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Criminal Law Reform In Criminal Liability Of Persons In Mental Disorders Oriented Towards Dignified Justice

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Abstract

Criminal law reform in Indonesia must be implemented immediately considering that the WvS Criminal Code is a legacy of the Dutch East Indies colonial government, which has never been changed at all. The juridical consequences of criminal law reform will mean that there will be several regulatory changes, one of which can be seen in ODGJ's liability. The latest regulation related to ODGJ liability is regulated in Article 38 juncto Article 39 of the National Criminal Code. Previously, the WvS Criminal Code stipulated in Article 44, did not provide legal protection for victims, and instead absolutely only provided legal protection for perpetrators. Meanwhile, the problem is how to protect the law if the perpetrator who committed the crime pretends to be in a mental disorder. The author analyzes criminal law reform in ODGJ criminal liability oriented towards the theory of dignified justice. This research will be studied based on normative juridical methods, so that the object of research studied is not widespread, and must be in accordance with the legal basis, and existing legal theory. The author suggests that relevant law enforcement officials such as the Police, and Hospitals that in this case issue VeR must be considered carefully.
Keywords: *Criminal Law Reform, ODGJ Criminal Liability, Dignified Justice*

1. INTRODUCTION

Based on Article 1 Paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as UUD NRI Year 1945) states clearly that, Indonesia is a state of law.[1] This indirectly entails the consequence that everything must have a legal basis. Law is the entire regulation that governs human behavior that is forced and has sanctions if violated. However, please note that what will be discussed further in this study is criminal law. Criminal acts in Dutch are referred to as strafbaar feit. The phrase can be translated into Indonesian to signify a variety of things, consisting of crimes, delicacies, crimes, crimes events, and crimes.

Strafbaar feit is composed of three words: *straf, baar,* and *feit*. *Strafbaar feit* is translated using a variety of terms; nevertheless, straf is rendered as both criminal and lawful. *Baar* is rendered as can and allowed, whereas feit is rendered as activities, happenings, offenses, and deeds. Related to the criminal law itself is simply regulated in the Criminal Code (hereinafter referred to as the WvS Criminal Code), but please note that in three years a new Criminal Code will apply based on RI Law Number 1 of 2023 (hereinafter referred to as the National Criminal Code). This can be interpreted as a renewal of criminal law in Indonesia.

Criminal law reform in Indonesia must be implemented immediately considering that the WvS Criminal Code is a legacy of the Dutch East Indies colonial government, which has never been changed at all. Of course, there are some arrangements in it that are

[1] Widiatama Widiatama, Hadi Mahmud, and Suparwi Suparwi, "Ideologi Pancasila Sebagai Dasar Membangun Negara Hukum Indonesia," *Jurnal Usm Law Review* 3, no. 2 (2020): 310, https://doi.org/10.26623/julr.v3i2.2774.

outdated, and no longer in accordance with the legal needs of the community. As for philosophical reasons, why there is a need for criminal law reform, namely, to realize the national criminal law of the Unitary State of the Republic of Indonesia (hereinafter referred to as NKRI) based on Pancasila, as well as the NRI Constitution of 1945, and general legal principles that are recognized by the wider community.

Meanwhile, the sociological reason, so that this national criminal law can be in accordance with the soul of the nation, which has been made in accordance with the wishes of the people, and is expected to humanize humans, especially victims, perpetrators, and communities affected by the existence of these crimes. Finally, the juridical reason is in Article 5 Paragraph (1), and Article 20 Paragraph (1) to (5) of the NRI Constitution of 1945, which states that, the President has the right to submit a Bill (hereinafter referred to as the Bill) to the House of Representatives (hereinafter referred to as the DPR) and must obtain mutual approval.

The reform of criminal law in Indonesia is expected to contain elements of increasingly advanced human civilization, as well as foster common welfare, and be able to humanize humans. The juridical consequences of criminal law reform are clear that there will be several regulatory changes, one of which can be seen in the accountability of persons in mental disorders (hereinafter referred to as ODGJ). The latest regulation related to ODGJ liability is regulated in Article 38 juncto Article 39 of the National Criminal Code. Previously, the WvS Criminal Code was regulated in Article 44. It is the change in arrangement, which gives attention to the author, to be able to analyze criminal law reform in ODGJ criminal responsibility which is oriented towards the theory of dignified justice.

