

Criminal Legal Responsibility For Murder Perpetrators Who Suffer From Severe Mental Disorders (Psychotic)

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Abstract

Murder is an act that is done intentionally to seize or eliminate the life of another person for which anyone who does it will be held accountable. However, in the Law there is a regulation that a person cannot be held accountable, namely in Article 44 paragraph (1) of the Criminal Code. This research is descriptive with a normative legal writing approach taken from secondary data by processing primary legal materials, secondary legal materials and tertiary legal materials obtained from documentation studies or literature searches or collecting library research data (library research) both offline and online which are then analyzed qualitatively. Based on the research results, it was found that the criteria for perpetrators who experience severe mental disorders in the crime of murder are strange delusions or delusions (the content is clearly unreasonable) and not based on reality, somatic (physical) grandeur, religious, jealousy, hallucinations in any form, then the panel of judges decided that the defendant was guilty of committing the crime of murder, but the defendant could not be punished for the reason of forgiveness in Article 44 paragraph (1) and (2) of the Criminal Code. The criteria for severe mental disorders should be known by the relevant police agency where the defendant works, so that something like this, namely the crime of murder, will never happen so that things like this can be anticipated.

Keywords: *Accountability, Criminal Law, Perpetrators, Criminal Acts Murder, Serious Mental Disorders*

INTRODUCTION

In the Criminal Code (KUHP) there is no specific definition of responsibility. This is because the KUHP formulates responsibility negatively, meaning it formulates it about a mental state that is unable to be responsible and not about being able to be responsible. The article related to responsibility is Article 44 of the KUHP. Based on Article 44 paragraph (2) of the KUHP, it is stated that if it is proven as stated in paragraph (1), the judge can order the person to a mental hospital on probation for one (1) year. The provisions of sanctions in Article 44 paragraph (2) of the KUHP are clearly a type of action sanction. Based on this article, it can be understood that the law in Indonesia has implemented a double track system. The double track system is a two-track system regarding sanctions in criminal law, namely the type of criminal sanctions on the one hand and the type of action sanctions on the other hand.

According to Roeslan Saleh, criminal responsibility is defined as the continuation of objective blame that exists in a criminal act and subjectively meets the requirements to be punished for the act. What is meant by objective blame is that the act committed by a person is a prohibited act, the prohibited act referred to here is an act that is contrary to or prohibited by law, both formal law and material law. Meanwhile, what is meant by subjective blame refers to the perpetrator of the prohibited act or it can be said that subjective blame is the person who commits an act that is prohibited or contrary to the law. Based on Article 44 paragraph (1) of the Criminal Code, it reads: "No one can be punished who does an act for which he cannot be held responsible, because his mind is imperfect or his mind is sick." This article shows that people who are mentally ill or insane are free from criminal penalties.

From the text of Article 44 paragraph (1) of the Criminal Code, it is clear to us that a person with a mental disorder will not be punished when he commits a crime. The question here is, why can't a person with a mental disorder who has committed a crime prohibited by statutory regulations be punished? If we look at what is stated in Article 44 paragraph (1) of the Criminal Code, it is clear that the actions that have been carried out by the person with a mental disorder cannot be held accountable for him because his soul is disabled in growth or disturbed by illness. This is the reason why the person cannot be punished because the person is unable to be held responsible for the actions that he has committed.

In Article 44 of the Criminal Code, it is stated that a person cannot be punished because his actions cannot be accounted for, this is because:

- a. His mind is imperfect, namely: mental strength, mental power, mental intelligence. Those who are considered to be mentally imperfect are idiots, imbeciles, deaf-blind and mute from birth. The person is not actually sick but has been disabled since birth so that his mind remains like a child. Idiot, experienced by humans who have an IQ (Intelligent Quotient) of less than 25.
- b. Illness changes his mind. In this category are insanity, hysterics, epilepsy, melancholy and various other mental illnesses. Hysterics/hysteria/hysteria are psychoneurotic disorders (mental nerves), which are characterized by extreme emotional instability, repression (abusive), dissociation (change in personality) and suggestibility (easily suggested with feelings of shame, guilt, sin and others).
- c. Epilepsy is a disease of consciousness, because there is a disorder in the brain. If an epileptic seizure occurs before the age of 7, it will cause mental weakness, and the development of other mental functions will be hampered
- d. Melancholy/melancholia is a form of psychosis (mental disorder) in the form of extreme mental confusion, which is constantly moving between sadness and despair. Melancholy sufferers experience very sad depression, cry a lot, feelings of dissatisfaction, are plagued by frightening hallucinations and delusions, feel bored with life and despair, want to die and make suicide attempts and blurred consciousness, accompanied by motor and mental retardation that is getting worse

