Criminal Liability For Dissociative Identity Disorder That Doing Crime Of Murder

Nadiya Umiyatul Bilqist¹, Yana Indawati²

¹Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jawa Timur, Indonesia, bilqist040@gmail.com
²Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jawa Timur, Indonesia, yanaindawati79@gmail.com

Abstract

In this thesis aims to determine the criminal liability against sufferers of dissociative identity disorder who commit the crime of murder. This study uses normative juridical methods, namely research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Sources of data obtained from literature books, existing research and applicable legislation. The results of the study concluded that a person with dissociative identity disorder could be a convicted of a criminal act of murder committed because he had fulfilled the element of criminal liability. The form of criminal liability is to apply the concept of accountability in strict liability so that the perpetrators can be sentenced to imprisonment in accordance with threat in article 338 of the Criminal Code governing murder.

Keywords: Criminal Liability, Dissociative Identity Disorder, Murder

I. Introduction

Crime is a name or stamp given by people to judge certain acts as a evil deeds.¹ Crimes occur when someone violates the law directly or indirectly, or a form of negligence that can result in punishment.² Regarding crime, crime is an interesting social problem to discuss because as time develops, crime will develop more and more. Crime is currently heavily influenced by the development of society. There are crimes that occur because of technological sophistication and there are also crimes that occur due to internal perpetrators.

Crimes due to internal perpetrators are divided into 3 causes, namely due to economic, biological, and psychological factors. From economic factors, crime can occur if the culprit is in a state of economic hardship. The usual form of crime from economic factors is theft. The next is from biological factors. According to biological factors, crime can be identified by one's physical characteristics, for example: large jaw, chin leaning forward, narrow forehead, high cheekbones, flat or wide inverted nose, large chin, very prominent in appearance, crooked nose or thick lips, sneaky eyes, minimal

*Corresponding Author

beard or baldness and insensitivity to pain, and have long arms. In addition, genetic leaders also argue that the tendency to commit violence may be inherited through genes. the last is psychological factors. According to psychological factors, crime can occur from possible defects in consciousness, emotional immaturity, inadequate socialization in childhood, weak moral development, and so on. From this psychological factor, appears a number of disorders that make the sufferer commit a crime. One such disorder is a dissociative identity disorder.

Dissociative identity disorder make a person who has it show two or more personalities (alters), each of which has a different name and character or character. There is usually a sharp difference or contradiction between at least two personalities in dissociative identity disorder. These personalities are usually called holy personalities and evil personalities. From these evil personalities can emerge a personality that has a high emotion that allows Sufferers to commit a crime.

One of the famous multiple personality cases is the case of Billy Milligan in 1970 in Ohio, USA. Where at that time Billy was accused of rape and armed theft. At first Billy did not admit to the crime that was charged to him. But after an examination by a psychologist, it was discovered that Billy was suffering from dissociative identity disorder and the crime he had committed was an act of his other personalities. Billy has a personality named Adalana who is a lesbian and this Adalana personality is found to have raped 3 female students at Ohio State University. One of the other personalities possessed by Billy is a personality named Ragen Vadascovinich who is a Yugoslavian nationality, from this Ragen personality then Billy commits theft to support his family and often commits crimes including consuming drugs.

In cases of dissociative identity disorder, sufferers often experience amnesia after committing a crime. So that when his personality returns to its original personality, the Sufferer will not admit that he has committed a crime. It will certainly be difficult in the investigation process because it will not remember about anything that has been done by other personalities when a personality transfer occurs. The original personality

5 Ibid
of the Sufferer will not admit if it turns out that his other personality has committed a crime.

The crime of murder is an act that intentionally or not, takes the lives of others in a way that violates the law. Of course someone who commits murder must be held accountable for his actions. This is in the form of punishment which is usually called criminalized. The difference in how to do this murder lies in the legal consequences, when the murder was done intentionally or planned in advance, the legal consequences of criminal sanctions will be more severe than the murder committed without intentional elements.

