



Criminal Liability Policy of Persons with Mental Disorders in Case Spreading Racial Issues

Alexandra Florecita Adja Mossa

Kantor Hukum Elisabeth Puji Astuti, SH. MH. & Rekan, Indonesia
parkalexal8@gmail.com

Submitted: Sept 06, 2022; Reviewed: Oct 18, 2022; Accepted: Nov 03, 2022

Article's Information

Keywords:

Criminal liability; Mental Disorders; Racial Issues.

DOI:

<https://doi.org/10.25041/ip.v3i2.2727>

Abstract

Article 28E of the 1945 Constitution regulates the freedom of expression, yet law enforcement often adheres to norms and regulations not directly derived from the law itself. This paper employs a normative legal research methodology, utilizing both a case-based and statutory analysis. Primary data is gathered through interviews, while secondary data is collected from various sources including books, papers, journals, and media outlets, both print and electronic. Legal frameworks pertinent to the identified issues are scrutinized and interpreted, serving as the foundation for analysis. The qualitative data analysis is then conducted. Drawing from the findings of a specific case, identified as Decision Number: 8/Pid.Sus/2019/PN.Srg, the judge determined the defendant's guilt under Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) of Law Number 19 of 2016, which amends Law Number 11 of 2008 concerning Information and Electronic Transactions, as well as Law Number 8 of 1981 concerning the Criminal Procedure Code, among other relevant statutes. The criminal liability of defendants with mental disorders is examined under Article 44 of the Criminal Code, which stipulates circumstances where perpetrators, due to mental disabilities or disorders, may not be held accountable for their actions. The defendant's mental competency, as outlined in Article 32 of Law no. 8 of 2016 regarding disabilities, is assessed, alongside considerations of justice for all involved parties.



A. Introduction

Indonesia stands as a nation governed by the rule of law and committed to democratic principles. Article 28E of the 1945 Constitution guarantees the right to freedom of expression in public. This underscores Indonesia's commitment to upholding freedom of opinion, expression, and creativity within the bounds of its legal framework.¹

In today's digitally-driven society, technological literacy, including understanding platforms like social media, is essential. Yet, despite this, inappropriate and discourteous communication persists on these platforms, leading to numerous cases of social media-related offenses.

The Information and Electronic Transactions (*ITE*) law addresses the dissemination of fake news, which aims to incite hatred or hostility towards individuals or communities based on ethnicity, religion, race, or societal affiliation (known as "SARA" in Indonesian). Broadcasting fake news constitutes a fabrication of information and poses significant risks to public opinion, especially when propagated or cited by other media outlets.²

Individuals can face legal repercussions if they knowingly violate prohibitions outlined in the law and are deemed legally responsible for their actions. Accountability forms the cornerstone of legal liability, with considerations given to mental capacity and potential impairments. The causal relationship with mental illness still causes many problems because there are various types and characteristics of mental illness in psychiatry books.³ Understanding the complexities of mental health is crucial, as mental disorders can significantly impact an individual's ability to engage in daily activities and affect their overall well-being.⁴

The Criminal Code delineates that an individual may be considered devoid of criminal responsibility if their mental faculties are compromised due to physical disability or a disease affecting their cognitive functions. Van Hamel posits that criminal responsibility hinges on a combination of normal psychological development and maturity, manifesting in the capacity to comprehend the consequences of one's action.⁵

Wahjadi Darmabrata suggests that individuals afflicted with mental disorders may be exempt from prosecution for crimes committed. This legal principle finds expression in various statutes, notably Article 44 of the Criminal Code, which absolves individuals from punishment if their actions stem from an inability to comprehend their actions due to intellectual impairments (e.g., idiocy, imbecility, sensory impairments) or mental illnesses (e.g., psychosis, schizophrenia, depression).⁶

R. Soesilo further expounds on Article 44 of the Criminal Code, explaining that defendants may escape sentencing if their actions cannot be attributed to them due to their compromised

¹Farida, E. "Kewajiban Negara Indonesia Terhadap Pemenuhan Hak Kebebasan Berpendapat Dan Bereksprei". *QISTIE*, 14 No.2, (2022):45 doi: <http://dx.doi.org/10.31942/jqi.v14i2.5590>

²Aisyah, Siti, et al. "Hoax News and Future Threats: A Research of the Constitution, Pancasila, and the Law." *Indonesian Journal of Pancasila and Global Constitutionalism* 1.No.1 (2022): 183 DOI: <https://doi.org/10.15294/ijpgc.v1i1.56881>

