

Legal Considerations from Judges in Supreme Court Decree No. 85 K/Pid.Sus/2013 Concerning the Acquittal of Exhibitionism Perpetrators and Their Implications as a Jurisprudence

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ABSTRACT

Purpose of the study: This paper aims to provide a juridical analysis and the implications of the Supreme Court Decision Number 85 K/Pid.Sus/2013, where an exhibitionist perpetrator was declared to have a mental illness and he could not be held responsible.

Methodology: This research used a normative juridical method with a library research approach. It was a descriptive study, which aimed to provide insight into the implication of judges in Supreme Court Decree No. 85 K/Pid.Sus/2013 for

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Results: Based on the results of the Supreme Court Decision, the judge was wrong in placing exhibitionism as an excuse for eliminating criminal liability. This was based on theories and opinions which say that exhibitionism is not included in the provisions as a reason for eliminating criminal liability because exhibitionism is a type of disorder that is different from the disorders contained in the provisions regarding reasons for criminal elimination, i.e., Article 44 of the Criminal Code concerning the ability to be responsible. Exhibitionism is a sexual disorder, as opposed to a type of psychiatric disorder or psychosis contained in Article 44 of the Criminal Code. The judge also failed to base his decision on an examination by a psychiatrist who has the expertise to accurately determine the perpetrator's mental condition.

Applications of this study: This paper can be applied to prevent future occurrences of similar cases, where exhibitionists are not held accountable for their actions. This may bring more harm than good because exhibitionists will feel they have the freedom to disturb public peace by carrying out exhibitionism.

Novelty/Originality of this study: No previous researchers have studied this decision and its implications.

Keywords: legal consideration; supreme court; exhibitionism; implications; jurisprudence.

ABSTRAK

Tujuan: Artikel ini bertujuan untuk memberikan analisis yuridis dan implikasi dari Putusan Mahkamah Agung Nomor 85 K/Pid.Sus/2013, dimana seorang pelaku eksibisionis dinyatakan sakit jiwa dan tidak dapat dimintai pertanggungjawaban.

Metodologi: Penelitian ini menggunakan metode yuridis normatif dengan pendekatan penelitian kepustakaan. Penelitian ini bersifat deskriptif, yang bertujuan untuk memberikan pemahaman tentang implikasi hakim dalam Keputusan Mahkamah Agung No. 85 K/Pid.Sus/2013 terhadap kasus eksibisionisme sebagai yurisprudensi.

Hasil: Berdasarkan hasil Putusan MA, hakim salah menempatkan eksibisionisme sebagai dalih penghapusan

pertanggungjawaban pidana. Hal ini didasarkan pada teori dan pendapat yang mengatakan bahwa eksibisionisme tidak termasuk dalam ketentuan sebagai alasan penghapusan pertanggungjawaban pidana karena eksibisionisme merupakan jenis gangguan yang berbeda dengan gangguan yang terdapat dalam ketentuan mengenai alasan penghapusan pidana yaitu Pasal 44 KUHP tentang kesanggupan untuk bertanggung jawab. Eksibisionisme adalah gangguan seksual, berbeda dengan jenis gangguan kejiwaan atau psikosis yang terdapat dalam Pasal 44 KUHP. Hakim juga tidak mendasarkan putusannya pada pemeriksaan psikiater yang memiliki keahlian untuk menentukan secara akurat kondisi kejiwaan pelaku.

***Aplikasi penelitian ini :** Artikel ini dapat diterapkan untuk mencegah kejadian serupa di masa mendatang, di mana eksibisionis tidak bertanggung jawab atas tindakan mereka. Hal ini mungkin membawa lebih banyak kerugian karena eksibisionis akan merasa memiliki kebebasan untuk mengganggu ketentraman masyarakat dengan melakukan eksibisionisme*

***Kebaruan/Orisinalitas:** Tidak ada peneliti sebelumnya yang mempelajari keputusan ini dan implikasinya.*

Kata kunci: pertimbangan hukum; Mahkamah Agung; eksibisionisme; implikasi; yurisprudensi.

