

criminal liability

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Criminal Liability of People with Mental Disorders: Health Law Perspective

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Abstract

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Criminal liability is a mechanism to determine whether or not a suspect may be held responsible for an action. Mental disorders are conditions that prevent someone from having the ability to take responsibility for their actions. The Indonesian Criminal Codes I and II provide a guide on the criminal liability of people with mental disorders. This is normative legal research with a focal point on inventorying written positive laws under legal principles and doctrines to discover the law in a case. The result shows that the judge has full authority to sentence offenders with mental disorders. Otherwise, they have to consider the facts at the trial and ask expert witnesses. We argue that imposing the sanction for perpetrators with mental disorders is not in line with *Lex Neminem Cogit Ad Impossibilia*, which is embedded in the Indonesian criminal code. Moreover, the judge needs to involve the psychiatrists to manage the suspect with a mental disorder in their decision.

Introduction

Humans face various problems daily from social interactions and activities with their families, environments, and communities. These interactions become problematic when they contain unlawful actions that violate one's rights; thus, impacting one's psychological condition [1].

Criminal law is part of the codified law in Indonesia. It is a legal basis to determine whether or not a human action is appropriate. According to the law, those who violate it may be punished [2].

According to the legality perspective – a criminal law principle in Indonesia – only act defined as a criminal offence under a penal code or other criminal legislation will result in criminal prosecutions. Poenali, this adagium meaning is that the perpetrators of criminal acts cannot be punished unless there is a rule of law. The law on which the prosecution will be based must have existed before the law and cannot be applied retroactively [3]. If there is a lack of evidence, the *Geen Straf Zonder Schuld* legal principle applies, that is, one

may only be punished if the actions fulfill the elements of criminal actions and if he can take responsibility for his actions [4].

Moeljatno suggests that criminal action is an action that violates the order expected by the law. Such actions harm others and disturb their daily lives [5]. Substantially, these criminal actions harm society as legal subjects [6].

In criminal law, liability correlates to how one carries out an illegal action. Ali in Candra provides a concept on liability. This concept is closer to the error in the *mens rea* legal discussion. *Mens Rea* has a fundamental perspective that actions do not make people guilty unless they already have bad intentions. Two requirements must be fulfilled in punishing a person, namely, it must be carried out outwardly with consciousness and competence (*actus reus*), and there must be bad intentions or motives (*mens rea*) [7].

In carrying out legal action, one must have the capability to be reliable. It means that the suspect must have a normal mental condition and competence to carry out the actions. Then, he must have a sense of

regret. Thus, he can be responsible for his actions in the face of law [8].

To be deemed as "able to be responsible," one must have the elements of ratio and intention. The perpetrators must be able to differentiate between good and bad behaviors. Furthermore, they must act consciously.

Indonesia's Criminal Code Article 44 stipulates 'Liability' as follows:

1. One cannot be punished if he/she carries out actions that he/she cannot be liable for due to lack of ratio or due to illnesses that disturb the ratio.
2. If the action cannot be taken responsibility for due to lack of ratio or illnesses that disturb the ratio, the judge registers him/her to a mental hospital for at most 1 year for examination [9].

The ratio of a legal subject – whether or not she can differentiate between good and bad – is a detrimental factor [10]. Then, the second factor is the perpetrator's intention that does not follow the ratio, namely, if one fails to control her feelings, making her unable to differentiate lawful and unlawful actions.

Baharudin argues that the ability to become legally liable means [11]:

- A. The ability to differentiate how a good or bad action, a lawful or unlawful action is carried out.
- B. The ability to have consciousness over one's actions, thus resulting to have regret over a bad action.

The law coerces and everyone are equal before the law. The law for a legally capable person cannot be applied to people with mental disorders even though in principle, everyone is equal before the law. If the law is similarly applied, its enforcement will cause a distortion [12]. How far can the law for ordinary people be applied to those with mental disorders? How much compensation can be given to those who are mentally disturbed? And what types of punishment fulfill a sense of justice to the mentally disabled people?

