

**LEGAL RESPONSIBILITY OF SKIZOFRENIA PATIENTS  
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*Submitted: Apr 29, 2019; Reviewed: Mei 10, 2019; Accepted: Jun 29, 2019*

**Abstract**

*The study, entitled Liability Law of People with Schizophrenia as an Actor Crime aims, first to analyze ability schizophrenic responsible under criminal law. Second, to know the reasons for the criminal punishment for a schizophrenic who committed a criminal act. The method used in this paper is a normative legal research method which is the legal research literature that examines the methods used in the existing library materials using the approach of legislation (Statue Approach). Concluded based on the results of this study, first: the person be able bear the responsibility under the criminal law seen from the ability irresponsibility, while schizophrenic who has a disorder that is psychosis or illness on the ability of common sense (ziekelijske storing) does not have the ability to be responsible as the condition is made clear by article 44 paragraph (1) Criminal Code which explains that people with disabilities in the growth of his soul (gebrekkige ontwikkeling) or impaired due to illness (ziekelijske storing) can not be held accountable and can not be convicted. Second: skizofrenia patients who commits an offense is punishable with some legal considerations that there is evidence in the form of post mortem, the fulfillment of the elements and their causal relationship deeds and psychiatric conditions.*

**Keywords:** Criminal; Responsibility; Schizophrenic

**INTRODUCTION****Background**

Law violations related to mental health problems in society today often occur, this can be seen from the number of

acts of violence, abuse of drugs (narcotics, psychotropic substances and additives) in the form of distribution and use, brawls, acts of channelling anarchist aggression, breaking up schooling, murder and others caused by psychiatric disorders. This causes great loss and vigilance for the development of society, both in terms of legal, moral and human rights.<sup>1</sup>

The occurrence of psychiatric problems that have resulted in many violations of the current law, especially schizophrenia against criminals, raises concerns in the community coupled with the existence of several cases of crime in Indonesia, such as the case in 2007, namely the murder of a mother on her three children, mutilation carried out by a policeman named Petrus Bakus against his own child, and the most recent case of narcotics circulation by Rodrigo Gualarte, a Brazilian national who was sentenced to death by the court began to leave confusion in the community regarding the perpetrators' responsibility the crime is because they have a psychiatric disorder.

Schizophrenia itself is a chronic or relapsing psychotic disorder characterized by the presence of schism between emotional thoughts and behavior of patients

affected and Based on DSM-IV, schizophrenia is a disorder that occurs in a duration of at least 6 months, with 1 month the active phase of symptoms (or more) followed by the emergence of delusions, hallucinations, unorganized conversations, and the presence of catatonic behavior and the presence of negative symptoms.

The ability to take responsibility alone is only explained in article 44 paragraph (1) of the Criminal Code, namely:

*"Whoever commits an act that cannot be held accountable to him, is due to his disfigured soul (gebrekkige ontwikkeling) or being disturbed by illness (ziekelijke storing), not being punished."*

Based on article 44 paragraph (1) of the Criminal Code, the *onerekeningsvatbaarheid* condition is the growth of imperfect common sense or imperfect development or *gebrekkige ontwikkeling* and disruption due to disease (*ziekelijke storing*) or disruption due to common sense abilities (*ziekelijke storing zijner verstandelijke vermogens*) . But there are shortcomings in the absence of an explanation of the classification of conditions categorized in the *gebrekkige ontwikkeling* and *ziekelijke storing zijner verstandelijke vermogens*, giving rise to difficulties in determining psychiatric disorders such as schizophre-

<sup>1</sup> Direktorat Kesehatan Jiwa Masyarakat. (2007). *Buku Pedoman Kesehatan Jiwa Departemen Kesehatan R.I. Direktorat Jenderal Bina Kesehatan Masyarakat*. Jakarta, hlm. 4.

nia can be classified as having the ability to be responsible or not.

In connection with the many criminal cases committed by schizophrenic sufferers, it can be seen in the Indonesian Criminal Justice System that forensic science is very much needed as a science and technology to obtain scientific evidence.<sup>2</sup> Forensic experts can provide expert information (*Visum et Repertum Psikiatri*) to clarify a case in the stage of examination by the investigator or public prosecutor in the trial stipulated in article 186 of the Criminal Procedure Code. The purpose of the description of the Psychiatric *Visum et Repertum* itself is to give the Judge evidence of all the conditions as stated in the news section, so that the judge can take the decision appropriately.<sup>3</sup>

