

Legal Liability Analysis for Defendants with Mental Disabilities

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Abstract

This study aims to identify and analyze legal liability for criminals with mental disorders in the Wonosobo District Court Decision. The results showed that the perpetrators with mental disorders were proven legally and convincingly to commit the crime of sexual harassment, but because of the limited evidence and the role of psychiatrists, the judicial process became ambiguous and the judicial decision stated that the defendant's behavior did not meet the elements of responsibility, so that according to science criminal law the defendant cannot be held responsible for some. However, the attorney and the victim stated that the defendant has the ability to be held criminally responsible because Article 44 of the Criminal Code does not regulate the state of being unable to be partially responsible.

Keywords: Judicial Process, Sexual Harassment, Mental Disabilities.

1. Introduction

Legal issues can affect individuals which have an impact on the community environment. People with the status of lawbreakers have a very heavy moral burden in the judicial process that will be carried out. Moreover, the person with the claimant is a person with a disability, of course, if the judicial process is generalized to people in general, it will be very difficult. People with disabilities have the same rights as people in general. As citizens, people with disabilities should be treated specifically and get a proper place like ordinary people.

As a state of law (*rechtstaat*), Indonesia guarantees the rights of every citizen to gain access to justice. Every citizen has the right to equal treatment before the law, so the state is obliged to ensure that every citizen is free from discriminatory treatment.

Every citizen, whatever the situation, regardless of background, has the right to get access to justice properly. Thus, the constitution mandates equality before the law (equality before the law).¹

Access to justice has become so crucial to get attention, because marginalized groups such as people with disabilities find it difficult to get access to justice like those who live a normal life.

Inclusive Court Services also seek to create a more accessible physical environment, provide a variety of information delivery media, and eliminate counterproductive attitudes towards persons with disabilities.²The responsibility of a person with disabilities, whether the person concerned is able to be

¹Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states "All citizens are equal before the law and government and are obliged to uphold the law and government without exception".

² International Labour Organization, *Inklusi Penyandang Disabilitas di Indonesia*, Jakarta, No Year, p. 1

responsible for the things he does is also an important point. This is to minimize injustice in law enforcement practices.

Providing education to the public that not everyone can be held accountable for their legal actions, especially people with disabilities is also important. It is not easy to provide education to the public about how judicial decisions should be made to people with mental disabilities.

In Wonosobo Regency, an incident occurred where suspect X, who had a mental disorder, committed a crime of sexual harassment against a child. Based on the results of the psychological examination, suspect X was sentenced to suffer from mental disorders in the category of Mental Retardation. In the trial, the defendant is a person who is unable to take full legal responsibility, and the suspect is declared on parole. This triggers a polemic for the victim who feels that "X" is someone who is able to take legal responsibility for his actions and considers that the judicial decision is not as expected.

The research aims to find out and analyze the implementation of the judicial process for an accused person with a "mental" disability involves psychiatrists, identifying and analyzing legal liability for persons with mental disabilities (OGDJ).

2. Research methods

This study uses a sociological juridical approach, namely identifying and conceptualizing law as real and functional in real life systems.³This research is a field research, using qualitative analysis. Therefore, the data collected in this study is in the form of information in the form of descriptions and not in the form of numbers. Sociological juridical analysis is considered more appropriate in this research, because this analysis is expected to make it more possible to develop this research in order to gain an in-depth understanding.

There are two types of data sources, namely primary data and secondary data. Primary data, obtained through interviews (interviews) and observations of the subjects (informants).

Secondary data, collecting data in the form of documents, court records, as well as police report files and writings in journals, articles, magazines, newspapers, and so on that are closely related to the focus or object of research. The results of the research found by the author are in the form of documents that are closely related to this thesis.

3. Research Results and Discussion

3.1. Involvement of a Psychiatrist in the Investigation and Trial of the Case of Defendant "X"

The role of mental health experts in the investigation process at the Wonosobo Resort Police is the initial process of a series of actions by law enforcement officers in their efforts to prove that a crime has been committed by the suspect.