In the regulation of Article 44 of the WvS Criminal Code, and Article 38 juncto Article 39 of the National Criminal Code there is actually a very clear difference. With these differences, of course, it will also bring different legal consequences, therefore related to the renewal must be known more deeply, by using a fundamental mindset to the roots. The provisions of Article 44 of the WvS Criminal Code actually do not provide legal protection for victims, and instead absolutely only provide legal protection for perpetrators. Meanwhile, the problem is how to protect the law if the perpetrator who committed the crime pretends to be in a mental disorder. That is, the pretender cannot be punished with excuses of forgiveness. Criminal acts that are usually committed such as obscenity, molestation, theft, and others.

Of course, neither the victim's side, nor the victim's family will get true legal justice, because the provisions of the offense only protect the perpetrator. In simple terms, it should be understood that Article 44 of the WvS Criminal Code is no longer applicable with the legal needs of the community, if it is still forced, and enforced, it will not achieve legal objectives. In addition, legal rules that are no longer applicable with the legal needs of the community are certainly also not in accordance with the progressive legal theory proposed by Prof. Satjipto Rahardjo. The law behind the change in society will certainly not be able to protect the wider community, and in fact has also harmed the function of the law itself. Therefore, what is true is the law for society, and not the other way around society for law. This is what must be considered together, so that there is a renewal of

criminal law in ODGJ criminal responsibility, with the aim of creating legal justice, especially dignified justice.

This research is related to previous research, namely the first by Jusup (2020) which examines the application of the concept of legal protection to victims of crimes committed by People with Mental Disorders. The results obtained in this normative and empirical research show that legal protection for victims of crimes by people with mental disorders must obtain justice and fair treatment in the criminal justice system in Indonesia, The government and law enforcement have a great obligation to protect and restore the law of victims of crime in the justice system because the government is also responsible for the criminalization it formulates in criminal legislation.[2]

The next was conducted by Wirasto (2020) which discussed the legal protection of people with mental disorders in special mental hospitals. This normative and empirical legal research shows that legal protection for ODGJ to obtain their rights in health services at hospitals is regulated in Law Number 44 of 2009 and related ministerial regulations.[3]

Reviewing from previous research, there are differences in this study, namely: normative research that focuses on criminal law reform in ODGJ criminal liability. The problems and discussions raised in this study are not the same as previous studies. In this study raised the problem: 1) What is the nature of criminal liability?; 2) Is criminal law reform in ODGJ criminal liability oriented towards the theory of dignified justice?

2. METHOD

The research method adopted in this work is normative juridical law research. This sort of research traces the rules and books that are pertinent to the subject under study using library sources or secondary data as a foundation for inquiry. The approach methods used in this study are Statute approach, Conceptual approach, and Comparative approach. Statute approach is a method of approach that refers to laws and regulations.

Legal issues must be reviewed first with all applicable laws and regulations, then the next step is to conduct a sequential analysis.[4] Conceptual approach is a conceptual approach method that is carried out by examining the views, theories, and doctrines that develop in legal science. The ideas of professional legal practitioners are also applied in this conceptual framework, which can later be used to study a legal issue.[5]

Comparative approach is a method of approach that is descriptive, and useful for obtaining information by comparing the old and new legal arrangements. In this study, the criminal law regulation in Article 44 of the WvS Criminal Code will be compared with Article 38 juncto Article 39 of the National Criminal Code. Descriptive, and argumentative

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[2] Yusup Anchori, "Legal Protection of Victims of Criminal Acts Committed by People with Mental Disorders (ODGJ) Linked to the Purpose of the State of Law in the Penal System in Indonesia," Journal of *Syntax Administration* 1, no. 8 (2020): 1183–1200, https://jurnalsyntaxadmiration.com/index.php/jurnal/article/download/143/238.

