

CRIMINAL RESPONSIBILITY FOR PERSONNEL PERSONALITY DANGEROUS

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Received 10 Sep 2021 • Revised 21 Oct 2021 • Accepted 20 Nov 2021

Abstract

The ability to be responsible (*toerekeningsvatbaarheid*) is Article 44 Paragraph (1) of the Criminal Code, which regulates a person '*sontoerekeningsvatbaarheid*' responsible (matters). Perpetrators of dangerous personalities are perpetrators who are unable to take responsibility, so that their mental personality is disturbed by illness, their mental personality is in an unconscious state, and their mental personality is disabled in their growth. The personality of the soul makes it difficult for his actions to be held accountable for criminal law. The problem is is criminal liability for perpetrators of dangerous personalities? The research method is normative juridical research. The conclusion is that by determining whether there is a responsible capacity (*toerekeningsvatbaarheid*), that the judge must accept the results of the examination from a psychiatrist about the mental condition of the perpetrator of a crime, because it is the psychiatrist who has the competence to determine this. Then, based on the results of the examination, the judge determines the extent to which the mental condition of the perpetrator affects his actions, and then determines his ability to be criminally responsible for his actions. In the decision that the author is reviewing, namely Decision Number 144/Pid.B/2014/PN.Cj, it is stated that the defendant Pupun Bin Sanusi was legally and convincingly proven guilty of not committing the crime of "murder", but for this act he cannot be held accountable for any reason. forgiveness as intended in the provisions of Article 44 paragraph (1) of the Criminal Code.

Keywords: Criminal Liability, Personality Perpetrators, Dangerous

INTRODUCTION

Criminal responsibility is closely related to the element of error, talking about the element of error in criminal law means about the heart, Idema said. Accordingly, according to Sauer, there are three basic meanings in criminal law, namely:

- a) unlawful nature (*unrecht*);
- b) error (*schuld*); and
- c) criminal (*strafe*).

According to Roeslan Saleh, in the sense of a criminal act, it does not include accountability. Criminal acts only refer to the prohibition of the act. Whether the person who has committed the act is then also punished, depends on the question of whether he or she has committed the crime or not. If the person who committed the crime did have an error, then of course he would be punished.

In this regard, Sudarto stated that it is not enough to punish a person if that person has committed an act that is against the law or is against the law. So even though the maker fulfills the formulation of the offense in the law and is not justified (*an objective breach of a penal provision*), this does not yet meet the requirements to impose a sentence. For sentencing, there is still a requirement that the person committing the act has *subjective guilt*.

In other words, the person must be accountable for his actions or if viewed from the point of view of his actions, he can only be held accountable to that person. Here applies what is called the principle of "no crime without guilt" (*keine strafe ohne schuld or geen straf zonder schuld or nulla poena sine culpa*), *culpa* here in a broad sense also includes intentional. In English criminal law, this principle is known in Latin which reads "*actus non facit reum, nisi mens sit rea*" (*an act does not make a person guilty, unless the mind is guilty*).

The above principles are stated in the Criminal Code or in other regulations (unwritten principles), but the validity of these principles is now unquestionable. It would be contrary to the sense of justice, if someone was shunned by a crime even though he was not at all guilty. Article 6 paragraph (2) of Law no. 48 of 2009 concerning Judicial Power, which reads: "No one can be sentenced to a crime, except if the court because of the legal evidence according to the law is convinced that a person who is considered to be responsible has been guilty of the act he is accused of."

From the sound of the article, it is clear that the element of error will determine the consequences of a person's actions, namely in the form of imposing a crime. In connection with this, Sudarto stated that for the existence of a sentence there must be an error on the part of the maker. The principle of no crime without guilt mentioned above has its own history.

In criminal law, it can be seen the growth of criminal law which focuses on the actions of people and their consequences (*tatstrafrecht* or *erfolgstrafrecht*) towards criminal law which is based on people who commit criminal acts (*taterstrafrecht*), without leaving at all the nature of *tatstrafrecht*. Thus, the existing criminal law today can be referred to as "*Tat-Taterstrafrecht*" namely criminal law that is based on actions and people. criminal law can also be referred to as "*Today's Schuldstrafrecht requires*" meaning that the element of imposing a criminal error on the part of the maker.

