

Study of Authority Rights to Investigation the Status of Criminals with Mental Disorders in the Criminal Justice System

by Kadek Wiwik 9

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Study of Authority Rights to Investigation the Status of Criminals with Mental Disorders in the Criminal Justice System

Rochman Marsudi¹, Setiyono², Kadek Wiwik Indrayanti³

^{1,2,3}Master of Legal Science Postgraduate Program

University Of Merdeka Malang, Indonesia

ABSTRACT

Currently, there are many criminal cases committed by a person who has a mental disorder. Among Law Enforcers, there are still frequent debates about who has the right to determine the status of a suspect in a state of mental illness, whether it is Police, Prosecutors, or the Judge. The problems in this: The Investigator's authority in stopping the investigation of criminals with mental disorders and criminal responsibility, and the authority to determine the status of criminals with mental disorders in the criminal justice system.

The type of research used in this thesis is normative juridical (legal research), statutory, conceptual, and qualitative descriptive analysis methods.

According to law, the Investigator's authority to stop the investigation of criminals who have mental disorders is legal. If the fact is obtained in the inquiry that the perpetrator cannot be held criminally responsible because he is mentally disturbed, then the subjective element has not been fulfilled. Criminal responsibility and the authority to determine the status of criminals who experience mental disorders should not only be judged. Police and prosecutors also have the power.

Key words: Authority, Status of Criminal Actors, Mental Disorders.

1. INTRODUCTION

Crime is a form of deviant behavior that always exists and is inherent in every state of society; no society is free from crime. According to ^[1], Deviant behavior is an actual threat or a threat to social norms that underlie life or social order. Crime is not only a humanitarian problem; it is also a social problem. According to ^[1] "the oldest social problem.

One of the efforts to prevent and control crime is to use criminal law with its criminal sanctions. However, even this effort is still often questioned. According to ^[2] efforts to control antisocial acts by imposing a sentence on someone guilty of violating criminal regulations is "a social problem that has an important legal dimension." The problem of controlling or overcoming crime by using criminal law is a social problem and a policy problem (the problem of policy) ^[2].

The history of criminal law is full of descriptions of the treatments, which by today's standards is seen as cruel and overreaching. It was further argued that the criminal reform movement in Continental Europe and England was primarily a humanistic reaction to criminal atrocities ^[3]. Based on such a view, presumably, there is an opinion that the retributive theory or the theory of retaliation in terms of punishment is a relic of barbarism ^[3].

Legal regulations for ordinary people cannot be applied to people with mental disorders. Thus, it creates problems for law enforcement, namely the extent to which the law for ordinary people can be used to mentally disturbed people. What is the appropriate form of punishment for People With Mental Disorders (PWMD)? In assessing whether PWMD can be responsible for their behavior, there are differences in the basic concepts between psychiatry and law, namely: ^[4] 1) Brain disease (disease of the mind), madness, insanity, and mental disability are legal terminology, not medical terminology. The term referred to the state of mind of the perpetrator of the crime when the crime was committed. Psychiatrists use the terms neurotic and psychotic more often ^[5]. 2) People who experience mental disorders in the concept of psychiatry are not necessarily qualified as "insane" in the legal concept. For example, neurotic and personality disorders are mental disorders, but the law does not accept these two conditions as diseases.

The challenge for psychiatrists working for the judiciary is translating medical language into legal language. 3) Laws work on the mind and not on the brain. For example, although a psychiatrist may explain that a person with antisocial personality disorder (psychopathic) behavior results from a brain disorder, the law focuses on the perpetrator's thoughts when committing a crime.

The practice of resolving criminal cases is still debated regarding who has the right to determine the status of criminals, including PWMD, whether the police, prosecutors, or judges. This is because the provisions of Article 44 of the Criminal Code determine:

Article 44 of Criminal Code : (1) Whoever commits an act that cannot be insured against him because his mind is disabled in growth or is impaired due to illness shall not be punished. (2) If it turns out that the act cannot be insured against the perpetrator because his mental growth is disabled or is impaired due to illness, the judge may order that the person be admitted to a mental hospital for a maximum of one year as a probationary period. (3) The provisions in paragraph 2 only apply to the Supreme Court, High Court, and District Court.

