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Criminal Liability For The Perpetrator Of Sexual Perversion Of The Corpse

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Abstract: This study discusses necrophilia as one of the deviations of sexual orientation that has not been regulated in the Criminal Code (KUHP). Although Article 271 of the Penal Code covers the regulation of corpses, excavation or demolition of tombs, retrieval, removal and transportation of bodies, and uncivilized treatment of bodies, the act of rape of bodies still does not have clear regulations. This situation creates a legal vacuum that poses new challenges, especially since necrophilia is often seen as a form of the disease. The question arises as to how legal liability can be imposed on the perpetrator in this context. The purpose of this study is to understand the regulation and form of criminal responsibility for the perpetrators of necrophilia in the context of the crime of rape of the corpse. The method used in this study is normative legal research with a legislative approach to discuss related legal issues. The results showed that criminal liability for individuals with necrophilia in the criminal act of rape of a corpse is not yet expressly provided for in the new criminal code. In the context of criminal acts, this is stipulated in Article 271 of Law Number 1 of 2023 (KUHP), while from the perspective of criminal acts rape is regulated in Article 415 of the Criminal Code. In addition, crimes against the body are also regulated in Article 415 as well as Article 269 and Article 270 of the new criminal code.

Keywords: Necrophilia, Rape of a Corpse, Criminal Liability

INTRODUCTION

This study discusses the legal issue of necrophilia disease which is a deviation of sexual orientation that has not been regulated in the Criminal Code No. 1 year 2023. In The Code Of Criminal Law No. 1 of 2023, Article 271 talks about digging up or disassembling corpses, taking, moving or transporting corpses and treating corpses uncivilized, while the Criminal Code No. 1 year 2023 does not provide for the rape of corpses. There is a legal vacuum. This is a new problem because the status of necrophilia is mentioned as a form of disease so how is the form of accountability. The purpose of this study is to determine how the arrangements and forms of criminal liability for perpetrators who suffer from necrophilia in the crime of rape of corpses. So that this study will provide an argument that the perpetrators who commit uncivilized acts against corpses can be held criminally liable in accordance with Article 271 of

the Criminal Code No. 1 of 2023 (hereinafter the National Criminal Code) while perpetrators of corpse rape who suffer from necrophilia, namely sexual orientation disorders, can be criminally liable but the punishment can only be given in part. It is based on Article 271 of the National Criminal Code, which regulates only normal people not on people who have necrophilia disorders. Article 38 of the National Criminal Code also regulates mental disabilities experienced by everyone who has impaired thinking, emotional, and behavioral functions. But such a sexual deviation as necrophilia does not belong to this category of disorders. Necrophilia is defined as sexual orientation. Thus, under the provisions of Article 271 of the National Criminal Code. The person who committed the rape of a corpse suffering from necrophilia will be held accountable unequally. Therefore, this paper will provide an argument that in fact the rules governing the legal liability of perpetrators of rape of corpses suffering from necrophilia are still empty.

Articles that are closely related to uncivilized treatment of corpses are formulated in Article 271 of the National Criminal Code, which takes effect 3 (three) years later, starting from January 2, 2023 (National Criminal Code). (Mahyudin 2023). Article 271 of the National Criminal Code is formulated that “any person who unlawfully digs or unloads a grave, takes, moves or transports the body and/or treats the body uncivilized, shall be punished with a maximum imprisonment of 2 (two) years or a maximum fine of Category III”. While the crime against the corpse itself in two namely, Article 269 of the National Criminal Code which reads “Any person who desecrates or unlawfully damage or destroy the tomb or signs that are on the tomb, shall be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of Category II ” and Article 270 of the National Criminal Code reads “Any person, shall be punished with a maximum imprisonment of 1 (one) year 6 (six) months or a maximum fine of Category II”.

Article 415 of the National Criminal Code, Article 271 of the National Criminal Code, Article 269 of the National Criminal Code and Article 270 of the National Criminal Code alludes to criminal threats if intended for each perpetrator, but does not clearly state the criteria or circumstances of the perpetrator that can be subject to criminal sanctions including necrophilia perpetrators who have deviant sexual orientation disorders, the perpetrator cannot be held criminally liable in full because Article 271 of the National Criminal Code does not regulate specifically related to the condition of the perpetrator.