Every crime that committed by humans cannot be released from an accountability. If someone does not have the ability to take responsibility then this results in the absence of a fault, so he cannot be convicted. Based on the above understanding, only human beings who have reason, are mature, and have their own will that can be burdened with criminal liability. Likewise, criminal liability for murder, where a crime against life is a serious crime that has violated human rights in the form of the right to life.

A murders committed by people with dissociative identity disorder are only two possibilities that can occur, free from punishment or continue to account for their actions. In murder cases like this, the judge in verdicting the verdict usually pays attention to Article 44 of the Criminal Code. Where the article is not clearly explained about mental disability in growth or disrupted due to disease, whereas in psychology the types of psychiatric disorders vary. This will have an impact on criminal liability committed by multiple personality sufferers. The absence of explanations from paragraphs 1 and 2 regarding his soul being disabled or disturbed because of illness makes Article 44 not provide legal certainty.

Data shows that before the 1980s, only a few cases of dissociative identity disorder were diagnosed worldwide, but in the 1990s the number of cases of dissociative identity disorder was reported to have increased to tens of thousands. This makes some practitioners said that dissociative identity disorder are more common than previously

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believed. According to data from the ministry of health in 2018 there were 14 million people suffering from psychiatric disorders experienced by people aged over 15 years. It increased from 1.7% to 7% when compared to 2013. Although cases with dissociative identity disorder sufferers are very rare in Indonesia, but this issue is interesting to discuss because as it is known that sufferers of dissociative identity disorder have no control over themselves while in his other personality. In addition, dissociative identity disorder is one part of mental disorders. Whereas in Article 44 of the Criminal Code which regulates the reasons for forgiveness it is said that a person cannot be convicted if he has a mental disability either in growth or due to illness. The question is whether the crime of murder committed by dissociative identity disorder can be convicted or not and how criminal liability is. Considering there are some other mental disorders which if a criminal act can still be convicted. Among them are psychopathic mental disorders, bipolar disorder, kleptomania, and so forth.

II. Method

The method used by the author in writing this research is normative juridical research. Normative juridical research can be interpreted as research carried out by examining library materials or secondary data consisting of primary legal material, secondary legal material, and tertiary legal material. The materials are arranged systematically, reviewed and conclusions drawn in relation to the problem under study. Based on the nature of this research, the method that can be used is descriptive analytical, analytical data used is a qualitative approach to primary data and secondary data. Descriptive, including the content and structure of positive law that is an activity carried out by the author to determine the content or meaning of the rule of law which is a reference in solving legal issues that are the object of study.

III. Main Heading of the Analysis or Results

Criminal Liability for Dissociative Identity Disorder That Doing Crime Murder

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Dissociative identity disorder is a disorder in which the sufferer shows the existence of two or more personalities, each of which has a different name and character. Usually there is a sharp difference or contradiction between personalities. This personality is usually called a holy personality and an evil personality. From this evil personality the sufferer can then commit a crime. These personalities will alternately take over the body of the sufferer and usually occur suddenly and surprisingly. Switching from one personality to another can take place several times a day, one week, or several months. If one personality is carrying out its role then the other personality will be pushed into the unconscious realm.

One theory of criminology is a theory that explains crime from a psychological perspective. The theory says that criminal behavior occurs due to intelligence, personality traits, motivation, wrong attitudes, fantasy, rationalization, self-internalization that is wrong, inner conflict, controversial emotions and psychopathological tendencies. Where the sufferers of dissociative identity disorder also still have intelligence in themselves. So if there is a transfer of personality to a personality with a bad character then the intelligence factor is also still inherent in the personality. Because when someone acts will certainly involve the brain, as well as sufferers with dissociative identity disorder. So if the form of the act is an act that violates the legal norms, then it is the influence of the brain. In addition there are also factors that tend to psychopathology. Psychopathology itself is a disorder or mental disorder. So mental disorders can also be one of the reasons why someone commits a crime.