³ Soejono soekamto, 1986, *Pengantar Penelitian Hukum*, Jakarta, Penerbit Universitas Indonesia Press, p.51

The stages of handling suspects generally start with public complaints about the crimes that have occurred. Followed by a police report which is handled by the Integrated Police Service Center or SPKT which is an element of implementing the main tasks in the field of Police Services. If the case is a criminal case, the SPKT delegates the case to the Criminal Investigations investigator for investigation. In the settlement of criminal cases, the role of witnesses is very important, because in a crime there must be a witness who knows the incident to make the case clear, so that the role of the witness becomes the main thing. Based on Article 1 number 14 of the Criminal Procedure Code (KUHAP), whether the suspect is a person who because of his actions or circumstances, based on preliminary evidence, should be suspected as the perpetrator of a criminal act, in this case the investigation process is not aimed at determining the case. criminal act or not, but because the investigation is intended to seek and collect evidence to find the perpetrator of the crime or the suspect.⁴

Besides that, expert information is also needed to clarify the problems that occurred. If there is a criminal incident, there is a police report, then a warrant for investigation is issued, then the police will only examine the witnesses concerned and if necessary, expert witnesses will be presented according to their expertise. In general, witnesses are presented by the prosecutor to strengthen their indictment in addition to other evidence, at least two witnesses. Meanwhile, expert testimony is needed for serious cases, so it requires certainty against criminal actsthat. This is very necessary because the sanctions given must be able to provide value education, and the nature of the sanctions must be in accordance with the meaning of philosophy.⁵

In handling a suspect whose soul is normal, it is certainly different from a suspect who is suspected of having a mental disorder. A suspect who behaves abnormally at the time of examination will receive a referral letter for observation to a hospital, which will then be observed at a mental hospital. After being observed for at least 14 days and it turns out that the suspect is proven to have a mental disorder, a certificate is issued by a psychiatrist stating that the suspect is proven to have a mental disorder.

Regarding the assistance of expert information needed in the process of examining a criminal case, this assistance at the investigation stage also has an important role to help investigators seek and collect evidence in their efforts to find the material truth of a criminal case.

In this case the Psychiatrist (Psychologist) has issued a post-mortem that the suspect is a person with a mental disorder (ODGJ) with a mild mental retardation category with an IQ ranging from 50-55 (CPM standard), meaning that the suspect was born on December 1, 1991 (30 years old). mental / mental equivalent to

⁴Suwarno and Sri Endah Wahyuningsih (2020), "Urgency of Suspect Determining In the Investigation Process on Human Rights Perspective" *Law Development Journal*, Volume 2 No 2, p.244

⁵ Rendy Surya Aditama, Umar Ma'ruf, Munsharif Abdul Chalim, 2018, "Kebijakan Hukum Pidana Terhadap Anak Sebagai Pelaku Kejahatan Psicotropika Di Kepolisian Resor Magelang", *Jurnal Daulat Hukum*, Vol. 1. No. 1, p.119.

children aged 7 s / d 9 years. Therefore, according to the expert, the suspect was unable to understand the consequences of his actions.⁶

In the judicial process, the panel of judges pays more attention to the results of investigations from the police and a certificate from a psychiatrist. However, the victim's side wishes to review the defendant's judicial decision on the pretext that the person concerned has committed a criminal act. However, the request was not granted on the grounds that there was sufficient evidence and stated that the defendant was a person with a mental disorder (ODGJ). So that the defendant was sentenced to parole by having to undergo special rehabilitation in a mental hospital.

Examination of psychiatrists' statements in this case becomes important for investigators, especially for people who have special expertise, with the aim that the handling of criminal acts that are being investigated becomes clearer. So, the role of expert testimony in the process of examining criminal cases at the investigation level is to make it clear that a criminal act is happening⁷.

Seeing the results of these observations, the researcher understands that the role of psychologists is important in the judicial mechanism from the investigation stage to the verdict for suspects with mental disabilities. The author also believes that there is very little understanding of the community about the ability of one's accountability (oGDJ) in a case.