The authors put forward the argument that the perpetrators of the rape of corpses suffering from necrophilia or sexual orientation disorders can be held criminally liable but the punishment can only be given in part. This is because Article 271 of the National Criminal Code does not specifically regulate the circumstances of the perpetrator of a corpse rapist who has necrophilia or sexual orientation disorders. Therefore, the issues studied in this paper consist of whether people with necrophilia who commit the crime of rape of corpses can be held criminally liable in full or only in part. The purpose of this study was to analyze the legal certainty of criminal liability perpetrators of rape of corpses suffering from necrophilia can be asked for punishment in full or only in part.

The results of a literature search, there are two previous studies that discuss similar legal topics, namely First, a study conducted by Anil Aggrawal in 2009 with the title “Necrophilia”. This study is an empirical explanation of necrophilia by explaining its typology and etiopathology through the legal and ethical aspects of necrophilia using the latest case studies cited to further explain this phenomenon

Research conducted by Richard B. Krueger, Geoffrey M. Reed, Michael B. First, Adele Marais, Eszter Kismodi, and Peer Briken in 2017 with the title Proposals for Paraphilic Disorders in the International Classification of Diseases and Related Health Problems, Eleventh Revision (ICD-11). (Krueger 2017) This study is a proposed revision of ICD-11 in this area and compares it with DSM-5. The Working Group other Classification of Sexual

Disorders and Sexual Health (WGSDSH) recommends that the grouping of sexual preference disorders be renamed paraphilic disorders and restricted to disorders involving patterns of sexual arousal focused on not giving consent to others or associated with great distress or immediate risk of injury or death. Consistent with this framework, the WGSDSH also recommends that the categories of fetishism, fetishistic transvestism, and sadomasochism according to ICD-10 be excluded from the classification and that new categories of coercive sexual sadism disorders, frotteuristic disorders, other paraphilic disorders involving non-consenting individuals, and other paraphilic disorders involving solitary behavior or consenting individuals be added. The wgsdsh proposal for paraphilic disorders in ICD-11 is based on WHO's role as a global public health agency and the ICD's function as a public health reporting tool. (Geneva 2004)

The difference of this study with the two studies above, this study does not focus on criminal liability for people with necrophilia in the rape of corpses. On the provisions of the law for the perpetrators of rape of corpses with necrophilia. Thus, this study will show that people who commit civilized acts against corpses can be held criminally liable under Article 271 of the National Criminal Code, while people who commit rape of corpses who have necrophilia (a disorder of sexual orientation) can be held criminally liable, although the punishment can only be given in part. Therefore, the novelty in this study is to offer a solution to the problem of legal protection for perpetrators of corpse rapists who suffer from necrophilia (sexual perversion).

METHOD

This writing uses juridical-normative legal research methods. (Suganda 2022) This type of research is a method used in conducting research on secondary materials. This study is about criminal liability for people with necrophilia in the crime of rape of corpses. Writings that have the nature of normative juridical law are also referred to as procedures that use the logic of legal science to obtain the truth. Thus, this paper can shed light on criminal liability for those suffering from necrophilia for uncivilized treatment of corpses. In the process of assessing the problem of this paper, the statute approach is used to complete this paper. Primary, secondary, and tertiary legal materials are used in this paper. This paper has a descriptive-analytical nature because in addition to providing an overview of the issues to be discussed, it also analyzes the relevant legal products to provide answers to the issues discussed. This study uses a type of normative research. Normative Research sees law as a norm that should be applied and norm as positive law. Using the normative method, research sources are derived from primary and secondary legal materials.

The research approach used is the approach of legislation, and conceptual. Legislative approach is studied by analyzing the legislation in force. The conceptual approach is used to obtain a point of view by looking at the related legal aspects, in the form of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code). The collection of legal materials is carried out by library studies that refer to literature books, journals, and other documents related to the problems studied. The analysis of this study was carried out in a descriptive qualitative manner by collecting legal materials, classifying them, linking concepts to further draw conclusions from the results of research on the problems under study. Analysis of this study by examining criminal liability for people with necrophilia in the crime of rape of corpses. This analysis is carried out with a juridical and conceptual approach that also refers to cases that are found and then examined to examine the problems that in fact occur.