[3] Muhammad Wirasto Ismail, "Perlindungan Hukum Orang Dengan Gangguan Jiwa (Odgj) Di Rumah Sakit Khusus Jiwa," *Wal'afiat Hospital Journal* 1, no. 1 (2020), https://doi.org/10.33096/whj.v1i1.22.

[4] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2017).p. 96

[5] *Ibid*. p.177.

techniques should be used in conducting an analysis of the primary legal material, and the secondary legal material that has been obtained.

3. RESULTS AND DISCUSSION

3.1 Dignified Justice Theory

A science, in this case the science of law, underlies the philosophy of dignified justice. The structure of legal science, which includes legal philosophy as its first layer, legal theory as its second layer, legal dogma (jurisprudence) as its third layer, and the arrangement, or the fourth layer, which includes law and legal practice as its fourth layer, can be used to determine the scope of the theory of dignified justice.[6] The conflict between lex eterna (upcurrent) and volksgeist (undercurrent) in understanding law as an effort to understand God's will in accordance with the legal system founded on Pancasila is the source of the philosophy of dignified justice.

The theory of dignified justice employs the legal method dialectically as a philosophy of law, legal theory, legal and legal dogmatics, and legal practice. The goal of dignified justice is to explain the law. In the philosophy of dignified justice, the objective of law emphasizes justice, which is interpreted as the attainment of laws that humanize humans. Justice in the sense of raising awareness that humans are God's creations is not the same as the Western view, developed, for example, by Thomas Hobbes, that humans are animals, political animals, wolves ready to prey on fellow wolves in all aspects of life, including political, economic, social, and cultural life.[7]

Dignified justice is a legal theory, or what is known in English-language literature as legal theory, jurisprudence, or philosophy of law, and understanding of a legal system's substantive laws. The idea of dignified justice also shows all of the norms and legal concepts that apply in the legal system, in this case the Indonesian positive legal system, or the Pancasila legal system. The Pancasila Legal System is a dignified system because it is based on the soul of the nation (*volksgeist*). Pancasila as a positive ethic that is the source of all sources of law, the soul of the nation has contained the completeness needed for the administration of the state. basically, as positive ethic, Pancasila contains ethics, the highest values, and is upheld (values and virtues), including political ethics, as a moral foundation, which is basically expected not only to enlighten, but to provide a way for the journey of life of a nation, and state.

Dignified theory of justice as a legal theory, or legal theory, is a system of legal philosophy that leads to all rules, and principles, or substantive legal disciplines. Included in substantive legal disciplines are networks of values that are bound together and bind to each other. The interrelated web of values can be found in various rules, principles, or networks of rules, and the principles inherent in which values and virtues are related, and binding to each other. The theory of dignified justice is so named because it is a type of

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[6] Teguh Prasetyo and Abdul Halim Barakatullah, *Ilmu Hukum Dan Filsafat Hukum, Studi Pemikiran Ahli Hukum Sepanjang Zaman* (Yogyakarta: Pustaka Pelajar, 2011). p.21.

[7] Teguh Prasetyo, *Keadilan Bermartabat Perspektif Teori Hukum* (Bandung: Nusa Media, 2015). p.30-31.

understanding, as well as an adequate (scientific) explanation of the coherence of legal concepts in rules, and applicable legal principles and doctrines that are actually faces, structures, or arrangements, and the content and spirit of society, and the nation that exist within the legal system based on Pancasila, as explained by the theory of dignified justice itself.

As a great theory of law, Dignified Justice regards Pancasila as the ultimate basic premise, meaning as the source of all forms of juridical inspiration to produce political ethics (democracy). In this sense, the law can humanize man by treating and upholding human values in accordance with the meaning and purpose of life. It is stated so, that in this situation, it is because humans are noble beings as God Almighty's creations, as mentioned in Pancasila's second precept, namely just and civilized mankind.

It contains the value of recognition of the dignity of man with all his rights and duties and man also gets fair treatment from other human beings, and gets the same for himself, the environment, and for God. The theory of dignified justice contains a theoretical view with a postulate that all activities in a country must be based on applicable laws and regulations. Pancasila, in the perspective of dignified justice, is the highest rule of law, the source of all sources of law.

