

## Criminal Responsibility of Mental Disorders for Criminal Offenses in Indonesia



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**ABSTRACT:** Indonesia places all people as equal in the eyes of the law, this is in accordance with Article 27 Paragraph (1) of the 1945 Republic of Indonesia Constitution which states that all citizens have the same position under the law and government and are obliged to uphold the law and government without exception. However, it is not easy to realize this goal if you look at the conditions in which criminal law is applied. Criminal law practice, especially for perpetrators with mental disorders. In this case, it is necessary to study the criminal liability of perpetrators of crimes with mental disorders in the laws and regulations in Indonesia. The theories used are the Theory of Criminal Responsibility, the Theory of Punishment, and the Theory of Justice. Criminal liability by perpetrators with mental disorders is regulated in Article 44 paragraph (1) of the Criminal Code and the Mental Health Law, however, there are no regulations regarding the limitations of mental disorders, giving rise to legal uncertainty both for the victims of criminal acts with mental disorders or for the perpetrators themselves.

**KEYWORDS:** Criminal Liability, Crime, Mental Disorders

### I. INTRODUCTION

#### A. Background

Indonesia is a country of law in accordance with the state principles of Article 1 paragraph (3) of the 1945 Republic of Indonesia Constitution. As a country of law, Indonesia places all people as equal in the eyes of the law. This is in accordance with Article 27 Paragraph (1) of the 1945 Republic of Indonesia Constitution which states that "all citizens The state has the same position in law and government and is obliged to uphold that law and government without exception." Equality before the law means that equality in the political, legal, social, economic, religious, racial, ethnic and cultural fields is very important to be recognized and protected. This aims to achieve justice in society. However, it is not easy to realize this goal if you look at the conditions in which criminal law is applied. Criminal law practice, especially for perpetrators with mental disorders.

In several cases in Indonesia, including the murder of a female employee in a mall lobby in Tanjung Duren, West Jakarta, which was carried out by a perpetrator who had a mental disorder, the investigation process was stopped by the local police because it was guided by

Article 109 of the Criminal Procedure Code and Article 44 of the Criminal Code.<sup>1</sup>

Furthermore, Decision Number 144/Pid.B/2014/PN. Cianjur, the Panel of Judges decided that the defendant was legally and convincingly proven guilty of murder. However, the defendant is not held responsible for criminal violations. The panel of judges released the defendant from all legal charges and placed the defendant in the West Java Provincial Mental Hospital to undergo treatment for 3 (three) months.<sup>2</sup>

Judge's Decision Number 105/Pid.B/2017/PN. Tsm, the defendant was legally and convincingly proven guilty of committing the crime of murder, but for this act he could not be held responsible because there were forgiving reasons as intended in the provisions of article 44 paragraph (1) of the Criminal Code, he was dismissed from all legal charges, placed the defendant at home Mental illness in West Java Province for 4 (four) months.<sup>3</sup>

Judge's Decision Number 602/Pid.Sus/2015/PN. Pbr, was legally and convincingly proven guilty of committing the crime of persuading a child to commit obscene acts and stated

<sup>1</sup> Devi Puspita, *Perpetrator of Mental Disorders, Investigation of Case of Worker Woman Murdered in West Jakarta Discontinued*, 2023 <https://news.detik.com/berita/d-6999088/pelaku-ngguan-jiwa-pengidikan-casekaryawati-murdered-di-jakbar-stopped>.

<sup>2</sup> Decision Number 144/Pid.B/2014/PN. Cjr.

<sup>3</sup> Decision Number 105/Pid.B/2017/PN. Tsm.

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that the defendant could not be punished (sentenced) but the defendant was placed (treated) in a mental hospital for 1 (one) year.<sup>4</sup>

Furthermore, Judge's Decision Number 20/Pid.B/2015/PN. Lbo, the defendant committed a criminal act by intentionally unlawfully destroying, damaging, rendering unusable or eliminating something that belonged wholly or partly to another person. The defendant suffers from mental disorders, such as signs of *sociopathic symptoms* (anti-social behavior), symptoms of *schizophrenia* (a brain disorder that causes deviations in thinking or behavior) or mental depression. The judge handed down a sentence of imprisonment for 1 (one) month, the judge also ordered that this sentence does not need to be served unless at a later date there is a judge's decision that determines otherwise because the convict committed a crime before the end of the 4 (four) month probation period.<sup>5</sup>