³Wulandari, Santi. "Tinjauan Yuridis Peran Dokter Ahli Penyakit Jiwa Dalam Pembuktian Perkara Pidana Di Sidang Pengadilan (Studi Putusan Pengadilan Nomor 182/Pid. B/2015/PN. Dmk)." *Jurnal Ilmiah Sultan Agung* 1. No.1 (2022): 404

⁴Pangestu, Kevin Jerrick, I. Nyoman Gede Sugiarta, and I. GAA Gita Pritayanti Dinar. "Perlindungan Hukum Terhadap Pelaku Tindak Pidana yang Mengalami Gangguan Jiwa." *Jurnal Analogi Hukum* 4.No.3 (2022):293 doi: <https://doi.org/10.22225/ah.4.3.2022.293-298>

⁵Azhar, Maulida Fathia, and Taun Taun. "ASPEK HUKUM TERHADAP PERAN PSIKOLOGI FORENSIK DALAM PENANGANAN PELAKU KEJAHATAN TINDAK PIDANA DITINJAU PADA HUKUM POSITIF INDONESIA." *Jurnal Meta-Yuridis* 5.2 (2022):164

⁶Hasan Basri Saanin Dt. Tan Pariaman, *Psikiatri dan Pengadilan, Psikiatri Indonesia*, cet. I, Jakarta: Ghalia Indonesia, hlm. 91.

mental state. This provision underscores the legal recognition that individuals with certain mental conditions lack the requisite capacity to be held accountable for their actions due to: 1. Imperfect Intellect refers to the capacity of reasoning, commonly understood as the cognitive abilities of the mind or soul, known in Dutch as "*verstandelijke vermogens*" or "*geestvermogens*." Individuals categorized within this spectrum may include those with conditions such as idiocy, imbecility, deafblindness, and muteness. These individuals are not considered diseased; rather, their cognitive development remains akin to that of children due to inherent defects; 2. Mental illness, known as "*ziekelijke storing der verstandelijke vermogens*," encompasses conditions such as madness, mania, hysteria, epilepsy, melancholia, and other.⁷

The electronic system encompasses an array of information technologies integrated into telecommunication networks and electronic media, facilitating the creation, analysis, visualization, and dissemination of electronic information.⁸

In this context, Article 42 of the Draft Criminal Code addresses the legal treatment of offenders suffering from mental illness. Such individuals may face prosecution with the possibility of reduced penalties or alternative actions, such as admission to a Mental Hospital, while still being subject to sanctions involving deprivation of liberty through imprisonment. However, it is imperative to ensure that individuals with severe mental disorders receive appropriate care and support.

As defined by S.R. Sianturi, S.H., deprivation of liberty entails restricting an individual's freedom of movement against their will.⁹

Criminal liability entails holding individuals accountable for actions that contravene legal prohibitions or result in prohibited conditions. Handling suspects with mental disorders or abnormal behavior often involves collaboration with psychiatric professionals, who may conduct psychiatric assessments to inform legal proceedings¹⁰.

The principle of legality in criminal law dictates that an act cannot be punished unless it contravenes existing provisions of the law at the time of its occurrence.¹¹ Unfortunately, not all law enforcement entities consistently adhere to legal norms, sometimes deviating from legal principles in their actions. An illustrative case highlighting this issue is one concerning a woman accused of disseminating racially charged content on social media while grappling with psychosis, a severe mental illness.

In this case, the woman faced charges under Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) of Law Number 19 of 2016, which amends Law Number 11 of 2008 on Information and Electronic Transactions. Despite expert evaluations from doctors at the Suharto Herdijan Grogol Mental Hospital in West Jakarta confirming her severe mental disorder—psychosis, specifically—the woman was still sentenced to five months' imprisonment.

Meanwhile, it is evident that incarcerating individuals with mental illness for criminal acts is both ethically unsound and ineffective. Research indicates that even those without pre-existing mental health conditions may develop or exacerbate mental health issues when subjected to imprisonment. This highlights a clear incongruity between the legal provisions

⁷ Kuncara, Jatmika Teja, and Suryawan Raharjo. "Kebijakan Kriminal Penyelesaian Perkara Pidana Pada Tahap Penyidikan Terhadap Pelaku Tindak Pidana Yang Menderita Gangguan Jiwa." *Jurnal Kajian Hasil Penelitian Hukum* 5. No.1 (2021): 2598

⁸ Moniaga, A. "Penyidikan Dalam Rangka Mengungkap Tindak Pidana Informasi Elektronik Dan Transaksi Elektronik". *Lex Privatum*, 10 No.6 (2022).

⁹ Firmansyah, Y., & Widjaja, G. "Masalah-Masalah Dalam Kesehatan Jiwa". *Cross-border*, 5 No.1 (2022):489.