Related to the ability to be responsible (*toerekeningsvatbaarheid*) is Article 44 Paragraph (1) of the Criminal Code, which regulates *ontoerekeningsvatbaarheid* (a person cannot be held accountable for his actions), which reads:¹

Niet strafbaar is hij die een feit begaat dat hem wegens de gebrekkige ontwikkeling of ziekelijke storing zijner verstandelijke vermogens niet kan worden toerekend.

Which means: "It cannot be punished whoever commits an act that cannot be accounted for by him, because of his imperfect growth of reason or because of a disease disorder in the ability of his common sense".²

In Moeljatno's translation of the Criminal Code, Article 44 Paragraph (1) of the Criminal Code reads as follows:

Whoever commits an act that cannot be accounted for by him, because his soul is disabled in growth (*gebrekkige ontwikkeling*) or disturbed by disease (*ziekelijke storing*), will not be punished.³

¹ Moeljatno, *Asas-Asas Hukum Pidana*, (Jakarta : PT Rineka Cipta, 2009), hlm. 178.

² PAF Lamintang, *Dasar-dasar Hukum Pidana Indonesia*, (Bandung: PT Citra Aditya Bakti, 2003), hlm. 392.

³ Moeljatno, *KUHP (Kitab Undang-Undang Hukum Pidana)*, (Jakarta : Bumi Aksara, 2011), hlm. 21-22.

In another KUHP, namely the translation of R. Soesilo, then Article 44 Paragraph (1) of the KUHP reads "Anyone who does an act, which cannot be accounted for by him because of his lack of perfect mind or due to illness, changes his mind should not be punished".⁴

In Andi Hamzah's KUHP translation, Article 44 Paragraph (1) of the KUHP reads as follows: "Whoever commits an act that cannot be accounted for by him because his soul is disabled in growth or is disturbed due to illness, will not be punished".⁵

According to *Memorie van Toelichting* (MVT), the definition of *ontoerekeningsvatbaarheid* (not to be responsible), which is regulated in Article 44 Paragraph (1) of the Criminal Code are:⁶

1. In case the manufacturer is not given the freedom to choose between doing or not doing what the law is prohibited or ordered – in other words: in the case of a forced act.
2. In the event that the maker is in a certain condition, so that he cannot realize that his actions are against the law and he does not understand the consequences of his actions (pathological lust (*pathologic drift*), madness, lost thoughts, and so on).

Referring to MvT, according to Van Hammel, as quoted by Jan Remmelink, the ability to be responsible (*toerekeningsvatbaarheid*) is a condition of maturity and psychic normality which includes 3 (three) other abilities, namely:

- 1) Understanding the direction of the factual goals of one's own actions;
- 2) Awareness that the act is socially prohibited; and the
- 3) existence of free will regarding the action.⁷

Simons gives his opinion that being able to be responsible (*toerekeningsvatbaarheid*) is:⁸

- a) If people are able to realize that their actions are against the law; and in
- b) accordance with that conviction can determine his will.

Frans Maramis provides a definition of the ability to be responsible (*toerekeningsvatbaarheid*) as a certain psychic ability that must be possessed by a person to be accountable for his actions.⁹

According to Van Hattum, as quoted by Lamintang, a person can be considered a "*niet toerekeningsvatbaar* unaccountable" or "for his actions", that is, if the person has grown imperfectly, is unable to realize the meaning of his actions, and therefore also does not able to determine what he wanted.¹⁰

According to Kanter and Sianturi, a person is capable of being responsible (*toerekeningsvatbaar*), when in general:¹¹

His mental state:

- a. Not disturbed by continuous or temporary disease (temporary);
- b. No defects in growth (stupid, idiot, *imbicile*, and so on); and
- c. Not disturbed by surprise, hypnotism, overflowing anger, subconscious influence/reflex *beweging*, *melindur/slaapwandel*, delirious due to fever/*koorts cravings*, and so on. In other words, he was conscious.

