



POSITION OF FORENSIC PSYCHOLOGY IN DETERMINING THE MENTAL HEALTH OF CRIMINAL OFFENDERS

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Criminal Responsibility; Forensic Psychology contributes to interpreting how psychological Forensic Psychology; Element of factors can influence a criminal act because Forensic Psychology has Fault. a crucial role in assessing the criminal responsibility of a perpetrator. The purpose of this study is to analyze how the results of forensic psychological examinations are used in the process of proving criminal cases and to what extent these results influence the judge's decision in determining the defendant's criminal responsibility. The research method used is a normative legal approach, by examining the provisions of the Criminal Code, the Criminal Procedure Code, and other related regulations, and supported by a case approach to court decisions involving perpetrators with indications of mental disorders. The position of forensic psychological examination results in the criminal law evidence system in Indonesia is in an important position, but is not yet fully strong normatively. The results of Forensic Psychological examinations have a significant influence on the determination of criminal responsibility by the judge, although their nature is not absolutely binding. The testimony of Forensic Psychological experts is one of the important considerations in determining whether or not there is an element of fault in the perpetrator, especially in the context of the principle of geen strafzonder schuld (no crime without fault).

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A. Introduction

Advances in science and technology have made significant contributions to law enforcement, one of which is through the field of forensic science. In the context of criminal law, forensics plays a crucial role in assisting law enforcement officers in discovering the material truth or actual facts by collecting physical evidence in a criminal incident. One branch that plays a strategic role in this regard is Forensic Psychology, a field that bridges the gap between psychology and law. Forensic Psychology holds a vital position because it provides a deep understanding of the mental state, behavior, and motives of individuals involved in criminal cases, whether as perpetrators, victims, or witnesses.

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Forensic psychology contributes to interpreting how psychological factors can influence a criminal act. This field involves the application of psychological theories and research methods within the legal system to analyze the cognitive, affective, and behavioral aspects that impact the legal process and translate these psychological aspects into a legal framework for the relevant agencies to understand (Saputri & Samosir, 2024). Forensic Psychology also has a deep connection with criminal law, the study of Forensic Psychology has an important role in assessing the criminal responsibility of a perpetrator of a crime.

Criminal responsibility is a very important concept because whether or not a person can be subject to criminal sanctions for an action is determined by this concept, because in this concept there is a causal relationship between a person and an action that is classified as a criminal act that can be subject to sanctions (Titit Fridawati et al., 2024). Criminal Acts can generally be seen in the Criminal Code (KUHP) where in its articles in Chapter Two concerning Crimes and Chapter Three concerning Violations which explain prohibited acts and their sanctions if they are still carried out. In the concept of Criminal responsibility, it can be said to be very close to the mental element, because in criminal punishment the principle of "keine strafe ohne schuld" applies which can be interpreted as the principle of no crime without Fault, so that a person who is subject to criminal responsibility must fulfill all the elements of the crime, either in the Criminal Code or other laws that regulate criminal acts. A person who is subject to criminal responsibility must also be ensured to have fulfilled the requirements of the element of fault or *mens rea*, which can be in the form of intent (*dolus*) or negligence (*Culpa*) (Mandagi et al., 2021).

In addition, there must also be other conditions that must be met so that a person can be held criminally responsible, namely the absence of reasons for the removal of the criminal offense, namely reasons for forgiveness and reasons for justification (Fadlian, 2020). Normatively, a person's mental condition can be a reason for forgiveness because the Criminal Code has provided a legal basis that the perpetrator's mental condition can affect criminal responsibility. Therefore, the mental health of the perpetrator of a crime is a crucial aspect in determining whether or not a person can be held criminally responsible because it can be understood that a person's punishment does not only depend on the element of fault or *mens rea* alone, there are other elements that must actually be used in the investigation stage to determine whether the suspect has mental health or the ability to reason to understand the wrong or right of an action and whether the suspect can control and determine his own will (Ida & Suryawati, 2023). According to Moeljatno in his book "*Asas-Asas Hukum Pidana*" it states that a person cannot be held responsible (sentenced to a criminal offense) if he has not committed a crime. However, even if he has committed a crime, he cannot always be punished (Moeljatno, 2009). If the suspect is proven to lack mental health or sufficient mental capacity, then the element of fault should not be attached to him and criminal responsibility should not be imposed on him because this condition has become a reason to excuse his mistake.