¹⁰ Salamor, A. M., & Salamor, Y. B. "Kewenangan Penghentian Penyidikan Dalam Perkara Dengan Pelaku Gangguan Kejiwaan". *Bacarita Law Journal*, 2 No.2, (2022):66.doi: <https://doi.org/10.30598/bacarita.v2i2.5396>

¹¹ Abdillah, M. F., & Santoso, I. "PSIKIATER DALAM RANAH HUKUM PERADILAN PIDANA". *Jurnal Pendidikan Kewarganegaraan Undiksha*, 10 No.1,(2022):100 doi: <https://doi.org/10.23887/jpku.v10i1.42697>

outlined in Article 44 of the Criminal Code and their application by law enforcement authorities. In light of this, the authors aim to delve deeper into the judicial decision-making process, particularly focusing on Decision No. 8/Pid.Sus/2019/PN.Srg, through a comprehensive research endeavor titled "Examining Judicial Decisions on Criminal Liability of Individuals with Mental Disorders in Cases Involving Racial Incitement."

Employing a normative legal approach supplemented by case analysis and statutory interpretation, this research draws upon both primary data derived from interviews and secondary data sourced from scholarly literature, publications, and media sources. By scrutinizing relevant laws and regulations and conducting qualitative data analysis, this research seeks to shed new light on the criminal responsibility policies pertaining to individuals with mental disorders implicated in racially-charged cases. The novelty of this research lies in its exploration of how the legal system navigates the complexities of addressing criminal behavior intertwined with mental illness, particularly in cases involving racial tensions.

B. Discussion

A court decision, as defined by Article 1 Number 11 of the Criminal Procedure Code, constitutes a legal pronouncement resulting from a general trial, where the defendant is either convicted of a crime, acquitted, or discharged from all charges according to procedures stipulated by law.¹² All court decisions hold validity and legal force only when pronounced in a public court session.¹³

The judge's assessment of the alleged violation forms a pivotal aspect of the judicial decision-making process. Essentially, the judge's evaluation serves as evidence to determine whether the defendant's actions align with the charges brought forth by the public prosecutor. This evaluation is based on two main principles: primary and equitable consideration. "Basis," as per the extensive Indonesian dictionary, denotes the fundamental or foundational aspect, while "equitable consideration" implies fairness and impartiality, and "consideration" refers to the judge's opinion, whether positive or negative.

Furthermore, the judge's decision in Case No. 8/Pid.Sus/2019/PN.Srg carries permanent and binding legal force, known as "*inkracht van gewijsde*." As per Article 50 of Law Number 48 of 2009 concerning Judicial Power, a court's decision must encompass not only the rationale and foundation for the verdict but also specific provisions or citations of relevant laws, as well as any unwritten legal principles that underpin the decision-making process.

Decision Number: 8/Pid.Sus/2019/PN.Srg concerns a female defendant, aged 37, born in Sumedang, Indonesia. She resides in Gg. Tower Indah Sayahbulu, Serang Village, Serang District, Serang City. The defendant, identified as Aisyah Tusalamah, stands accused of intentionally disseminating information aimed at inciting hatred or hostility towards certain individuals and community groups based on ethnicity, religion, race, and inter-group (SARA) relations. This dissemination allegedly occurred between the end of 2017 and July 2018.

The defendant purportedly uploaded a self-recorded video to Facebook under the aliases "Muahmad Syah Ash" and "Sin Shima Syaba (Musa M one)" using her Samsung J7 Prime cellphone at her residence in Gg. Tower Indah Sayahbulu, Serang Village, Serang City. Consequently, the actions of the defendant are deemed to contravene Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) of Law Number 19 of 2016, which amends Law Number 11 of 2008 concerning Information and Electronic Transactions. These provisions encompass specific elements outlined in the legal framework.

1. Each person;

¹² Sorongan, Tommy Terry. "Eksepsi dalam Kuhaap dan Praktek Peradilan." *Lex Crimen* 5.No.4 (2016):126

¹³ Setyawan, Vincentius Patria. "Fulfillment of the Principle of an Open Trial in an Electronic Trial." *Sol Justicia* 5.No.1 (2022):2 doi: 10.54816/sj.v5i1.468

2. Those who intentionally and without rights spread information aimed at causing hatred or hostility to specific individuals and community groups based on ethnicity, religion, race, and inter-group (SARA).'

The court declared the defendant guilty of the offense and sentenced her to five months' imprisonment, with the provision that the duration of arrest and pre-trial detention would be fully deducted from the imposed sentence.