It is said that the Laws and Regulations are the highest because in the perspective of dignified justice, Pancasila is the first agreement. Those who study law understand this in the phrase *pacta sunt servanda* (the covenant has binding force like a law). As a Law, it can be enforced, for those who do not want to comply, and carry it out. As the source of all sources of law, all laws and regulations, as well as all judicial decisions in Indonesia, are derivations (soulmates) of Pancasila. In other words, all rules and regulations, as well as all court decisions with permanent legal effect, are Pancasila as well, because they are in the same spirit as Pancasila and do not contradict it.

3.2 Progressive Legal Theory

Progressive is an English term derived from progress, which meaning onward. A progressive adjective denotes something advanced. Law that is progressive is law that is progressed. Progressive is defined as favoring new, current ideas, happening or developing continuously, or wishing to progress, always progress, increase. Prof. Satjipto Rahardjo coined the phrase progressive law, which is founded on the fundamental principle that law is for humanity.

Professor Satjipto Rahardjo expresses his concern regarding the limited role of legal science in enlightening the Indonesian society and addressing various crises, including those whitin the legal domain. To address this, he has put forward a solution involving the concept of progressive law. The essence of progressive law is characterized by rapid transformations, fundamental shift in theories and legal practices, and the introduction of innovative approaches. This transformative approach is rooted in the fundamental principle that the law serves humanity, emphasizing that the law is designed to serve the broader purpose of human dignity, happiness, well-being, and the elevation of the human spirit.[8]

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[8] Satjipto Rahardjo, *Membedah Hukum Progresif* (Jakarta: Kompas, 2007).

According to Professor Satjipto Rahardjo, progressive law is a series of radical actions that change the legal system (including changing legal regulations if necessary) to make the law more useful, particularly in raising self-esteem and ensuring happiness and human welfare. Simply put, progressive law is a law that carries out liberty, both in terms of thinking and action, in law, so that the law can only flow to complete its responsibility to serve humanity, and humanity.

As a result, there is no engineering or bias in enforcing the law. Because, in his opinion, the law exists to create justice and welfare for all individuals. He attempted to highlight the above conditions in the social sciences, including the science of law, although not as dramatically as in the physical sciences, but there was a phenomenal change in the laws he formulated with sentences from simple to complicated, and from fragmented to unified. This is what he meant by a comprehensive approach to science (law). This holistic perspective provides visionary understanding that something in a specific sequence has components that are interconnected with other parts or with the total.

Progressive law is one that is concerned with humanity rather than being dogmatic. Progressive legislation is often referred to as pro-people law and just law. The idea behind progressive law is that law exists not for its own sake, but for an end in and of itself. As a result, the tradition of analytical jurisprudence, or rechtsdogmatiek, was abandoned by progressive law. These schools only study law and discuss and analyze it, particularly law as a set of norms that are regarded to be systematic and rational.

Progressive legislation is responsive, which means that it is always related to aims that go beyond the linguistic narrative of the law itself. Because the presence of law is tied with its social purpose, progressive law is also related to Roscoe Pound's sociological jurisprudence. Because Indonesian law inherits the liberal legal system, progressive law invites criticism of the liberal legal system. When pre-modern law became modern, there was a moment of momentous transformation. It was given this name because modern law evolved from a justice-seeking institution to a bureaucratic public agency.

Laws formed in response to the presence of contemporary law must be completely rewritten in order to be reconstructed as rational, bureaucratic entities. As a result, only regulations enacted by the legislature, which are referred to as laws, are valid. Legal progressivism emphasizes that law is not king, but rather an instrument for outlining the foundation of humanity and granting grace to the world and man. The following ideas underpin legal progressivism: 1) Law exists for man, not for himself; 2) Law is always in the process of being made and is not final; and 3) Law is a moral institution of humanity.

Based on the assumptions stated above, the progressive legislation criteria are as follows: 1) Have a high objective of human well and happiness; 2) Have a very strong moral content of humanity; 3) Progressive law is a freeing law that moves not only in the world of practice but also in the realm of philosophy; 4) Critical and functional.