INTRODUCTION

The crime of exhibitionism is a crime that does not yet have a clear and specific legal arrangement in Indonesia. **A legal arrangement is an arrangement by law, in this case, positive law which is the statutory law.** But cases of exhibitionism have been rife in Indonesia. Victims are usually reluctant to make complaints to the authorities because they consider this a taboo or an embarrassing thing. Therefore, there are not many cases in court regarding the crime of exhibitionism. In Indonesian law, the crime of exhibitionism is included in the delict of decency (Santoso & Nurisman, 1996).

In the case of a crime against decency, a defendant is held accountable by being sentenced to prison following the Articles that regard the crimes he/she committed. Defendants in rape cases are subject to Articles 285 and 286 of the Criminal Code; violations of decency are subject to Article 281 paragraph 1.2; adultery cases are subject to Article 284

of the Criminal Code; cases of obscenity are subject to Article 296 of the Criminal Code; and cases that occur the most and are annually increasing are cases of obscenity against children, where perpetrators were charged with Law Number 35 of 2014, Article 81 paragraphs 1 and 2 and Article 82 paragraphs 1 and 2 (Soesilo, 1996).

Sex crimes that occur due to sexual preference disorders are becoming a matter of concern in society. They are a serious concern over law enforcement in Indonesia. People with sexual preference disorders carry out strange and unusual actions to obtain sexual satisfaction. According to the law, the severity of sex crimes from those with the heaviest punishment to the most lenient ones can be ranked as follows: child rape, rape, human prostitution, domestic rape (as part of domestic violence), and forced marriage.

Sexual preference disorder is also known as sexual orientation disorder. People who suffer from this have a great tendency to commit or undergo sexual or immoral crimes (Simandjuntak, 1991). Sexual crime is a form of a disorder (deviation) in sex that can be criminalized.

A type of sexual disturbance or deviation is exhibitionism. This disorder is carried out by showing off one's genitals to other people. The victims can be children, people of the opposite sex, and even people that the perpetrator desire. The perpetrator feels that he gains sexual or psychological satisfaction when showing his genitals to the victim. Victims of exhibitionism usually feel disturbed and disgusted by the perpetrator's actions (Lamintang & Lamintang, 2011).

Actions like this clearly cause concerns and they disturb the public peace as exhibitionism is a violation of legal norms, i.e., the norms of morality and decency that apply in society (Moeljatno, 1993). Law enforcement must urgently be implemented so that such abnormal behavior does not spread. Perpetrators of exhibitionism also need to be acted on so they don't cause disturbances in society. Law enforcement is crucial because society expects the law to be one of the instruments that can solve problems like this due to its strict sanctions and its role in upholding and maintaining moral values and peace in society.

Exhibitionism is a sexual disorder that is not commonly accompanied by other acts against victims such as committing sexual harassment or rape. In this exhibitionist behavior, the victims are mostly women or children because they are the targets that have the least

chance of physically retaliating against the perpetrators. Victims will experience psychological disturbances such as disgust, anger, and annoyance. They may feel demeaned or disturbed even for quite a long time (Ferraro, Erentzen, and Schuller, 2021).

In Indonesia, exhibitionists usually carry out their actions in public or crowded places. Exhibitionists are generally men. They don't look like people who have mental disorders. On the contrary, it's not uncommon for them to look neat. They will look for the right place and then show off their genitals in front of children or women. When the victims are shocked or scared, then the perpetrators' excitement level increases (Siswandini, 2017).

Exhibitionism crimes often occur. But the legal remedies provided are still weak. They have not been handled optimally by law enforcement. The large number of exhibitionism offenses that took place requires law enforcement officials, especially the police force, to control this crime through preventive and repressive efforts (Supanto, 1999).

Exhibitionism is considered an act that violates decency. So, in several cases, the perpetrators of exhibitionism were arrested. One of them is the case of AD who was sentenced by the Semarang District Court and upheld by the Semarang High Court. But this case was acquitted by the Supreme Court. The difference in the judicial decisions shows that judges have different interpretations in determining whether or not exhibitionism can be justified.