The defendant's action, as described, constitutes the dissemination of electronic information via Facebook, which falls within the scope of Article 1 point 1 of Law Number 19 of 2016. This law defines electronic information as any form of electronic data, including but not limited to text, audio, images, and other forms of electronic communication.

Regarding the principles governing criminal liability, these encompass the principles of legality and culpability, which include both intentional and negligent acts that are attributable to the perpetrator. Not everyone can be held accountable for their actions; Article 44 of the Criminal Code outlines circumstances where an individual may be deemed incapable of legal responsibility (*toerekenbaar*)¹⁴.

1) Whoever commits an act that he cannot account for because his soul is disabled in growth or is disturbed due to illness is not criminal. 2) If the action cannot be insured against the perpetrator because his mental growth is impaired or 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."

In both civil law and common law jurisdictions, the concept of criminal responsibility is typically framed in negative terms, as it serves as a means to hold individuals accountable for their actions and subject them to appropriate punishment. However, Indonesian criminal law, akin to civil law systems, also delineates circumstances wherein individuals may not be held accountable for their actions.¹⁵ In such cases, where criminal liability does not hinge on the presence of fault, it is termed absolute criminal liability, analogous to the common law concept of liability without fault.

The Criminal Code Bill, derived from the *Wetboek van Strafrecht voor Nederlandsch*, serves as a legal framework designed to reflect societal changes, state policies, and legal developments. Presently, discussions revolve around whether individuals with mental disabilities should receive mitigated sentences for committing crimes. Article 38 of the Draft Criminal Code addresses this issue, stipulating that individuals with mental and intellectual disabilities at the time of committing a crime may have their criminal liability reduced accordingly.

The foundation of an individual's criminal liability is assessed based on three key factors: their capacity for responsibility, the presence of intent (*dolus*) or negligence (*culpa*), and the absence of justifications or exculpatory reasons. Criminal responsibility thus hinges on these aspects, which can be analyzed from various perspectives;

- 1) Ability to distinguish good and bad deeds; unlawful and unlawful acts.
- 2) Ability to understand and assess good intentions and bad intentions

First of all, criminal liability is a condition that exists within the maker when committing a crime. Then this criminal responsibility also means linking the circumstances of the maker with appropriate actions and sanctions. Therefore, the assessment is carried out in two directions:

a) Criminal responsibility is, first of all in the context of a genuine requirement for coaching because it carries a preventive aspect.

¹⁴ Andi Hamzah, *Asas-Asas Hukum Pidana*, 2010, hlm 112

¹⁵ Andi Zainal Abidin, *Hukum Pidana I*, 1983, Jakarta: Sinar Grafika, hlm 260

b) Criminal liability is part of the repressive aspects of criminal law. Criminal liability depends on the situation that is a prerequisite for the existence of a sentence and the legal consequences of its existence.

Based on the elements of criminal responsibility, particularly the unlawful act, the defendant is culpable for disseminating a video on Facebook containing content that instigates racial tensions about Islam, alongside claims of leading a kingdom dubbed the Jellyfish Kingdom. However, upon psychiatric evaluation, it was determined that the defendant suffers from severe psychosis. Consequently, provisions outlined in Articles 44, 48, 49 Paragraphs (1) and (2), Article 50, and Article 51 Paragraphs (1) and (2) come into play, offering reasons that may absolve the imposition of criminal liability.

Article 44 Paragraph (1) of the Criminal Code stipulates that individuals deemed insane or mentally incapacitated cannot be held criminally responsible. The psychological condition of the suspect, as delineated in this article, renders them ineligible for punishment, as their mental state impedes their capacity for culpability. This assessment aligns with the findings from the interview with Uli Purnama, where the verdict remained open. The defendant's dissemination of provocative content on Facebook contradicts Islamic teachings, inciting "hatred or hostility towards certain individuals and groups based on ethnicity, religion, race, and inter-group dynamics." The court must engage expert and public witnesses, with observation results fully documented, indicating that the defendant's interactions with the community were limited and marred by disturbances caused by nocturnal activities involving followers from outside the community.

The author argues that the judge must consider the defendant's upbringing, where they felt alienated and unappreciated by their family, leading to distorted perceptions. The defendant's actions were influenced by derogatory remarks and isolation from others. Despite attempts to correct their misguided beliefs, the defendant persisted, indicating a lack of control over their behavior. Considering these factors, the punishment for the perpetrator could be reduced, with rehabilitation being a viable option.

Regarding criminal liability, Uli Purnama suggests that the judge will evaluate the juridical facts presented before the trial, including witness testimonies, evidence, and expert opinions. The defendant's testimony is crucial but must be corroborated by evidence. If the act is proven, the judge must uphold the law, maintaining confidence in court decisions.