3.3 The Nature of Criminal Liability

Accountability is one of the fundamental principles in criminal law, otherwise known as the principle of "no crime without fault" (*geen straf zonder schuld*).[9] However, if criminal liability without fault in the person of the perpetrator of the crime is called (*leer van het materiele feit*).[10] Meanwhile, in the WvS Criminal Code itself there is no explanation of what is meant by the principle of "no crime without guilt", but this principle is an unwritten law, and applies also in Indonesia.[11] Therefore, discussing criminal responsibility must be considered the definition of two things, as follows: Non-criminal (*daad strafrecht*) and Perpetrators of criminal acts (*dader strafrecht*).

The understanding of the two things mentioned above, must be considered carefully, because in criminal law known the principles that an act that has fulfilled all elements of a criminal act does not necessarily mean that the perpetrator can be held criminally responsible. It should be reiterated that criminal liability can only be applied to the perpetrator of a criminal act, if he has a mistake, or can be blamed for committing a criminal act. It is this element of guilt in the perpetrator of the crime that will be the basis for consideration for the judge, or the general condition for imposing a crime (*algemene voorwaarde voor strafbaarheid*).[12]

In practice, the principle of "no crime without fault" by several countries including Indonesia is not always implemented purely, or what is known as the principle of "criminal without fault" or "*strict strafrecht*". If a "*strict strafrecht*" is followed, then the criminal conviction no longer needs an element of guilt, meaning that the criminal conviction is not determined to exist, or whether the element of guilt, but is based on the act committed, or the result of the act committed. However, not all types of criminal acts apply the principle of *strict strafrecht*, but certain types of crimes, especially types of crimes that qualify as serious crimes, or certain types of offenses. The principle of "no crime without fault" has actually been known since the 1930s, especially in countries that adhere to the Anglo Saxon system which is formulated as "*actus non facit reum, nisi mens sit rea*".[13] According to this principle that an act cannot yet be used as a basis for stating the guilt of the perpetrator, unless the act committed is based on evil intent.[14] While the basic formulation

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[9] Fiska Maulidian Nugroho and Andika Putra Eskanugraha, "Reflections on the Principle of Expediency: Inspiring the Principle of No Crime Without Guilt No Fault Without Expediency," *Puskapsi Law Review* 3, no. 1 (2023): 121–38, https://doi.org/https://doi.org/10.19184/puskapsi.v3i1.40295.

[10] Andreas Butar-Butar, "Pertanggungjawaban Pidana ASN Yang Dengan Sengaja Melakukan Tindak Kekerasan Yang Manghalang-Halangi Penyelenggara Pemilu Dalam Pelaksanaan Tugasnya Di Tempat Pemungutan Suara (Putusan Nomor 1238/Pid.Sus/2018/PN Makassar)" (Universitas HKBP Nommensen, 2020), http://repository.uhn.ac.id/bitstream/handle/123456789/4394/Andreas Butar-Butar.pdf?sequence=1&isAllowed=y.

[11] Roni Wiyanto, *Principles of Indonesian Criminal Law* (Bandung: Mandar Maju, 2012).

[12] Irvan Hidayatulloh, "Konsep Penjatuhan Sanksi Bagi Pelaku Eksibisionisme Dalam Perspektif Nilai Keadilan" (Universitas 17 Agustus 1945 Surabaya, 2021), http://repository.untag-sby.ac.id/10319/.

[13] Romli Atmasasmita, *Reconstruction of the Principle of No Crime Without Guilt: Geen Straft Zonder Schuld* (Jakarta: Gramedia Pustaka Utama, 2017).

[14] Sristi Bubna, "CASE ANALYSIS: R v McNaughton (1843) 8 E. R. 718," *THE JOURNAL OF UNIQUE LAWS AND STUDENTS* 1, no. 3 (2021): 288–93, https://doi.org/https://dx.doi.org/10.59126/v1i3a21.

of "*actus non facit reum, nisi mens sit rea*" basically consists of two principles, namely "*actus reus*" and "*mens rea*".[15]

Actus reus, is a principle of guilt based on an act desired by the perpetrator and matches the formulation of criminal acts in the Law (*wederrechtelikheid*). *Mens rea*, on the other hand, is a principle of error that indicates the underlying state of the psyche of a person who intentionally commits a criminal act. Thus, an act that satisfies, or matches the elements formulated as a criminal offence, is not sufficient for the judge to convict the perpetrator, unless the offender has fulfilled the specified conditions to be called guilty. Therefore, if the perpetrator is held accountable for the criminal act committed must first be corrected his mental state, if he can be blamed, then he cannot be held criminally responsible, meaning that even if he commits a criminal act if he cannot be blamed for his mental state, then he cannot be held responsible for the criminal act committed.

