

Responsibility of Persons with Intellectual Disabilities in Criminal Acts in Case of Child Abuse (Study of Decision No. 47/PID.SUS/2018/PN. TRT)

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Abstract

A person with a disability on average has difficulty in reasoning, processing, about something good and bad. This will certainly be a problem if he is caught in a criminal case. How the legal protection for perpetrators of persons with disabilities and what is is their criminal responsibility. This research was conducted by means of normative legal research. The research method used is a Case Approach and a comparative approach. The results of the study show that perpetrators with disabilities are given legal protection as stated in the legislation, namely the 1945 Constitution of the Republic of Indonesia, Law Number 19 of 2011 concerning Ratification (Convention Regarding the Rights of Persons with Disabilities) and Law Number 8 of 2016 concerning Persons with Disabilities. Accountability of perpetrators with intellectual disabilities in cases of child abuse. Case study Decision No. 47/Pid.Sus/2018/Pn. Trt the perspective of Islamic law according to the hadith of the Prophet SAW narrated by Imam Ahmad and Abu Daud: "From Ayesha R.A she said: Rasulullah saw: Removed the provisions of three things, from people who are still sleeping until he wakes up, from a madman until he is healed and from a child until he grows up." Meanwhile, in Indonesian criminal law, according to Article 44 of the Criminal Code paragraph 1, it cannot be sentenced because his soul is disabled in growth or is disturbed by disease.

Keywords

person with disability;
intellectual; case of child abuse



I. Introduction

Humans are creatures created by Allah the most noble and honorable by His side in the best form. Humans are given the ability to think and reason by God to be able to distinguish between good and bad in carrying out an action and behavior. This thinking ability shows that humans can carry out activities such as doing work, socializing with the community and others. Humans can distinguish what to do and what to avoid. The existence of the ability to think, humans become the most perfect creatures among God's other creatures (Nurdin, 2019:167).

Intellect is the most important gift for mankind given by Allah SWT. Intellect is one of the tools that can channel the truth as well as evidence and can distinguish between the true and the false and what is found to be true can be ascertained, as long as the conditions of its work function are maintained and not ignored. Humans who have reason can have intelligence, the intelligence of reason that is owned is a talent to interpret, calculate and describe everything from not knowing to knowing, from wrong to being right, from nothing to being, from difficult to easy, and etc. That is a small picture of the perfection of the human mind. The intelligence and thinking power possessed by humans so that they

are able to understand, understand, explain all aspects, both visible and invisible (Dadang, 2014:57-80).

A person with a disability on average has difficulty in reasoning, processing, about something good and bad. This will certainly be a problem if he is caught in a criminal case. The problem is that law enforcement in Indonesia is based on "actions". What has been done by someone can be considered as an act that violates the law if the act is included in certain rules or articles in both the law and the Criminal Code. Seeing the limitations of a person with a disability, the state should be wise to participate in providing and guarding persons with disabilities in the legal process. They should receive special protection for their limitations in order to ensure a sense of justice and to always maintain their mental and psychological conditions. In the sequence of Indonesian criminal law, there are three crucial problems that lead us to want to carry out an assessment, namely regarding criminal acts which show how actions that can threaten sanctions, fraud and criminal liability, how to determine who can be held criminally responsible and what type of punishment is commensurate with being granted arrest and the period of time for sanctions to be imposed (Fitriyani, 2022).

Islamic criminal law also has a concept in explaining actions that are contrary to the Qur'an and Hadith. The concept of an act or jinayah which means crime, crime, or crime is an act that is forbidden or prohibited because it can cause loss or damage to religion, life, reason, and property. Islamic criminal law or jinayah is a criminal law that is within the scope of Islamic law, which is a translation of the concept of "uqubah, jarimah, and jinayah" (Hasan, 2013).