Uli Purnama emphasizes that while psychiatric evaluations play a role in assessing the psychopathology of criminal behavior, they are not binding on judges in determining criminal responsibility. Despite collaboration with psychiatrists, judges retain the authority to diverge from their findings, ensuring considerations of decency and appropriateness in criminal law.

In line with Simons' viewpoint, as cited by Lamintang, judges must evaluate whether a perpetrator's mental illness is severe enough to render them incapable of being held criminally responsible (*toerekeningsvatbaarheid*). This assessment involves examining how the disorder affects the individual's psychological state, their understanding of their actions, and their ability to discern right from wrong. Ultimately, the judge decides whether the defendant can be held accountable based on their consciousness and capacity to determine their actions.\

The author underscores that the principle of impartiality, as outlined in Article 5 Paragraph (1) of Law no. 48 of 2009, must be understood within the context of judges making correct decisions rather than adhering to an original interpretation. Impartiality, in this sense, does not imply a lack of fairness in considerations and judgments. Rather, it is encapsulated in the formulation of the law, which mandates that courts judge according to the law without discrimination.¹⁶

¹⁶ Andi Hamzah, *KUHP dan KUHP*, Jakarta: Rineka Cipta, 1996, hlm. 95

Judges, as per Article 28 Paragraph (1) of Law no. 40 of 2009, are obligated to familiarize themselves with and comprehend the legal principles prevalent in society. Criminal responsibility, according to the author, hinges on determining whether a suspect or defendant can be held accountable for a crime. This determination ultimately decides whether a person is acquitted or convicted. Judges may rely on their conscience in reaching a verdict, a concept aligned with the theory of proof based on the judge's personal conviction.

In a system where evidence is weighed based on the judge's belief, decisions can be made without strict adherence to predefined rules. However, the judge's belief must be substantiated by clear and rational reasoning.¹⁷ The interaction between legally valid evidence and the judge's belief is reciprocal: valid evidence must inform the judge's conviction, and vice versa. This symbiotic relationship ensures that the judge's decision is grounded in both legal evidence and a sense of justice.

Before reaching a decision in a criminal case, the judge meticulously considers various crucial factors presented during the trial. The judge evaluates the criminal act committed by an individual by examining certain prerequisites: the presence of culpability, the capacity to assume responsibility, and the absence of justifiable excuses. Additionally, the judge adheres to objective criteria, ensuring that the criminal act in question meets the criteria outlined in the law and lacks any legitimate justification. Once these conditions are met, the judge takes into account mitigating and aggravating factors affecting the defendant.¹⁸

According to Elisabeth Puji Astuti, the perpetrator in this instance is implicated under "Article 28 paragraph (2) Jo. Article 45A paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions." Despite individuals with mental illnesses being subject to criminal liability, they still fall under the purview of the Criminal Justice System Act and are governed by the Criminal Code regarding issues of criminal responsibility, with considerations for both forgiveness and compelling reasons.

The author's analysis posits that the exoneration of a perpetrator from criminal liability is rooted in seven distinct grounds that can prompt such a circumstance, namely::

- 1) There is the inability of the perpetrator to take responsibility (Article 44 Paragraph (1) of the Criminal Code).
- 2) Forced power (overmatch, Article 48 of the Criminal Code).
- 3) Forced defense/emergency defense (*noodwer*, Article 49 Paragraph (2) of the Criminal Code).
- 4) A forced defense that exceeds the limit (*noodwer excess*, Article 49 Paragraph (2) of the Criminal Code).
- 5) Implementing laws and regulations (Article 50 of the Criminal Code).
- 6) Carry out a legitimate position order (Article 51 Paragraph (1) of the Criminal Code) and (Article 51 Paragraph (2) of the Criminal Code).
- 7) Carry out an unauthorized position order in good faith (Article 51 Paragraph (2) of the Criminal Code)¹⁹."

The 7 (seven) fundamental causes for not being convicted of the perpetrators are grouped into two basics, namely:

1. Based on forgiving reasons that are subjective and inherent in people, especially regarding the inner attitude before or when it is done.

¹⁷ Isima, Nurlaila. "Kedudukan Alat Bukti Elektronik Dalam Pembuktian Perkara Pidana." *Gorontalo Law Review* 5.1 (2022):181.

¹⁸ Leden Marpaung, *Proses Penanganan Perkara Pidana*, Jakarta: Sinar Grafika, 2011, hlm 130.

¹⁹ Dody Makanoneng, 2016, *Cacat Kejiwaan Sebagai Alasan Penghapusan Pidna*, Jurnal lex crime, Vol. V, No.4.