Ability of the soul:

- a. Can realize the essence of his actions;
- b. Can determine his will for the action, whether to be carried out or not; and
- c. can find out the reproach of the act.

According to the author of the description above, those who are unable to take responsibility are those who: Their

- a. mental personality is disturbed by illness;
- b. His soul personality is in an unconscious state;
- c. His soul personality was flawed in his growth ;

The personality of the soul makes it difficult for his actions to be held accountable for criminal law.

⁴ R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, (Bogor : Politeia, 1996), hlm. 60.

⁵ Andi Hamzah, *KUHP & KUHP*, (Jakarta : Rineka Cipta, 2012), hlm. 23.

⁶ E. Utrecht, *Hukum Pidana I*, (Surabaya : Pustaka Tirta Mas, 2000), hlm. 292.

⁷ Jan Remmelink, *Hukum Pidana*, (Jakarta : Gramedia Pustaka Utama, 2003), hlm. 213.

⁸ Frans Maramis, *Hukum Pidana Umum dan Tertulis di Indonesia*, (Jakarta : PT RajaGrafindo Persada, 2013), hlm. 117

⁹ *Ibid.*, hlm. 118.

¹⁰ Lamintang, *Op.Cit.*, hlm. 400.

¹¹ EY Kanter dan SR Sianturi, *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya*, (Jakarta : Stora Grafika, 2012), hlm. 249.

According to the author, the personality of a person's soul is the ability to be responsible is the ability:

1. Having free will in choosing to do the act.
2. To realize / realize that his actions are against the law;
3. Has a definite purpose for his actions; and

Regarding the words "can determine their will" and "have free will" above, such determination of will is considered to exist if the requirements are met regarding the absence of an abnormal psychic or physical influence on "*de wilsvorming*" or on the "formation of the will" of the perpetrator. ¹²

Hazewinkel-Suringa argues that having free will is the determination of the free will of a normal person under normal circumstances. Lamintang interpret the notion of normal or abnormal is not the task of the jury, but the task of a psychiatrist.¹³ Hazewinkel-Suringa and van Hattum define a "normal person" as one who knows the meaning of what is desired.¹⁴

In Article 44 Paragraph (1) of the Criminal Code, we will find the words "imperfect growth of common sense" or "imperfect development" or "*gebrekkige ontwikkeling*" and also the words "disturbed due to disease (*ziekelijke storing*)" or "disturbed because of disease in the ability of common sense (*ziekelijke storing zijner verstandelijke vermogens*)".

People who enter a state of less than perfect (*intellectgebrekkige ontwikkeling* According to R. Soesilo,), for example, are¹⁵ idiots, imbecilians,¹⁶ blind, deaf, and mute from birth.¹⁷ Such people are not actually sick, but because of their birth defects, their minds remain as children. According to van Hattum, imperfect growth should be interpreted as a growth that is not perfect biologically and not socially, such as "*imbecilliet*" or "weak mind" and "idiot".

It can also be included in the sense of "imperfect growth" or "*gebrekkige ontwikkeling*" such as the imperfect growth of blind and deaf-mute people from birth.¹⁸ Meanwhile, people who enter into a disturbed state due to illness in their common sense abilities (*ziekelijke storing zijner verstandelijke vermogens*), according to R. Soesilo¹⁹ are people who experience madness, *manie*,²⁰ *hysteria*,²¹ *epilepsy*,²² *melancholie*,²³ and various other mental illnesses.

Classification of mental disorders, which is based on:

1. *Diagnostic and Statistical Manual of Mental Disorders 4th Edition* (DSM-IV), published by the American Psychiatric Association in 1994,
2. *International Classification of Disease* (ICD-10) issued by the World Health Organization (WHO), which was given the name "Guidelines for Classifying the Diagnosis of Mental Disorders III (PPDGJ III)".