3.4 Criminal Law Reform in ODGJ Criminal Responsibility Oriented to the Theory of Dignified Justice

The problem that often arises in society is that criminal offenders pretend to be mentally ill when examined by the Police when there are victims who report the crime. These criminal acts are usually such as obscenity, molestation, theft, and others. Pretending to be a mental disorder is known as malingering. That is, symptoms of suffering from mental disorders arise only when an examination is carried out both medically, and legally. However, at this time there is no standard method that can be sure to detect it. However, to minimize malingering there are several assessment parameters, namely by looking at the symptoms, whether it occurs continuously, or is it unbalanced.

This can be observed from several examinations, therefore there must be precise data. The data is to assess whether there is inconsistency between several examinations carried out. What is clear, that these symptoms should not arise suddenly when a criminal act occurs, if it arises suddenly then it is definitely *malingering*. Mental health examinations of suspected ODGJ perpetrators can be carried out by mental medicine specialists, and can involve other specialists, general practitioners, and clinical psychologists. The results of the mental health examination are known as *Visum et Repertum* (hereinafter referred to as VeR).

Article 7 of the Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examination for the Benefit of Law Enforcement (hereinafter referred to as Permenkes Number 77 of 2015), states that, mental health examination in criminal cases can only be carried out on the basis of an official request letter from the police, prosecutor's office, court, or other law enforcement state agencies stipulated by law. Based on the provisions of the Indonesian criminal procedural law, especially the Criminal Procedure Code (hereinafter referred to as the KUHAP) explicitly does not explain the meaning of VeR.

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[15] Larasati Dwi Rizqiqa and Budi Arta Atmaja, "Determination of Mens Rea in Planning Elements in Persecution Cases Article 353 Paragraph 2 of the Criminal Code," *Belo Journal* 6, no. 2 (2021): 126–47, https://doi.org/https://doi.org/10.30598/belovol6issue2page126-147.

At first what gave this definition of VeR was *the Staatsblad* of 1937 Number 350. The regulation states that, VeR is a written report for judicial purposes at the request of the competent authority, made by a doctor, on everything seen, and found on examination of evidence, based on oath at the time of acceptance of office, and based on his best knowledge.[16] VeR comes from the words "visual" which means to see, and "*repertum*" which means to report. Thus, it can be said that VeR means what is seen and found. VeR is made only to clarify cases, and is used for examination purposes, and is intended for judicial purposes, not for other purposes.

Given the limits of mental disorders experienced by a person cannot be clearly known, whether someone who commits a criminal act is really a mental disorder, or not. VeR is an important instrument to prove factual truth related to a particular criminal case.[17] Actually, pretending to be a mental disorder aims to avoid punishment, because the perpetrators take advantage of the provisions of the offense contained in Article 44 of the WvS Criminal Code, which states that: 1) Whoever commits an act that cannot be accounted for to him because his soul is disabled in growth or impaired due to disease, is not criminalized; 2) If it turns out that the act cannot be accounted for to the offender because his mental growth is disabled or impaired due to illness, then the judge may order that the person be admitted to a mental hospital, not more than one year as probation; 3) The provisions of paragraph 2 shall apply only to the Supreme Court, the High Court and the District Court.

In the provisions mentioned above, it can be observed that, perpetrators who are in mental disorders cannot be convicted because of the element of forgiving reasons in their delicacies.[18] Meanwhile, this is different from the provisions in Article 38 juncto Article 39 of the National Criminal Code which states that: Article 38, Every person who at the time of committing a crime has a mental disability and / or intellectual disability can be reduced in crime and / or subject to action. Article 39, Every person who at the time of committing a criminal offense bears a mental disability who is in a state of acute relapse and accompanied by psychotic images and / or intellectual disability of moderate or severe degree cannot be sentenced to a crime but may be subject to action.