As the opinion of the Guttmacher MD, namely:<sup>4</sup>

*“(...Psychiatry is also beginning to play a greater part in the field of law, particularly in relation to the criminal law. Today psychiatry has reached the point where it can tell us some significant things about the very nature and need of law..., psychiatry helps law to focus on its goal, the development of the individual’s potential-*

*ities for freedom and productiveness. Understanding the concept of freedom, for example, is impossible without appreciation of the psychological fact...)”*

In addition to the role of psychiatry in this case the Judge as a pillar of criminal law enforcement is required to be able to give the right sentence of conviction, in imposing criminal cases and must remain in a criminal law corridor with the Criminal Code as the main provisions, so that the consideration does not harm any party and violating the basic rights of people with mental disorders, especially those with schizophrenia.<sup>5</sup>

The problem that needs to be addressed here is whether schizophrenics have the ability to be responsible according to criminal law? And what are the legal considerations in imposing criminal penalties on people with schizophrenia?

To answer these questions The approach method used is the statue approach. So this approach is an approach using legislation and regulation.<sup>6</sup> This approach is used because in the discussion in this scientific work will refer to the Act.

## DISCUSSION

<sup>2</sup> Tina Asmarawati. (2015). *Hukum dan Psikiatri*. Jakarta: Deepublish, hlm. 2.

<sup>3</sup> R. Soeparmono. (2011). *Keterangan Ahli dan Visum et Repertum dalam aspek Hukum Acara Pidana*. Semarang : Mandar Maju, hlm. 46.

<sup>4</sup> Laurence R. Tancredi and David N. (1986). “Law, Psychiatry and Morality: Unpacking the Muddled Prolegomenon.” *New York: Weisstub Internasional*, hlm.38.

<sup>5</sup> Haryanto Dwiatmodjo. 2013. “Pelaksanaan Pidana dan Pembinaan Narapidana Narkotika”, *Perspektif Volume XVIII No. 2*”

<sup>6</sup> Peter Mahmud Marzuki. (2010). *Penelitian Hukum, Kencana Pranadamedia*. Jakarta: Kencana Pranadamedia, hlm.137.

## Responsible Ability of Schizophrenic People According to Criminal Law

According to Moeljatno, relating to the ability to be responsible (*toerekeningsvatbaarheid*) is Article 44 Paragraph (1) of the Criminal Code, which regulates the *onerekeningsvatbaarheid* (It cannot be accounted for by someone for his actions) which said:

*"Niet strafbaar is hij die een feit because the data of the wegens de gebrekkige ontwikkeling of ziekelijke storing zijner verstandelijke vermogens niet is worden toerekend" which means: "It cannot be punished by anyone who is responsible for him perfect or because of a disease disorder in his common sense abilities".*<sup>7</sup>

Whereas in the opinion of Van Hammel the ability to be responsible (*toerekeningsvatbaarheid*) is a condition of psychological maturity and normality which includes 3 (three) other abilities, namely understanding the direction of the factual goal of action, awareness that the action is socially prohibited, the existence of free will regarding actions that is.<sup>8</sup>

According to Kanter and Sianturi criteria a person can or is able to be responsible if generally in the following circumstances:<sup>9</sup>

- 1) The state of his soul is not disturbed by continuous or temporary illness (temporair);
- 2) The state of his soul is not defective in growth (hesitation, idiot, imbecile, etc.);
- 3) Not disturbed because of shock, hypnotism, anger that overflows, the influence of the unconscious or *reflexebeweging*, *melindur* or *slaapwandeling*, delirious because of fever or *koorts*, cravings and so forth. In other words, he is in a conscious state;
- 4) The ability of his soul can realize the essence of his actions,
- 5) The ability of his soul can determine his will for the action, whether it will be implemented or not, and
- 6) The ability of his soul can know the deterioration of the action.

In addition, Simons, as quoted by Frans Maramis, gave his opinion that being able to be responsible (*toerekeningsvatbaarheid*) is if people are able to realize their actions that are against the law and in accordance with that conviction can determine their will.<sup>10</sup>

According to Van Hattum, as quoted by Lamintang, a person can be considered as a *niet toerekeningsvatbaar* or cannot be

<sup>7</sup> Moeljatno, *Op.Cit*, hlm. 178.

<sup>8</sup> An Rimmelink. (2003). *Hukum Pidana*. Jakarta: Gramedia Pustaka Utama, hlm. 213.

<sup>9</sup> E.Y. Kanter dan S.R. Sianturi. (2012). *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya*. Jakarta: Stora Grafika, hlm. 249.