According to PPDGJ III, mental disorders are behavioral or psychological patterns that are clinically significant and typically associated with symptoms, (*distress* *distress*) and *impairment/disability* in psychosocial functioning. However, the term used in PPDGJ III is a mental

¹² Lamintang, *Op.Cit.*, hlm. 404

¹³ *Ibid.*, hlm. 405

¹⁴ *Ibid.*,

¹⁵ Idiot dialami oleh manusia yang memiliki IQ (*intelligent Quotient*) kurang dari 25. Intelegensinya tidak bisa berkembang; tidak bisa mengerti, dan tidak bisa diajari apa-apa. Mereka tidak memiliki naluri yang fundamental (mendasar), dan tidak mempunyai kemampuan untuk mempertahankan diri serta melindungi diri. Kartini Kartono, *Psikologi Abnormal Dan Abnormal Seksual*, (Bandung : Mandar Maju, 2009), hlm. 45.

¹⁶ *Ibid.*, hlm. 47. *Imbicil* dialami oleh manusia yang memiliki IQ (*Intelligent Quotient*) antara 25-49. Tingkah laku mereka seperti kanak-kanak yang berumur 36-83 bulan (3-7 tahun). Gerakan-gerakannya tidak stabil dan lamban. Ekspresi mukanya kosong dan ketolol-tolongan. Pada umumnya mereka tidak mampu mengendalikan dan mengurus diri sendiri. Namun demikian, mereka masih dapat diajari menanggapi suatu bahaya; dan bisa diajari melindungi diri terhadap bahaya fisik tersebut.

¹⁷ Soesilo, *Op.Cit.*, hlm. 61.

¹⁸ Lamintang, *Op.Cit.*, hlm. 401

¹⁹ Soesilo, *Op.Cit.*, hlm. 61.

²⁰ *Ibid.*, hlm. 171.

²¹ *Ibid.*, hlm. 99.

²² *Ibid.*, hlm. 73-75.

²³ *Ibid.*, hlm. 171-172.

disorder or mental disorder (*mental disorder*). PPGDJ III does not recognize the term (*mental illness/mental illness/mental disease*).²⁴

The unfamiliarity of the term mental illness in PPDGJ III results in confusion if we relate it to Article 44 Paragraph (1) of the Criminal Code, because as the author explained above, that the condition of *ziekelijske storing* in Article 44 Paragraph (1) of the Criminal Code, is experienced by people who have mental illness.

In the opinion of Adrianus Meliala, which fall into the category of mental illness in Article 44 Paragraph (1) of the Criminal Code:

1. Who are psychotic disorders / psychosis,²⁵ namely: the nature of psychiatric disorders (*psychology*), not the nature of neurological disorders (*neurosis*);
2. Not a personality disorder (*personality disorder*), where an example of a psychosis / psychosis disorder is schizophrenia.²⁶

Historically, in the Netherlands, there has been a change regarding the word "*verstandelijk vermogens*" which is contained in the provisions of Article 37 Paragraph (1) *Wetboek van Strafrecht* (WvS) which applies in the Netherlands or has the same sound as that contained in Article 44 Paragraph (1) of the Criminal Code. , where according to *Psychopathenwet* in 1925, namely the Law dated May 28, 1925, *Staatsblad* 1925 Number 221, it has been determined that according to a statutory regulation the words "have been used *verstandelijk vermogens*" or "common sense ability", then it is also included in the meaning, namely "*geestvermogens*" or "spirit ability". Then, with the Law dated July 21, 1928, *Staatsblad* 1928 Number 21, finally the word "*verstandelijk vermogens*" in Article 37 Paragraph (1) of the Dutch WvS was replaced with the word "*geestvermogens*".²⁷

In this paper, we will examine Decision Number 144/Pid.B/2014/PN.Cj., in which the Defendant Pupun Bin Sanusi was proven legally and convincingly guilty of committing the crime of "murder", but for this act cannot be held accountable to him because there is a forgiving reason as intended in the provisions of Article 44 paragraph (1) of the Criminal Code.