RESULTS AND DISCUSSION

The Concept of Necrophilia

The crime of necrophilia, defined as engaging in sexual activity with a deceased person, stands as one of the most taboo and stigmatized acts across cultures. Despite its rarity, necrophilia raises profound legal, ethical, and moral questions, challenging legal systems worldwide to appropriately address and sanction such behavior. (Sayyed 2024) Necrophilia is classified as a fairly rare paraphilia but has been practiced around the world for centuries. Necrophilia includes paraphilia in which the perpetrator gets sexual pleasure by having sex with a deceased person. It is classified as paraphilia by ICD10 and the Diagnostic and Statistical Manual. The disease can manifest itself or be associated with a number of other paraphilias, namely sadism, cannibalism, vampirism (the practice of drinking blood from a person or animal), necrophagia (eating the flesh of the dead), necropedophilia (sexual attraction to the corpses of children), and necrozoophilia (sexual attraction to corpses or the killing of animals is also known as necrobetiality). Often the remains used for sexual purposes were not fresh, but were dug out of the graves in a decomposed or mummified condition. Necrophagists actually eat rotting corpses to get sexual pleasure. This is in contrast to cannibals, who prefer fresh meat or eat deceased loved ones for spiritual purposes. There is a wide spectrum of necrophagisms, ranging from those who only want to lick the genitals or breasts of the dead, to people who only want to devour certain parts, to necrophiliacs who eat the whole body. Necrophilia is mostly seen in men. (Mwandayi 2023)

In the WHO ICD-8, approved in 1965, ushered in a substantial expansion of the related category for paraphilia in the chapter of mental disorders. Under the grouping of sexual deviations, certain categories are included for homosexuality, fetishism, pedophilia. Transvestitism, exhibitionism and other sexual perversions. Masochism, narcissism, necrophilia, sadism and voyeurism are included in additional terms for other sexual perversions (WHO, 1965). ICD-9, approved in 1975, included the grouping of sexual disorders and deviations in the chapter of Mental Disorders. This grouping includes special categories for homosexuality, bestiality, pedophilia, transvestism, Exhibitionism. Trans-Sexualism, psychosexual identity disorder, frigidity and impotence, as well as other sexual deviations or disorders. Among the inclusion of other sexual perversion terms or disorders are fetishism, masochism, and sadism. ICD-9 was the first version of the ICD classification to include the definition of each condition in the Mental Disorders chapter. Previously, no other definition or diagnostic guidance had been provided for any condition in the ICD. Frettophobia and necrophilia are uncommon sexual paraphilias. An overview of sexual sadism, exhibitionism, voyeurism, autoerotic asphyxiation, and their epidemiology, aetiology, and pathophysiology is covered in this article along with potential treatments. (Poparskis 2023)

The definitions for some categories relating to paraphilia in ICD-9 apply exclusively to specific sexual behaviors with no reference to arousal patterns. For example, bestiality used to be defined as "sexual or anal intercourse with a husband", and pedophilia was defined as "sexual intercourse in which adults engage in sexual activity with children. of the same or different sex". For exhibitionism, however, the idea of a preferential pattern of arousal is put forward: "the understanding of sex that pleasure and the need for sex are primarily understood from the use of genitalson the one who uses the type". The ICD-9 definition of transvestite recognizes this condition as based on a specific pattern of behavior and distinguishes it from problems related to gender identity: "sexual abuse committed against women is based on the treatment of the same sex. There is no attempt to identify or legal hazards of this type". ICD-10 is currently an official classification created and applied in 1990.

Romantic necrophilia enjoys only the corpses of loved ones instead of all corpses. The corpse of his loved one can still accompany him including in sexual terms in the minds of romantic necrophilia. Class III: Fantasy necrophilia people with necrophilia fantasize about

things related to death rather than actually having a close relationship with a corpse. For example, people with necrophilia perceive the presence of inanimate objects or coffins as something exciting. Class IV: tactile necrophilia. People with tactile necrophilia conditions can get sexual satisfaction from touching, stroking, or licking corpses, Class V: fetish necrophilia. Cutting off parts of the corpse's body, such as parts of the breast or fingers, and storing them alone to satisfy his sexual desires, Class VI: Necromutilomania. Is a term that combines the terms mutilation and necrophilia. This type of disorder results in sexual satisfaction from mutilating a person. Class VII: opportunistic Necrophilia having sex with a deceased person if the opportunity arises, Class VIII: regular necrophilia. enjoying intercourse with a corpse if there is an opportunity and less enjoying sex with a living person, Class IX: necrophilia of murder. The most dangerous type of necrophilia is due to the fact that sufferers only choose to be intimate with recently deceased individuals to keep their bodies "warm" and they do not hesitate to look for victims and then kill them on purpose. Class X: exclusive Necrophilia. Those who suffer from this condition cannot feel passion during intimacy with a living person. To achieve their goals, they filter out various ways, such as digging graves, accessing morgues and killing.