In addition, in the judge's decision, there are still many differences in the sanctions imposed on the PWMD defendant, namely being returned to the family or put in a mental hospital. Some examples of criminal cases committed by PWMD that the author will analyze include:

First, the case of persecution by the Chief of Dampit Village, Sub District Dampit, Malang Regency, Denny Eko Setyawan. The criminal act of molestation, on November 19, 2016, occurred when the victim driving a truck carrying sound equipment disobeyed a traffic sign, so Denny stopped the victim's vehicle in the middle of the road, and a battle of arguments broke out between the perpetrator and the victim, which ended up the perpetrator beating the victim. After an investigation was carried out by the Chief of Dampit Sector Police, Adjunct Police Commissioner Amung Sri Wulandari, it was discovered that the perpetrator, Denny Eko Setyawan, had a mental disorder from the results of an examination at the Radjiman Wedyodiningrat Lawang Mental Hospital. Based on these medical considerations, the police issued an Order for Termination of Investigation. In addition, based on information from several residents, cases of abuse carried out by the perpetrator, Denny Eko Setyawan, have often happened, so some residents suspect that Denny Eko Setyawan has a mental disorder^[6].

Second, the case of the murder of Ernawati and the torture of Kamsiga by the perpetrator, Suwoto. Suwoto suddenly went berserk by slashing Kamsiga, his wife, and Ernawati, his daughter-in-law, using a sickle. As a result of Suwoto's actions, Ernawati died while being rushed to the community health center, while Kamsiga suffered a stab wound in the back and had to undergo treatment at Ibnu Sina Hospital, Gresik. As a result of these actions, the East Java Regional Police were temporarily detained and underwent psychiatric observation at the East Java Police Bhayangkara Hospital. Suwoto underwent a psychiatric examination for six days, and the results were positive for Suwoto suffering from a mental disorder. Based on the study results, the Investigator issued an Order for Termination of Investigation^[7].

Based on the background of the issue above, here found the following problems: 1) What is the authority of investigators in stopping investigations of criminals who have mental disorders? 2) What is the criminal responsibility and authority to determine the status of criminals who has mental disorders in the criminal justice system?

2. RESEARCH METHODOLOGY

This research used the type of normative legal research. The research approaches used are statutory policy, conceptual, and case approaches. The sources of legal materials used in this writing are: a) Primary legal materials, which are traditional legal materials, means to have authority¹⁵; b) Secondary legal materials used include books, texts, or the opinions of legal experts as outlined in the research report, journals, magazines, and other related sources; and c) Tertiary legal materials, namely legal materials that provide additional explanation or support for existing data on primary and secondary legal materials.

Tracing legal materials in this research is performed using a literature study. The technique of collecting this writing is using the deductive method, which is a method that starts from the general information to the specific information.

3. DISCUSSION

The Authority of Investigators in Stopping Investigations of Criminals Who Have Mental Disorders

In public law, authority is related to power. Power has the same meaning as an authority because the executive, Legislative, and judiciary power is formal powers. Power is an essential element of a country in the process of administering government in addition to other factors, namely: 1) law; 2) authority; 3) justice; 4) honesty; 5) benevolence policies; and 6) virtue^[8].

The principle of legality becomes the central pillar and is one of the main principles of law used as the basis in every administration of government and state in every legal form, especially for legal and continental countries^[9]. According to

Indroharto, authority is obtained by attribution, delegation, and mandate. Attributive authority is usually outlined through the division of state power by the Constitution. Delegation and mandate authority are powers derived from the commission.

There is a fundamental difference between attributive authority and delegation authority. The existing authority is ready to be delegated in attributive authority, but not so on the delegated authority. Regarding the principle of legality, authority cannot be delegated on a large scale, but it is only possible under the condition that legal regulations determine the possibility of such delegation. The delegation must meet the following requirements: 1) The delegation must be definitive, meaning that the delegate can no longer use the authority that has been delegated by himself; 2) Delegation must be based on statutory provisions, meaning that delegation is only possible if there are provisions that allow for it in the laws and regulations; and 3) Delegation is not to subordinates, meaning that there is no delegation in the staffing hierarchy.

