



Criminal Liability Policy Of Persons With Mental Disorders In Case Spreading Racial Issues

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Abstract

Freedom of expression is stated in Article 28E of the 1945 Constitution. However, law enforcement obeys laws and norms that do not use the law as a source of law. This paper uses normative legal research method consisting of case approach and a statutory approach. Sources of data used are primary data obtained from interviews and secondary data obtained by collecting data contained in books, papers, journals, and print or electronic media. Laws and regulations relating to the existing problems are studied and analyzed, these are also legal materials. The data that has been obtained is then analyzed. The data analysis used is qualitative. Based on the results of research and discussion in the case, decision Number: 8/Pid.Sus/2019/PN.Srg, the judge decided that the defendant was legally and convincingly proven guilty and was threatened with a criminal sentence in Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) Act. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 8 of 1981 concerning the Criminal Procedure Code and other relevant laws and regulations. Criminal liability for defendants with mental disorders in Article 44 of the Criminal Code which stipulates if the criminal acts committed by the perpetrator cannot be held accountable due to a mental disability during growth or mental disorders where by his mind or soul is disturbed due to diseases such as mental disorders, psychosis etc. The defendant's condition is that the defendant is not legally competent, as referred to in Article 32 of Law no. 8 of



2016 regarding disability, and there is no sense of justice for the perpetrators.

A. Introduction

Indonesia is a state of law and a country that adheres to a democratic system. Article 28E of the 1945 Constitution guarantees freedom of expression in public. This means that the Indonesian state is in the corridor and has freedom of opinion, expression, and creativity as long as it is based on the laws in force in Indonesia.¹

Today's society is surrounded by technology, and must be 'literate' or understand the technology and its components, such as social media. Even today, many parties still use internet social media for inappropriate and rude communication, and there are still many cases of internet-based social media crimes.

The Information and Electronic Transactions (ITE) law explain that fake news aims to deceive feelings of hatred or hostility towards specific individuals and community groups based on ethnicity, religion, race, and inter-group (SARA). Broadcasting of fake news is a form of news fabrication. Only those who don't use common sense dare to broadcast fake news. Broadcasting fake news will be more dangerous to public opinion if it is relayed or quoted by other media.²

A person can be sentenced if the person is aware or at least there is a possibility of knowing that there is a prohibition. The person must also be proven capable of being held liable under criminal law. The ability to take responsibility is an essential basis for error. A crime can be removed if there is a causal relationship between the act committed by the maker and the growth disability or mental illness he suffered. The causal relationship with mental illness still causes many problems because there are various types and characteristics of mental illness in psychiatry books.³ Mental disorders, or psychiatric disorders, result from several or a group of symptoms that arise in human psychology. This disorder is not something the patient wants and is an obstacle to daily activities, so it can reduce the level of well-being in the patient's life.⁴

The Criminal Code states that a person loses control of his soul because his soul is physically disabled or disturbed by a disease that changes his mind. Van Hamel states that criminal responsibility is a normal condition and psychological maturity that brings three kinds of abilities to understand the consequences of their actions, realize that their actions are not justified or prohibited by society, and determine their ability to act.⁵

Wahjadi Darmabrata said that if the perpetrator of the crime had a mental disorder, he was acquitted of prosecution. The fact that a person with a mental disorder can be convicted for committing a criminal act can be found in the laws and regulations governing this matter; article

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

² Aisyah, Siti, et al. "Hoax News and Future Threats: A Study 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>

³ 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

⁴ 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>

⁵ 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

44 of the Criminal Code states that a person cannot be punished because his actions cannot be accounted for, this is due to his lack of perfect intellect (idiot, imbecile, deafblind, mute), mental illness (crazy, hysterical, epilepsy, melancholia, schizophrenia, psychosis), and depression.⁶

According to R. Soesilo, in Article 44 of the Criminal Code as the reason why the defendant cannot be sentenced because his actions cannot be accounted for to him because:

1. Less than perfect intellect, what is meant by the word reason is the power of the mind, the power of the mind, the intelligence of the mind which in Dutch is *verstandelijke vermogens*. Or *geest vermogens* means the power or power of the soul. For example, idiots, imbeciles, deafblind and mute are born. Such people are not sick, but because the defects are starting to emerge so that their minds remain as children.