Protection for persons with disabilities is contained in Article 28H Paragraph (2) of the second amendment to the 1945 Constitution which states that "everyone has the right to facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice." In order to achieve equality and justice in society, which turns out to be not the same for all, because there are some groups of people with special needs, who need tools in obtaining such equality and justice, then on April 15, 2016 the President of the Republic of Indonesia Joko Widodo ratified the Law of the Republic of Indonesia Number 8 of 2016 concerning Persons with Disabilities (Law on Persons with Disabilities). The enactment of Law Number 8 of 2016 concerning Persons with Disabilities shows a significant change for the fulfillment, protection, and respect for the rights of persons with disabilities (Aryani, 2018). Human Resources (HR) is the most important component in a company or organization to run the business it does. Organization must have a goal to be achieved by the organizational members (Niati et al., 2021). Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired (Shah et al, 2020). The development of human resources is a process of changing the human resources who belong to an organization, from one situation to another, which is better to prepare a future responsibility in achieving organizational goals (Werdhiastutie et al, 2020).

The existence of arrangements regarding the fulfillment of the rights of persons with disabilities must include the protection of the human rights of persons with disabilities which are equal and equal to human rights in general, regardless of the presence or absence of physical or mental disabilities. In Law Humans are seen as legal subjects because they are legally capable, have the ability to be responsible, this becomes a phenomenon when people with disabilities have to deal with the law, both as perpetrators and victims of crime.

One example of a crime committed by persons with intellectual disabilities is the case of child molestation in Decision No. 47/Pid.Sus/2018/Pn.Trt stated that the Defendant Boslin Aritonang Alias Bos has been legally and convincingly proven guilty of committing a criminal act “by means of violence committing obscene acts to minors”; Stating that the Defendant cannot be legally responsible for his actions; Ordered the Public Prosecutor to place the Defendant to be treated in a Government Mental Hospital in the North Sumatra Province for 1 (one) year. So based on this background, the authors are interested in carrying out research on the criminal responsibility of perpetrators with intellectual disabilities in criminal acts of child molestation against Decision No. 47/Pid.Sus/2018/Pn.Trt.

II. Research Method

The type of research used is normative legal research. Normative legal research is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. The source of data used in this study is a secondary data source, namely searching through legal materials that are in accordance with legal issues related to the author's title. The research method used is the Case Approach, which must be considered, namely the material facts or legal reasons used by the judge (*ratio decidendi*) in their decisions and the comparative approach, namely the approach used by trying to compare the perspectives of the Indonesian Criminal Code and the perspectives of the Indonesian Criminal Code Islam.

III. Result and Discussion

Islamic law views that as a mukallaf who can be charged with criminal responsibility, if he has the ability to think and choose (*idrak* and *ikhtiar*). A person's ability to think can be lost due to several factors, one of which is congenital factors from birth or because of disorders such as illness or physical disability. Which in everyday life we generally hear the term crazy (Muslich, 2004). Based on this explanation, a mad person cannot be held criminally responsible because he does not have a normal mind. Therefore, people who experience an abnormal mental state do criminal acts in Islamic law, the person cannot be convicted or cannot be held accountable because his soul is disturbed. This is in line with the opinion of the Imams of the Madhhab which states that punishment should not be applied to small children and crazy people based on the hadith of the Prophet Muhammad.

For children, crazy people, stupid people, people who have lost their will and are forced not to be held criminally responsible (Hanafi, 2005). The acquittal of their criminal liability has been explained in the hadith of the Prophet narrated by Imam Ahmad and Abu Daud: "From Aisha R.A she said: The Messenger of Allah said: The provisions of three things are abolished, from the person who is still sleeping until he wakes up, from the insane person to the person who is awake. he is healed and from a child until he is an adult." (Hanafi, 2005). This is in accordance with the hadith of the Prophet Muhammad SAW which explains that a person's crime is closely related to his intention. From Amir al-Mu'minin, Abu Hafs Umar bin Al Khattab *radhiyallaahu anhu ta'ala*, he said: I heard the Prophet *sallallaahu 'alaihi wa alaa aalihi wasallam* say: "Verily every action depends on the intention" (Hanafi, 2005).

A person who has perfect skills in Islamic law is called a person who has *Ahliyyatul Ada*, that is, a person who can do what is commanded by *syara* 'and can be held

accountable for it. The reference lies in reason, puberty, and intelligence. So, a person who has a mental disorder is a person who does not have an Ahliyyatul Ada but he can still have the right to receive it. Valid and canceled, what is valid is law in accordance with the provisions of syara', while void is the exit of syara' from the stipulated provisions. Valid and invalid are the results of the application of taklifi law, whether supported by the existence of wadh'i law or not.