Concerning exhibitionism in Indonesian laws and regulations, there is a need for interpretation in incorporating elements of exhibitionism into articles in the Criminal Code and the Pornography Law. This is so that such laws can be used to impose sanctions on exhibitionist perpetrators (Anggreni, Setiabudhi, & Putri).

In dealing with exhibitionism cases, authorities are faced with the challenges of a lack of evidence and ambiguity in legal norms. So, perpetrators of exhibitionism are not charged with the law. In addition, there is a lack of public knowledge on this matter. Therefore, the community does not regard this as something that needs to be considered or held accountable for. The stipulations regarding exhibitionism are ambiguous because the law does not explicitly state that exhibitionism is a criminal act. So, interpretations regarding exhibitionism are wide open and wild, including the opinion that exhibitionism is a mental illness thus perpetrators cannot be punished. This ambiguity takes a toll on the victims of exhibitionism.

There are many cases of exhibitionism in Indonesia. Some victims do not take any action and prefer to be silent. Sometimes they don't go and tell other people because they think it is embarrassing. Many victims are afraid to report the perpetrators to the authorities, although some do file such cases in court.

This paper focused on an exhibitionism case in Kebumen, Central Java Province, Indonesia. The case began when AD came home from work in mid-December 2011. When he arrived at his house in Kebumen, AD found his 8-year-old child playing with his friends. After he entered the house, AD called his son's friend to come into the house. It turned out that at home, AD only wore a towel and opened it so that his genitals were visible to the kids.

The Kebumen District Court sentenced AD to 1 year in prison based on the decision of the Kebumen District Court No. 86/Pid.Sus/2012/PN.Kbm and confirmed by the Semarang High Court Decision with Decision Number 390/Pid.Sus/2012/PT.SMG. The Kebumen Court and the Semarang High Court acknowledged the perpetrator had sexual deviation, i.e., exhibitionism. But the judge decided that he still had consciousnesses. He can control his actions and hold responsibility. Thus, the judges sentenced him to one year of imprisonment. But the prosecutor was not satisfied so he appealed this case to the Supreme Court which resulted in the decision that AD was released from all criminal charges based on Supreme Court decision Number 85 K/Pid.Sus/2013. AD was declared to have a sex derivation disorder of the exhibitionism type. So, his actions could not be controlled and he could not be held responsible. Unfortunately, this decision was given without a doctor's recommendation or evaluation. The judges didn't have competencies in mental illness. Thus, this was an anachronism. Based on the problems above, the problem is, how are the juridical analysis and the implications of this Supreme Court decision?

RESEARCH METHOD

This research used the normative juridical method. It used a library research approach. (Benuf, & Azhar, 2020, p. 24). This descriptive study described the judge's considerations and decision in Supreme Court Decree No. 85 K/Pid.Sus/2013. This research aimed to give insight into the implications of Judges in Supreme Court Decree No. 85 K/Pid.Sus/2013 for the case of exhibitionism as a jurisprudence.

The secondary data used in this research included books, journals, and written sources that discussed jurisprudence and the legal consequences of a judge's decision in court (Diantha, 2016, p. 47). The main data source of this research was Supreme Court Decree No. 85 K/Pid.Sus/2013, especially regarding the judge's considerations in making the decision.

RESULTS AND DISCUSSION

Exhibitionism is classified as an "obscene" sexual crime. The criminal act of obscenity is defined as a crime that contradicts and violates the decency and morality of a person carried out in the sphere of sexual lust. For example, a man touches a woman's genitals with coercion (Marpaung, 2004).

The similarity between the definition of sexual obscenity and the elements of sexual harassment means that sexual obscenity is part of sexual harassment. Examples of regulations in the Criminal Code that regulate the activity of obscenity are Articles 289 and 290 (Moeljatno, 1976). Article 289 of the Criminal Code states that, "Whoever with violence or threats of violence forces a person to commit obscene acts or allow it to be carried out, is threatened with the maximum punishment of imprisonment for nine years for committing an act that attacks the honor of decency".