2. It hurts to change your mind, *ziekelijke storing der verstandelijke vermogens*. In this sense, for example, madness, manie, hysteria, epilepsy, melancholia, and other mental illnesses.⁷

The electronic system is used to explain the existence of an information system which is the application of information technology based on telecommunications networks and electronic media, which functions to design, analyze, display and transmit or disseminate electronic information.⁸

In this case, Article 42 of the Draft Criminal Code also states that perpetrators with mental illness can be prosecuted for reduction or be subject to action, such as being admitted to a Mental Hospital. Still, they are given sanctions in the form of deprivation of independence with imprisonment. At the same time, perpetrators like this should be treated or guaranteed that people with severe mental disorders are appropriately nurtured.

According to S.R. Sianturi, S.H., deprivation of liberty is the removal or limitation of a person's freedom to move from one place to another other than his choice.⁹

Criminal liability imposes penalties on the maker for actions that violate the prohibition or cause prohibited conditions. Handling a suspect with an average soul is not much different from a suspect with a mental disorder or abnormal behavior. Investigators asked for the help of a psychiatrist at the local mental hospital to conduct psychiatric observations of the suspect¹⁰.

On the principle of criminal law, there is a principle that we know as the principle of legality.¹¹ The principle of legality requires that an act cannot be punished unless it is based on the provisions of the criminal law in force before the act occurs. But unfortunately not all law enforcers comply with the law and norms and do not use the law as a source of law. An example of a case that has attracted the author's attention is the implementation in Article 44 of the Criminal Code, namely the case regarding a woman who is a perpetrator of a criminal act of spreading racial issues on social media who suffers from mental illness psychosis which is threatened with criminality in Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) of the Law. Law Number 19 of 2016 concerning Amendments to Law Number

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

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>

11 of 2008 concerning Information and Electronic Transactions and sentenced to imprisonment for five months.

Based on the facts in the trial and the observation process by expert doctors from the Suharto Herdijan Grogol Mental Hospital, West Jakarta, it was stated that it was confirmed that the suspect had a severe mental disorder and could not distinguish illusion from reality, aka psychosis. Psychosis is a mental disorder characterized by an impaired ability to cope with reality. Psychosis is caused by a brain disorder that affects how the brain processes information.

Meanwhile, we know that if the perpetrators of criminal acts who suffer from mental illness are put in prison, it is wrong and useless because it can be seen that if ordinary people who do not have mental illnesses are put in prison, they can even experience unstable mental illness. Therefore, we can see the incompatibility of the provisions of Article 44 of the Criminal Code with the implementation by law enforcement in this case. Therefore, the authors are interested in examining the judge's decision study of Decision No. 8/Pid.Sus/2019/PN.Srg). in more depth by analyzing it in the form of research entitled: "Criminal Liability Policy Of Persons With Mental Disorders In Case Spreading Racial Issues."

The research method is normative legal and uses a case approach and a statutory approach. Sources of data used are primary data obtained from interviews and secondary data obtained by collecting data contained in books, papers, journals, and print or electronic media. Laws and regulations relating to the existing problems are studied and analyzed, then called legal material. The data analysis used is qualitative. This research's novelty concerns the criminal responsibility policy for people with mental disorders in cases that cause racial issues. In law enforcement regarding court decisions and the realization of justice for criminals who suffer from mental disorders

B. Discussion

A court decision based on Article 1 Number 11 of the Criminal Procedure Code is a juridical statement that is sentenced in a general trial, in the form of a crime, or is acquitted or excluded from all cases according to the method regulated by law¹². All court decisions are only valid and have legal force if they are pronounced in a court open to the public¹³.

The judge's assessment of the alleged violation is an essential consideration in the judge's decision. In essence, the judge's consideration is a component of proving whether the defendant's actions are by the crime charged by the public prosecutor. The basis for consideration comes from two syllables, primary and weigh; the word "basis" in the extensive Indonesian dictionary means principal or basis. The word "weigh" means fair and equal, and consideration means opinion (good or bad).