The nature of authority is generally divided into 3 (three) types: binding, facultative (optional), and liberal. This is closely related to the power to make and issue decisions and decrees by government organs so that it is known that there are decisions that are bound and free.

The theory of authority used to answer the first problem formulation is the Attributive Authority. Attributive authority is outlined through the division of state power by the Constitution. Attributive authority is an independent legislative body given to a government organ (institution) or state institution. This authority is genuine, which is not taken from the previous authority. The legislature creates an independent authority, does not extend the final authority, and gives it to a competent organ. The institutions referred to in this writing are the Police, Prosecutors, and Judiciary institutions.

In Article 1 (one) point 2 (two) of the Criminal Procedure Code, it is formulated that an investigation is a series of actions by the investigators in terms of and according to the method regulated in this law to seek and collect evidence with which evidence makes clear about the criminal acts that happened and to find the suspect. Based on the formulation stated above, in principle, the purpose of an investigation is to find and collect evidence to find the suspected perpetrator of a crime. Searching for and managing the evidence in question is formulated in Article 184 of the Criminal Procedure Code, which includes: witness statements, expert statements, instructions, and statements from the defendant.

Investigators search and collect evidence to find suspected perpetrators of criminal acts. It should be noted that the accusation of a person as a suspect must be based on preliminary evidence to meet the requirement to be suspected as a perpetrator of a crime. They are so based on insufficient evidence. Thus a person could be imagined as a criminal.

Criminal Procedure Code as a National Law based on Pancasila and the 1945 Constitution, which is unified and codified and serves the national interest, is the realization of the ideals of federal law which contains the principles reflected in Pancasila and the 1945 Constitution, have been settled in the Law Number 4 of 2004 concerning Judicial Power which was later embodied in the Criminal Procedure Code and becomes the implementation of development in the legal field based on the Decree of the People's Assembly Number IV of 1978 (concerning State's Policy Outline)^[10]. The spirit and material of the Criminal Procedure Code are very different from the old Criminal Procedure Code (Het Herzien Inlandsch Reglement) because there have been fundamental changes in the criminal justice system that also affect the investigation system.

As stipulated in the Criminal Procedure Code, the Investigator consists of officers from the Indonesian National Police and certain civil servants who are given special authority by law; in this discussion, the duties of the two officials will be mentioned one by one. The source of the Investigator (police) has been regulated in detail in Article 7 of the Criminal Procedure Code. Regarding the Investigator's power (police) to stop the investigation, it is carried out by taking into account specific conditions such as; there is not enough evidence or the event does not constitute a crime, or the investigation is terminated by law. If the Investigator (police) abort the study, it must be notified to the public prosecutor and the suspect or his family (Article 109 paragraph (2) of the Criminal Procedure Code).

As what is meant by the termination of an investigation for the sake of law is related to what is regulated in the Criminal Procedure Code, among others Article 2 of the Criminal Procedure Code, regarding people who have extritoriality rights, such as ambassadors of other countries who if they commit a crime in Indonesia, the Investigator has no authority to perform an investigation because the person concerned must be processed in his country. Likewise to what is regulated in Article 77 of the Criminal Procedure Code, which states, "the authority to demand conviction is abolished, if the accused dies." An example can be displayed here, if a person commits a criminal act, and then when the examination process has not been completed, the concerned person dies, then the investigation is terminated.

As for Article 109 paragraph (2) and Article 109 paragraph (3), in section (2), there is an obligation from the Investigator (police) to give notification to the suspect or his family, while Article 109 paragraph (3) mention nothing concerning to this provision. The

Investigator referred to in Article 6 paragraph (2) of the Criminal Procedure Code has no obligation to notify the suspect or his family of the termination of an investigation, but only to inform the Investigator (police) and the public prosecutor.