Law Number 23 of 2002 concerning Child Protection regulates obscenity. It is stated in Article 82 as follows, "Everyone who deliberately commits violence or threatens others with violence, forces, commits deception, says a series of lies, or persuades a child to do obscene acts or allow it happen, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp. 300,000,000.00 (three hundred million rupiahs) and a minimum of Rp. 60,000,000.00 (sixty million rupiahs)."

Law Number 44 of 2008 concerning Pornography does not directly state the criminal act of obscenity. Article 1 paragraph 1 concerning obscenity states, "Pornography is pictures, sketches, illustrations, photos, writing, sounds, voices, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in the society."

The forms of obscenity are quite diverse. There are several terms regarding obscenity, namely:

1. *Sexual exhibitionism*: deliberately showing genitals to children;
2. *Voyeurism*: adults passionately kissing children;
3. *Fondling*: stroking/touching a child's genitals; and
4. *Fellatio*: adults force children to make mouth contact.

If someone shows his genitals to someone who does not want to see it in public, that exhibitionist can be charged with Article 281 of the Criminal Code for crimes that violate public decency. Article 281 reads:

Shall be punished with imprisonment for a maximum of two years and eight months or a fine of up to Rp. 4,500,- (four thousand five hundred rupiahs):

1. Whoever deliberately violates decency;
2. Whoever deliberately, in front of other people who are there against their will, violates decency;

Article 281 above regulates two formulations of crime. The first formulation of crime is in Article 281 point one while the second formulation is contained in Article 281 point 2. Article 281 point one defines a crime with 3 elements: (1) the first element is the subjective element which is an essential requirement for wrongdoing in the form of a deliberate mistake that violates the values of decency norms to happen, (2) the second is the subjective element consisting of actions that violate decency norms, and (3) the third is the open element (Chazawi, 2005).

The intentional element in the crime against decency in public is that, before the perpetrator commits the act of violating decency, the perpetrator has indeed formed a desire in his heart to commit that act. It means that the act is indeed desired by the perpetrator and the perpetrator is aware of it. He knows about the value of his actions as an attack against the general sense of decency. He is also aware that such actions violate moral values.

The element of publicity causes all the above actions to become acts that violate decency, meaning that this act of decency is inherently disgraceful and unlawful. But it cannot be ascertained if that act is not committed in public, perhaps the disgraceful nature of the act

that violates decency still exists. Based on the crime norms of the second point of Article 281, it is clear that the disgraceful nature of an act becomes an act that attacks a sense of decency if it is carried out in the presence of other people, who are not there to specifically see the actions of those who violates the value of decency. If a normal person sees an action that violates the values of decency, he/she will be embarrassed (Gunandi & Efendi, 2014)

Associated with the above statement, the act of exhibitionism contains the elements of the above crime. The perpetrators of exhibitionism aim to obtain satisfaction. They show their genitals so that people who see them can be shocked and feel embarrassed. This clearly offends the sense of decency of the people who saw it.

Exhibitionist perpetrators carried out the act on purpose. Before committing this act, the exhibitionist previously had the intention to do it, even though he was fully aware that this violated the norms of legal decency. Besides that, the act was carried out deliberately. They do the acts openly in public places such as on the street or on trains. The nation's train corporation punished a perpetrator of exhibitionism and banned him from becoming a train passenger for life (Radar Solo, 2022). In this case, the exhibitionists have clearly violated the sense of decency and they have committed acts that violate the provisions of Article 281 of the Criminal Code regarding crimes that violate public decency.

Based on the statement described above, it can be seen that according to the consideration of the Supreme Court judges, exhibitionism is considered a mental illness. So, AD cannot be held responsible or it can be said that exhibitionism is included as a basis for abolishing criminal sanctions. The Criminal Code formulates several circumstances that can serve as legal bases for criminal write-offs, as follows:

1. Article 44 of the Criminal Code concerning Responsibility.
2. Article 48 of the Criminal Code concerning Forced Power and Forced Circumstances.
3. Article 49 of the Criminal Code concerning Forced Defense.
4. Article 50 of the Criminal Code concerning Carrying Out Law Orders.
5. Article 51 of the Criminal Code concerning Carrying Out Superiors' Orders.