Based on the description above, the problem is how is the criminal responsibility for perpetrators of dangerous personalities in the decision Number 144/Pid.B/2014/PN.Cj.? The purpose of this paper is to identify and analyze criminal liability for perpetrators of dangerous personalities in the decision Number 144/Pid.B/2014/PN.Cj.

Research Methods Research Methods

1. This research

is included in the form of normative juridical research, namely research that emphasizes the use of written legal norms.²⁸ This study discusses criminal liability for perpetrators of dangerous personalities.

2. Type of

Research This research is descriptive in nature because it describes the applicable laws and regulations and is associated with legal theories in their implementation practices related to problems, as well as describes/describes facts that actually occur as a reflection of the implementation of the laws and regulations. -laws and legal principles related to legal theories and their implementation practices.²⁹

3. Types of data The

type of data used is the type of data with a statute approach and a case approach. The statute approach is carried out by reviewing all laws and regulations relating to the legal issues being handled. For research for practical activities, this legal approach will open up opportunities for researchers to study the consistency and conformity between one law and other laws or between laws and the Constitution or between regulations and related laws. criminal liability for perpetrators of dangerous personalities. While the Case Approach is carried out by examining cases related to the issues at hand and which have become court decisions that have permanent legal force. The main study in the case

²⁴ Vyan Veegreen "PPGDJ", diakses di <http://www.scribd.com/doc/171321363/PPDGJ>, pada tanggal 3 November 2021 pukul 14:28 WIB.

²⁵ Zakiah Daradjat, *Kesehatan Mental*, (Jakarta : CV. Gunung Agung, 1993), hlm. 33.

²⁶ Hasil wawancara dengan Adrianus Meliala.

²⁷ *Ibid.*

²⁸ Dian Puji Simatupang, *Modul Perkuliahan Metode Penelitian*, (Jakarta : Program Studi Magister Ilmu Hukum Unkris, 2010), hlm. 2.

²⁹ *Ibid.*

approach is the ratio decidendi or reasoning, namely the court's consideration to arrive at a decision, in this writing using the decision Number 144/Pid.B/2014/PN.Cj.

4. Types of Legal

a. Material Primary Legal Material

Namely sources of law that become the binding / legal basis such as: the Criminal Code and Law no. 48 of 2009 concerning Judicial Power.

b. Secondary Legal Materials,

namely materials that provide an explanation of primary legal sources such as materials in the form of books, daily/magazines and scientific writings.

5. Data

Collection The data collection method used is *Library Research*. In this literature study, what is done is to study and read criminal law books, so that these materials can be related to problems related to this research.

6. Data Analysis Methods

In an effort to be able to answer or solve the problems raised in this study, qualitative data analysis methods were used, because the data obtained were of quality not quantity. After data collection, analysis is then carried out, so that scientifically justifiable conclusions can be drawn.³⁰

7. Form of Research Results The

form of research results according to the type of research that is descriptive in nature, analysis is a method that functions to describe or provide an overview of the object under study through data or samples that have been collected as they are without analyzing and making conclusions that apply to the public.³¹

RESEARCH RESULTS AND DISCUSSION

One of the patterns in the perpetrators of dangerous personalities is Pupun Bin Sanusi in Decision Number 144/Pid.B/2014/PN.Cj. The defendant committed the murder of his mother on Wednesday, December 18, 2013 at approximately 03.00 WIB at the defendant's house, namely in Pasir Gombong Village, Sukamaju Village, Cugenang District, Cianjur Regency. At dawn the defendant heard a noise in the kitchen, then the defendant woke up and looked into the kitchen and at that time the defendant saw his mother who gradually turned into the figure of "Edi" who wanted to chase and kill the defendant. Then the defendant ran to the living room and took a machete and then the defendant attacked and hit the victim's forehead until the victim fell down, after that the defendant swung his machete towards the victim's neck so that the victim's neck was cut off, then the defendant cut both of the victim's hands at the elbows and cut both of the victim's legs at the knees. After that, the defendant threw the part of the victim's head into the ditch, while the pieces of the two legs and hands of the accused victim dumped in the garden behind the defendant's house. Then using a hoe the defendant buried the victim's body next to the house near the defendant's kitchen;

Based on expert testimony, the defendant suffered from a mental illness called Paranoid Schizophrenia with symptoms of delusions of pursuit, delusions of grandeur and hallucinations that had lasted a year or more and at the time of the crime, the subject was in a state of inability to direct a conscious will and the defendant had a level of intelligence. which is at a level below the average, namely grade IV (PM 16 scale).