Judge's decision in Case No. 8/Pid.Sus/2019/PN.Srg has permanent and binding legal force (inkracht van gewijsde). The court's decision in Article 50 of Law Number 48 of 2009 concerning Judicial Power states that the court's decision must contain not only the reasons and basis for the decision but also special provisions or the writing of the relevant law, which states that this will not be the case as well as unwritten sources of law, which is used as the basis for decision making.

Decision Number: 8/Pid.Sus/2019/PN.Srg. The defendant is a woman, place of birth Sumedang, age 37 years, female gender, Indonesian nationality, the residence of Gg. Tower Indah Sayahbulu Rt. 002 Rw. 007 Serang Village, Serang District, Serang City, Islam religion, housewife occupation, D3 education (graduated).

¹² Sorongan, Tommy Terry. "Eksepsi dalam Kuhap 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

That the defendant, on behalf of Aisyah Tusalamah on a date and time that can no longer be remembered from the end of 2017 to around July 2018 had "deliberately and without rights disseminated information, which was intended to cause hatred or hostility to certain individuals and community groups based on ethnicity, religion, race and inter-group (SARA)," the defendant committed the act in the following way:

The defendant uploaded/uploaded a video recorded by the defendant himself to Facebook using the names Muahmad Syah Ash and Sin Shima Syaba (Musa M one) with the defendant's cellphone, a white Samsung J7 Prime brand, at the defendant's house in Gg. Beautiful Tower Sayabulu RT. 002 RW. 007 Serang Village, Kec. Attack Serang City.

That as a result of the actions of the perpetrators, in this case, are regulated and subject to criminal sanctions in Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions which contain elements of -the elements are as follows:

1. Each person;
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).'

Which declared the defendant guilty of committing an act of "imprisonment for 5 (five) months and stipulating that the period of arrest and detention that the defendant had served was deducted entirely from the sentence imposed."

The defendant's act as mentioned above is an act of spreading that has broadcast, shared or distributing videos that are distributed through Facebook through their account, where the defendant "sends and disseminates electronic information as stipulated in Article 1 point 1 of Law Number 19 of 2016 which is one or a set of electronic data, including but not limited to writing, sound, pictures, maps, designs, photos of electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, signs, access codes, symbols or processed perforations that have meaning or can be understood by someone who can understand it."

"Principles" relating to criminal liability are in the form of the principle of legality and the principle of error, as well as including against the law as an error in the broadest sense in addition to intentional or error and can be accounted for or with the term *toerekenbaar*¹⁴. Not everyone can be said to be able to be responsible; it is said that someone is unable to be responsible in Article 44 of the Criminal Code, which states:

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 civil law and common law countries, criminal responsibility is generally formulated in negative terms because it is considered criminal responsibility as a solution for criminals to be free from the punishment given. This means that Indonesian criminal law, like civil law systems, actually formulates the circumstances that can cause the perpetrators of criminal acts not to be held accountable.¹⁵ In Indonesia, criminal liability exists when there is a criminal liability that does not require an element of error, it is called absolute criminal liability and is also known in common law as liability without fault.

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

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

The Criminal Code Bill is a criminal law originating from *Wetboek van Strafrecht Voor Nederlandsch*, as well as a bill designed to update policies, conditions, and legal developments in society, the state, and state life. It is also currently being stated whether people with mental disabilities can shorten their sentences if they commit a crime. The answer is contained in Article 38 of the Draft Criminal Code which reads:

"Everyone who at the time of committing a crime has a mental disability and intellectual disability, his criminal offense can be reduced and subject to action."