Decision 50/Pid.Sus/2015/PN. Kbu, the defendant committed a criminal act by intentionally broadcasting, exhibiting, distributing or selling to the public a work or goods resulting from a violation of copyright or related rights. The defendant experienced problems with insomnia and anxiety and the judge imposed a prison sentence of 6 (six) months with the provisions that the sentence did not need to be carried out unless, at a later date there was another order in the judge's decision, that the convict be sentenced before probation for 10 (ten) months after being guilty of committing a crime.<sup>6</sup>

Judge's Decision Number 119/Pid.Sus/2019/PN.Mgl with the defendant who committed the murder of his wife was a person suffering from a mental disorder based on PPDGJ (Guidelines for Classifying the Diagnosis of Mental Disorders) III with symptoms of perception disorders or sensory disorders in the form of auditory hallucinations and visual hallucinations, and the defendant was also found to have thought disorders such as disturbances in thought content and thought processes. Because there is a psychological disorder in the defendant's mind that makes him easily offended, based on *the Visum Et Repertum Psychiatricum/VER-P*, the defendant's mental disorder is fluctuating in nature, which means it is still possible for the defendant to participate in the legal process. The judge's decision states that the defendant has not been legally and convincingly proven guilty of committing the crime as charged in the single indictment of the Public Prosecutor, acquits the defendant from the indictment of the Public Prosecutor, orders the defendant to be released from detention immediately after this decision is pronounced, restores the defendant's rights within capacity, position, honor and dignity.<sup>6</sup>

From several cases described, it is known that accountability Crimes committed by criminals who suffer from mental disorders are not regulated by specific laws and regulations. If you look at the Judge's Decisions above, including the Judge's Decision, the perpetrator of a criminal offense who was proven to have a mental disorder was given a prison sentence for forgiving reasons in Article 44 paragraph (1) of the Criminal Code and was placed in a Mental Hospital in accordance with Article 44 paragraph (2) of the Criminal Code. However, there are also criminal cases where the defendant is proven to have a mental disorder and the judge decides on a criminal decision, and there is an acquittal decision that is free from all charges, is not placed in a mental hospital and there is no punishment.

This is interesting to study, what is the criminal responsibility of criminals with mental disorders in the laws and regulations in Indonesia, whether the laws and regulations in Indonesia regulate the classification of levels of people suffering from mental disorders when committing criminal acts, so that law enforcers can stop investigations and the Council. The judge decides on acquittal by law, decides on imprisonment or places the defendant in a mental hospital.

### B. Theoretical framework

#### 1. Theories of Criminal Responsibility

Criminal liability in English is referred to as *responsibility* or *criminal liability*. In his book, Roeslan Saleh explains criminal responsibility as a continuation of the objective blame that exists in criminal acts which subjectively fulfill the requirements to be punished for their actions.<sup>7</sup>

Objective reproaches can be held accountable to the maker as subjective reproaches. Since the maker is seen from the perspective of society in this case, he can be blamed for the fact that he had the freedom to act in a different way if he did not want to.<sup>9</sup> In another sense, criminal responsibility is the process of determining whether a suspect can be held responsible for the criminal acts he has committed. In other words, criminal responsibility functions to determine whether someone who commits a violation has the right to be punished.

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<sup>4</sup> Decision Number 602/Pid.Sus/2015/PN. Pbr.

<sup>5</sup> Decision Number 20/Pid.B/2015/PN. Lbo. <sup>6</sup> Decision 50/Pid.Sus/2015/PN. Mrs

<sup>6</sup> Decision Number 119/Pid.Sus/2019/PN.Mgl

<sup>7</sup> Roeslan, Saleh, *Thoughts on Criminal Responsibility*, (Jakarta: Ghalia Indonesia, 1982), p. 33. <sup>9</sup> Andi, Hamzah, *Indonesian Criminal Law*, (Jakarta: Sinar Grafa, 2019), p. 128.

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Alf Ross<sup>8</sup> stated that responsibility is demonstrated by the correlation between the required reality and the required legal consequences. Because there are legal rules, responsibility is a statement of a legal decision.

### 2. Theory of Punishment

Theories related to the purpose of punishment are as follows:

*Absolute/Retribution* theory is that punishment is imposed solely because the person has committed a criminal act or crime. According to Immanuel Kant, crime is a "*Kategorische Imperatif*", which means that a person must be sentenced by a judge because he has committed a crime so that the crime shows the demands of justice. Immanuel Kant's opinion in his book "*Philosophy of Law*" shows the demand for absolute justice: Punishment is never carried out solely as a means to promote other goals/goods, either for the perpetrator himself or for society, but in all cases it must be imposed because of the person. the person concerned has committed a crime.<sup>9</sup>