2. Based on justifying reasons that are objective and attached to his actions or other things outside the mind of the perpetrator, in other words according to Schaffmoistei, it is easily formulated that if there is a forgiving reason then the nature of being reproached cannot be blamed²⁰.

The author's analysis indicates that the defendant indeed meets the criteria for committing a criminal act related to spreading racial issues as per Article 45A paragraph (2) of the ITE Law. This stems from the distribution of videos containing racial slurs against Islam on social media platform Facebook, alongside the assertion of leadership over a purported new religious kingdom.

One of the grounds for absolving criminal liability, as outlined in the theory of forgiving reasons, plays a significant role in the cessation of criminal prosecution (*strafuitsluitings grand*). In criminal jurisprudence, these grounds are categorized into justifying reasons, which differentiate between punishing an act and punishing the individual responsible for the act. The justification theory nullifies the unlawfulness of the act, with justifying reasons delineated in Criminal Code Article 49 Paragraph (1), Article 50, and Article 51 Paragraph (1). In essence, legal scholars commonly enumerate forgiveness reasons:

- a. Not being able to take responsibility
- b. A forced defense that exceeds the limit
- c. In the case of carrying out an illegal position order in good faith

While the justification reasons are as follows:

- a. Forced power
- b. Emergency defense / forced defense
- c. Reasons for carrying out statutory orders
- d. Reasons carry out legitimate office orders

Although there is no clear distinction between reasons for forgiveness and justification, *Memorie van Toelichting* (MvT) introduces the concept of "reasons for the irresponsibility of a person or reasons for not convicting a person." According to MvT, there are two categories: reasons for non-accountability stemming from the individual or the mind (Article 44 Paragraphs (1) and (2) of the Criminal Code), and reasons for non-accountability external to the individual or the mind (Articles 48, 49, 50, 51 of the Criminal Code).

Based on the results of the author's interview with Elisabeth Puji Astuti, the perpetrator should not be given "a punishment by the provisions of Article 44 of the Criminal Code that "Whoever commits an act that cannot be insured against him because his soul is disabled in growth or is disturbed due to illness, is not punished" were that the defendant has proven faithful to suffer from severe mental disorder psychosis. This is as emphasized in Article 103 of the Criminal Code that chapters 1 (one) to chapter 8 (eight) of book 1 of the Criminal Code also apply to other provisions outside the Criminal Code as long as it is not specified otherwise (*lex specialis derogate legi general*). *Lex specialis derogate legi general*, namely the principle of legal interpretation, which states that special laws override general laws.

Although there is no clear distinction between reasons for forgiveness and justification, the *Memorie van Toelichting* (MvT) introduces the concept of "reasons for the irresponsibility of a person or reasons for not convicting a person." According to MvT, there are two categories: reasons for non-accountability stemming from the individual or the mind (Article 44 Paragraphs (1) and (2) of the Criminal Code), and reasons for non-accountability external to the individual or the mind (Articles 48, 49, 50, 51 of the Criminal Code).

²⁰ Scraffmeister, N, E. PH, Sutorius, *Hukum Pidana*, hlm 56.

Based on the results of the author's interview with Dr. Agung Frijanto, it is true that he and his team have observed the defendant on behalf of Aisyah Tusalamah and it is true that the defendant has a psychotic mental disorder. Psychosis is a severe type of mental disorder. The Guidelines for the Classification and Diagnosis of Mental Disorders (PPDGJ) list various types of mental illness, from F0, F1, F2, F3 to F9. Psychosis or psychosis is one type of mental disorder in the code between F0, F1, F2 F3 in which there are symptoms of psychosis. One of the symptoms of mental disorders is psychosis.

Dr. Agung Frijanto outlines a systematic approach for determining whether a patient exhibits signs of psychotic illness. When law enforcement observes behavior deemed unnatural in a suspect or defendant, they question their accountability and mental health status. To initiate this process, they request a *visum et repertum* psychiatry or a mental health certificate for legal purposes, directing it to a psychiatrist as team leader. Subsequently, a specialized team, comprising two psychiatrists, one clinical psychologist, and relevant medical personnel, is assembled. Upon admission to the hospital, the suspect undergoes a maximum 14-day observation period, extendable if necessary. During this time, comprehensive evaluations including physical, psychological, and laboratory tests are conducted. The final *visum et repertum* concludes whether a mental disorder exists, its connection to the alleged criminal behavior, and the patient's accountability. If a criminal act stems from a mental disorder, legal culpability may be mitigated accordingly.

