intentionally" is attached to each person. (Defendant Muhammad Iman Siregar).

Intentionality is not defined in the criminal code code. The doctrine of willfulness can be seen from the doctrine which is basically referred to in 2 (two) theories of willfulness, namely the theory of will and the theory of knowledge.

The will theory (wilstheorie) was introduced and adopted by Von Hippel of Gottingan, Germany. He said intentional is the result that has been desired as imagined as a goal. With regard to the theory of will, philosophers have questioned the freedom of man in determining his will. According to the flow of determinism states that humans do not have free will because everything humans do is driven by the heart or from outside themselves, the anthropological school says that all human actions are driven by talent, the sociology school says that human actions are driven by society and the environment.

While the flow of interminism states that even though human actions are driven by or influenced by talents and their environment, humans can still determine their will freely.

Furthermore, related to the theory of knowledge (voorstellingstheorie) was taught by Frank, Professor of Tübingen, Germany. He said intentional is seen from the consequences that have been known and behavior following that knowledge. Pompe states that the condition of intentionality is *willens en wetens* or wills and knows. By Eddy OS Hiariej says:

Both conditions are absolute. That is, a person is said to have done an act intentionally, if the act was done knowingly and willingly. It's just that the perpetrator who commits a criminal act is definitely aware that the consequences of the act can be in accordance with his will or purpose, or not in accordance with his will or purpose. *Affectus punitur licet non sequatur effectus*. That is, intentional punishment can be punished even if the will or purpose is not achieved.

Related to the intentionality attached to the "everyone" element in the Rantauprapat District Court Decision Number: 18/Pid.Sus-anak/2016/PN-Rap, dated December 15, 2016 is Muhammad Iman Siregar, who by expert dr. Freddy Subastian, SpKJ stated that Muhammad Iman Siregar suffered from mental retardation or mental retardation with a moderate to severe degree.

People with moderate degree of mental retardation can have physical weakness and neurological dysfunction that hinders normal motor skills such as holding and coloring in lines, and gross motor skills such as running and climbing local area that is not foreign to them. While severe mental retardation are people who have physical abnormalities since birth and limitations in motor sensor control.

Thus, if it is seen that children with moderate-to-severe mental retardation are associated with the element of "deliberately" which absolutely must meet the requirements of *willens en wetens* or wills and knows, then according to the author, the judge's consideration that the element "everyone" has been proven is a consideration. Inappropriate law because in legal considerations, the judge does not explore the principle of criminal responsibility in the form of mistakes, intentions that require *willens en wetens* or wills and knows.

Ad. 2. Performing violence or threats of violence, forcing or persuading children to commit or allow obscene acts to be carried out.

R. Wiyono mentions this element as an objective element. The objective element is the element that has to do with the circumstances, namely in the circumstances under which the actions of the actor must be carried out. The objective elements in a criminal act consist of:

- a) The nature of breaking the law or *wederrechtelijkheid*;
- b) The quality of the perpetrator, for example "his state as a civil servant" in a crime according to article 415 of the Criminal Code or "his condition as a manager or commissioner of a limited liability company" in a crime according to article 398 of the Criminal Code;
- c) Causality, namely the relationship between an action as a cause with a reality as a result.

According to the judge, this element has been fulfilled based on the testimony of the victim's witness and *visum et revertum*, although due to the condition of the defendant who suffers from moderate to severe mental retardation, it is difficult to clarify and confirm the conditions described by the witnesses.

3.2 The Judge's Policy Provides Legal Protection for Children with Mental Retardation Who Commit Crimes

In terminology, policies are defined as general principles that function to direct the government (in a broad sense including law enforcement) in managing, regulating or resolving public affairs, community problems or areas of drafting laws and regulations and allocating law/ regulations with a (general) purpose that leads to efforts to realize the welfare or prosperity of the community.

Understanding the policy above can be mentioned law enforcement (judges) including the subject of policy makers other than the government (executive) and legislative. Regarding criminal policy, Sudarto in Bardanawi Arif states that there are 3 (three) meanings regarding criminal policy, namely:

- a. In a narrow sense, it is the overall principles and methods that form the basis of reactions to violations of the law in the form of crimes.
- b. In a broad sense, it is the overall function of the law enforcement apparatus, including the workings of the courts and the police.
- c. In the broadest sense is the overall policy, carried out through legislation and official bodies, which aims to enforce the central norms of society.