Goal / Relative Theory, Muladi and Barda Nawawi Arief stated about the relative theory, that crime is not just to carry out revenge or compensation for people who have committed a criminal act, but has certain useful goals. Therefore, this theory is often also called goal theory (*utilitarian theory*). So the basis for justifying the existence of punishment according to this theory lies in its purpose. Punishment is imposed not "*quia peccatum est*" (because people commit crimes) but "*ne peccetur*" (so that people do not commit crimes).<sup>12</sup> This relative theory is divided into two, namely: General Prevention and Specific Prevention. General Preferences emphasizes that the purpose of criminal law is to prevent criminals from disrupting public order. By punishing people who commit crimes, it is hoped that other people will not commit criminal acts. However, according to special prevention theory, the purpose of punishment is to stop prisoners from committing the same mistakes. In this case, punishment functions to educate and improve prisoners so that they become good people and are useful for society.

Combined Theory, the purpose of crime is to protect society by creating order and avenging criminals. This theory uses the two theories of punishment mentioned above (absolute theory and relative theory) as a basis because both theories have weaknesses, namely: The failure of the absolute theory causes injustice because the application of punishment requires consideration of existing evidence, and the state does not have to retaliate. One of the disadvantages of the relative theory is that it can lead to injustice because perpetrators of minor crimes can be given harsh sentences, public satisfaction is negligible if the goal is to improve society, and scaremongering can make it difficult to prevent crime.

In this situation, Muladi offers various purposes of punishment which are considered to be in accordance with sociological, ideological and philosophical juridical perspectives. The aim is based on the basic assumption that criminal acts are a disruption of balance, harmony and harmony in social life, which causes damage to both individuals and society. Therefore, the purpose of punishment is to repair the damage caused to both individuals and society. The set of criminal objectives consists of: prevention (specific and general), community protection, maintaining community solidarity, and compensation or compensation.<sup>10</sup>

### 3. Justice Theory

The theory of justice according to Aristotle is a theory based on the principle of equality. Aristotle differentiated justice into distributive justice and commutative justice.<sup>11</sup> Distributive justice is justice that ensures that everyone has the same rights, so that distributive justice is proportional. Distributive justice is related to the determination of rights and fair distribution of rights in the relationship between society and the state, in terms of the rights that the state should give to its citizens. The relationship between state and society is an example of the application of distributive justice. Such as the state must provide its citizens' rights to protection, public facilities, and a sense of security and comfort, while commutative justice is related to determining fair rights for certain individuals. Treating everyone equally is an example of the use of commutative justice. When they do something that violates rules or norms, they not only have to accept their rights, but also have to accept punishment.<sup>12</sup>

## C. Formulation of the problem

Based on the background of the problem above, the author chooses the problem formulation as follows:

1. What is the level of criminal responsibility for perpetrators with mental disorders based on Indonesian laws and regulations?

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<sup>8</sup> Roeslan, Saleh, *Opcit*, p. 34

<sup>9</sup> Muladi and Barda Nawawi, *Criminal Theory and Policy*. (Bandung: Alumni, 1992) p. 11. <sup>12</sup>Ibid, Pp. 16.

<sup>10</sup> Muladi and Barda Nawawi Arief, *Op. cit*, 1992, Pp. 61

<sup>11</sup> Bahder Johan Nasution, "Philosophical Study of the Concept of Justice from Classical Thought to Modern Thought", *Yustisia*, III, 2, (August, 2014), p. 120- 121

<sup>12</sup> Sandy, Alawi. *Criminal Responsibility of Perpetrators of Misuse of Sharp Weapons Due to Mental Disorders (Analysis of Decision Number 160/Pid.Sus/2022/PN Sbs)*, Uin Syarif Hidayatullah Jakarta, 2023 : Pg. 28.

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## II. RESEARCH METHODS

The method used in this writing is normative juridical because this research refers to statutory regulations, court decisions and community legal standards.<sup>13</sup>The juridical approach refers to applicable laws and regulations.<sup>14</sup>Normative juridical legal research, also known as the library legal research method, utilizes existing library materials or secondary data, which consists of primary legal materials, secondary legal materials, and tertiary legal materials.

The primary legal materials used are the Criminal Code, Criminal Procedure Code, Law Number 18 of 2014 concerning Mental Health. Secondary legal materials are legal materials that explain or support primary legal materials. Primary legal materials can include books, journals or magazines written by legal scholars, theories and expert opinions, as well as websites that discuss the issue of criminal liability for perpetrators with mental disorders. Tertiary legal materials are primary legal materials and secondary legal materials consist of general dictionaries, legal dictionaries, large Indonesian dictionaries and English dictionaries.<sup>15</sup>The data collection technique used in this research is a library data collection technique, namely in the form of document study or *documentary study library materials*. To obtain research materials, data is collected from books, the internet, journals, statutory regulations, and scientific works related to research topics using deductive thinking analysis techniques, namely by drawing conclusions from the material studied.