There is no reason to abort the investigation process if the perpetrator of the crime turns out to have a mental disorder. Termination of an investigation by investigators requires a separate policy that has no legal basis in dealing with criminals who have mental disorders because the formulation of Article 44 of the Criminal Code only gives the judge the authority to decide whether there is an issue of mental illness or not.

In criminal law, accountability for people who commit crimes is often a subjective element, while criminal acts are an objective element. The subjective element is an absolute element of criminal responsibility related to the terms of sentencing, and the personal part is necessary for criminal liability, known as the men's rea doctrine. The subjective aspects of criminals who have mental disorders are determined by mental health experts (psychiatrists) through forensic psychiatry or judicial cognitive psychiatry. The psychiatrist who decides the alleged suspicion of a mental illness is provided by a psychiatrist as mandated by Article 44 of the Criminal Code. However, in its application, the Investigator can also ask for information from a psychologist in determining the condition or absence of a mental disorder.

The pre-trial examination or preliminary examination includes the investigation and prosecution process. The first necessary condition to check is whether the perpetrator can be held responsible. Suppose in the initial study by the Investigator; it turns out that the perpetrator is capable of being responsible. In that case, the test may proceed in the adjudication phase. Still, if the results of the psychiatric examination discovered any conditions that indicate or are subject to mental disorder, then the examination process in the pre-adjudication phase will be terminated by the Investigator. The investigation process that the Investigator released against the perpetrator of a criminal act with a mental disorder was followed up by returning the perpetrator to his family accompanied by an order to send him for treatment in a mental hospital.

Based on that provision, if the investigation discovered the fact that based on expert testimony it was stated that the perpetrator could not be held criminally responsible because of a mental disorder, then the subjective element, which is a fundamental element of criminal responsibility, was not fulfilled so that the case could be terminated by the Investigator on the base that there was not enough evidence (insufficient evidence) as referred to in Article 109 paragraph (2) of the Criminal Procedure Code. What is meant by "insufficient evidence" in this case is if the Investigator does not obtain preliminary evidence that can prove that the suspect can be held criminally responsible because based on an expert examination, in found the fact that the perpetrator has a mental disorder so that he cannot be held criminally accountable.

When the fact is obtained that the perpetrator has/suffers from a mental disorder that cannot be held criminally responsible, then the legal procedure is to abort the investigation by issuing SP3. With the termination of the study based on the SP3, the research carried out by the Investigator ceases, and if the suspect is detained, it must be immediately released, and the confiscated goods must be returned directly. When investigators have issued SP3 on criminal cases in which the perpetrators, based on Visum et Reperitum Psychiatricum, are declared to have mental disorders, the perpetrators must immediately be released.

The Investigator then reports the case's progress to the Investigator's superiors and the public prosecutor. Investigators can issue SP3 because the case is still under the Investigator's authority. Investigators only need to inform the Public Prosecutor that the case has been terminated, which is certainly completed with reasons and evidence showing that the perpetrator has a mental disorder.

Based on the provisions of Article 44 paragraph (1) of the Criminal Code, the termination of an investigation by an investigator is an action based on statutory regulations and for the sake of legal certainty, justice, and goodness for the perpetrator so that treatment can be carried out for his mental health issue. Therefore, to speed up the process of resolving cases according to the principle of simple, fast, and low-cost justice, the only appropriate action is to issue because it is the authority of investigators towards criminals who have mental disorders.

Criminal Accountability and Authority to Determine the Status of Criminals with Mental Disorders in the Criminal Justice System

The definition of criminal law can be referred to from the characteristics or elements of crimes in a broad sense, namely: 1) The perpetrator can be held accountable; 2) There is a psychological correlation between the perpetrator and the act, namely the existence of evil intention or will in the narrow sense (culpa); 3) There is no basis for the termination of a criminal process that eliminates the ability to be held accountable for an act to the perpetrator. From point 3, we can see the link between the crime and the intention to violate the law. There can be no fault without being against the law, but there may be something against the law without being wrong. Against the law is about an objectively abnormal act. If the act itself is not against the law, it means that it is not an unnatural act.