The Indonesian Criminal Code stipulates that a person who commits a crime but suffers from a mental disorder that prevents them from understanding or controlling

their actions may be exempted from criminal liability. A forensic psychological mental health assessment should be a basis or requirement for every criminal case to ensure that there is no doubt in the subsequent legal process as to whether the perpetrator is capable of being held accountable for their actions. In practice, this mental health assessment is not always conducted and therefore often leads to debate, especially when the perpetrator pretends or claims to have a mental disorder (malingering) to avoid criminal sanctions during the prosecution and trial process.

Thus, two main discussion points can be drawn in this article, namely: What is the Position of the Results of Forensic Psychology Examination in Criminal Responsibility in Indonesia and Do the results of forensic psychology examination influence the judge's decision regarding the defendant's criminal responsibility.

B. Method

This research uses a normative legal approach, also known as doctrinal legal research. In this type of research, law is understood as a system of norms contained in laws and regulations (law in books) or as rules that serve as guidelines for behavior considered appropriate in society. Therefore, the Normative Research Method emphasizes the application of legal rules to real legal problems and its data sources are only secondary data, consisting of primary legal materials such as laws and regulations; secondary legal materials such as literature, previous research results, journals, and opinions of legal experts who provide explanations of primary legal materials; or tertiary data (Sihombing & Hadita, 2022). To explore the topic of the position of forensic psychology in determining the mental health of criminals, this study uses two types of approaches, namely: (Kristiawanto, 2022)

1. Statute Approach

This approach is used to examine the legal provisions governing the role of expert testimony in criminal justice proceedings. The study includes the Criminal Code (KUHP), the Criminal Procedure Code (KUHP), and regulations relevant to the role of forensic psychology in proving cases. This will determine the extent to which the normative framework supports the use of forensic psychology in determining the mental health of criminal offenders.

2. Case Approach

In this approach, research focuses on analyzing court decisions involving criminals with indications of mental illness or who are feigning mental illness. The purpose of this case study is to examine how judges consider the results of forensic psychological examinations in their decisions and their impact on determining the defendant's criminal responsibility.

C. Result & Discussion

In criminal law, there is a concept that is so inherent, namely criminal responsibility, a person can be a subject of criminal law if they have fulfilled the elements to be held criminally responsible. The basis of criminal responsibility is fault because one principle applies in Criminal Law, namely "keine strafe ohne schuld" which can be interpreted as the principle of no punishment without fault. Faults are divided into 2, namely deliberate faults (dolus) and faults with negligence/accident (culpa). In Faults committed with Dolus, the assessment of a person's fault lies in their intention and will to achieve a goal and whether there was prior planning before acting. Thus, intent is divided into 3, namely deliberate as an intention, deliberate with awareness of certainty, and deliberate with awareness of possibility (Fadlian, 2020). Apart from that, there is also the element of fault called Culpa which is the opposite of deliberate (Dolus) which has intention and will even with planning, Culpa is a condition when criminal act occurs but the perpetrator does not have the intention and will for the criminal act to occur (Laela & Risman, 2024). However, determining whether or not a person can be burdened with criminal responsibility is not only based on the element of intent or negligence, according to Jonkers there are 3 parts to the definition of fault, namely:(Chandra, 2022)

1. Intention (Dolus) or Negligence (Culpa);
2. Includes unlawful nature; and
3. Ability to take responsibility;

An individual's psychological state is the basis for determining the extent to which a person can understand the consequences of their actions and control their will when committing a crime. Therefore, the results of a forensic psychology examination can be used as a tool by judges and other law enforcement officials to assess whether the perpetrator has the full capacity for responsibility. Through this psychological analysis, it can be identified whether the perpetrator committed the crime while conscious, under the influence of certain psychological pressures, or due to a mental disorder that eliminates the ability to be legally responsible. Thus, forensic psychology not only plays a role in the evidentiary process but also serves as an important instrument in upholding the principle of substantive justice, namely ensuring that punishment is only imposed on those who are truly capable of being accountable for their actions.

The basis for the regulation regarding the perpetrator's mental condition can be found in Article 44 of the Criminal Code (KUHP), which states that a person who commits a crime while mentally disturbed or mentally retarded, so that he cannot be held responsible for his actions, cannot be punished. In the future, Articles 38 and 39 of Law No.1/2023 concerning the Criminal Code (New Criminal Code) will apply. In these two KUHPs, a person cannot be held criminally responsible if at the time of committing the crime, he is unable to understand the nature of his actions or control them due to significant mental disorders. These two KUHPs provide a legal basis for the importance of forensic psychological examinations in the judicial process.