Concerning liability, it becomes a question of how social control is applied and how a psychiatrist classifies perpetrators of criminal actions to become liable for his actions. The Indonesia Penal Laws Article 44 (1) stated "if a perpetrator's mental condition is questioned, the courtly authorities ask a psychiatrist as a legal expert to see whether that person suffers from mental disorders and (2) "If the Psychiatrist found the perpetrators had mental disorders then he would recommended the court to rehabilitated the perpetrators rather than jailed perpetrators."

As a legal expert, the psychiatrist's statement may become a criminal liability in the face of the law. It becomes a benchmark on how that person suffers from mental illnesses. Psychiatry and the law have strong correlations as the psychiatrist may give valid statements on the perpetrator's mental condition [13].

The law views the action from data and real conditions. Meanwhile, in psychiatry, an action is assessed from whether or not it is carried out consciously. The factor of consciousness influences one's actions. Psychiatry views the symptoms of one's legal actions not merely from the conscious factor, but some actions are manifestations of mental illnesses [14].

The Indonesian legal system uses the civil law system, perceiving from codified rules. The law views social symptoms from social behaviors and the applicable legal norms. It is a distortion when a law enforcer sees from the positivist perspective that the law is a funnel of justice without considering whether or not the perpetrators can be responsible for their actions.

There needs to be justice to perpetrators of criminal actions, whether or not the actions are according to their ratio, conscience, and capabilities. People with mental disorders only carry out their actions based on relative truth. Thus, they only depend on their minds without considering their responsibility in the face of the public [15].

Thus, this paper aims to analyze the criminal liability of people with mental disorders. What are the liabilities according to the criminal law? Is there compensation for law violators, as the criminal code is a set of regulations close to social behaviors?

Methods

Criminal law is a set of codified laws to bind social activities or legal liability if one can be responsible for his actions according to his psychological condition. This is juridical normative research that analyzes legal products (laws) and legal behaviors. Its main object of analysis is the law conceived as norms or principles that are behavioral guidelines of society [16]. It focuses on inventorying written positive laws, such as legal principles, legal doctrines, legal findings in a case, legal systems, synchronization levels, legal analysis, or legal comparison.

This paper uses primary and secondary legal data. The former is legal stipulations concerning the paper's theme, namely, the criminal liability of people with mental disorders based on positive law such as Article 44 clauses (1) and (2) of the criminal code. The latter is legal material that explains the primary legal material, for instance, previous research, scientific papers, and information from mass media on the subject [17]. Authors had been obtained ethical Clearance from Balitbangkes (Health Research and Development Body) with the number of ethical clearance 147/X/EC/Balitbangkes/2021.

Results

An illegal action is an action that violates legal norms such as the criminal code. This code stipulates human activities close to society, namely, when actions are carried out mindfully and consciously with certain motives that violate the criminal laws and that may be taken accountable. However, what if a person with mental disorders acts while not knowing whether or not that action is lawful? What if he does not have certain plans or motives to it and only relies on intuitions or hallucinations [18]?

Criminal responsibility describes punishing a perpetrator. To punish a perpetrator, one must be able to take responsibility for her actions. An action must fulfill elements of an offence as stipulated in the law. According to Pompe, the ability to take responsibility is rational. One must have the ability over their mind that allows them to determine their actions. Thus, a perpetrator can determine her actions and determine her will according to her actions [19].

In the Indonesian criminal code, elements of liability and offences are mixed in the second and third books [20]. According to the criminal code, the punishment requirements must follow the offence. Thus, the elements must be proven in the courtly processes. According to the criminal code, there are three elements of criminal liability: The ability to be responsible, the existence of an offence, and no excuses. There are some classifications of mental disorders in some cases, including bipolar, impulsive violence mental disorder, personality disorder, and cognitive limitation.

A person with impulsive violence disorder carries out unexplainable actions of violence impulsively. These actions cannot be explained logically and are manifestations of the mental disorder. A person with bipolar disorder has symptoms in her body, where she feels an increase in energy. There are episodes where she has an exaggeratingly happy mood and optimism. This high optimism results in uncontrollable provocative and aggressive actions. She carries out actions based on her own beliefs without considering the legal implications or the legal responsibility [21].