In Bahasa Indonesia, only one term can be used, namely accountability. Meanwhile, in Dutch, three words are synonymous according to Pompe, namely aansprakelijk, verantwoordelijk, and toerekenbaar. The person who is aansprakelijk or verantwoordelijk, while toerekenbaar is not the person, but an act that is accountable to people. Usually, other authors use the term toerekeningsvatbaar. Pompe objected to using the latter term because it is not the person but the deed that is toerekeningsvatbaar. Pompe said, as a measure for accountability (toerekenbaarheid), most writers use a formula that the maker may think of about the meaning of the deed, and the thought is directed according to the deed^[11].

Responsibility or what is known as the concept of liability in terms of legal philosophy, Roscoe Pound states that: "I use simple word "liability" for the situation whereby one may exact legally, and other is legally subjected to the exception." Criminal liability is defined by Pound as the obligation to pay retaliation to be received by the perpetrator from someone who has been harmed. The accountability carried out concerns legal issues and the issue of moral values or decency that exist in a society. Meanwhile, according to Van Hamel, criminal liability is a normal state of psychic and skill that brings three kinds of abilities: first, understanding the meaning and natural consequences of one's actions. Second, being able to realize that those actions are against public order. Third, be able to determine the will to do^[12]. And Pompe provides an understanding of criminal responsibility in terms of elements, namely the ability to think of the perpetrator, which allows him to control his mind and determine his will, the perpetrator can understand the meaning and consequences of his behavior, and the perpetrator can choose his will according to his opinion (about the importance and implications of his behavior)^[13].

When viewed from the experts' opinions mentioned above, criminal liability is different from criminal acts. A criminal act only refers to the prohibition and restriction of action that threatens a punishment. Whether the person who commits the act is then sentenced to punishment or not depends on whether the act contains a wrongful act. Because the principle in criminal law accountability is "not being punished if there is no mistake (Geen straf zonder Schuld; Actus non facit reum nisi mens sit rea)" which means that the assessment of criminal responsibility is aimed at the inner attitude of the perpetrator, not on evaluation to his actions. The exception to the principle of actus reus and mens rea is only for offenses in which nature are strict liability (absolute responsibility), wherein such crimes, the element of the wrongful act or mens rea does not need to be proven^[14].

From the mixing of elements of the act and the elements of the actor, it can be concluded that strafbaar feit is the same as the requirement for imposing a criminal offense, so it is considered strafbaar feit; only then the perpetrator can be punished. Therefore, adherents of the monistic view of strafbaar feit or criminal action think that the elements of criminal responsibility concerning the actor of the offense include^[15]: a) Ability to be responsible, namely being able to understand the consequences of violating public order indeed; b) Able to realize that the act is against the public order and able to determine the will to act; c) Those abilities are cumulative. If one of the response capabilities is not fulfilled, then a person is considered irresponsible^[16].

The theory of criminal responsibility is intended to analyze the formulation of the second problem related to criminal responsibility and the authority to determine the status of criminals who suffers mental disorders in the criminal justice system. Using the theory of criminal responsibility will answer the issue related to criminal responsibility and the authority to determine the status of criminals who suffer mental disorders in the criminal justice system.

If viewed from the source's perspective, the basis of the abolition of the crime is divided into two groups, the first as stated in the law, and the other is outside the law introduced by jurisprudence and doctrine. What is contained in the law can be further divided into the general ones (contained in the general provisions of Book I of the Criminal Code) and applies to all formulations of offenses, and the specifics which included in particular articles or conditions that use for the formulation of the concerning crime. Details of the generals have contained in 1) Article 44: inability for accountability; 2) Article 48: coercive power; 3) Article 49 paragraph (1): forced defense; 4) Article 49 paragraph (2): a forced defense that exceeds the limit; 5) Article 50: enforcing legal regulations; 6) Article 51 paragraph (1): carries out the order of an authorized position; 7) Article 51 paragraph (2): carries out the order of an unauthorized position if the subordinate in good faith view the superior in question as authorized.