This means that in the new arrangement related to ODGJ liability, it is possible for the perpetrator to be convicted. This is what distinguishes it from the formulation of offense in Article 44 of the WvS Criminal Code, which absolutely provides legal protection only for perpetrators. The legal protection provided in this new arrangement is more appropriate because it not only gives to the perpetrator, but also considers the

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[16] Anju Trifosa Manurung, "Tinjauan Terhadap Kekuatan Alat Bukti Visum Et Repertum Dalam Kasus Penganiayaan (Studi Kasus Perkara No: 384/Pid.B/2020/PN Dum)" (Universitas Islam Riau, 2022), https://repository.uir.ac.id/14656/1/171010549.pdf.

[17] Ni Putu Mega Cahyani, I Nyoman Sujana, and Made Minggu Widiantara, "Visum et Repertum Sebagai Alat Bukti Dalam Tindak Pidana Penganiayaan," *Jurnal Analogi Hukum* 3, no. 1 (2021): 122–28, https://doi.org/10.22225/ah.3.1.2021.122-128.

[18] Resky, "Application of Article 44 of the Criminal Code concerning Criminal Responsibility which is used as a reason for forgiveness of perpetrators of criminal acts to religious leaders" (INSTITUTE OF ISLAMIC RELIGION (IAI) MUHAMMADIYAH SINJAI, 2022), http://repository.uiad.ac.id/id/eprint/843/1/SKRIPSI RESKY.pdf.

interests of the victim, if the perpetrator is malingering. This is what is meant by criminal law reform has considered the interests of perpetrators, victims, and affected communities. This criminal law reform has been oriented towards the theory of dignified justice as stated by Prof. Teguh Prasetyo.[19]

The main goal that is expected to be achieved is dignified justice that humanizes human beings. When the perpetrator who committed the malingering was convicted after going through the procedural process in court, it has actually paid attention to the interests of the victim, or the victim's family who was harmed both materially and immaterially. Criminal sanctions for malingering perpetrators will also be considered as well as possible. Where the court decision on the criminal sanctions imposed must be objectivity and must not favour the perpetrator. However, if the perpetrator is well, and obediently follows the process in court, then the judge can consider it. So, not only the interests of actors are considered, but the interests of all parties who have had an impact must be considered.

4. CONCLUSION

The problem that often arises in society is the perpetrators of criminal acts who pretend to be mentally ill during examinations both medically and legally. Criminal acts that are often committed are usually such as obscenity, molestation, theft, and others. Pretending in a mental disorder is known as malingering. That is, symptoms of suffering from mental disorders arise only during the examination. This is what constitutes fraud in law, because the formulation of the offense in the provisions of Article 44 of the WvS Criminal Code is not appropriate, because it does not provide legal protection for victims, if the perpetrator of the crime commits malingering.

In fact, Article 44 of the WvS Criminal Code does not meet the legal needs of the community that exists today and is not in accordance with the progressive legal theory proposed by Prof. Satjipto Rahardjo. Therefore, a criminal law reform is needed, especially in ODGJ criminal liability which has been regulated in Article 38 juncto Article 39 of the National Criminal Code, where the rule of law is more appropriate, and has been oriented towards the theory of dignified justice, which has been proposed by Prof. Teguh Prasetyo, because it has provided legal protection for victims, perpetrators, and directly affected communities.

Reform of the criminal law in ODGJ liability will not guarantee that related crimes will not occur again, especially in malingering. However, at least with better legal arrangements can minimize criminal acts that will occur. Actually, relevant law enforcement officials such as the Police, and also Hospitals that in this case issue VeR must also be considered. Because proper law enforcement is also needed from law enforcement officials. That is, it is not enough from the renewal of the law alone. So, there are three things that must be considered as a whole, namely, the legal structure, the substance of the law, and the legal culture. It is hoped that later the reform of the criminal

[19] Prasetyo, *Dignified Justice Legal Theory Perspective*.

law which is oriented towards dignified justice can answer the legal needs of the community that exist today.

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