Prevention of crime or criminal can be done with an integral approach, in the sense that:

1. There is an integration between criminal politics and social politics.
2. There is integration (integrality) between efforts to overcome crime with penal and non-penal.

According to Barda Nawawi Arif, the penal tool has limitations and contains several weaknesses, including:

- a) Dogmatically/ideally, criminal sanctions are the sharpest type of sanctions, because they are often referred to as the *ultimum remedium*.
- b) Functionally/pragmatically, its operationalization and application require more varied supporting facilities.
- c) Criminal law sanctions are remedies that contain contradictory/paradoxical properties and contain elements/or negative side effects.
- d) The use of criminal law in tackling crime is only a symptom of curing the symptoms. So the criminal law/sanction is only a symptomatic treatment and not a causative treatment because the causes of such a complex crime are beyond the reach of criminal law.
- e) Criminal law/sanctions are only a small part of the means of social control that are impossible to overcome the problem of crime as a very complex humanitarian and social problem.
- f) The punishment system is fragmentary and individual/personal, not structural or functional.
- g) The effectiveness of the crime still depends on many factors, therefore each of them is often questioned.

Furthermore, to see the judge's policy related to the legal protection of children with mental retardation who commit criminal acts, it can be seen from the legal considerations in dealing with child crimes as regulated in law number 11 of 2012 concerning the juvenile criminal justice system.

From the legal considerations, an assessment will be obtained whether the judge has a penal policy and/or a non-penal policy. Ediwarman said that the penal policy focuses more on the repressive nature after the crime has occurred, while the non-penal policy focuses more on the preventive nature before the crime occurs.

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, crime prevention allows for penal and non-penal measures. Penally, the prevention of the crime is carried out by giving or imposing criminal sanctions on the child, while the non-penal overcoming of crimes committed by children can be done by approaching or applying restorative justice.

Restorative justice is the settlement of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. To realize restorative justice, diversion is carried out, namely the transfer of the settlement of children's cases from the criminal justice process to processes outside of criminal justice.

The purpose of the diversion effort is to achieve peace between victims and children, resolve cases of children outside the judicial process, prevent children from deprivation of independence, encourage the community to participate and instill a sense of responsibility in children. Because in the settlement through the diversion must be considered, namely:

- 1) The interests of the victim;
- 2) Child welfare and responsibilities;
- 3) Avoidance of negative stigma;
- 4) Avoidance of retaliation;
- 5) Community harmony; and
- 6) Propriety, decency, and public order.

In tackling crimes committed by children with mental retardation in the Rantauprapat District Court Decision Number 18/Pid.Sus-Anak/2016/PN-Rap, dated December 15, 2016, the judge adopted a penal policy by imposing what was done by the child, it could be done by sentencing to imprisonment for 2 (two) years and 7 (seven) months and a fine of Rp. 100,000,000, - (one hundred million rupiah).

Meanwhile, related to the non-penal policy in the form of a settlement with a restorative justice approach through diversion, the judge did not do so. Therefore, legal protection for children, especially people with mental retardation in The decision of the Rantauprapat District Court Number 18/Pid.Sus-Anak/2016/PN-Rap, dated December 15, 2016 has not been maximally implemented.

Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, legal protection of crime victims as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance.

Legal protection for children is the effort and activity of all levels of society in various positions and roles, who are fully aware of the importance of children for the homeland and nation in the future. If they have matured their physical, mental and social growth, then it is time to replace the previous generation.

Child protection is the embodiment of justice in a society, thus child protection is sought in various fields of state and social life. Regarding legal protection, this is guaranteed by the state.

As for the rights of children, it can be referred to the provisions of Articles 4 to 18 of Law Number: 23 of 2002 concerning Child Protection. Meanwhile, in Article 3 of Law Number: 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that every child in the criminal justice process has the right to:

- a) Treated humanely by paying attention to the needs according to their age;
- b) Separated from adults;
- c) Obtain legal and other assistance effectively;
- d) Carry out recreational activities;
- e) Free from torture, punishment or other cruel, inhuman, and degrading treatment;
- f) Not sentenced to death or life imprisonment;
- g) Not arrested, detained, or imprisoned, except as a last resort and for the shortest time;
- h) Obtaining justice before a juvenile court that is objective, impartial, and in a trial that is closed to the public;
- i) His identity is not published;
- j) Obtain assistance from parents/guardians and people who are trusted by the child;
- k) Obtain social advocacy;
- l) Acquire a personal life;
- m) Gaining accessibility, especially for children with disabilities;
- n) Obtaining education;
- o) Obtaining health services; and
- p) Obtain other rights in accordance with the provisions of the legislation.