## III. RESULTS AND DISCUSSION Criminal Liability of Offenders with Mental Disorders 1. Based on the Criminal Code

Moeljatno<sup>16</sup>believes that the capacity for accountability is related to Article 44 of the Criminal Code, which regulates the circumstances of a person who can be held accountable. Article 44 of the Criminal Code stipulates that:

Paragraph (1) *"That no person can be punished if he commits an act for which he cannot be held responsible, because his mind is not perfect or he is sick of changing his mind;*

Paragraph (2) *"That if it is real the act cannot be done if he is held accountable because his mind is not perfect or he is sick with change of mind, then the judge can order him to be admitted to a mental hospital for a period of one year for examination; And*

Paragraph (3) *"That the provisions in paragraph (2) only apply to the Supreme Court, High Court and District Court."*

This regulation does not explicitly regulate mental disorders; it only regulates when a person is deemed incapable of responsibility based on the two reasons listed in Article 44 which have been explained above.

If it is connected to the criminal act of taking someone's life, based on Decision Number 144/Pid.B/2014/PN. Cianjur, the defendant was released from all legal charges and placed the defendant in the West Java Provincial Mental Hospital to undergo treatment for 3 (three) months, Decision Number 105/Pid.B/2017/PN. Tsm, the defendant was acquitted of all legal charges and placed the defendant in the West Java Provincial Mental Hospital for 4 (four) months and Decision Number 119/Pid.Sus/2019/PN.Mgl the defendant was acquitted of the Public Prosecutor's charges, ordered the defendant to be released from detention immediately after this decision is pronounced, restoring the defendant's rights in terms of his capacity, position, honor and dignity. It cannot be known for certain how the law will be enforced based on Article 44 paragraph (2) while there are no specific regulations regarding imperfection of reason or illness changing one's mind so that one cannot be held criminally responsible.

Different from the criminal act of obscenity, Decision Number 602/Pid.Sus/2015/PN. Pbr, the defendant cannot be punished (sentenced) but the defendant is placed (treated) in a mental hospital for 1 (one) year. The criminal act of intentionally breaking the law destroying, damaging, rendering unusable or eliminating something which wholly or partly belongs to another person, Judge's Decision Number 20/Pid.B/2015/PN. Lbo. The judge handed down a sentence of imprisonment for 1 (one) month, the judge also ordered that this sentence does not need to be served unless at a later date there is a judge's decision that determines otherwise because the convict committed a crime before the end of the 4 (four) month probation period. The two decisions above are different from the decision regarding the crime of murder, the sentence is carried out with imprisonment and rehabilitation in a mental hospital to the maximum, whereas in the crime of murder, only rehabilitation in a mental hospital is carried out for less than 1 year.

Furthermore, Decision 50/Pid.Sus/2015/PN. Kbu, the defendant committed a criminal act by intentionally broadcasting, exhibiting, distributing or selling to the public a work or goods resulting from a violation of copyright or related rights. The defendant experienced problems with insomnia and anxiety and the judge imposed a prison sentence of 6 (six) months with the provisions that the sentence did not need to be carried out unless, at a later date there was another order in the judge's decision, that the convict be sentenced before probation for 10 (ten) months after being guilty of committing a crime. This decision is also different from all the decisions mentioned above, where perpetrators with mental disorders are only sentenced to prison with a probationary period of 10 months without any rehabilitation in a mental hospital.

For victims of criminal acts committed by perpetrators with mental disorders, this certainly gives injustice to their rights, namely to obtain legal protection. As according to Aristotle, distributive justice is related to determining rights and fair distribution

<sup>13</sup> Zainuddin, Ali, *Legal Research Methods*, (Jakarta: Sinar Graphics, 2014), p.105.

<sup>14</sup> Roni Hanitijo Soemitro, *Legal Research Methodology and Jurisprudence*, (Jakarta: Ghalia Indonesia, 1982), p. 20.

<sup>15</sup> Soerjono, Soekanto & Sri, Mamudji, *Normative Legal Research A Short Review*, (Jakarta: Rajawali Press, 1990), p. 14-15.

<sup>16</sup> Moeljatno, *Criminal Code (KUHP)* (Yogyakarta: Sinar Graphic Offset, 2007), p. 21-22.

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of rights in the relationship between society and the state, in the sense of the rights that the state should give to its citizens, in this case legal protection. Article 27 Paragraph (1) of the 1945 Constitution states that: "All citizens have the same position under the law and government and are obliged to uphold the law and government without exception." This article provides a guarantee that the state has the responsibility to guarantee the position of society before the law/ *equality before the law*.