The Concept Of Criminal Liability In The Criminal Act Of Rape Of A Corpse

Criminal liability in English is referred to as responsibility, or criminal liability. In reality, the concept of criminal liability involves the general moral and ethical values held by a particular society or group of people, as well as the law. This is done to achieve justice. Responsibility skills can be defined as a healthy psychological state in which a person has the ability to distinguish between good and bad things and can get used to behavior that is in accordance with the allowed and not allowed. Liability is not generally defined in the criminal code. According To E.Y. Kanter and S.R. Sianturi that the ability to take responsibility is based on the state and ability of the "soul", rather than the state of "thinking" a person. (Muniati 2023). However the official term used in Article 44 of the criminal code is *verstandelijke vermogens* for the translation of *verstandelijke vermogens* deliberately used the term "circumstance. and the ability of a person's soul. This means that criminal liability can be imposed on any offender who is considered to have the ability of the soul and the ability to think.

Van Hamel, defines a criminal act as a human Act provided for in the law against the law, which deserves to be punished and carried out with errors. (Gaib 2018) More clearly, Pompe argues that the term "criminal offense" or "strafbaar feit" can theoretically be defined as a violation of the norm or interference with the rule of law committed against an offender either intentionally or unintentionally. In this case, the imposition of law against the offender is intended to maintain legal stability and ensure the public interest. In the event that a person commits a criminal offense, a person must account for his actions.

Liability itself in criminal law can be interpreted as criminal liability which is then known as *toerekenbaarheid* in Dutch and criminal responsibility or criminal liability in English. Based on Simons. *Strafbaar feit*, a criminal act must constitute a human act, unjust (contrary to law), committed by a person who can be held accountable (*toerekeningsvatbaar*), and that person can be held accountable. In criminal law, holding someone accountable means passing on an objective punishment to the person who committed the criminal act. (Syahrizal 2023). Criminal liability is determined based on the guilt of the author and not just the fulfillment of the elements of the criminal act, determining criminal liability. Therefore, guilt is considered an element that determines criminal liability and not just the mental component of the criminal act. This means that someone who does something against the law will be punished according to something they did. The ability of a person to be responsible for his actions must also be accompanied by the law in accounting for his actions. In line with Van Hamel's understanding,

responsibility is a normal mental and psychological condition that brings 3 (three) types of ability to understand the meaning and consequences of his actions, understand that his actions are not justified or prohibited by society, establish the ability to his actions. Thus it can be concluded that accountability (teorekensvatbaarheid) contains the notion of ability or proficiency.

Criminal liability for people with necrophilia in the criminal act of rape of a corpse is not clearly provided for in the Criminal Code. The Criminal Code only regulates criminal sanctions for the crime of rape provided for in Article 415 letter A of the National Criminal Code which is formulated as follows, shall be punished with a maximum imprisonment of 9 (nine) years for "any person who commits an obscene act with a person who is known to be unconscious or helpless". While the article that is closely related to crimes against corpses is formulated in Article 271 of the National Criminal Code which reads "Any person who unlawfully digs or disassembles a grave, takes, moves or transports the body and/or treats the body uncivilized, shall be punished with a maximum imprisonment of 2 (two) years or a maximum fine of Category III". Crimes against corpses are also regulated in two articles, namely, Article 269 of the National Criminal Code which reads "Any person who desecrates or unlawfully damages or destroys the tomb or signs on the tomb, shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Category II " and Article 270 of the National Criminal Code reads "Any person who buries, hides, carries, or, shall be punished with a maximum imprisonment of 1 (one) year 6 (six) months or a maximum fine of Category II". But in the new Criminal Code, the act of rape of a corpse has not yet been explicitly regulated.