Furthermore, in the Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare, it is stated that every child has the right to:

- 1) Children have the right to welfare, care, upbringing and guidance based on affection both within their families and in special care to grow and develop properly (article 2 paragraph 1).
- 2) Children have the right to services to develop their abilities and social life, in accordance with the culture and personality of the nation, to become good and useful citizens (Article 2 paragraph 2)
- 3) Children have the right to care and protection, both during the womb and after birth (article 2 paragraph 3)
- 4) Children have the right to protection of the environment that can harm or hinder their growth and development properly (article 2 paragraph 4).
- 5) In a dangerous situation, the child is the first to have the right to help, assistance and protection (article 3).
- 6) Children who do not have parents have the right to be cared for by the state or by an individual or entity (Article 4 paragraph 1).
- 7) Children who are not capable have the right to receive assistance so that in their family environment they can grow and develop properly (Article 5 paragraph 1).
- 8) Children who experience behavior problems are given services and care aimed at helping them to overcome obstacles that occur during their growth and development (Article 6 paragraph 1)
- 9) Services and care, as referred to in paragraph (1), are also provided to children who have been found guilty of violating the law based on a judge's decision (article 6 paragraph 2)
- 10) Children with disabilities are entitled to special services to achieve the level of growth and development as far as the ability and ability of the child concerned (article 7)

- 11) Assistance and services aimed at realizing children's welfare are the rights of every child regardless of gender, religion, political stance, and social position (article 8).

The defendant as suffering from mental retardation with a moderate to severe degree can be categorized as a disabled child, especially the power or ability of common sense. In this case expert Dr. Freddy Subastian, Sp.KJ explained that the defendant was slow in his mind. The ability of common sense is one of the benchmarks to be held accountable for the actions of the defendant. To be held accountable, Van Hamel said it must be seen from a normal situation and a psychological maturity that makes a person have three kinds of abilities, namely:

- a) Able to understand the true meaning of what he is doing;
- b) Able to realize that his actions can or cannot be justified by society and
- c) Able to determine the will of what he wants to do.

The judge should consider the above-mentioned responsibilities carefully and seriously by the judge in his legal considerations, but in this case it is not done seriously so that it results in the defendant as having mental retardation or mental retardation with a moderate-severe degree not getting his rights guaranteed both in the Child Protection Act, the Child Criminal Justice System Act as well as in the Child Welfare Act, which are as follows:

- 1) Article 8 According to the Child Protection Act, it is stated that every child has the right to obtain health services and social security in accordance with their physical, mental, spiritual and social needs.
- 2) Article 12 In the Child Protection Act, it is stated that every child with a disability has the right to receive rehabilitation, social assistance, and maintenance of social welfare levels.
- 3) Article 3 of the Juvenile Criminal Justice System Act, states that children have accessibility, especially for children with disabilities and obtain health services.
- 4) Article 5 paragraph 1 of the Child Welfare Law, it is stated Children who cannot afford have the right to receive assistance so that in their family environment they can grow and develop properly.
- 5) Article 7 of the Child Welfare Act, it is stated Disabled children are entitled to special services to achieve the level of growth and development as far as the ability and ability of the child concerned.

Thus, the author concludes that the Judge in the Rantauprapat District Court Decision Number: 18/Pid.Sus-Anak/2016/PN-Rap, dated December 15, 2016 has not been able to apply or provide legal protection to children with mental retardation.

IV. Conclusion

The conclusions from the results of this study are as follows:

1. The judge's legal considerations in the Rantauprapat District Court Decision Number: 18/Pid.Sus-Anak/2016/PN-Rap, dated December 15, 2016 which convicts a child with moderate-severe mental retardation is not appropriate because the legal considerations do not explore the criminal responsibility of children people with mental retardation in the form of errors and intentions that require willens en wetens or will and know. Besides that, the judge did not make legal considerations about how the tower can provide education to children with mental retardation so that they can return to being

- better, because it is very difficult to imagine a prison sentence can return abnormal children to be better as the judge hopes for the child.
2. In the decision of the Rantauprapat District Court Number: 18/Pid.Sus-Anak/2016/PN-Rap, dated December 15, 2016 the judge in making crime prevention policies and at the same time providing legal protection for children with mental retardation who commit criminal acts is carried out by applying a penal policy by imposing imprisonment on the child concerned without taking a non-penal policy which results in the neglect of the rights of children with mental retardation.

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