People with mental disorders who commit criminal acts such as murder, sexual abuse, destruction of other people's property and copyright infringement are actually indirectly protected by Article 44 paragraph 1 of the Criminal Code. This shows that there is an imbalance in legal protection between perpetrators of criminal acts with mental disorders and legal protection for victims.

### 2. Based on Law Number 18 of 2014 concerning Mental Health

Law Number 18 of 2014 concerning Mental Health in Chapter 1 Article 1 explains that the definition of mental illness is divided into two, namely People with Mental Disorders (ODGJ) and People with Mental Problems (ODMK).

Article 1 Paragraph (2) People with mental problems, hereinafter abbreviated as ODMK, are people who have physical, mental, social, growth and development problems, and/or quality of life so that they are at risk of experiencing mental disorders.

Article 1 Paragraph 3 of Law Number 18 of 2014 concerning Mental Health, states that People with Mental Disorders, hereinafter abbreviated as ODGJ, are people who experience disorders in thoughts, behavior and feelings which are manifested in the form of a set of symptoms and/or significant changes in behavior. , and can cause suffering and obstacles in carrying out people's functions as human beings.

Criminal liability for ODGJ perpetrators as regulated in Article 71 paragraph (1) states that for the purposes of law enforcement, a person suspected of being ODGJ who has committed a criminal act must receive a mental health examination. The psychiatric examination, among other things, is to determine a person's ability to take responsibility for the criminal acts they have committed; and/or determining a person's legal capacity to undergo the judicial process, this is regulated in Article 71 Paragraph (2) of the Mental Health Law.

The Mental Health Law does not regulate what constitutes a mental disorder, except as explained in Article 1. So it needs to be checked. Article 7 paragraph (1) of the Minister of Health Regulation Number 77 of 2015 concerning Guidelines for Mental Health Examinations, for Law Enforcement Purposes regulates that Mental Health Examinations for the purposes of law enforcement in criminal cases can only be carried out on the basis of an official request letter from the agency: police; attorney; court; or other state law enforcement agencies as determined by law.

The results of the mental health examination must be stated in the form of a VeRP. The party who makes VeRP is a mental medicine specialist who will assist the judge by stating the elements that can determine the examinee's responsibility. The mental disorders referred to are taking into account limited abilities (*disabilities*):

- a) Inability has a conscious purpose (*intentional disability*). Unconscious goals are goals that are based on delusions and/or hallucinations.
- b) Inability to direct/or control the will/or goal of one's actions (*volitional disability*).
- c) Inability to understand the value and risks of his actions.

Apart from determining responsibility, in making decisions the judge considers and pays attention to the ideas of correctional institutions, namely in Law Number 12 of 1995 concerning Correctional Institutions, including:

- a. The effectiveness of punishment for convicts as a behavior changer (*efficient punishability*).
- b. The use of crime against convicts and the community as an effort to scare them to prevent criminal acts (*deterrent efficiency*)

From the description above, there are no regulations regarding limitations in terms of criminal acts committed by perpetrators of criminal acts with severe, moderate or minor mental disorders or in other words there are no specifications that differentiate between these mental disorders so that it is necessary to further rank the levels of disorders. psychology to provide legal certainty.

## IV. CONCLUSION

Criminal liability by perpetrators with mental disorders is regulated in Article 44 paragraph (1) which states that no person can be punished if they commit an act for which they cannot be held responsible, because their mind is less than perfect or they are sick of changing their mind. Then, for the purposes of law enforcement, a person suspected of having committed a crime must receive a mental health examination. The psychiatric examination, among other things, is to determine a person's ability to take responsibility for the criminal acts they have committed; and/or determining a person's legal capacity to undergo the judicial process, this is regulated in the Mental Health Law. In the psychiatric examination, the Judge is assisted by a specialist psychiatrist and the results of the mental health examination will be presented in the form of a VeRP. However, there is no level of mental disorder among perpetrators of criminal acts, so this results in ignorance of the boundaries of mental disorders and legal uncertainty, both for victims of criminal acts with mental disorders or for the perpetrators themselves.

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- 5) Decision Number 602/Pid.Sus/2015/ Pekanbaru District Court
- 6) Decision Number 20/Pid.B/2015/ Limboto District Court
- 7) Decision Number 50/Pid.Sus/2015/ Kotabumi District Court
- 8) Decision Number 119/Pid.Sus/2019/ Magelang District Court
- 9) Minister of Health Regulation Number 77 of 2015 concerning Mental Health Examination Guidelines.



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