<sup>10</sup> Frans Maramis. (2013). *Hukum Pidana Umum dan Tertulis di Indonesia*. (Jakarta: Raja Grafindo Persada, hlm. 117

held accountable for his actions, namely if the person has grown imperfectly, is unable to realize the meaning of his actions, and is therefore unable to determine what he wants.<sup>11</sup> Meanwhile, according to Frans Maramis, it provides a definition of the ability to be responsible (*toerekeningsvatbaarheid*) as a certain psychological ability that must be possessed by someone to be accountable for his actions.<sup>12</sup>

Based on the opinion of Mahrus, in determining responsible ability can be seen based on two main factors, namely the reason factor and the will factor. Intellect, which is to be able to distinguish between actions that are allowed and which are not allowed. Whereas, will, that is, can adjust his behavior with conviction of something that is permissible and which cannot be allowed. Mahrus Ali said that the ability of the maker to discriminate the actions that can be done and should not be done, causes the person concerned to be accountable in criminal law, when committing a crime.<sup>13</sup>

From some of the definitions above, it can be concluded that the offender who is capable of criminal responsibility must

be in the criteria of the state of the soul which is not disturbed due to illness, whether continuous or temporary, not disabled in growth, and in a conscious state (not under the influence of hypnosis or the influence of the unconscious), also has the ability of the soul to realize the nature of his actions, can determine his will, and know the disdain of the actions he has done.

According to Adami Chazawi, there are 3 ways to determine whether the creator is in a state of being unable to take responsibility, namely:<sup>14</sup>

- 1) With biological methods, meaning by investigating the symptoms or abnormal conditions which are then associated with the inability to be responsible;
- 2) With psychological methods, meaning by investigating the psychological characteristics that exist later from the characteristics are assessed to draw conclusions whether the person is capable of being responsible or not;
- 3) With the combined method, the two methods above are used together. Besides investigating abnormal symptoms, it also examines the per-

<sup>11</sup> P. A. F. Lamintang. (2011). *Dasar-dasar Hukum Pidana Indonesia*. Bandung: PT Citra Aditya Bakti, hlm. 392.

<sup>12</sup> *Ibid*, hlm. 118.

<sup>13</sup> Mahrus Ali. (2012). *Dasar-Dasar Hukum Pidana*. Jakarta: Sinar Grafika, hlm. 171.

<sup>14</sup> Adami Chazawi. (2011). *Pelajaran Hukum Pidana Bagian 2: Penafsiran Hukum Pidana, Dasar Penindakan, Pemberatan*. Jakarta: Rajawali Persada, hlm. 24.

son's psychological characteristics to draw conclusions whether he is able to be responsible or not.

According to Moeljatno, in formulating the inability to take responsibility (*ontorekeningsvatbaarheid*) as a matter which abolishes a criminal, one can take 3 (three) ways, namely:<sup>15</sup>

- 1) Determined the reasons for eliminating punishment.

According to this system, if the psychiatrist has stated that the defendant is insane or unsound mind, the judge may not declare wrong and impose a criminal sentence. This system is called a descriptive system (stated).

- 2) Mentioning the consequences of the disease itself is not determined.

Here, what is important is whether he is able to realize the meaning of his actions or realize that he is doing something that is not good or contrary to the law. This formulation is so wide that there may be dangers. This system is called normative (valuing). Here the judge determines.

- 3) Combined 1 and 2 (descriptive normative).

This method is often used for Article 44 Paragraph (1) of the Criminal Code. To determine that the defendant is unable to take responsibility is not sufficiently determined by the psychiatrist or the judge himself, but there must be cooperation between the psychiatrist and the judge, the psychiatrist determines the existence of the disease; while the judge considers that the disease is so large, that the deeds cannot be accounted for to him.

Adami Chazawi refers to the opinion of Pompe which states that the state of the soul is called a defective soul in its growth (*gebrekkige ontwikkeling*) and is mentally disturbed because disease (*ziekelijke storing*) is not an understanding in medicine, but a legal understanding. Adami Chazawi argues that the main thing here is not solely on the state of the creator's soul, but about how the creator's soul relations with the actions taken. Is there a relationship that is so close that the maker is not able to be responsible for the actions he does. Determining whether or not there is a relationship between the state of the soul and its actions is the authority of the judge, and not a psychologist.<sup>16</sup>

<sup>15</sup> Moeljatno, *Op.Cit*, hlm. 179-180.

<sup>16</sup> Chazawi, *Op.Cit*, hlm. 23-24.

Information from experts by psychiatrists at the trial regarding the state of the soul of the maker is not obligatory to be followed by the panel of judges. However, by reason of the judge being generally not an expert in the psychiatric field, it is only natural that the opinion of the psychologist be considered to strengthen his opinion or become the basis of his opinion.