The Panel of Judges is of the opinion that the second element, namely the element of *intentionally eliminating the soul of another person*, is declared fulfilled. Because all the elements of the above indictment have been proven and fulfilled by the defendant's demands, therefore the Panel of Judges is of the opinion that the defendant has been legally and convincingly proven guilty of committing the crime of "murder". In addition to considering the criminal acts committed by the defendant, in this case the Panel of Judges also needs to consider the psychological and psychological factors of the perpetrator because in criminal law theory it has been stated that to be held criminally responsible for a perpetrator, it is not only seen from the proven act against only the law, but on the other hand it must also be seen and considered whether the act against the law can be held accountable for the defendant? Further, the Panel of Judges will provide the following considerations.

In the provisions of Article 44 of the Criminal Code, it is stated that:

- 1) Whoever does an act, which cannot be accounted for because of his lack of perfect mind or due to illness, changes his mind, should not be punished.

³⁰ *Ibid.*

³¹ Sugiyono, *Metode Penelitian Pendidikan Pendekatan Kuantitatif, Kualitatif, dan R&D*, (Bandung : Alfabeta, 2009).

- 2) If it is evident that the act cannot be insured against him because his intellect is not perfect or because he has changed his mind, the judge may order him to be placed in an insane asylum for a maximum of one year for examination.
- 3) What is specified in the paragraph above, only applies to the Supreme Court, High Court, District Court.

From the case above, according to the author, there is a reference to the condition of a person being considered a *moralist*³² can also be used as a basis for saying that a person is not capable of being criminally responsible (*heldontoerekeningsvatbaar*).³³

Furthermore, according to the author of the term "*verstandelijk vermogens*" or "common sense ability" or "thinking ability" and not the word "*geestvermogens*" or "spirit ability" there are still differences in point of view which are *historical interpretations*, but *grammatically* there are no essential differences.

The author looks at the views of previous research regarding criminal liability, it is necessary to combine 3 (three) aspects, namely causes, effects and a combination of causes and effects which are divided into 3 (three) phases:

- 1) Determine the causes that abolish the sentence. According to this system, if the *psychiatrist* has declared that the defendant is *insane* or has an *unsound mind/guilt*, the judge cannot declare and impose a sentence. This system is called a descriptive system (state);
- 2) Mention only the consequences; the disease itself is not determined. Here, what is important is whether he is able to realize the meaning of his actions or realize that he did something that was not good or against the law. This formulation is so broad that there may be dangers. This system is called normative (judging). Here it is the judge who decides;
- 3) Combination of 1 and 2 (normative descriptive). This method is actually often used for Article 44 Paragraph (1) of the Criminal Code. To determine that the defendant is unable to take responsibility, it is not enough just to be determined by the psychiatrist or the judge himself, but there must be cooperation between the *psychiatrist* and the judge. *The psychiatrist* determines the presence of the disease; while the judge judged that the disease was so great that the act could not be held accountable to him.³⁴

In Moeljatno's concept above, the first approach refers to the basis for eliminating criminals. For this reason, the analysis of a psychiatrist is needed to determine whether a person is insane (a person with a mental disorder), not mentally healthy so that as a result of this the judge may not convict or impose a sentence on the person concerned.³⁵

Furthermore, in the second approach, efforts should be made to understand the consequences without reviewing the mental illness/disorder that a person suffers from. In a sense, it is only enough to focus or focus on whether the person concerned is aware of and realizes what he has done.