In the old Criminal Code, mental disorders were referred to as a disabled soul. Article 44 does not provide much explanation and only divides the category of disabled souls into 2, namely disabled souls in growth and disabled souls due to disease. If the defendant meets one of the categories, the defendant cannot be punished. The only action that can be imposed on the defendant is to be admitted to a mental hospital for only 1 year as a probationary period. This is different from the New Criminal Code which is explained in 2 articles, namely Article 38 and Article 39. In the New Criminal Code there is a significant difference, namely that perpetrators with mental disorders will not be arbitrarily released from all criminal charges. There are 2 types of sanctions, namely a reduction in punishment and/or being subject to action or also no punishment and only being subject to action. The judge's decision will be emphasized on how severe the mental disorder suffered by the perpetrator is no longer dependent on the open interpretation of the judge as in the old Criminal Code (Indratmoko & Hakim, 2025). If it is only a mental and/or intellectual disability, then only a reduced sentence will be given and/or action will be taken, and if the perpetrator has a mental disability that is in an acute relapse and is accompanied by psychotic symptoms and/or moderate or severe intellectual disability, he/she will not be subject to criminal punishment, but may be subject to action. Actions taken against perpetrators with mental disorders can be seen in Article 103(2) of the New Criminal Code, namely:

1. rehabilitation;
2. surrender to another person;
3. institutional care;
4. surrender to the government; and/or
5. care in a mental hospital;

Information from a Forensic Psychology Expert is one of the evidences in accordance with Articles 184 and 187 of the Criminal Procedure Code, it can be in the form of expert testimony or a letter containing opinions based on his expertise regarding something or a situation that is officially requested and to him. In handling cases that have not been examined by a forensic psychologist, it will certainly be very vulnerable to malingering, it is better if in every criminal case there must be an examination by a forensic psychology expert so that there are no obstacles in the subsequent legal process and also to make it easier for the judge because with the existence of forensic psychology it will increase the judge's confidence regarding his decision because there are no other factors that influence the element of the Defendant's fault such as the reason for forgiveness due to mental disorders.

However, there are also cases such as in the Criminal Court Decision Number 108/Pid.B/2021/PN Stb regarding the case of deliberate murder. The defendant named Paisal tried to deceive the Panel of Judges by pretending to have a mental disorder or problems in his mental health, so that he could be freed from all criminal penalties

because there was a reason for forgiveness. This can be seen in the defendant's defense note through his legal counsel that he wanted to be released from the Tanjung Pura State Detention Center and placed in a mental hospital to undergo treatment at a designated place. What the defendant did was an act of Malingering, namely any action or mode carried out by a person so that he can avoid criminal responsibility and in this case it was by pretending to have a mental disorder (Gunawan et al., 2021). In this case, a mental health examination was carried out on the perpetrator and it was stated that he was suffering from a severe mental disorder and paranoid schizophrenia with a MULTIAXIAL diagnosis as a result of dependence on the narcotic type crystal methamphetamine.

However, based on the facts of the trial and other evidence presented by the Public Prosecutor, it was stated that the perpetrator had full sanity to hit the victim and throw away evidence in the form of wood and hide to avoid investigation by the police so that the panel of judges still gave a verdict in the form of a prison sentence of 13 years. With the example of handling the case, it can be concluded that the diagnosis for criminal perpetrators is also still not always accurate so that the panel of judges also does not arbitrarily believe the results of the assessment/diagnosis from experts.

Currently, testimony from forensic psychology experts holds a crucial position, but is not yet absolutely decisive. Judges retain the freedom to assess and correlate the results of these examinations with other evidence. There are no explicit and comprehensive regulations specifically governing the standards and procedures for forensic psychology examinations in Indonesia, although mental health examinations of criminal offenders are crucial and can determine criminal liability as a reason for forgiveness. This situation results in the lack of official guidelines that can serve as a standard reference for psychologists, investigators, and other law enforcement officials in conducting psychiatric assessments of criminal offenders. Due to the lack of these regulations, the implementation of forensic psychology examinations often relies solely on the internal policies of the relevant institutions.