Adami Chazawi's opinion is in line with the opinion of Utrecht which states that in order to determine whether or not there is *Onerekeningsvatbaarheid*, judges can receive advice from a hospital doctor or an institution that investigates human mental disorders. But, the doctor, the hospital, or the institution is only an expert advisor (*deskundig adviseur*), who has the right to finally (*uitenindelijk*) determine whether the presence of the *Onerekeningsvatbaarheid* is a judge.<sup>17</sup>

Determining whether or not there is an ability to be responsible (*toerekeningsvatbaarheid*), the author argues that the judge must accept the results of a psychiatrist's examination of the psychiatric condition of the offender, because it is the psychiatrist who has the competence to determine it. Then, from the results of the examination, the judge determines the extent to which the psychological condition

of the offender influences his actions, then determines his ability to be criminally responsible for his actions.

In addition, in determining whether a person who has a mental disability, which includes mental abilities, also has the ability to be criminally responsible, the results of a psychiatric examination are not absolute. This means that people who do not have the capacity for common sense, which includes the ability of the soul, cannot immediately be said that they cannot be criminally responsible (*ontoerekeningsvatbaar*) for the crime they committed. What must be seen is whether there is a close and such relationship between the inability of the mind and the actions that it does. On this connection, it will then be determined whether the person has the ability to be criminally responsible or not.

According to R. Soesilo in his book, people who enter into a state of imperfect reason (*gebrekkige ontwikkeling*), for example idiots, imbecilic, blind, deaf, and mute from birth. These people actually don't get sick, but because of their birth defects, their minds remain as children. According to van Hattum, imperfect growth must be interpreted as a growth that is biologically imperfect and not so-

<sup>17</sup> E. Utrecht, *Op.Cit*, hlm. 298

cial, such as imbecilliet or weak minds and idiots.<sup>18</sup>

Thus, the understanding of imperfect growth (*gebrekkige ontwikkeling*) does not include transparency or imperfect growth because of the attention of parents to children or the education that has been obtained by someone.

However, what is included in the notion of imperfect growth or gingival fever is like imperfect growth of large and deaf-mute people from birth. Meanwhile, people who enter into an emergency situation due to illness in their common sense abilities (*ziekelyke saves zijner verstandelijke vermogens*), according to R. Soesilo are people who need mental illness, manie, hysterie, epilepsie, melancholie, and various causes others.

Adrianus Meliala, who was included in the category of mental illness in Article 44 Paragraph (1) of the Criminal Code which discussed the problem of psychosis or psychosis, which is a psychology-focused disorder, not one that supports nerve protection (neurosis), and also does not deny personality, where an example of psychosis / psychosis is schizophrenia.

Related to the opinion of Adrianus Meliala was strengthened by Professor of

the Faculty of Psychology, University of Indonesia (UI) Sarlito Wirawan Sarwono about schizophrenia classified as psychosis and schizophrenia disorders associated with diseases associated with delusional signs, hallucinations, measures taken, and those who joined psychosis. According to the Guidelines for Diagnostic Diagnosis of Mental Disorders (PPDGJ) III, which is a classification of mental disorders issued by the Indonesian government, to be accessible to someone with schizophrenia, there must be recommendations for the following questions which are very clearly less sharp or unclear:<sup>19</sup>

- 1) Thought echo: the contents of the mind itself that recur or echo in his head (not hard) and fill the mind of the test, even though the contents are the same, but the quality is different, or
- 2) Thought insertion or withdrawal: the contents of foreign thoughts from outside enter into the mind (insertion) or the contents of the mind taken out by something from outside (Withdrawal) and
- 3) Thought broadcasting: the contents of his mind spread out so that other people or generally know it.

<sup>18</sup> R. Soesilo. (1996). *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*. Bogor: Politeia.

<sup>19</sup> Sarlito Wirawan Sarwono. (2002). *Terorisme di Indonesia Dalam Tinjauan Psikologi*. Jakarta: Alvabet, hlm.70-71.