An acts can be said as a crime if it has fulfilled five elements, namely:

a. There must be a human deed

Based on positive law in force in Indonesia, human beings are considered as legal subjects. So an action is said to be a criminal offense, one of the conditions is that the act is committed by a human being. Against criminal acts of murder committed by sufferers of dissociative identity disorder, the legal subject in the crime is someone who suffers from dissociative identity disorder.

b. The act must be in accordance with the provisions of the law
This means that the act must fulfill the elements of criminal acts as regulated in the Criminal Code. For a crime of murder, it must meet the elements as regulated in Article 338 of the Criminal Code. The elements are:

- Whoever
- Purposely
- Take the lives of others

c. It must be proven that there is sin in those who do

To be able to determine the presence or absence of sin in the act must look at the prohibition of the act and the impact of the act. For murder, the act is prohibited because it has violated the right of life of a person. The manifestation of that prohibition has been regulated in Article 338 of the Criminal Code which in that article has also been accompanied by the threat of punishment for those who violate it. In addition, if seen from the impact, then the act of killing has resulted in the loss of one's life.

d. The act must be against the law

According to Pompe, contrary to the law is against the law, both written and unwritten laws. Meanwhile, according to Noyon, against the law means contrary to the rights of others. The crime of murder committed by sufferers of dissipative identity disorder is an act contrary to the law, because the act has violated the written law in Indonesia, namely the Criminal Code. Besides killing is also an act that is contrary to the rights of others because it has violated the right to life owned by someone.

e. Against this act there is a threat of punishment in the law

Whereas one of the principles of criminal law is the principle of legality which is said not to be convicted of an act if there is no law or regulation governing the prohibition of the act. This means that the act can be convicted if the law regulates it as a criminal offense. To be convicted the act must have a criminal threat. Related to the crime of murder, the act has been regulated in Article 338 of the Criminal Code and has a maximum penalty of fifteen years.
Dissociative identity disorder is included in one of the mental disorders that is personality disorder. In the Diagnostic and Statistical Manual of Mental Disorder, Fourth Edition (DSM-IV), dissociative identity disorder is coded 300.14. In the International Classification of Diseases 10th Revision (ICD 10), dissociative identity disorder is given the code F44.9 with the name dissociative disorder. Whereas in the Pedoman Penggolongan dan Diagnosis Gangguan Jiwa III (PPDGJ III), dissociative identity disorder is given the code F60.2 with the name of a disocial personality disorder which is a derivative of F60 which is a typical personality disorder. Regulatory dissociative identity disorder in the three guidelines above indicates that dissociative identity disorder is also a part of mental disorder.

As part of mental disorders, the Criminal Code in Article 44 paragraph (1) has regulated that criminal acts committed by someone who has mental disability either in growth or are disturbed due to illness cannot be given a criminal liability. However, the provisions of Article 44 of the Criminal Code do not explain what diseases are included in the mental disability in growth or disturbed due to disease. So it is not yet known whether dissociative identity disorder is included in the provisions of Article 44 of the Criminal Code or not. Because there are differences in the basic concepts between psychiatry and law in assessing whether people with mental disorders can be responsible for their behavior. First, disease of the mind, insanity, mental disability is legal terminology, not medical terminology. Second, people who clearly experience mental disorders in the concept of psychiatry, are not necessarily qualified as crazy in the concept of law. For example neurotic and personality disorders are mental disorders, but the law does not accept these two conditions as illness. Third, the law works on the mind and not on the brain.\(^\text{10}\)

For sufferers of multiple disorder (dissociative identity disorder) who commit murder, then to be convicted, a person must have the ability to be responsible and the crime committed has fulfilled the elements of Article 338 of the Criminal Code. In article 338 the Criminal Code says whoever intentionally takes another person’s life, is threatened with murder for a maximum of fifteen years jail. So, there are several elements of a murder crime, namely:

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a. Whoever
b. Purposely
c. Eliminating the lives of others

Related to the ability to be responsible, Moeljatno draws conclusions about the ability to be responsible, namely:

a. There must be an ability to differentiate between good and bad deeds, which are according to the law and which are against the law;
b. There must be the ability to determine his will according to his conviction about the good and bad actions earlier.