D. Conclusion

Based on the discussion, it can be concluded that the position of forensic psychological examination results in the criminal law evidence system in Indonesia is important, but not yet fully strong normatively. The results of forensic psychological examinations have a strategic role as expert evidence as regulated in Article 184 of the Criminal Procedure Code, which is used to assess the mental condition of the defendant at the time of committing a crime. This examination helps law enforcement officials, especially judges, in assessing whether the perpetrator has the ability to be responsible for their actions or not. The basis for the regulation can be found in Article 44 of the Criminal Code and Articles 38 and 39 of the New Criminal Code (Law No. 1 of 2023) which regulates perpetrators who suffer from mental disorders.

The results of a forensic psychology examination have a significant influence on the judge's determination of criminal responsibility, although they are not absolutely

binding. The testimony of a forensic psychology expert is an important consideration in determining whether or not the perpetrator is guilty, particularly in the context of the principle of *geen straf zonder schuld* (no crime without fault). To date, there are no explicit and comprehensive regulations governing the standards and procedures for forensic psychology examinations in Indonesia. Therefore, its implementation in the judicial process still depends on institutional policies and the interpretations of each law enforcement officer, and the judge's decision does not absolutely depend on the results of the forensic psychology expert's assessment.

E. Recommendation

Based on the analysis and findings of this research, strategic steps are needed to strengthen the position of forensic psychology in the Indonesian criminal justice system. First, the government, along with law enforcement agencies, must immediately draft implementing regulations that clearly define expert competency standards, examination procedures, and reporting procedures for forensic psychology assessment results, so that they can serve as a standard reference across all law enforcement agencies.

Bibliography

- Chandra, T. Y. (2022). *Hukum Pidana*. PT Sangir Multi Usaha.
- Fadlian, A. (2020). Pertanggungjawaban Pidana Dalam Suatu Kerangka Teoritis. *Jurnal Hukum Positum*, 5(2), 10–19.
- Gunawan, T., Octafian, T. K., Vionita, C. C., Andianto, S., & Angelica, D. G. (2021). Tinjauan Yuridis Pembuktian Pemeriksaan Perkara Pidana terhadap Pelaku Pidana yang Mengalami Gangguan Jiwa. *Syntax Literate ; Jurnal Ilmiah Indonesia*, 6(1), 450–458. <https://doi.org/10.36418/syntax-literate.v6i1.2272>
- Ida, O. V., & Suryawati, N. (2023). Pertanggungjawaban Pidana Bagi Pelaku Tindak Pidana Dengan Gangguan Kejiwaan Menurut Ketentuan Hukum Positif. *Binamulia Hukum*, 12(2), 263–275. <https://doi.org/10.37893/jbh.v12i2.620>
- Indratmoko, D. A., & Hakim, A. R. (2025). Reformasi Pelaku Tindak Pidana Yang Mengidap Penyakit Jiwa: Perbandingan Hukum Pidana Indonesia dan Belanda. *Legal Spirit*, 9(1), 169–180.
- Kristiawanto. (2022). *Memahami Penelitian hukum Normatif*. PRENADA.
- Laela, I. F., & Risman, L. O. (2024). Analisis Yuridis Tentang Tindak Pidana Kelalaian yang Mengakibatkan Hilangnya Nyawa Orang Lain. *Jurnal Hukum, Pendidikan Dan Sosial Humaniora*, 1(6), 349–360. <https://journal.appihi.or.id/index.php/Aliansi>
- Mandagi, S., Karmite, J. A., & Tampi, B. (2021). Pemidanaan Percobaan Kejahatan Dalam Delik Aduan. *Lex Crimen Unsrat*, VIII(13), 35–44.
- Moeljatno. (2009). *Asas-Asas Hukum Pidana*. Rineka Cipta.
- Saputri, adhalia S., & Samosir, D. (2024). *Kriminologi*. Penerbit Litnus.
- Sihombing, E. N. A. , & Hadita, C. (2022). *Penelitian Hukum*. Setara Press.
- Titit Fridawati, Khairol Gunawan, Reza Andika, Muhammad Rafi, Rafsanjani Ramadhan, & Muhammad Isan. (2024). Perkembangan Teori Pertanggungjawaban Pidana di Indonesia: Kajian Pustaka terhadap Literatur Hukum Pidana. *JIMMI: Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(3), 317–328. <https://jurnal.fanshurinstitute.org/index.php/jimmi%7C317>