The basis of a person's criminal law liability is seen from three factors: the ability to be responsible, an error in the sense of intention (*dolus*) or negligence (*culpa*), and the absence of justification and forgiving reasons. Talking about criminal liability, responsibility can be from two aspects:

- 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.
- 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 element of criminal responsibility, namely an unlawful act, it is true that the defendant is guilty of spreading a video to Facebook containing information containing racial issues about Islam and admitting that he leads a kingdom called the Jellyfish Kingdom. However, after observing the defendant, a psychiatrist, it was stated that the defendant had severe psychosis. Because of this we can see in the provisions regulated on "reasons that can eliminate the criminal imposition of criminal acts, namely in Article 44, Article 48, Article 49 Paragraphs (1) and (2), Article 50 and Article 51 Paragraph (1) and (2). Article 44 Paragraph (1) of the Criminal Code states that a person who is insane or insane cannot be held criminally responsible, and the psychological condition of the suspect, which causes the suspect as formulated in the article cannot be punished. Cannot be held accountable for perpetrators because the perpetrator's soul is disabled in growth or is disturbed due to disease."

Based on the interview results with Uli Purnama, the verdict was open in the verdict of the defendant's case. The perpetrator spreading the video on his Facebook is contrary to Islam's teachings, which creates "a sense of hatred or hostility towards certain individuals and groups of people based on ethnicity, religion, race and between groups." And criminal courts must bring in experts and public witnesses. The results of observations must be stated in full, for reports, for reports against the defendant in community research that the defendant has never gathered or mingled with other residents, and there have been clashes with residents because of the night and until morning because many of his followers are from outside and their activities disturb the residents.

The author's analysis is that the judge must consider and see the defendant's condition where the defendant himself, as a child did not fit in with his family and did not feel appreciated by his family; then a specific understanding arose, and the defendant had a disturbance in his allusions. The defendant's actions were also based on the defendant's testimony because many had blasphemed the defendant's husband and isolated the defendant. The defendant had a wrong belief and had been corrected by others, but the defendant still carried it out. So it can be seen that no one can control the defendant's behavior. Should the punishment received by the

perpetrator can be lighter and or can get rehabilitation taking into account the condition of the perpetrator.

Criminal liability or not. According to Uli Purnama, the judge will weigh based on the juridical facts revealed before the trial obtained from witness statements, letters of evidence, and expert statements, and the defendant's testimony will be linked to evidence, so the facts must first be proven, second whether they can be questioned. If this act is proven, there is no reason for the abolition of the crime; the judge still has confidence in making decisions in court.

According to Uli Purnama that. "it must be remembered that the results of examinations from psychiatrists regarding the psychopathology of criminal acts are not binding on judges in determining whether or not there is criminal responsibility for criminal acts, although in this case they have cooperation with psychiatrists in determining the psychopathology. The judge can decide otherwise than the results of a psychiatrist's examination, of course with considerations of decency and appropriateness in criminal law, as described above. That is, the judge has full authority to state whether a perpetrator of a crime can be responsible, considering whether the disease is so great that the defendant's actions cannot be held criminally responsible. This is in line with Simons' opinion, as quoted by Lamintang, which states that to decide the presence or absence of "toerekeningsvatbaarheid" from a person, the judge must pay attention to the reality, namely to what extent the disease disorder influences the psychological state. Of the doer, and must consider whether the influence is such that the doer becomes incapable of realizing the meaning of his action or not, and according to his consciousness is also able to determine what he wants to do or not."

Freedom of judges must also be shown in the impartial judge of Article 5 Paragraph (1) of Law no. 48 of 2009. The concept of impartiality here should not be as original because the judge must make the right decision. In this case, it does not mean that it is not impartial in its considerations and judgments. More precisely, the formulation of Law no. 48 of 2009 Article 5 Paragraph (1): "The court will judge according to the law by not discriminating between people." Judges who make decisions are not only based on legal values that live in society but are also explained in Article 28 Paragraph (1) of Law no. 40 of 2009 states "Judges are obliged to explore, follow and understand the legal values that live in a society".¹⁶

According to the author, "criminal responsibility is a form of being able to determine whether a suspect or defendant can be accounted for or not for a crime that has occurred; in other words, criminal liability can determine whether a person is released or convicted. And the judge decides that a case may use the judge's conscience; this is by the theory of proof according to the judge's belief alone (conviction in time)¹⁷. In the evidence system based on the judge's belief, the judge can make a decision based on mere belief without being bound by a rule. The judge's belief still plays an important role in determining the defendant's guilt. Still, the application of the judge's belief is carried out selectively because the judge's belief is limited by having to be supported by clear and rational reasons in making a decision. And that between the valid evidence according to the law and the judge's belief, there is a reciprocal work where the valid evidence according to the law must lead to the judge's belief, and vice versa, so that in other words, the judge's belief is obtained from valid evidence. To create a judge's decision that has a sense of justice."