Law Number 8 of 2016 concerning Persons with Disabilities does not explicitly address the criminal liability of individuals with mental disabilities, leaving their accountability governed by Article 44 of the Criminal Code. However, the law underscores the procedural aspects concerning individuals with disabilities, mandating that law enforcement officials must seek input from medical professionals, including doctors, psychologists, psychiatrists, and social workers, before proceeding with the examination of a person with a disability.

The author disputes the decision made in judge's ruling No. 8/Pid.Sus/2019/PN.Srg, where the defendant was sentenced to five months in prison. It appears that the panel of judges did not adequately consider the testimony provided by expert witnesses. The expert opinions regarding the defendant's mental illness were disregarded. Moreover, the judges' skepticism toward the credibility of the expert witnesses is concerning. Furthermore, there are aspects of the analysis that could have mitigated the severity of the defendant's sentence. For instance, it is evident that the defendant suffers from severe psychosis, indicating that they have a mental disability as defined in Article 44 of the Criminal Code and Article 38 of the Draft Criminal Code. Additionally, the investigation process should have delved deeper into the specifics of the defendant's case. The thoroughness of the investigation process significantly influences the judge's decision in court, highlighting the importance of detailed examinations and considerations in cases involving individuals with mental disabilities.

The principle of the double track system in modern law suggests that punishment decided by a judge should be either reduced or substituted with alternative actions, such as rehabilitation (*matrigel*), particularly in cases where criminal sanctions would traditionally be imposed, notably imprisonment.²¹ Action sanctions, being more proactive, aim to address the underlying causes of an offense, whereas criminal sanctions are reactive responses to unlawful acts. This distinction is evident in Article 44 of the Criminal Code, which outlines conditions under which a perpetrator may not be held accountable due to mental incapacitation, as stipulated in Article 32 of Law No. 8 of 2016 concerning disabilities.

The author's analysis suggests that in this instance, the judge's examination of the legal facts during the trial was less meticulous, leading to the conclusion that the defendant, classified as suffering from psychosis, was granted an exemption from culpability under Article 44 of the

²¹ Gita Santika Ramadhani, Barda Nawawi Arief, Purwoto. 2012. Sistem Pidana dan tindakan "Double Track System" Dalam Hukum Pidana di Indonesia. *Diponegoro Law Review*, Vol. 1, No. 4, Universitas Diponegoro.

Criminal Code. Consequently, the judge's ruling against the defendant is deemed incorrect from a substantive legal standpoint. However, considering the dual objectives of legal certainty and expediency, which are in harmony with the pursuit of justice, the decision holds merit outside the strict confines of legal interpretation.

A comparative perspective highlights that, ideally, as seen in countries like the Netherlands, the legal system maintains separate facilities for individuals with mental disorders, distinguishing between those requiring psychiatric treatment and those needing a more conducive environment for rehabilitation. This underscores the importance of the judge's deliberations concerning the burden of proof in adjudicating cases involving perpetrators with mental health issues.

C. Conclusion

A defendant with psychosis was deemed criminally responsible in Decision No. 8/Pid.Sus/2019/PN.Srg for inciting racial tensions. The judge concluded that the defendant was proven to be legally and convincingly guilty of intentionally disseminating inflammatory information targeting ethnic, racial, religious, and inter-group sentiments, a violation punishable under Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) of Law Number 19 of 2016, amended from Law Number 11 of 2008 concerning Information and Electronic Transactions, along with relevant provisions in Law Number 8 of 1981 concerning Criminal Procedure Code and other pertinent legislations. The imposed sentence was five months of imprisonment. The defendant's accountability, given their psychotic mental disorder, was discussed under Article 44 of the Criminal Code. This article specifies that if a perpetrator's mental disability or disorder prevents them from being held accountable for their actions, such as when their mental state resembles that of a child or is disturbed due to conditions like mental illness or epilepsy, they cannot be legally competent. This aligns with the provisions outlined in Article 32 of Law no. 8 of 2016 regarding disability.

Acknowledgments

The success of this research owes gratitude to the continuous blessings of the Lord Jesus Christ and the unwavering support of the Faculty of Law, Criminal Law Division, University of Lampung, Indonesia. I extend my heartfelt appreciation to the Faculty of Law, University of Lampung, and express my sincere thanks to Prof. Dr. Maroni, S.H., M. Hum., and Mrs. Emilia Susanti, S.H., M.H., for their invaluable mentorship and friendship throughout the process of this journal. I am also deeply grateful to all those who have provided assistance and encouragement along the way.