The Specifics are listed in related articles, such as Article 310 paragraph (3) Criminal Code, Article 166, for offenses in Articles 164 and 165, and Article 221 paragraph (2). Hezewinkel-Suringa also mentions the existence of a pure basis for eliminating crimes. He gave the example of Article 163 bis paragraph (2) of the Criminal Code (article 134 bis paragraph (2) Ned. WvS).

The basis for eliminating criminal acts outside the law can also be divided into general and specific ones. Examples for the generals are "there is no crime without guilt" and "not against the material law." As for the specifics, it is regarding certain authorities (run a particular livelihood), for example, the work of a doctor, sports such as boxing, and others.

The terms "basis for justification and basis for forgiveness" are very important for criminal proceedings because if the basis for justification exists, or the act is not against the law, while "against the law" is the core part of the offense, then the verdict is free. In contrast, if no criminal act elements or the basis for forgiveness exists, the judgment will be free from all lawsuits.

According to Van Hamel, the basis for justification (*rechtvaardingsgronden*) abolishes the condition against the law, while the other abolishes *strafwaardigheid* (a state that deserves to be punished). On the first term, Van has the same opinion, but in his opinion, the basis for forgiveness (*schulduitsluitingsgronden*) is not to abolish things that deserve to be punished but to abolish things that cause the perpetrator can be held accountable for his actions^[17].

Cognitive ability is a translation of *verges*, which in the Dutch *Wetboek van Strafrecht/WvS* was changed in 1928 into which can be translated into mental capacity. *Geestvermogens* (mental capacity) is broader in meaning than cognitive ability. The former means idiots, weak minds, mentally ill, epilepsy, etc. Practice in Indonesia follows this general understanding.

In Article 44 paragraph (1) of the Criminal Code, there will find the words "imperfect growth of cognitive ability" or "imperfect development," and also the terms "undeveloped due to disease (storing)" or "undeveloped caused by disease in the ability of cognitive thinking." Then, what are the circumstances that go into *morgens*?

According to R. Soesilo, people who are classified into the state of undeveloped cognitive ability, for example, are those being idiots, imbeciles, blind, deaf, and mute since their birth. This kind of person is not classified as sick or unhealthy, but due to his inherited disability since his inception, his mind remains as a child. According to van Hattum, imperfect growth must be interpreted as a growth that is not perfect according to biological understanding and not according to social learning, such as weak mind and "idiot." Thus, what is not included in the definition of imperfect growth is retardation or inadequate growth due to lack of attention from parents to a child or lack of education obtained by someone. Another that can also be included in the sense of "imperfect growth" or "*brekkie*" is the imperfect growth of people who are blind and deaf from birth^[18].

Regarding the determination of whether or not there is a capacity to be held liable (*toerekeningsvatbaarheid*), the judge must consider the results of the examination by a psychiatrist regarding the mental health or condition of the perpetrator of a crime, because it is the psychiatrist who has the competence to assess such situation. Then, based on the examination results, the judge determines the extent to which the perpetrator's mental state affects his actions and then determines his ability to be criminally responsible for his actions.

4. CONCLUSION

According to the author, the authority to assess the relations between mental disorders or other disorders with criminal liability should not only be judges who have the power to determine this matter. In the trial context, it is the judge who has the authority to judge. However, the Police (Investigators) and the Prosecutor also have the power to assess such conditions to determine if the case of someone with a mental disorder can proceed or not. Therefore termination of investigation carried out by investigators by issuing is the right action and under the principles of equality of process (formal) and equality of outcomes (substantive). Investigator issues SP3 after information or instructions from experts prove that the perpetrator was in a state of mental disorder at the time of committing the crime.

The norms formulated in Article 44 paragraph (1) of the Criminal Code provides two causes for the perpetrator of a crime not to be convicted of a criminal act, namely related to the inability to be held liable for the actor or perpetrator proven to have committed a crime, namely: a) Because his mental condition is disabled in its growth; and b) Due to mental disorders caused by illness. The judge must consider the results of the examination by a psychiatrist concerning the mental health or condition of the perpetrator of the crime because it is the psychiatrist who has the competence to assess such condition. 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.

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