Before deciding on a criminal case, the judge must pay attention to every crucial thing in the trial. The judge examines a criminal act committed by a person by considering his requirements, namely the presence of an error, the ability to take responsibility for a person and no excuse for forgiveness for him. In addition, the judge must also show the objective

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

¹⁷ Isima, Nurlaila. "KEDUDUKAN ALAT BUKTI ELEKTRONIK DALAM PEMBUKTIAN PERKARA PIDANA." *Gorontalo Law Review* 5.1 (2022):181.

requirements, namely that the criminal act committed is by formulating the offense, is against the law, and has no justification. If it is fulfilled, the judge considers things that can relieve and burden the defendant.¹⁸

According to Elisabeth Puji Astuti, in this case the perpetrator was entangled in “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. So even though people who have any mental illness are subject to criminal acts, they still use the Criminal Justice System Act and are regulated by the Criminal Code for criminal liability issues; there are forgiving and forced reasons.”

The author's analysis that a perpetrator cannot be convicted of a crime has a basis for causing it; this is by 7 (seven) grounds that can cause, 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.
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.

Analysis The author's analysis is that it is true that the defendant has fulfilled the element of committing a criminal act of spreading racial issues based on Article 45A paragraph (2) of the ITE Law by distributing videos containing racial remarks to social media Facebook against Islam and claiming to be the leader of a kingdom that is recognized as a new religion.

The theory of forgiving reasons is one of the reasons behind the abolition of crime (*strafuitslutings grand*); in criminal science, the reasons for the abolition of crime are divided into justifying reasons, and the distinction is by the development of criminal law which distinguishes the punishment of an act and the punishment of the person who has committed the act. The justification theory eliminates the unlawful nature of the act, the justifying reason contained in the Criminal Code Article 49 Paragraph (1), Article 50, Article 51 Paragraph (1). In general, legal experts include reasons for forgiveness, namely:

- 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

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.

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

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 it "does not clearly distinguish the reasons for forgiveness and justification, Memorie van Toelichting (MvT), who puts forward the so-called "reasons for the irresponsibility of a person or reasons for not being convicted of a person," MvT stated that there are two reasons that are, the reason for not being accountable for a person lies in that person or the mind (Article 44 Paragraphs (1) and (2) of the Criminal Code) and the reason for not being accountable for a person lies outside that person or the mind (Articles 48, 49, 50, 51 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.

Furthermore, Elisabeth Puji Astuti stated that if the defendant were sentenced to 5 months in prison, it would cause significant trauma to the defendant's psychologist, who already had mental retardation. People could assume that the illness he had suffered so far was a lie and examination by experts can be considered a fabricated lie. And should pay more attention to the principle of *ultimum remedium*, a legal term generally used and interpreted as the application of criminal sanctions, which are the final (last) sanctions in law enforcement.

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.

According to Dr. Agung Frijanto, research conducted by a team of doctors so that it can determine that the patient has a psychotic disease, namely the mechanism/procedure is when law enforcers perceive an unnatural behavior from the suspect/defendant and question whether the suspect/defendant can be held accountable for his actions or not, or whether the suspect/defendant has a mental disorder or not, they will send an application for a *visum et reported* psychiatry or a mental health certificate for legal purposes to a psychiatrist as team leader. Then a team will be formed consisting of 2 psychiatrists, 1 clinical psychologist, and doctors related to the disease in the suspect/defendant. After the suspect/defendant is sent to the hospital, observation is carried out for a maximum of 14 days, which can be extended if the team has not concluded. In the observation process, physical examination, psychological examination, supporting examinations, laboratories, and others were carried out, which finally concluded that according to the conclusion of the *visum et reported* whether first was there a mental disorder, then whether the mental disorder was related to the alleged criminal act, then whether The patient can be held accountable for his actions. So if the patient commits a criminal act due to a mental disorder, it is considered that the patient cannot be held accountable for his actions in the eyes of the law.