In the last approach, Moeljatno combines the two, namely by coordinating between psychiatrists and judges. It is the psychiatrist/medical community who determines whether there is a mental disorder in the person concerned and, only the judge has the right to judge whether the illness or mental disorder greatly affects a person's actions.

Niebor refers to the *Durham Rule*,³⁶ which states that "*It is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect*".³⁷

Niebor states that the causal role of psychic deviation must be considered in a crime. The bigger the role of the psychological deviation, the smaller the error rate.

³² Rosalia Dika Agustanti, "Penegakan Hukum Pelaku Perbuatan Cabul Dalam Putusan Bebas Terhadap Perempuan", *Jurnal Yuridis* Vol. 7, No. 1, Juni 2020, hlm. 36.

³³ Lamintang, *Op.Cit.*, hlm. 406.

³⁴ Penelitian Penulis Fase-Fase Penentuan Kemampuan Bertanggung Jawab dan Kompleksitas Zaman Dalam Program Pasca Sarjana Kajian Hukum Pidana Dan Kriminologi Unkris tahun 2017.

³⁵ Firman Wijaya, *Kepribadian Berbahaya dan Pertanggungjawaban Pidana*, (Bekasi: CV. Intelektual Writer, 2021), hlm. 59.

³⁶ Disarikan dan diterjemahkan bebas oleh penulis dari Floyd L. Jennings, *The Insanity Standard*, dalam *Open Access Journal of Forensic Psychology*, (Texas : 2013), hlm. 139-140.

³⁷ Essensi *Durham rule* tentang gangguan mental kejiwaan *A defendant found "not guilty by reason of insanity" (or legally insane) can't be convicted for crimes committed as a result of certain mental conditions, since willful intent is required for most convictions. State and federal courts use a legal test to determine the mental state of the defendant at the time of the incident if they use the insanity defense.* "(Seorang terdakwa tidak bertanggung jawab secara pidana jika perbuatannya yang melawan hukum adalah hasil dari penyakit mental atau gangguan mental)".

To make a decision about the presence or absence of "*toerekeningsvatbaarheid*" from a perpetrator, the judge must pay attention to reality, namely to what extent the disease disorder has an influence on the psychological state of the perpetrator, and must consider whether the influence is such that the perpetrator becomes unable to realize the meaning of his actions or not, and according to his consciousness is also able to determine what he wants to do or not.³⁸

Advice by a psychiatrist/psychiatrist in this case, may contain:³⁹

- a. Whether or not a person has a mental state as specified in Article 44 and the level of illness, disability or unconsciousness of the soul.
- b. Analysis / diagnosis of the level of responsibility of the patient.

Chazawi once suggested 3 (three) ways to determine whether the maker is in a state of inability to be responsible, namely:

First, by using a biological method, meaning by investigating abnormal symptoms or conditions which are then associated with the inability to take responsibility;

Second, with the psychological method, meaning by investigating existing psychological characteristics which are then assessed from those characteristics to draw conclusions whether the person is capable of being responsible or not;

Third, with the combined method, the two methods mentioned above are used together. Besides investigating abnormal symptoms, it also examines the psychological characteristics of the person to draw conclusions as to whether he is capable of being responsible or not.⁴⁰

With this biological method approach, by investigating abnormal symptoms or conditions which are then associated with the individual's inability to take responsibility. Meanwhile, the psychological method is done by investigating existing psychological characteristics. Then an assessment of these characteristics is carried out to draw a conclusion whether the person is capable of being responsible or not. Meanwhile, efforts through the combined method use a combination of the two approaches above.

From the decision above, the Judge is of the opinion that the defendant cannot be sentenced to a criminal offense because of a mental disorder caused by illness. The Panel of Judges taking into account the expert opinion and in order to avoid unwanted things that will occur in the future as a result of the defendant's actions so that it is feared that the next victim will fall victim, therefore the Panel of Judges is of the opinion that ordering the defendant to be admitted to the Mental Hospital of West Java Province to undergo treatment as stipulated in Article 44 paragraph (2) of the Criminal Code. How long the defendant will be treated will be determined later in the verdict below.