3.2. Theory of Certainty of Islamic Law

In this study, the researchers tried to correlate this case with the certainty of Islamic law. Islam views that the condition of mental disability is part of *awaridhul Ahliyah*. *Awaridhul expertyah* is something that can prevent someone from being sentenced.

This is based on the hadith:

رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ : عَنِ الصَّبِيِّ حَتَّى يَبْلُغَ ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ ، وَعَنِ الْمَجْنُونِ حَتَّى يُفِيقَ

"The pen is raised from three groups of people: from a small child until he reaches puberty. From the person sleeping until he wakes up. From a madman until he wakes up." (HR Ahmad)

The hadith classifies people who are free from the law. Like a child who is free from lawsuits until he reaches the age of puberty. A sleeping man who cannot be punished unless he wakes up. Then a madman who can only be punished when he wakes up from his madness.

Meanwhile in the book *Al-Mausu'ah Al-Kuwaitiyah*: "Insanity is an *awaridhul Ahliyatul Ada'*. Madness eliminates (*ahliyatul ada'*) in its entirety, then all the actions of a madman do not have any *syar'i* impact. The reason is that the *illat* (legal cause) of *Ahliyatul Ada'* is *tamyiz* (the ability to distinguish between good and bad) and reason. As for the madman, he has neither."⁸That means people with

⁶ Richa Nurhayati.(2019) Psychological Examination Results., Ministry of Social Affairs RI "Great Center for the Rehabilitation of People with Intellectual Disabilities" Kartini: In Temanggung.

⁷Results of the Interview with the Judge Who Handled the Case of the Defendant on Monday, March 8, 2021.

⁸*Al Mausu'ah Al-Kuwaitiyah*, vol. 16, p. 101

mental disorders cannot be prosecuted. Even though he has committed a criminal act.

With this research, it will be revealed that all those involved in the judicial process will be revealed so that matters relating to the decisions in the courts are already fair decisions and can be accepted by all parties.

3.3. Criminal Law Liability Against Defendants Who Have Mental Limitations

The criminal system is an integrated system in society that has the aim of tackling the problem of crime in the sense of controlling crime so that it is within the limits of community tolerance.⁹ In this case the judge has doubts about the defendant's ability to be responsible because the defendant is a mentally retarded child so the judge needs confidence to determine the defendant's ability to be responsible, the judge's belief must be supported by evidence. KUHP, valid evidence can be obtained from: Witness testimony; Expert description; Letter; Instruction; and Defendant's Statement.

Evidence from a psychiatrist or psychologist is needed to explain the mental condition of the defendant. An expert only has the right to say about the mental state of the defendant at the time committing a crime, as for the judge who stipulates a causal relationship between the mental state and the criminal act committed by the defendant.

This is because the system used by the Criminal Code in determining the irresponsibility of a person is "normative descriptive". Descriptive means describing the mental state of the perpetrator according to what it is by an expert. Normative, meaning that it is the judge who judges based on the results of the examination, about the ability or inability of the defendant to account for his actions.

Based on this, the author will briefly describe the statements of legal experts who say that Article 44 of the Criminal Code which states that:

- Whoever commits an act that cannot be accounted for by him because his soul is disabled in growth or is impaired due to illness, will not be penalized;
- If it turns out that the act cannot be insured against the perpetrator because his mental growth is disabled 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;
- The provisions in Paragraph 2 Article 44 of the Criminal Code only apply to the Supreme Court, High Court, and District Court.

Based on these provisions, this has weaknesses in its application. Article 44 of the Criminal Code gives birth to two differences of opinion in the world of Indonesian legal experts, that this article is aimed at people who are unable to take responsibility and are in a condition that is mentally ill or mentally imperfect, so that according to them "mental disorders" are also included. in it, so that the reason for the elimination of the crime is appropriate to be imposed against them.