The problem in this case is if the perpetrator is someone who has a mental disorder, then the question arises whether the action is in accordance with his will and intention. In the plea it was stated that the defendant has a severe mental disorder (psychotic) as per the results of the *Visum Et Repertum*. Therefore, the perpetrator is feared to be unable to be responsible for his actions. However, the testimony of other witnesses stated that the defendant could socialize well like a normal person who does not have a mental disorder. Severe mental disorder or psychosis is a mental health condition characterized by serious disorders in thinking, perception, and behavior. People who experience this disorder often lose touch with reality and can experience hallucinations (seeing or hearing things that are not there) and delusions (believing in things that are not true or not real).

It should be noted that in criminal law there are reasons for eliminating criminal acts, namely justification and forgiveness, with the following explanation:

- a. Justification means a reason that eliminates the unlawful nature of a crime. So, in justification it is seen from the side of the act (objective). For example, the act of 'taking life' carried out by the executioner of the death penalty against a death row convict (Article 50 of the Criminal Code)
- b. A forgiving reason is a reason that eliminates the guilt of the perpetrator of a crime, while his actions remain unlawful. So, in forgiving reasons it is seen from the side of the person/perpetrator (subjective). For example, because the perpetrator is insane or crazy so that he cannot be held responsible for his actions

One example of a case regarding Criminal Legal Responsibility for Murder Perpetrators Suffering from Severe Mental Disorders (Psychotic) occurred in Decision Number 140/Pid.B/2019/PN Brb. The defendant named Jamaludin Bin H. Abdul Hadi was legally and convincingly guilty of committing a crime of "intentionally taking the life of another person" violating Article 338 of the Criminal Code as stated in the Primary Indictment of the Public Prosecutor, but the defendant could not be held accountable to the defendant because the defendant suffered from severe mental disorders.

If it turns out that the perpetrator is truly considered unable to be held responsible for his actions, then a forgiving reason applies to the perpetrator, where according to the Criminal Code he cannot be punished and the judge can order that the perpetrator be put in a mental hospital for a maximum probationary period of 1 year. to prevent similar things from happening that endanger both the safety of the insane person and the surrounding community. This is as stated by R Soesilo, namely that the judge has the authority to decide whether or not the defendant can be held responsible for his actions by asking for advice from a psychiatrist. If the judge is of the opinion that the person is truly not held responsible for his actions, then the person is freed from all criminal charges (ontslag van alle rechtsvervolgin).

RESEARCH METHODS

This study uses a normative legal research method which is part of the doctrinal research typology. The research approach used is a conceptual and legislative approach. The data sources obtained in this study were obtained from secondary data obtained indirectly which is a literature study and the secondary data is divided into several parts, namely, primary legal materials and secondary legal materials and tertiary legal materials. Primary legal materials are data that have legal force such as laws and regulations, while secondary and tertiary legal materials are supporting data on primary legal materials such as previous studies that discuss the research being written and that has been published and related books. The legal materials that have been obtained are then analyzed using descriptive-qualitative analysis to obtain conclusions that can be scientifically accounted for regarding the comparative analysis of Criminal Legal Responsibility for Murder Perpetrators Who Suffer from Severe Mental Disorders (Psychotic) (Analysis of Decision Number 140 / Pid.B / 2019 / PN Brb).

The data is analyzed using methods of qualitative analysis. The data analysed qualitatively will be presented in the form of a systematic description by explaining the relationship between various types of data as appropriate. All data is selected and processed, then analysed descriptively so that some conclusions can be drawn from this discussion. (Tampil Anshari Siregar, 2015).