Law Number 8 of 2016 concerning Persons with Disabilities does not explicitly regulate the criminal liability of persons with mental disabilities so that the criminal liability of persons with mental disabilities remains by the provisions of Article 44 of the Criminal Code. Still, the critical point is that the law concerns the legal process of persons with disabilities with the provision that law enforcement officers, by law, it is obligatory to ask for the consideration of a doctor, psychologist or psychiatrist and social worker before examining a person with a disability.

The author disagrees with the judge's decision No. 8/Pid.Sus/2019/PN.Srg, which decided that the defendant received a prison sentence of 5 months, so it can be said that the panel of judges did not use the testimony of expert witnesses. Indeed, the expert witness's testimony is not binding on the panel of judges' decision. Still, it seems that the expert's opinion is wrong regarding the mental illness suffered by the defendant. It was also impressive that the panel of judges did not believe in the credibility of the expert witnesses who examined the defendant. As well as in the analysis, there are things that can alleviate the criminal threat given to the defendant, such as that the defendant indeed has severe psychosis, where a defendant is a person with a mental disability, which is stipulated in Article 44 of the Criminal Code and Article 38 of the Draft Criminal Code. And in the process of investigating the defendant, there must be more detail on the specifications of the case faced by the defendant because the investigation process stated at the time in court determines what decision the defendant receives in court by the judge.

It is better if the threat of "the punishment decided by this judge should be lower than what has been decided or replaced with action (*matrigel*)" from the development of modern law regarding the term double track system, which means there is a separation between criminal sanctions and action sanctions as another alternative to the criminal principal, especially imprisonment.²¹ Action sanctions are more anticipatory in nature against the perpetrator of the act than criminal sanctions that are reactive to an act because the provisions in Article 44 of the Criminal Code, which regulates if the criminal act committed by the perpetrator cannot be held accountable to him, it is due to his disabled soul or his soul is disturbed due to diseases such as mental illness, psychosis, hysteria, epilepsy, and others. In such a condition, it can be said that the defendant is not yet legally competent as stated in Article 32 of Law no. 8 years" 2016 on disability."

The author's analysis is that in this case the judge was less thorough and careful in assessing the juridical facts in the trial, which led to the facts that led to the fact that the defendant was a person who was given an exception in carrying out the crime because it was included in the category of psychosis. Substantively and juridically based on Article 44 of the Criminal Code. The defendant cannot be held accountable so the judge's decision against the defendant is incorrect. But because the law does aim at not only legal certainty but also the element of expediency and does not conflict with a sense of justice, non-juridically the decision is correct. Because ideally when compared to other countries, for example in the Netherlands, special prisons for people with mental disorders and public prisons are separated. Prisoners with severe mental illness or refusing treatment can be treated in psychiatric detention centers. Meanwhile, in less severe cases, prisoners with mental disorders can be taken to special treatment facilities designed to "provide a calm atmosphere."

The novelty of this study is about the judge's considerations regarding the importance of proof in terminating the perpetrators of mental disorders whose mental disorders are disturbed.

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.

C. Conclusion

The criminal responsibility for the defendant with psychosis as the perpetrator of the crime of spreading racial issues in Decision No. 8/Pid.Sus/2019/PN.Srg is that the judge decided that the defendant was proven legally and convincingly guilty of committing a crime "Intentionally and without the right to spread information that creates hatred for community groups based on ethnicity, race, religion, and inter-group (SARA)" which is punishable by criminal sanctions in Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 8 of 1981 concerning the Criminal Procedure Code and other relevant laws and regulations, with imprisonment for five months. The accountability of the defendant with a psychotic mental disorder is explained in Article 44 of the Criminal Code, which regulates if the criminal act committed by the perpetrator cannot be held accountable to him, it is due to his mental disability during growth or a mental disorder so that his mind remains as a child or his soul is disturbed due to diseases such as mental illness, hysteria, epilepsy and others. The defendant's condition like that can be said that the defendant has not been legally competent, as stated in Article 32 of Law no. 8 of 2016 concerning disability.

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