Law enforcement in terms of handling cases of rape and crimes against other bodies in Indonesia has only been able to decide as a crime of premeditated murder. (Badaru 2020). Whereas in the ratio decidendi in the verdict aquo has admitted that acts of rape and violence against the body including crimes and inhumane. Under Article 271 of the National Criminal Code, there is a provision that uncivilized treatment of corpses can be criminally charged which is formulated "any person who unlawfully digs or unloads Graves, takes, moves or transports bodies and/or treats bodies uncivilized, shall be punished with a maximum imprisonment of 2 (two) years or a maximum fine of Category III". However, the fact is that the formulation of Article 271 of the National Criminal Code is still vague and unclear, so that legal certainty cannot be given to all citizens. Formulation that is not careful, too widespread and unclear will certainly be troublesome in its application and can harm many people. In addition, the phrase "any unlawful person" in Article 271 of the National Criminal Code implies that this rule is intended for everyone but it is unclear whether this rule can be applied to people with necrophilia which is considered a sexual orientation disorder.

Seeing in terms of positive law in Indonesia, the perpetrators of the above crimes can be charged under Article 271 of the new criminal code this is because in Article 271 of the new criminal code has set criminal sanctions for someone who treats corpses uncivilized, in this case the crime of rape against corpses can be classified as an uncivilized treatment of corpses. But in line with the opinion of the WHO under the grouping of sexual deviations, special categories are included for homosexuality, fetichism, pedophilia, transvestism, exhibitionism and other sexual deviations. Masochism, narcissism, necrophilia, sadism, and voyeurism are listed as inclusion terms for other sexual perversions. The ICD-9 approved in 1975 included the grouping of sexual disorders and deviations in the chapter of mental disorders. So that the criminal liability of the perpetrator must see the ability of the perpetrator to be able to account for his actions.

Partial criminal liability for the perpetrator of the rape of corpses in this necrophilia case has a correlation with Article 38 of the new Criminal Code, which is one of the articles that regulates the mental disability of perpetrators of criminal acts. (Awaeh 2017)

Article 38 of the new criminal code is formulated "any person who at the time of committing a criminal offense bears a mental disability and/or intellectual disability may be reduced in punishment and/or subject to action." Further, this provision is described in the new formulated article 39 of the Criminal Code "any person who at the time of committing a criminal offense bears a mental disability that is in a state of acute relapse and is accompanied by a psychotic picture and/ or intellectual disability of moderate or severe degree cannot be punished, but may be subject to action. However, Article 38 of the new criminal code is considered less able to provide legal certainty regarding criminal liability that can be given to perpetrators of necrophilia, if you look at Article 38 of the new criminal code this provision is more intended for mental disabilities while necrophilia is not included in mental disorders and the like. Necrophilia is a deviation in sexual orientation.

CONCLUSION

Criminal liability for perpetrators of necrophilia in Indonesian law has not been explicitly regulated. Although the act of rape of corpses is considered immoral and contrary to social norms, the Penal Code only provides for criminal sanctions for the uncivilized treatment of corpses, such as digging or dismantling tombs. Several cases of necrophilia have occurred in Indonesia and abroad, but Indonesian law does not specifically regulate it. In Indonesia, sexual acts against corpses can be considered a violation of applicable norms and laws. Although there is no specific provision for necrophilia in criminal law, such an act is punishable under Articles relating to the protection of the body and respect for human dignity. Criminal liability of the perpetrator of necrophilia can be considered taking into account certain factors, such as whether the perpetrator has a mental disorder or a sexual orientation disorder. However, in many cases, necrophilia is still considered a serious criminal act and can result in full criminal liability as in Article 271 of the National Criminal Code which regulates the uncivilized treatment of corpses. However, in the event that necrophilia is classified as a deviation in sexual orientation, the perpetrator of a corpse rapist who has necrophilia can only receive part of the existing punishment. In some regulations, offenders with mental disorders or sexual deviations can obtain a reduced sentence under Article 38 of the National Criminal Code. Cases of necrophilia are often seen as psychological disorders that require specific intervention and treatment. Experts have provided an understanding of necrophilia and the factors that may influence it, including psychological disorders, traumatic experiences, or environmental factors. Although the reduction of criminal liability has been provided for in Article 38 of the new criminal code, and crimes against corpses have also been provided for in Article 271 of the National Criminal Code, the formulation of the article is still vague and unclear. It does not specifically provide assertions that the perpetrator of the rape of a corpse suffering from necrophilia is a deviation in sexual orientation that requires special attention from psychologists. So there is a legal vacuum in which there are no clear rules related to criminal liability for perpetrators of necrophilia.

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