RESULT AND DISCUSSION

Severe mental disorder/Schizophrenia is a functional psychosis with chronic or long-term mental disorders primarily in the thought process and a mismatch between the thought process and emotions. Will and psychomotor are accompanied by distortion of reality, especially due to delusions and hallucinations, associations are divided so that they are incoherent. Specifically, Schizophrenia is a person who experiences emotional, thought, and behavioral disorders. The forms of mental disorders in criminal law include organic mental disorders, schizophrenia, schizotypal disorders and delusional disorders, neurotic disorders, childhood and

adolescent behavioral disorders, psychosomatic disorders and mental retardation. The following is an explanation of the various types of mental disorders above.

- a. Organic mental disorders, Organic mental disorders or organic mental disorders are mental disorders (psychotic or non-psychotic) that are suspected to be related to specific organic factors (can be systemic diseases/disorders of the body or disorders of the brain itself).
- b. Schizophrenia, Schizophrenia is one of the severe mental disorders that can affect the thoughts, feelings, and behavior of individuals. The term Schizophrenia comes from the Greek schizo (split) and phren (soul). The term is used to explain the splitting or fragmentation of the thoughts of individuals with this disorder. The term schizophrenia does not indicate the diversity of personalities in individuals.
- c. Schizotypal disorder and delusional disorder, Individuals with schizotypal personality disorder have much more typical characteristics of schizophrenia than people with schizoid personality disorder, but the symptoms are not severe enough to justify a diagnosis of schizophrenia
- d. Neurotic disorders, Neurotic disorders are mostly experienced as disturbances of intraphysical functioning, and their symptoms are egodystonic, while personality pathology is mostly experienced as disturbances of interpersonal functioning, and maladaptive behavioral patterns are often experienced as ego-syntonic.

In essence, ODGJ are still recognized as legal subjects, where legal subjects are supporters of rights and obligations whose consequences can sue or be sued by other legal subjects in court. When ODGJ commits a crime, in order to be held accountable for the crime, ODGJ must have the ability to be responsible. The judge in his decision considered legally whether from the results of the examination in the trial, Jamaludin Bin H. Abdul Hadi's actions had fulfilled or not the elements of the article charged by the Public Prosecutor, namely "intentionally taking the life of another person" as regulated in Article 338 of the Criminal Code. The elements of Article 338 of the Criminal Code are "the element of whoever" and "the element of intentionally taking the life of another person."

The elements of Article 338 of the Criminal Code on Jamaludin Bin H. Abdul Hadi: Element of whoever Whoever is whoever the person is as the legal subject of the perpetrator of the crime charged. Based on the Police Investigation Report which is closely related to the Public Prosecutor's indictment which all points to the "Defendant" as the perpetrator of the crime, further examination in court by considering the identity of the defendant, the person charged as the perpetrator in the aquo case is someone named Jamaludin Bin H. Abdul Hadi. Element of intentionally eliminating another person's soul. Intentionality is the existence of a will, desire, intention that arises from within the perpetrator's mind/self to do or not do an act and the perpetrator is aware of all the consequences that will arise later. eliminating another person's soul is making it disappear, making someone's life (human) disappear so that it causes the soul and body to be separated.

A person suffering from schizophrenia who intentionally takes the life of another person can be punished under Article 338 of the Criminal Code. However, it should be remembered that in criminal law there is something called a reason for eliminating criminal liability. Reasons or grounds for eliminating criminal liability are things or circumstances that can result in a person who has committed an act that is expressly prohibited and threatened with punishment by the Criminal Code. In criminal law, there are reasons for eliminating criminal liability, namely justification and forgiveness:

- a. Justification means a reason that eliminates the unlawful nature of a crime. So, in justification, it is seen from the side of the act (objective). The justifications contained in the Criminal Code are Article 48 (emergency), Article 49 paragraph (1) (forced defense), Article 50 (statutory regulations) and Article 51 paragraph (1) (office orders).
- b. A forgiveness is a reason that eliminates the guilt of the perpetrator of a crime, while his actions remain unlawful. The reasons for forgiveness contained in the Criminal Code are Article 44 (unable to take responsibility), Article 49 paragraph (2) (past forced defense or noodweer excess), Article 51 paragraph (2) (in good faith carrying out an invalid office order). Regarding Article 48 (coercive force) there are two possibilities, it could be a justifying reason and it could also be a forgiving reason.