- 4) Delusion of control: the notion of himself is controlled by a certain force from the outside or
  - 5) Delusion of influence: the notion of himself is influenced by a certain external force.
  - 6) Delusion of passivity: a notion of himself helpless and resigned to an external force; (about himself = clearly, refers to the movement of the body or limb or mind, action or special sensing).
  - 7) Delusion perception: unnatural sensory experience, which means very unique to him: usually mystical and miraculous.
  - 8) Subleional Auditor: Voice of hallucinations that comment continuously on the behavior of patients
  - 9) Discuss about patients among themselves (between various voices that speak or
  - 10) Another type of hallucinatory sound that comes from one part of the body.
  - 11) Other types of sedentary beliefs, which according to local culture are considered unnatural and something that is musty, for example regarding certain religious or political beliefs or strengths and abilities above ordinary people.
- Or at least two symptoms below that must always be clear:
- 1) Any permanent hallucinations of the five senses, if accompanied by either floating or half-shaped understandings without clear affective content, or accompanied by over-valued ideas that persist, or if they occur every day during weeks or months continuously.
  - 2) The flow of thoughts that are interrupted (break) or which experience insertions (interpolation) that result in inkoherensia or irrelevant talks or neologism.
  - 3) Catatonic behavior such as nervous conditions (excitement), certain body position (posturing) or cereal flexibility, negativism, mutism, and stupor.
  - 4) Negative symptoms such as apathy, sparse speech and collapsing emotional responses are unnatural, usually resulting in withdrawal from social intercourse and reduced social performance, but it must be clear that these are not caused by depression or neureptic medication.
- Therefore, it can be concluded that a criminal who fulfils the elements of a psychiatric disorder in the form of schizo-

phrenia above can be said to be unable to be responsible or incompetent according to criminal law due to fulfilling article 44 paragraph 1 of the Criminal Code as a condition disturbed by illness in the ability of reason healthy (*ziekelyke storing*).

### **Legal Considerations In The Imposition Of Criminal Penalties On People With Schizophrenia**

In imposing criminal penalties on perpetrators of mental disorders, especially people with schizophrenia, law enforcers have various legal considerations, including:

#### **Fulfillment of Elements of Criminal Accountability**

The basis of the existence of criminal acts is the principle of legality, while the basis of being able to be prosecuted by someone is a mistake, which means that a person cannot be accounted for and punished if he or she does not have a mistake as well as a person with schizophrenia. A person with schizophrenia who commits a criminal act can be convicted if he has an error or commits a criminal act.

The problem of criminal liability is closely related to the element of error. In Law no. 4 of 2004 concerning judicial power Article 6 paragraph (2) stated:

*"No one can be sentenced to a crime except a court because the legal evidence according to the law has the conviction that someone who is considered capable of being responsible has been guilty of the deed charged against him".*

Judging from the provisions of the Article it can be clear that the element of error determines the consequences of one's actions, that is, in the form of criminal imposition. Although the element of error has been accepted as an element that determines an accountability of the maker of a criminal act, but in terms of defining errors by experts there are still differences of opinion, The definition of error by itself determines the scope of the responsibility of the maker of a criminal act.<sup>20</sup>

The existence of different views regarding the definition of errors results in differences in the application of which errors can be divided in the following terms:<sup>21</sup>

- a. Psychological error: according to Sudarto on psychological errors, mistakes are only seen as psychological (mental) laws between the creator and his actions. What is seen in this psychological error is

<sup>20</sup> *Ibid*, hlm. 74.

<sup>21</sup> Sudarto. (1983). *Hukum dan Perkembangan Masyarakat*. Bandung: Sinar Baru. hlm. 72.

the mind of the perpetrator, in the form of the will for his actions.

- b. Normative error: the normative error of a person's fault is not determined based on the mind of the creator, besides that there is a normative assessment of his actions. Normative assessment is an external assessment of the relationship between the maker and his actions. The external assessment is an assessment found in the community.

From the opinion above, it can be said that, errors contain elements of harm to someone who has committed a crime. The investigation referred to is a violation based on applicable law. To determine the existence of an error someone must fulfill several elements, namely:

- a. the ability to be responsible to the maker,
- b. the inner relationship between the creator and his actions in the form of intentions (*dolus*) or omission (*culpa*) which is called a form of error,
- c. there is no reason for deleting errors or no forgiving reasons.

Seeing from the first element, responsible ability can be interpreted that a person who is capable of being responsible is a person who has a normal or

healthy inner condition and has reason in distinguishing between good and bad things or in other words being able to realize his lawlessness an act and in accordance with conviction it is able to determine the existence of responsible abilities, namely reason and will factors.<sup>22</sup> Whereas, if seen by Schizophrenic Patients who cannot distinguish between good or bad deeds and believe in their actions, it can be said that the schizophrenic person is not capable of being responsible in criminal law.