In the decision of the Supreme Court Number 865 K/Pid.Sus/2013, the Supreme Court Judge based his considerations for abolishing criminal sanctions against AD on the provisions of Article 44 of the Criminal Code. The Judge considers exhibitionism to be one of the psychiatric disorders related to sex. Other than that, exhibitionism is a disorder of sexual stimulation. A disease is the disruption or non-continuation of psychological and physical functions; namely abnormalities and deviations that result in damage and endanger organs or the body, thus they can be life-threatening.

As an example of the case in the Supreme Court Decision Number: 865/Pid.sus/2013 regarding the exhibitionism case with AD perpetrators. The Defendant, AD, has intentionally committed violence or threatened violence, forced, tricked, and said a series of behaviors or persuaded a child to allow obscene acts to be carried out. Based on the forensic examination, no sexual violence was found, so the judge decided that AD had committed the act as stated in the indictment, but the act was not a crime. On that basis, the judge released Defendant AD from all punishments, returned AD's rights to his position, ability, dignity and honor, and charged AD with court fees.

In the case of exhibitionism by AD, exhibitionism *is* considered a mental illness **by the decree of the Supreme Court. The Supreme Court believes** that he has difficulties controlling the urge to show his genitals in public. This urge is "ego-alien", where the sufferer cannot control the urge. So, even though the exhibitionist knows that his actions violate decency, he cannot restrain or control them due to his mental illness. This deviant behavior of people with exhibitionism is a disease in society because it is inappropriate. Such actions violate the values and norms of Indonesian society. Because of this mental illness, he can't be punished by the law.

The behavior of people with exhibitionism deviates from human nature. People with psychiatric disorders including exhibitionism have some weaknesses, including their inability to recognize, understand, control, and regulate their own emotions, impulses and behavior. It is difficult to trust them because generally, they have low mental quality. So, they cannot take responsibility.

The issue of criminal liability cannot be separated from the element of whether a person's actions contain an element of error or not. If there is an element of error, then the act

can be held accountable. This is contained in the origin of legality which forms the basis of punishment in criminal law. The basis of responsibility is the error in a person's mental condition and the relationship with the punishable behavior. Based on the mental condition, the perpetrator can be reproached for his actions. This means that apart from the element of error, a person who commits the crime must have an element of responsibility.

According to Jan Rammelink, the existence of the element of the ability to be responsible is the basis for whether or not there is an error. The absence of the ability to be responsible is a variant of the absence of mistakes (*afwezigheid van alle schuld*). It is a psychological overact caused by a "mental illness" (Rammelink, 2003). This opinion means that if the perpetrator of exhibitionism (in this case AD) does it because of a mental illness, then he is considered to not be able to be responsible. On the contrary, if the perpetrator did not do it because of mental illness, then the exhibitionist should have the ability to be criminally liable.

The Panel of Judges also considered certain circumstances that resulted in the defendant not being prosecuted. The imposition of the decision where the defendant was free from all lawsuits was because he cannot be held accountable for his actions. This was because he was mentally disabled or disturbed due to an illness according to the formulation in Article 44 of the Criminal Code. In this regard, a person who does not have an element of responsibility cannot be held accountable even if it is proven that his actions have an element of error and violate the laws and regulations (Zulfa, 2010).

In AD's case, the Supreme Court judge based his considerations on provisions of Article 44 of the Criminal Code. The Judge stated that AD was unable to be responsible for his actions. Even so, in the decision, the judge did not write Article 44 of the Criminal Code down as his legal basis. Article 44 of the Criminal Code gives a clear description of a condition, where a perpetrator of a crime cannot be held accountable for the actions he has committed. The general measure that is used to determine whether or not a person is capable of being responsible is the standard of maturity for normal people in general.