References

A. Book

- Abidin, Andi Zainal, *Hukum Pidana I*, Jakarta: Sinar Grafika (1983),
 Hamzah, Andi, *KUHP dan KUHP*, Jakarta: Rineka Cipta, (1996)
 Hamzah, Andi, *Asas-Asas Hukum Pidana*, (2010)
 Marpaung, Leden, *Proses Penanganan Perkara Pidana*. Jakarta: Sinar Grafika
 Pariaman, Hasan Basri Saanin Dt. Tan, *Psikiatri dan Pengadilan, Psikiatri Indonesia*, cet. I, Jakarta: Ghalia Indonesia
 Sutorius, Scraffmeister, N, E. PH, *Hukum Pidana*

B. Journal

- Abdillah, M. F., & Santoso, I. "Psikiater Dalam Ranah Hukum Peradilan Pidana". *Jurnal Pendidikan Kewarganegaraan Undiksha*, 10 No.1,(2022):100 doi: <https://doi.org/10.23887/jpku.v10i1.42697>
- Aisyah, Siti, et al. "Hoax News and Future Threats: A Research of the Constitution, Pancasila, and the Law." *Indonesian Journal of Pancasila and Global Constitutionalism* 1.No.1 (2022): 183 DOI: <https://doi.org/10.15294/ijpgc.v1i1.56881>
- Azhar, Maulida Fathia, and Taun Taun. "Aspek Hukum Terhadap Peran Psikologi Forensik Dalam Penanganan Pelaku Kejahatan Tindak Pidana Ditinjau Pada Hukum Positif Indonesia." *Jurnal Meta-Yuridis* 5.2 (2022):164
- Farida, E. "Kewajiban Negara Indonesia Terhadap Pemenuhan Hak Kebebasan Berpendapat Dan Berekspresi". *QISTIE*, Vol.14 No.2, (2022):45 doi: <http://dx.doi.org/10.31942/jqi.v14i2.5590>
- Firmansyah, Y., & Widjaja, G. "Masalah-Masalah Dalam Kesehatan Jiwa". *Cross-border*, 5 No.1 (2022):489.
- Isima, Nurlaila. "Kedudukan Alat Bukti Elektronik Dalam Pembuktian Perkara Pidana." *Gorontalo Law Review* 5.1 (2022):181.
- Kuncara, Jatmika Teja, and Suryawan Raharjo. "Kebijakan Kriminal Penyelesaian Perkara Pidana Pada Tahap Penyidikan Terhadap Pelaku Tindak Pidana Yang Menderita Gangguan Jiwa." *Jurnal Kajian Hasil Penelitian Hukum* 5. No.1 (2021): 2598
- Makanoneng, Dody, "Cacat Kejiwaan Sebagai Alasan Penghapusan Pidana", *Jurnal lex crime*, Vol. V, No.4 (2016).
- Moniaga, A. "Penyidikan Dalam Rangka Mengungkap Tindak Pidana Informasi Elektronik Dan Transaksi Elektronik". *Lex Privatum*, 10 No.6 (2022).
- Pangestu, Kevin Jerrick, I. Nyoman Gede Sugiarta, and I. GAA Gita Pritayanti Dinar. "Perlindungan Hukum Terhadap Pelaku Tindak Pidana yang Mengalami Gangguan Jiwa." *Jurnal Analogi Hukum* 4.No.3 (2022):293 doi: <https://doi.org/10.22225/ah.4.3.2022.293-298>
- Ramadhani, Gita Santika, Barda Nawawi Arief, dan Purwoto, Sistem Pidana dan tindakan "Double Track System" Dalam Hukum Pidana di Indonesia, *Diponegoro Law Review*, Vol. 1, No. 4, Universitas Diponegoro (2012).
- Salamor, A. M., & Salamor, Y. B. "Kewenangan Penghentian Penyidikan Dalam Perkara Dengan Pelaku Gangguan Kejiwaan". *Bacarita Law Journal*, 2 No.2, (2022):66.doi: <https://doi.org/10.30598/bacarita.v2i2.5396>
- Setyawan, Vincentius Patria. "Fulfillment of the Principle of an Open Trial in an Electronic Trial." *Sol Justicia* 5.No.1 (2022):2 doi: 10.54816/sj.v5i1.468
- Sorongan, Tommy Terry. "Eksepsi dalam Kuahap dan Praktek Peradilan." *Lex Crimen* 5.4 (2016).
- Wulandari, Santi. "Tinjauan Yuridis Peran Dokter Ahli Penyakit Jiwa Dalam Pembuktian Perkara Pidana Di Sidang Pengadilan (Studi Putusan Pengadilan Nomor 182/Pid. B/2015/PN. Dmk)." *Jurnal Ilmiah Sultan Agung* 1. No.1 (2022): 404.

