

**RATIO DECIDENDI DALAM PUTUSAN PEMIDANAAN TERHADAP
PENYANDANG DISABILITAS INTELEKTUAL
SEBAGAI PELAKU TINDAK PIDANA**

ABSTRAK

Dalam praktiknya penerapan hukum sering kali bersifat diskriminatif dan juga regulasi hukum yang ada tidak menjamin perlindungan, pemenuhan beserta penghormatan hak-hak penyandang disabilitas berhadapan oleh permasalahan hukum. Terlebih guna memahami situasi praktiknya hakim tidak memberikan pertanggungjawaban pidana kepada penyandang disabilitas intelektual yang menjadi pertimbangan hakim memberi putusan suatu perkara Putusan Nomor: 290/Pid.Sus/2019/PN. Tng dengan terdakwa Wendra Purnama, alasan dalam hal ini hakim tidak menjatuhkan pertanggungjawaban hukum bagi Terdakwa penyandang disabilitas intelektual atas nama Wendra Purnama, padahal dinyatakan telah ikut serta tindak pidana narkoba, tetapi karena pertimbangan hakim sesuai kewenangannya pada pasal 183 KUHP dalam persidangan, maka ditinjau berdasarkan kondisi terdakwa maka perlu memperhatikan asas pemaaf pada Pasal 44 KUHP. Sedangkan Putusan Nomor 135/Pid.Sus/2018/PN Btg. terkait hal ini terdakwa penyandang disabilitas intelektual yakni retardasi mental ringan. Terbukti melakukan tindak pidana upaya membujuk seorang anak dan melaksanakan perbuatan pencabulan kepada korban seorang anak dengan usia 7 (tujuh) tahun kemudian pelaku dibebani pidana oleh hakim karena memenuhi dan terbukti adanya tindak pidana, dan kondisi terdakwa bukan termasuk ke dasar pemaaf dalam alasan-alasan terhapusnya pidana. Maksud penelitian ini melihat dengan jelas pertimbangan hakim sebagai kepastian hukum ditengah tidak terdapat peraturan yang jelas berkaitan atas subyek hukum penyandang disabilitas intelektual. Kemudian penulis melakukan penelitian penelitian dengan yuridis normatif yang dilaksanakan melalui observasi atas peraturan perundangan yang mempunyai keterkaitan, selanjutnya melaksanakan studi terhadap bahan-bahan kepustakaan untuk mengembangkan pengkajian yang terkait dengan judul skripsi ini.

Kata Kunci: Pertimbangan Hakim, Tindak Pidana, Disabilitas Intelektual

RATIO DECIDENDI IN SENTENCE DECISIONS AGAINST PERSONS WITH INTELLECTUAL DISABILITIES AS A CRIMINAL OFFENDER

ABSTRACT

In practice, the application of the law is often discriminatory and the existing legal regulations do not guarantee the protection, fulfillment and respect for the rights of persons with disabilities when faced with legal problems. Moreover, in order to understand the practical situation, judges do not provide criminal liability to people with intellectual disabilities, which is the consideration for the judge in giving a decision in a case, Decision Number: 290/Pid.Sus/2019/PN. Tng with the defendant Wendra Purnama, the reason in this case is that the judge did not impose legal responsibility on the defendant with intellectual disabilities on behalf of Wendra Purnama, even though he was stated to have participated in a narcotics crime, but because the judge's consideration was in accordance with his authority in Article 183 of the Criminal Procedure Code in the trial, it was reviewed based on The condition of the defendant requires paying attention to the principle of forgiveness in Article 44 of the Criminal Code. Meanwhile, Decision Number 135/Pid.Sus/2018/PN Btg. In this regard, the defendant has an intellectual disability, namely mild mental retardation. Proven to have committed a criminal act of attempting to entice a child and carrying out an act of sexual immorality against the victim, a child aged 7 (seven) years, then the perpetrator was charged with a criminal charge by the judge because he fulfilled and proven the existence of a criminal act, and the defendant's condition was not included in the grounds for forgiveness in the reasons for his abolition. criminal. The purpose of this research is to clearly see the judge's considerations as legal certainty amidst the absence of clear regulations relating to the legal subject of people with intellectual disabilities. Then the author conducted normative juridical research which was carried out through observation of relevant legal regulations, then carried out a study of library materials to develop a study related to the title of this thesis.

Keywords: Ratio decidendi, crime, intellectual disability