Regarding the second element, namely the inner relationship between the creator and his actions, schizophrenic people are seen from the desire to do a criminal act arising from the inner state of the person who then directs his mind to do the action or not. In criminal law the use of thought which then directs the maker to commit a criminal act, is referred to as a form of error which is technically called intentional. Regarding understanding, intentional is the willingness to do actions that are prohibited by law, want their actions and know and realize their actions. Whereas negligence, can be interpreted when the maker does not use his mind or knowledge properly. If you look at the

<sup>22</sup> Mahrus Ali. (2011). *Dasar - Dasar Hukum Pidana*. Jakarta: Sinar Grafika. hlm. 171.

psychiatric conditions of schizophrenics who have insights or unhealthy thoughts in the form of a desire to do things outside their own common sense, the intentional or negligent element of a schizophrenic person can be interpreted as not fulfilled and is not a form of error that can be accounted for.

In the third element mentioned there is no reason for erasing errors or no forgiving reasons. Regarding this, there are times when a person cannot do anything else that leads to a criminal act even if he does not want it. And there are times when the occurrence of a crime cannot be avoided by someone, because something that comes from outside him, this factor causes the person to not be able to avoid the criminal act which results in his mistake being erased as a condition experienced by someone who has schizophrenia when doing an act criminal law based on article 44 paragraph (1) of the Criminal Code.

So, based on the description above, it can be said that schizophrenics cannot be responsible for their actions, because to determine the existence of an error is the ability to be responsible of the perpetrator himself, intentional and the absence of forgiving reasons, while an action can be held accountable if the maker mistakes are

aware of his actions against the law and those actions are carried out with full awareness of the perpetrator who is not found in the person with schizophrenia.

### **The existence of a causal relationship between the Actions and Conditions of Psychology**

In etymology, causality or causalized is a statement about the cause and effect relationship. In criminal law the theory of causality is intended to determine the objective relationship between human actions and the consequences of unwanted laws.

In criminal law the theory of causality is intended to determine the objective relationship between human actions and the consequences of unwanted laws. The Criminal Code itself is not a clue about a cause and effect relationship that can cause offense. Although in several articles of the Criminal Code it is explained that in certain offenses it is necessary to have a certain effect in order to impose a crime against the maker.

In criminal law, to measure a behavior can be determined to be a consequence of a prohibited consequence and considering the complexity of the situation that has taken place around it, an objective logic is needed that has been achieved by other

sciences. Judges as inconcrita law enforcers do not have complete knowledge about it, so it requires the help of experts who master medical science that have important meaning, namely medical science.<sup>23</sup>

The frequent occurrence of psychiatric disorders on the offender when committing a crime, allows the need for withdrawal of a relationship between psychiatric conditions with actions committed by the perpetrator such as seeing the relationship of criminal offenses committed by psychopaths as well as criminal acts of theft by a person suffering from kleptomania.

Adami Chazawi argues that the main thing here is not solely on the state of the creator's soul, but about how the creator's soul relations with the actions taken. Is there a relationship that is so close that the maker is not able to be responsible for the actions he does. Determining whether or not there is a relationship between the state of the soul and its actions is the authority of the judge, and not a psychologist. Information from experts by psychiatrists at the trial regarding the state of the soul of the maker is not obligatory to be followed by the panel of

judges. However, by reason of the judge being generally not an expert in the psychiatric field, it is only natural that the opinion of the psychologist be considered to strengthen his opinion or become the basis of his opinion.<sup>24</sup>

This is in line with Simons's opinion, as quoted by Lamintang, which states that in an attempt to make a decision about the presence or absence of toerekeningsvatbaarheid from someone the perpetrator, the judge must pay attention to reality, namely to what extent the disease has an influence on the psychological state of the the perpetrator, and must consider whether the influence is such that the culprit becomes unable to realize about the meaning of his actions or not, and according to his awareness it is also able to determine what he wants to do or not.<sup>25</sup>

Niebor stated that the role of causality in psychological deviations must be considered in an offense. The greater the role of psychological deviation, the smaller the level of error. Niebor imagined that psychiatrists as psychopathologists must measure the causal power of disease in action. The consideration or decision as a psychopathologist must be taken over (or

<sup>23</sup> Bambang Poernomo. (1982). *Hukum Pidana Dan Kumpulan Karangan Ilmiah*. Jakarta: Bina Aksara, hlm. 200.

<sup>24</sup> Adami Chazawi, *Op.Cit.*, hlm. 23.

<sup>25</sup> P. A. F. Lamintang. (2011). *Dasar-dasar Hukum Pidana Indonesia*. Bandung: PT Citra Aditya Bakti, hlm. 406.

rejected) by the judge, and if accepted, it must be tested based on propriety or appropriateness.

Niebor shows how through re-translating psychopathological causality data into the context or model of legal liability there can be the possibility that psychiatrists decide that there is full ability to account for actions, but judges, on the basis of propriety and appropriateness, decide more legal responsibility small.