The defendant cannot be held criminally responsible, therefore the Panel of Judges declares to restore the defendant's rights in his ability, position and dignity as well as in his original state. The defendant has been in detention, the Panel of Judges ordered that the defendant be immediately released from detention. It has been declared that the defendant cannot be held criminally responsible, so in this case the panel of judges does not need to consider aggravating and mitigating matters against the defendant.

The evidence submitted to the trial consists of:

- 1 (one) brown wooden handle;
- 1 (one) hoe; According to the Panel of Judges, it must be seized to be destroyed;

So in the decision, the defendant cannot be convicted, so he charges the court costs that arise in this case to the state. In view of Article 44 paragraph (1) and paragraph (2) of the Criminal Code and Law no. 8 of 1981 concerning the Criminal Procedure Code and other laws and regulations relating to this case. The verdict stated that the defendant Pupun Bin Sanusi was legally and convincingly proven guilty of not committing the crime of "murder", but for this act he could not be held accountable for the reason for forgiveness as referred to in the provisions of Article 44 paragraph (1) of the Criminal Code.

Then release the defendant from all lawsuits. Ordered the Public Prosecutor to place the defendant in the Mental Hospital of West Java Province to undergo treatment for 3 (three) months. Ordered the accused to be immediately released from custody. Restoring the rights of the accused in his ability, position and dignity as well as in his original state. Determine evidence in the form of: 1 (one) brown wooden handle; and 1 (one) hoe; confiscated for destruction and charge court fees to the State.

³⁸ Lamintang, *Op.Cit.*, hlm. 403.

³⁹ EY Kanter, Sianturi, *Op.Cit.*, hlm. 260.

⁴⁰ Adami Chazawi, *Pelajaran Hukum Pidana Bagian 2 : Penafsiran Hukum Pidana, Dasar Penindakan, Pemberatan, Peringatan, Kejahatan Aduan, Perbarengan, dan Ajaran Kausalitas*, (Jakarta : Rajawali Persada, 2011), hlm. 24.

CONCLUSION

Criminal liability for perpetrators of dangerous personalities that in order to determine the presence or absence of "ontoerekeningsvatbaarheid", the judge can receive advice from a hospital doctor or an institution that investigates human mental disorders. However, the doctor, hospital or institution is only an expert advisor (*deskundig adviseur*). It who has the right in the end (*uitenindelijk*) to determine whether there is "" or not ontoerekeningsvatbaarheid is the judge. By determining whether there is a responsible capacity (*toerekeningsvatbaarheid*), that the judge must accept the results of the examination from a psychiatrist regarding the mental condition of the perpetrator of a crime, because it is the psychiatrist who has the competence to determine this. Then, based on the results of the examination, the judge determines the extent to which the mental condition of the perpetrator affects his actions, and then determines his ability to be criminally responsible for his actions. In Decision Number 144/Pid.B/2014/PN.Cj., the defendant cannot be convicted, so he charges the court costs arising in this case to the state. In view of Article 44 paragraph (1) and paragraph (2) of the Criminal Code and Law no. 8 of 1981 concerning the Criminal Procedure Code and other laws and regulations relating to this case. The verdict stated that the defendant Pupun Bin Sanusi was legally and convincingly proven guilty of not committing the crime of "murder", but for this act he could not be held accountable for the reason for forgiveness as referred to in the provisions of Article 44 paragraph (1) of the Criminal Code.

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Sumber Lainnya:

Penelitian Penulis Fase-Fase Penentuan Kemampuan Bertanggung Jawab dan Kompleksitas Zaman Dalam Program Pasca Sarjana Kajian Hukum Pidana Dan Kriminologi Unkris tahun 2017.

Undang-Undang :

Kitab Undang-Undang Hukum Pidana.

Law No. 48 Tahun 2009 Tentang Kekuasaan Kehakiman.

Wawancara:

Hasil wawancara dengan Adrianus Meliala.

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