Looking at the characteristics of dissociative identity disorder sufferers with the conclusion about the ability to be responsible according to Moeljatno, it can be said that sufferers of dissociative identity disorder have the ability to be responsible. Dissociative identity disorder sufferers do have several personalities in themselves, but each personality in the self is still able to distinguish whether the actions carried out are good actions or bad actions. In addition, sufferers of dissociative identity disorder can also still determine their will to continue doing the bad deed or not. Dissociative identity disorder sufferers do not have the will to determine any personality that exists in him, because usually it is an expression of a sense of trauma in the past. However, sufferers of dissociative identity disorder still have the will with the personality to do good deeds or bad deeds.

Sudarto said that there are several conditions that must be met so that someone has an aspect of criminal liability, these requirements include:

1. There is a crime committed by the maker
2. The element of fault is intentional or negligence
3. There are makers who are able to take responsibility
4. There is no excuse for forgiveness

Whereas to be sanctioned, a person must fulfill the elements of criminal liability. The elements of criminal liability include:11

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a. Able to be responsible
b. Fault
c. There is no excuse for forgiveness

So far, criminal liability is closely related to the principle of fault. This means that to be able to impose sanctions on the offender, in addition to the proven elements of the criminal act must also be proven the element of fault in the perpetrator. However, along with advances in legal science, there are two concepts of criminal liability that can be applied, namely strict liability and vicarious liability.

Strict liability is the concept of criminal liability without fault where the maker can already be convicted if he has committed a criminal act as formulated in the law. So in this concept of responsibility, what is seen is the act (actus reus). No matter whether in carrying out the act there is evil intentions or not, the important thing is that the act has violated the law, then someone can already be convicted. Whereas vicarious liability is a concept of one's responsibility for wrongdoing done by others. The two people must have a relationship within the scope of their work.

Against the crime of murder committed by sufferers of dissociative identity disorder, the concept of responsibility that can be applied is strict liability. Because in the concept of strict liability does not question the existence of mens rea. Because as it is known that to prove the existence of mens rea in criminal acts of murder committed by sufferers of dissociative identity disorder is quite difficult. Especially when there has been a transfer of personality from a personality who commits a crime to another personality. An active personality does not know that his other personality has committed a murder. So it will be difficult to know the existence of mens rea in criminal acts of murder committed by sufferers of dissociative identity disorder. Even though the concept of responsibility in strict liability does not question the existence of mens rea, but the mens rea is still considered to exist but it does not need to be proven.

The form of punishment that can be imposed on the perpetrators of a murder is a crime of no more than fifteen years. The criminal form that can be imposed is a prison sentence. Wherein imprisonment is a crime that is eliminating and or limiting freedom of movement, in the sense of placing the convict in a place (correctional institution) where the convict is not free in and out and is obliged to submit, obey and carry out all
applicable rules and regulations. It was said before that the maximum threat of a criminal is fifteen years. This means that the judge can impose a crime below that depends on how the judge's judgment in passing the decision. For criminal acts of murder committed by sufferers of multiple personalities, his mental state can be used as a mitigating reason. So the Judge in issuing a decision considers this matter and can get a decision below the maximum decision.

IV. Conclusion

Perpetrators of murder crimes committed by sufferers of dissociative identity disorder can be convicted. Based on existing criminological theories, criminal acts committed by sufferers of dissociative identity disorder can still be regarded as a crime. In addition to being convicted of a criminal offense, sufferers of dissociative identity disorder in carrying out their actions must have fulfilled the element of crime in Article 338 of the Criminal Code and in themselves there are no excuses or justifications, and have the ability to be responsible. The form of criminal liability towards people with dissociative identity disorder who commit the crime of murder is to impose a crime in accordance with the criminal threat in Article 338 of the Criminal Code that is a maximum imprisonment of 15 years. Before being convicted of a criminal, people with dissociative identity disorder must meet the elements of criminal liability that already exist. In addition it must determine the concept of criminal liability which will be applied. For criminal acts of murder committed by sufferers of multiple personality (dissociative identity disorder), the concept of criminal liability that can be applied is strict liability.

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