From the explanation of the explanations above, we will see that the results of the psychiatrist's examination of the psychopathology of the perpetrators of the crime are not binding on the judge in determining whether or not there is criminal responsibility from the perpetrator of the crime. That is, it is the judge who has the full authority to declare whether an offender has the ability to be responsible or not, taking into account whether the illness suffered by the offender is so great that the defendant's actions cannot be held accountable for crimes or in other words, must seen the causality of the condition of the *ontoerekeningsvatbaarheid* with the action taken.

This also applies to people with schizophrenia. If it turns out that a person has schizophrenia and schizophrenia has a causal relationship with the actions taken,

then the judge should not be able to convict the person and order the person to be rehabilitated, in accordance with Article 44 Paragraph (2) of the Criminal Code. However, if the schizophrenia does not have a causal relationship with the actions it does, or has a very small causal relationship, then the judge can just impose a sentence on the person.

### **Results of *Visum Et Repertum Psychiatricum* As Evidence**

Cases in a court session, the collection of evidence is an important part of giving confidence to the judge in making legal decisions. This is because the judge's conviction is very important, considering that in proving the criminal case is seeking material truth, that is the real truth. Legitimate evidence, which has been regulated limitatively in Article 184 of the Criminal Procedure Code, in the Indonesian law *Visum et Repertum* is more clearly stated in the *Staatsblad* 350 of 1937, namely:

*"Reperta visas from doctors, which are made on oaths made at the time of completing medical studies in the Netherlands or in Indonesia, or for special oaths, as referred to in Article 2, have the evidence in criminal cases, insofar as they contain information about what doctors see on the object being examined".<sup>26</sup>*

<sup>26</sup> Dyah Irawati. (2009). "Rekonstruksi Pasal 44 Kuhp Dan Verp Dalam Sistem Peradilan Pidana". *Prioris*. Volume 2, Nomor 2: 88.

In the Regulation of the Minister of Health of the Republic of Indonesia No. 1993 / Kdj / U / 1970, 1970, concerning the Care of Patients with Mental Disease, Article 15 paragraph (3), stated that *Visum et repertum* Psychiatricum is a written testimony in a criminal / civil case made at the request of the presiding judge and by remembering an oath doctor.

Likewise, the provisions in the Criminal Procedure Code state the doctor's statement as an expert witness in the court listed in Article 120, 133 paragraph (1) and 180. In Article 120 paragraph (1) of the Criminal Procedure Code, it is stated that investigators consider it necessary, can ask for expert opinion who have special expertise. Similarly, stated in Article 133 of the Criminal Procedure Code:

*"In the case of investigators in the interests of the judiciary regarding a victim of injury, poisoning or death allegedly due to an incident which constitutes a criminal offense, the judge has the authority to submit an expert inquiry to a judicial medical expert or doctor and / or other expert."*

There are two types of expert information, namely, verbal statements from expert witnesses in their testimony in the court session and written statements in the field of medicine called *Visum et Repertum*. *Visum et Repertum* is the result of a medical examination conducted by a doc-

tor or a team of doctors and is intended for the benefit of the court as a means of proof. *Visum et Repertum* is based on the results of a medical examination, which is a hostage of the object (person) being examined which is then written as a report (*Visum et Repertum* means to see and report). So, actually *Visum et Repertum* is the result of hostage taking or descriptions of evidence, namely humans and in *Visum* some of the things listed are not an illustration of the facts of the examination results, but some are interpretations of the physician making the facts obtained from the examination.<sup>27</sup>

Thus, *Visum et Repertum* is a combination of facts and opinions of doctors against these facts. *Visum et Repertum* for the field of psychiatry is called *Visum et Repertum Psychiatricum*. In cases experienced by people with schizophrenia, a psychiatrist doctor who is assigned to make VeRP conduct an examination on someone who is asked to be examined, at the request of law enforcement, basically what doctors do in making VeRP is an effort to provide assistance to law enforcement to determine:<sup>28</sup>

- a. The presence or absence of mental disorders.

<sup>27</sup> *Ibid*, hlm. 89.

<sup>28</sup> *Ibid*, hlm. 95.

- b. The existence or absence of a relationship (causality) between mental disorders with behavior that results in a criminal act.
- c. The state of criminal responsibility from being examined.

With the examination by a psychiatrist to help law enforcement in knowing whether a person who commits a criminal act has a psychiatric disorder or schizophrenia to weigh the person can be punished.