Thus, the perpetrator who has a mental disorder in committing a criminal act is canceled from being sanctioned, because there is a barrier (*mani'*) even though the conditions and conditions have been met. Azimah and Rukhsah are legal categories that apply according to the conditions experienced by the mukallaf. Azimah is a law established from the beginning by syara' which generally applies to all mukallaf. The law for the madman is basically a law that has been established from the beginning by the shari'a 'to the hadith. So actually there is no punishment for people who are insane and regardless of their demands and responsibilities because of their condition.

Meanwhile, Rukhsah is a law that is regulated with different arguments because of the age factor. According to Ash-Syatibi rukhsah is something that is eternal. Azimah can coexist with rukhsah but she is an obligation that can be chosen. Therefore, the convert can choose one of them. However, if rukhsah is paired with ability, it is something that is not right because lifting/doing something wrong is not an option (Baroroh, 2019).

So we can apply that crazy people are those who cannot be held accountable for their actions because of a barrier (*mani'*), so they do work that contains legal elements in it such as praying, buying and selling or even doing jarimah then what is valid becomes null and void. by law because of the circumstances. It's just that here if the person causes harm to other people's property, then he is still obliged to replace it by paying for the loss. So that they have imperfect expertise (*Ahliyyah*) or called *Ahliyyatul Wujub Naqisah* which is one part of *Ahliyyatul Wujub*, namely a person's ability to support the rights assigned to him (receive) and support the rights of others who are billed. But to support these rights he is not fully capable of fulfilling the rights others. The benchmark for this *Ahliyyatul Wujub* is his human nature. (Baroroh, 2020).

Referring to the case of child molestation committed by perpetrators with intellectual disabilities in Decision No. 47/Pid.Sus/2018/Pn.Trt, based on expert statements and the results of a psychiatric examination conducted that the perpetrator had an intellectual disability. So in this context, in Islamic criminal law the perpetrator is considered unable to account for his actions because the perpetrator is considered someone who cannot be burdened with obligations because the ability to carry out his obligations is not perfect (*Ahliyyatul Wujub Naqisah*). However, in terms of the ability to act in law (*Ahliyyah Al-Ada*) the perpetrators of severe mental retardation are included in the category of the *adam Ahliyyah* group, namely they do not have the ability to act at all.

Article 44 of the Criminal Code, (1) Whoever commits an act that cannot be insured against him because his soul is disabled in growth or is disturbed due to illness, will not be punished. (2) If it turns out that the act cannot be insured against the perpetrator because his mental growth is impaired or is impaired due to illness, the judge may order that the person be admitted to a mental hospital for a maximum of one year as a probationary period. (3) The provisions in paragraph 2 only apply to the Supreme Court, High Court, and District Court. In Article 44 paragraph (1) of the Criminal Code, it is regulated one of what in the doctrine is called the reasons for the abolition of the crime. A person whose psychic condition as specified in this verse - that is, his soul is disabled in growth or impaired due to illness -, even though he has committed an act that clearly fits the formulation of a criminal provision, cannot be punished. (Punuh, 2015).

The condition of people with mental disabilities who have mental disabilities can be included in the category of "mental disabilities due to growth" and cannot be punished, considering that the shortcomings of people with mental disabilities are experienced from birth or from the time they are growing. However, it turns out that the condition of the "disabled soul" cannot actually be said to be the same condition between one person and another (Dian, 2013).

Disability in a person's soul has different levels from one another, therefore the provision of "a disabled soul in growth" cannot be absolute, moreover, mental function or disturbances in a person's mental health can only be explained from a medical point of view, so the judge is obliged to present a psychiatrist or psychologist who can explain this. As stated by psychology expert Kartini Kartono, people with mental disabilities or mental retardation are divided into 3 (three) categories from severe to moderate levels, which are as follows:

- a. Idiot/severe mental disability;
- b. Implicit/moderate mental disability; and
- c. Debilitation / mild mental disability.