Based on the foregoing, mental disorder is classified as a condition in which the person experiencing it must be released from all lawsuits if it is proven that

⁹ I Dewa Putu Gede Anom Danujaya, 2018, "Formulasi Model Sistem Pemidanaan Anak Di Indonesia", Jurnal Daulat Hukum Volume 1 Issue 1, p.113

there is a mental disorder in the suspect, in other words this opinion does not distinguish between "illness" and "mental disorder".

In this case, legal certainty is determined by the judge, while *Visum et Repertum* as written expert testimony remains the material for legal decision making, generally *Visum et Repertum psychiatricum* is made after a doctor examines objects (patients, suspects and evidence).

Equality of position between criminal sanctions and action sanctions is very useful for maximizing the use of both types of sanctions appropriately and proportionally. This is because the sanctions policy is integral and balanced between criminal sanctions and action sanctions (restorative justice in the form of diversion, by maximizing settlement through penal mediation). In addition to avoiding the application of fragmentary sanctions (which always emphasizes criminal sanctions), it also ensures the integration of individual sanctions systems and sanctions systems that are functional. Criminal sanctions place more emphasis on the element of retaliation (reward/worth).¹⁰

The judge in his decision considers juridically whether from the results of the examination at trial the defendant's actions have fulfilled or not sexual harassment against the opposite sex. Referring to Article 289 of the Criminal Code, "Whoever by force or threat of violence forces a person to commit or allow an obscene act to be carried out, is punished for committing an act that attacks the honor of decency with a maximum sentence of nine years."

The implementation of the law can take place normally, peacefully, but the place where it occurs is also because of a violation of the law. It is through law enforcement that the law becomes a reality. In enforcing the law, there are three elements that are always considered, namely legal certainty, expediency, and justice. In enforcing the law there must be a compromise between the three elements, the three elements must receive proportional and balanced attention. However, in practice it is not always easy to seek a proportionally balanced compromise between the three elements.¹¹

In criminal law, the concept of liability or "responsibility" is a central concept known as the teaching of error. In Latin the teaching of this error is known as *mens rea*, it is based on the maxim *actus non facit reum nisi mens sit rea*, which means "an act does not result in a person being guilty unless the person's thoughts are evil."¹² According to the traditional view, in addition to the objective conditions for committing a criminal act, subjective conditions or mental conditions must also be met in order to be able to commit a crime be held accountable and punished. This subjective condition is called "error". Thus, it is hoped that a quality statutory policy will form that meets all the requirements, both juridical, philosophical, and sociological.¹³

4. Closing

¹⁰ I Dewa Putu Gede Anom Danujaya, 2018, "Formulasi Model Sistem Pemidanaan Anak Di Indonesia", *Jurnal Daulat Hukum Volume 1 Issue 1*, p.108

¹¹ Sudikno Mertokusumo, 2005, *Mengenal Hukum*, Liberty, Yogyakarta, p.160-161

¹² Erdianto Effend, 2011, *Hukum Pidana Indonesia*, Refika Aditama, Bandung, p, 107

¹³ I Dewa Putu Gede Anom Danujaya, op. cit., p.112.

Persons with mental disabilities in the criminal law system in Indonesia cannot be separated from their ability to be responsible, not all people with mental disabilities can be categorized into "the soul is disabled due to growth" as stated in Article 44 paragraph (1) of the Criminal Code, because it turns out that there is a mild mental disability or debilitating mental illness. can be held criminally responsible, although not fully capable of being responsible, but can be said to be "less capable of being responsible", in the Juvenile Court Law, the Law on Persons with Disabilities, the Law on Persons with Disabilities does not regulate the ability to be responsible for someone who has mental deficiencies, so that to determine the capacity to be responsible, the provisions of Article 44 Paragraph (1) of the Criminal Code shall apply. In reviewing the theory of Islamic legal provisions, it also explains the same thing. So that in this case, according to the author, there needs to be an understanding and explanation of court decisions about a person's ability to be responsible, so as not to harm one party, and minimize turmoil and polemics in society.

5. Reference

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