Even though the trial in court requires, directly to a proof, this demand can be fulfilled by medical science which provides an opportunity for possibilities so that it cannot provide a definite answer that is judgmental or ensures a verdict. In such a case, the legal certainty is determined by the judge while the *Visum et Repertum* as written expert testimony is still an (important) material for judicial decision making.<sup>29</sup> In such cases, the legal certainty is determined by the Judge, while *Visum et Repertum* as written expert testimony is still an ingredient for legal decision making, generally *Visum et Repertum Psychitricum* is made after a doctor examines the object (patient, suspect and evidence).

<sup>29</sup> *Ibid*, hlm. 90.

### Judge Considerations in Imposing Criminal Cases

Regarding the psychiatric condition of a schizophrenic person, according to R. Soesilo, the judge who has the power to decide whether or not the accused is responsible for his actions, although he can also ask for advice from a psychiatrist. If the Judge believes that the person is truly not accountable for his actions, then the person is freed from all criminal charges (*ontslag van alle rechtsvervolgin*). However, to prevent the occurrence of similar things that endanger both the safety of the madman and the community, the judge may order that the person be put into a mental hospital for a maximum trial period of one year to be protected and inspected.

According to Indonesian Criminal Law written by P.A.F. Lamintang and C. Djisman Samosir, cannot be punished, whoever commits an act that cannot be accounted for by him, because of the growth of his imperfect common sense or mental illness, namely:<sup>30</sup>

- a. According to Psychopathology in 1925 it was determined that where according to some laws and regulations used the words "*versandelijke vermogens*" or common sense abili-

<sup>30</sup> P.A.F. Lamintang. (1989). *Hukum Pidana Indonesia*. Bandung: Sinar Baru, hlm. 36.



- ties, including "*geestvermogens*" or mental abilities;
- b. It can be dipidananya a suspect is a consideration and a decision that is given separately, in addition to the statement of proof of an act, even if it is true that there is shown a basis that negates punishment;
  - c. *Toerekeningsvatbaarheid* is not an element of an act that can be punished, which must be proven. The absence of the *toerekeningsvatbaarheid* is the basis that negates punishment;
  - d. *Ontoerekenbaarheid* or things that cannot be accounted for by an act in the creator, as formulated in Article 44 of the Criminal Code, is a *Stringuitsitingsgrond*, or a basis for eliminating punishment;
  - e. Someone said *toerekeningsvatbaar* if the actor in acting consciously, can be free to act differently and be able to determine his will.

Based on the explanation above, it can be seen that the judge can decide whether or not an act of schizophrenia is carried out on the basis of its power and can also ask for advice from a psychiatrist but is not limited to trial. Someone who is a psychiatrist who was brought in at the trial must provide information about the

presence or absence of imperfect growth or disease in a person's soul, but the Judge has the freedom to follow or not follow the advice he has received from this expert in this case a psychiatrist. A judge also has the freedom not to bring in psychiatric doctors to give his advice at trial. So it is not surprising that in practice the advice of a psychiatrist can be obtained from his testimony at the trial and obtained from a medical letter from the hospital where the defendant examined him.

In giving consideration when in court, the Judge saw the results of the *Visum regarding the psychiatric* condition of people with schizophrenia when seen by the Judge of the psychic ability of someone with schizophrenia, that there was something that caused a doubt, that the proven action could be accounted to the suspect, then suspects can be convicted.<sup>31</sup>

In addition to seeing the results of the *Visum*, the judge also considered the causal relationship between criminal acts and psychiatric conditions of schizophrenics whether at the time of committing a crime such as the murder of a schizophrenic person or having an episode in the form of a whisper to kill, the judge could consider not giving criminal penalties to

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<sup>31</sup> Lamintang, *Op.cit.*, hlm 37.

sufferers schizophrenia, but if the psychological condition and criminal act committed do not have a causal relationship at all or only a few Judges can impose criminal penalties on those with schizophrenia.

### Conclusion

The responsibility of schizophrenic sufferers can be determined based on their psychological condition which has psychosis or disease disorders in their common sense ability (*ziekelyke storing*) which means that schizophrenic patients have forgiving reasons and fulfill article 44 paragraph (1) of the Criminal Code, therefore schizophrenics can said not to have the ability to be responsible and, cannot be held accountable under criminal law.

Legal considerations that criminal penalties can be imposed on schizophrenics who commit criminal offenses are based on several considerations, namely by looking at the evidence in the form of *Visum* of schizophrenic sufferers, then fulfilling the element of criminal liability and seeing the size of the causal relationship of criminal acts committed by perpetrators with psychiatric disorders. experienced, these considerations play a big role for the judge in determining whether or not he can be held accountable for a schizophrenic.

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