First, the state of idiots generally has an IQ of less than 25. Their intelligence abilities or reason cannot develop, cannot understand and cannot be taught anything. Second, regarding the state of imbecility, his I.Q is between 25-49. They are like children aged 36-83 months (3-7 years). They are generally unable to drive and take care of themselves. However, they can still be taught to respond to a danger and can be taught to protect themselves against the physical danger.

They cannot be taught in conventional schools, therefore they are very dependent on the protection and help of their family or parents, because they are completely incapable of finding their own livelihood. Based on the explanation above, the state of being idiotic and implicit is generally in accordance with the intent of the condition of "his soul is disabled in growth" as referred to in Article 44 paragraph (1) of the Criminal Code, so that such people are rightly incapable of being responsible (Kartini, 2009).

Whereas people with intelligence aged 12-16 years, for example, should be accountable, even though the responsibilities they carry do not have to be exactly the same as adults. As stated in Article 1 point 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is explained that a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years who are suspected of committing a crime.

It is people who are classified as debilitating who should not be classified as "incapable of being responsible" (ontoerekeningsvatbaarheid) but can only be classified as "less capable of being responsible" (verminderde toerekeningsvatbaarheid). Inability to be responsible (verminderdetoerekeningsvatbaarheid) is a condition where the perpetrator is still considered capable of being responsible, but the deficiency is only seen as a mitigating reason. Therefore, if in the legal process people with mental disabilities are said to be criminally responsible, the court in examining and processing cases of people with mental disabilities does not stop at making decisions about whether or not the criminal case is proven, but the court must think further about its decision for persons with mental disabilities. mental disability so as not to cause further problems and benefit the future of the mental disability. (Dewi, 2013).

Based on Juridical Considerations Decision No. 47/Pid.Sus/2018/Pn.Trt Juridical considerations are judges' considerations based on factors that have been revealed in the trial and by law have been determined as matters that must be included in the decision. The juridical considerations include: - The defendant's actions as regulated and punishable by

crime in Article 76 E Jo Article 82 Paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning Protection Child.

Non-Juridical Considerations Decision No. 47/Pid.Sus/2018/Pn.Trt. Background of the Defendant During the trial the panel of judges did not find the defendant's motive for committing the crime of child molestation. The consequences of the defendant's actions against the victim, namely sexual abuse, in this case will cause prolonged trauma to the child and affect the child's growth. Defendant's personal condition The defendant's condition has impaired thought function which is often called mental retardation. The mental retardation experienced by the defendant was severe. During the trial the defendant did not understand the panel of judges' questions and just looked down and remained silent. In decision No. 47/Pid.Sus/2018/Pn. Trt based on test results and expert opinion that the perpetrator in his psyche has a severe mental retardation disorder or is classified as a person "not capable of being responsible" (ontoerekeningsvatbaarheid).

IV. Conclusion

Based on the above discussion, several conclusions can be drawn including that perpetrators of persons with disabilities are given legal protection as stated in the legislation, namely in the 1945 Constitution of the Republic of Indonesia, Law Number 19 of 2011 concerning Ratification of the Convention on The Rights of Persons With Disabilities (Convention Concerning the Rights of Persons With Disabilities). Rights of Persons with Disabilities) and Law Number 8 of 2016 concerning Persons with Disabilities. Accountability of perpetrators with intellectual disabilities in cases of child abuse. Case study Decision No. 47/Pid.Sus/2018/Pn. Trt the perspective of Islamic law according to the hadith of the Prophet SAW narrated by Imam Ahmad and Abu Daud: "From Ayesha R.A she said: Rasulullah saw: Removed the provisions of three things, from people who are still sleeping until he wakes up, from a madman until he is healed and from a child until he grows up." Whereas in Indonesian criminal law according to article 44 of the Criminal Code paragraph 1: "Whoever commits an act that cannot be insured against him because his soul is disabled in growth or is disturbed due to disease, is not punished". Suggestions that can be conveyed by the author regarding legal protection for perpetrators with disabilities to be carried out in accordance with laws and regulations so that there is no discrimination and hastened to ratify the RKUHP to be more specific in solving problems regarding the accountability of perpetrators with disabilities.

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