Inability to make decisions due to impaired thinking processes and the emergence of delusions and hallucinations, meaning that schizophrenics cannot be held accountable because the perpetrator has a mental disorder that causes the mind not to work normally so that the perpetrator is unable to determine his will according to his awareness of the good and bad of his actions. However, the judge has the authority to decide whether or not the defendant can be held accountable for his actions, although he can also seek advice from a psychiatrist. According to the expert opinion in Court Decision number 140 / Pid.B / 2019 / PN Brb, the illness suffered by the defendant is included in the severe category but can be cured on the condition that he must continue to take medication continuously. If the mental disorder suffered by the perpetrator is a severe mental disorder, the judge needs to consider the relationship between the mental disorder experienced by the perpetrator and the crime committed by paying attention to the article regarding responsibility in the Criminal Code (KUHP). In addition, it also pays attention to the elements of responsibility, namely the element of error, the element of being able to be responsible and the element of no reason to eliminate the crime.

In an acquittal (*onslag van recht vervolging*), all legal charges for the actions committed by the defendant in the prosecutor's/public prosecutor's indictment have been proven legally and convincingly according to the law, however the defendant cannot be sentenced to a criminal penalty, because the actions are not criminal acts, for example in the field of civil law, customary law or commercial law. In addition to the above, the imposition of an acquittal and release by a judge on a perpetrator of a crime (where the elements of the article charged are proven), can be distinguished by looking at the presence or absence of reasons for eliminating the criminal offense (*Strafuitsluitingsgronden*), both in the law, for example justification (for example Article 50 of the Criminal Code ("KUHP") or forgiveness (for example Article 44 of the KUHP), or outside the law (for example: the existence of permission).

Based on the author's analysis, the nature of the judge's decision imposed on the defendant is still unclear. This refers to a question whether the nature of the judge's decision is classified as a type of criminal decision (*verordeling*) or is classified as a release decision (*onslag*). The author conveys this opinion because if the decision is classified as a criminal decision, then the judge should determine the amount of the period/length of the criminal sentence imposed on the defendant. In relation to if the decision is declared a criminal decision, the author considers this to be appropriate. One of the reasons that was not taken into consideration by the judge and according to the author was an error and lack of precision on the part of the judge in examining the case was related to the defendant's ownership of a firearm. According to the author's opinion, considering the statement of the Criminal Law Expert who stated that the defendant can only be ascertained by a Psychiatrist regarding the serious mental disorder he suffered at the time of committing the crime was relapsing or not, it must be explained firmly by the Psychiatric Expert witness, in order to ensure whether the defendant can be held

criminally responsible for his actions. Because if the defendant is normal or the disease he suffers from does not relapse when committing the crime, then the verdict imposed by the panel of judges is not appropriate or not appropriate. Considering the consequences of the criminal act committed by the defendant resulting in the loss of life, the panel of judges examining and trying the case must ensure that the defendant at the time of committing the crime was relapsing from the serious mental disorder or not. Because taking someone's life is a very serious matter. This is a violation of human rights. Therefore, the defendant who carried out the shooting which resulted in death was an act of abusing his authority so that he should be tried in accordance with the provisions of applicable laws and regulations.

CONCLUSION

Based on the results of the study related to the Legal Analysis of Children's Rights Against Victims of Child Molestation Crimes Reviewed from Law No. 35 of 2014 (Decision Study Number: 640 / Pid. Sus / 2023 / PN Mdn) It can be concluded as follows: Law No. 35 of 2014 concerning Child Protection provides more humane legal protection for child victims of sexual violence. With this legal protection, child victims of sexual violence are treated humanely and with respect for their human dignity. Criminal sanctions against perpetrators of sexual violence are also applied severely, and law enforcement against sexual violence crimes is carried out by providing protection for child victims.

In the decision of case No. 640 / Pid.Sus / PN Mdn the judge decided the case by imposing a sentence in the form of a prison sentence of 13 years with a fine of IDR 100,000,000 (One Hundred Million Rupiah). Where in the decision it is said to be imperfect because there is no justice obtained by the child as a victim of sexual violence in the form of molestation. Therefore, the judge should consider the rights of children who have been taken away based on Article 69A of Law No. 35 of 2014 which explains that Special Protection for Children who are victims of sexual crimes as referred to in Article 59 paragraph (2) letter j is carried out through education, rehabilitation, psychological support at each stage of recovery, and the provision of protection and support at each level of examination starting from the investigation to the trial examination.

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