In AD's case, **without a review from a doctor, a psychologist, or a psychiatrist**, the judge considered exhibitionism a disease. Thus, this makes AD unable to be held responsible for the criminal act of obscenity he committed. However, based on an explanation from the

author of the book *Psychology Abnormal and Sexual Abnormalities*, Kartini Kartono, exhibitionism is a type of sexual immorality where the perpetrator can use judgment before committing it. This raises a different interpretation of the definition of exhibitionism. Then this also raises the question, "Can exhibitionism be categorized as an obscene act or is it a mental illness?" (Deowikaputra & Zulfa, 2014).

According to the provisions of Article 44 paragraph 1 of the Criminal Code, a person can be referred to as "*niet kan worden toegerekend*" or as "*ontoerekeningsvatbaar*" or as "not accountable" for his actions if that person fulfills one of its conditions. For instance, he has a "*gebrekkide ontwikkeling zijner verstandelijke vermogens*" or an "imperfect development of his reasoning abilities" or he has a "*ziekelijke storing zijner verstandelijke vermogens*" or a "disease or disorder against one's ability to have common sense".

Thus, it is not included in the notion of imperfect growth. It is unlike retardation, for instance, which happened due to a child's lack of attention from parents or their lack of education. In his book, R. Soesilo has a similar argument. People who have disturbed intelligence are for instance "idiots", "imbeciles", blind, deaf, and mute people.

Meanwhile, exhibitionism is a compulsive tendency to display body parts, usually the genitals, for the purpose of obtaining excitement, sexual excitement, and sexual satisfaction (Soesilo, 1996, p. 61). Exhibitionism is also known as the Lady Godiva syndrome, namely Apodysofilia. In the United States and Canada, the slang term is *flasher*, which is defined as a sexual need and pattern of behavior to show naked body parts to others (Chaplin, 1981).

Based on the results of the Supreme Court Decision, the judge was wrong in placing exhibitionism as an excuse for eliminating criminal liability. This is based on theories and opinions which say that exhibitionism is not included in the provisions as a reason for eliminating criminal liability. This is because exhibitionism is a type of disorder that is different from the types of disorders contained in the provisions regarding reasons for criminal elimination, i.e., Article 44 of the Criminal Code concerning the ability to be responsible. The type of disturbance in exhibitionism is a sexual disorder, rather than a psychiatric disorder or psychosis contained in Article 44 of the Criminal Code. The judge also did not base his decision on an examination by a psychiatrist who has the expertise to accurately determine AD's mental condition.

The decision to release AD could become a boomerang in the future because the perpetrators of exhibitionism sexual harassment will feel that they have the freedom to disturb public peace by committing exhibitionism. The perpetrators and potential perpetrators of exhibitionism will feel safe because if the victims report it to the authorities, they will be released from criminal punishment. This is because they are considered to be unable to be responsible as the authorities believe that they have a mental illness. This is an effect of the Supreme Court decision which can be considered jurisprudence.

The panel of judges that handle exhibitionism cases should invite a competent psychiatrist to decide whether the exhibitionists really have a psychiatric disorder or does he only have sexual deviance. The panel of cassation judges can decide on the treatment for perpetrators who experience mental disorders in a mental hospital or psychiatrist until they recover from exhibitionism and not just let them go.

CONCLUSION

Exhibitionism should not be included as a mental disorder by the judge's legal reasoning, but the judge should consider it a sexual disorder (deviation), as it is a deviation to show or exhibit genitals in public or in the presence of victims. Thus, such is not included in the definition of imperfect growth. An example of imperfect growth is retardation due to a lack of attention from parents or a lack of education.

Meanwhile, exhibitionism is a compulsive tendency to display body parts, usually the genitals, to obtain excitement, sexual desire, and sexual satisfaction. Thus, it does not deserve a waiver of all charges according to Article 44 of the Criminal Code as stated in the decision of the Supreme Court judicial panel.

The cassation decision also runs the risk of causing rampant exhibitionism cases that disturbs the public peace. Exhibitionists will feel safe because they think they will definitely be released on the grounds of a mental disorder. It is necessary to provide an expert examination to ascertain the mental condition of exhibitionists. The panel of cassation judges can decide on treatment in a mental hospital or psychiatrist until the exhibitionist perpetrators who have mental disorders recover instead of just letting them go.

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