Criminal liability or criminal responsibility may be analyzed from several illnesses described above. For example, in the case of someone with impulsive violent behavior, they act freely and spontaneously without certain motives due to their illness. According to Gerben Meynen, free action is when a person carries out an action based on fundamental reasons. Meanwhile, a spontaneous action due to mental illnesses that are carried out without certain motives cannot be held responsible for in the face of the law. A person with an impulsive disease has free will. Thus, he cannot be held accountable for his actions before the law [22].

Then, in the case of liability of people with bipolar disorder, there was a case where a grandson killed his grandmother, because she caused much hassle. That grandson murdered his grandmother because he had a strong desire that arose spontaneously so that his grandmother does not bother him anymore. He has a rational reason, but he violated stipulations of the criminal code as he cannot control his desires. He has the consciousness to carry out that action. He realizes that the action is wrong from the perspectives of society and the law. The legal expert considered some motives. Although bipolar disorder is an illness, he can be responsible [23].

In the case of perpetrators with cognitive limitation mental disorder, the cognitive limitation is when a perpetrator has a weak mindset or is cognitively disabled. There was a case where a perpetrator of harassment has an influencing cognitive disease, namely, his Intelligence Quotient (IQ) is low. Thus, the perpetrator had difficulties undergoing daily activities. He has negative behavior and is prone to bad deeds due to his lack of cognitive understanding [24].

Article 44 of the criminal code explained that a person could not be held responsible for his actions if he has mental disabilities or abnormal growth. This refers to mild or severe mental retardation conditions rather than light mental retardation or low intellectuality compared to other people, as people with the former conditions may still be held responsible for their actions. A person who commits a criminal act must be able to take responsibility for her actions before the law. Furthermore, the person must have the psychological capability to be held accountable in the trial processes. One cannot be regarded as guilty if there has not been a decision from the judge, as the Indonesian legal system implements the "presumption of innocence" principle. Judges in giving a courtly verdict refer to this principle. In the case of criminal activity of a mentally disturbed person in the courtly process, especially during the investigating process, the investigators may suggest the chance for the perpetrator to have mental disorders.

The investigators may suggest this if there is acknowledgement from the family and the community on that person's harmful actions and behaviors, while psychologically, that person's actions are not like that of a normal person in society. The perpetrator's abnormal action usually shows during the investigation process, the courtly processes, or during imprisonment. Investigators may suggest that the criminal action was carried out without certain motives and that it was carried out outside of a healthy ratio. Thus, the investigation process involves legal experts to understand the perpetrator's psychology as a whole.

In the investigation process, expert testimony has an important role. A psychiatrist as a legal expert may carry out a *visum psikiatrikum*. If the *visum* issued describes that the perpetrator has mental disorders, the investigators must follow the psychiatrist's suggestions as a legal expert [25].

Discussion

If it is stated that the perpetrator cannot be held responsible for, a letter of investigation termination is issued. The case is not followed up to the next stage. The process of accountability for criminal actions is a prerogative right of the judge with consideration of expert statements. If the suspect cooperatively communicates well, the judge may suggest that she has the physical and mental capabilities to be held responsible for her actions in the face of law as she is legally capable [26].

The theory of pointless punishment by legal experts such as Fletcher suggests that it is pointless to punish a perpetrator who cannot acknowledge his mistakes, as he cannot prevent himself from doing further criminal actions after his punishment is over [27].

Conclusion

Criminal liability describes punishments for a perpetrator, whether or not they are responsible for their actions. To be punished, a perpetrator must fulfill the elements of offenses in the criminal code. There is no excuse for those who can be held responsible for their actions to refrain from punishments.

It is concluded that almost all mental disorders may concern legal actions, as mental disorders disturb the function of consideration, making their sufferers violate legal norms. Judges have the prerogative right to determine the criminal liability of perpetrators based on expert statements. The Indonesian law seems to have a dichotomy regulation on the criminal liability of people with mental disorders – either a perpetrator is fully responsible or not through analysis beforehand. There is a tendency that judges do not see mental disorders to alleviate punishments. Meanwhile, physical illnesses may alleviate them based on the applicable Indonesian criminal law. Judges should insert an element of therapy in giving a verdict on criminal actions of people with mental disorders.

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