

## **A COMPARATIVE ANALYSIS OF THE CRIMINAL LAW FRAMEWORK FOR MENTALLY ILL MURDERERS: A CASE STUDY OF ASEAN COUNTRIES**

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### **Abstract**

This research analyses the criminal legal framework applied to mentally ill homicide offenders in several ASEAN countries. The aim is to understand how each country deals with these cases, and evaluate the differences and similarities in legal approaches and implementation of psychiatric evaluations. This research reveals that there is significant variation in the way ASEAN countries draft and implement criminal laws relating to mentally ill offenders. While the general principle that mentally ill offenders require special treatment is recognised, the study results indicate major differences in rehabilitation policies, use of psychiatric evaluations, and sentencing practices. These findings point to the importance of integrating more holistic and rehabilitation-focused policies to support the recovery and reintegration of mentally ill offenders into society.

**Keywords:** Comparative Analysis, Criminal Legal Framework, Murder Offenders, Mental Illness, Asean Countries

### **Introduction**

Murder is one of the most serious forms of crime and has significant legal consequences in almost all jurisdictions in the world. However, the complexity of murder cases increases when the offender is found to be mentally ill. This is because of the conflict between justice for the victim and society and the protection of the mentally challenged offender.

A mental disorder, or mental illness, is a health condition that affects a person's thoughts, feelings, behaviour or mood, resulting in significant difficulties in functioning in daily life, work or social relationships. (Allen, 2020). These disorders can range from common conditions such as depression and anxiety, to more serious disorders such as schizophrenia and bipolar disorder. A diagnosis of a mental disorder usually requires an evaluation by a mental health professional based on observed symptoms as well as the individual's medical history. Mental disorders generally require treatment involving medical approaches, psychological therapies, or a combination of both to help individuals manage symptoms and improve their quality of life (Loveless et al., 2022)..

In ASEAN countries, the regulation and approach to mentally ill homicide offenders shows significant variation. Some countries adopt a more rehabilitative legal approach and focus on medical treatment, while others continue to apply criminal penalties albeit with some leniency. These differences reflect the diverse cultural backgrounds, legal systems and policies of countries in the ASEAN region. For example, Indonesia has Article 44 of the Criminal Code which stipulates that a person who commits a criminal offence due to mental illness cannot be convicted. (Monaghan, 2022). On the other hand, Singapore has the Mental Health (Care and Treatment) Act

which allows for punishment but with consideration of mental disorder as a mitigating factor. Meanwhile, Malaysia tends to use a legal medical approach in dealing with similar cases through the Insanity Defence. (Theodorou et al., 2024)..

As such, Singapore and Malaysia have a stricter approach to this issue. Both countries apply legal principles that require a rigorous medical evaluation to determine whether a person with mental illness can be released from criminal responsibility. In Singapore, for example, the Mental Health Act allows the court to order psychiatric evaluations for defendants suspected of mental illness, and the results of these evaluations will be a key determinant in legal decision-making. (Kremnitzer, 2020). In Malaysia, individuals with mental illness can be taken to a psychiatric hospital if they are not deemed responsible for the criminal offence committed, under the Mental Health Act 2001. This approach shows how each ASEAN country handles cases of mental illness in their criminal justice system by balancing the protection of individuals suffering from mental illness and the interests of law enforcement (Kremnitzer, 2020). (Kremnitzer, 2020).

These differences raise important questions about how justice and public policy can be effectively achieved in homicide cases with mentally ill offenders in the ASEAN region. This comparative study aims to analyse the criminal legal framework and treatment of mentally ill homicide offenders in several ASEAN countries.

## **Research Methods**

The study used the literature method. The literature research method, or often referred to as literature review, is an academic approach that involves the systematic collection, review, and analysis of written sources relevant to a particular topic or research question. This process includes the identification, evaluation, and synthesis of previous research results that have been published in the form of books, journal articles, reports, and other documents. (JUNAIDI, 2021); (Abdussamad, 2022). Literature research aims to build a strong theoretical foundation, identify research gaps, and provide context and analytical framework for new studies. This is done through a thorough, critical and structured search strategy, which ensures the validity, reliability and relevance of the information gathered to achieve a deep and comprehensive understanding of the topic under study. (Wekke, 2020).

## **Results and Discussion**

### **Indonesia's Criminal Law Framework**

A mental disorder, or mental illness, is a health condition characterised by significant changes in a person's thinking, feeling, mood, or behaviour, resulting in impairments in psychological, social, or occupational functioning. These disorders can

include a wide range of diagnoses, such as depression, anxiety disorders, schizophrenia, bipolar disorder, and more. (Nasu, 2024). A person with a mental disorder may have difficulty coping with everyday stress, interacting with others, or maintaining stable employment and relationships. The diagnosis and treatment of mental disorders requires a professional evaluation by a mental health professional, which may include therapy, medication, and other interventions to help individuals achieve recovery and well-being. (YILDIZ, 2022).

Criminal law is a branch of law that regulates acts that are considered unlawful and threatened with punishment in the form of punishment or action by the state against the perpetrators. Criminal law aims to maintain public order and security, protect public interests, and provide appropriate sanctions for those who commit criminal offences. (Clough, 2023). This concept includes various provisions on what is considered a criminal offence, as well as procedures for handling and enforcing the law, including investigation, prosecution, trial, and execution of punishment. (Sadyrina, 2024).

Criminal liability, on the other hand, relates to the principle that a person can only be subject to criminal sanctions if there is culpability that can be proven based on due process of law. Criminal liability involves elements such as intentionality or negligence, the legal capacity of the perpetrator (e.g., age competence or mental impairment), and the existence of a causal relationship between the act and the resulting consequences. (Yudha et al., 2023).. In the criminal law system, this principle serves to ensure that every punishment is given fairly and proportionally according to the level of guilt that has been committed, as well as taking into account the human rights of the defendant during the legal process. (Tedjokusumo & Siswanto, 2023)..

The framework of criminal law in Indonesia is built on the basis of the principle of legality contained in Article 1 Paragraph (1) of the Criminal Code (KUHP) which states that no act can be punished except based on the strength of criminal rules in existing legislation. (Pratama et al., 2024). This principle confirms that a person can only be subject to criminal punishment if the act committed has been regulated and considered a criminal offence in the regulations in force when the act is committed. The Criminal Code is the main basis of the criminal law system in Indonesia, which contains general provisions on criminal offences, criminal liability, and the types and application of penalties. (Amri, 2022).

In addition to the Criminal Code, there are also other laws that regulate special criminal offences in Indonesia, such as the Law on the Eradication of Corruption, the Law on Narcotics, and the Law on Terrorism. These special criminal laws were formulated to answer the need for more specific regulations in addressing certain crimes that have a broad and serious impact on society. These regulations are made to complement and strengthen the provisions in the Criminal Code, with approaches and

sanctions that are adjusted to the characteristics of each criminal offence. (Iswantoro & Maryanto, 2020)..

Criminal law enforcement in Indonesia is carried out by law enforcement officials consisting of the Police, the Prosecutor's Office, and the Courts. The police play a role in the investigation and prosecution of criminal offences, while the Attorney General's Office is responsible for the prosecution process. The court is tasked with examining, trying, and deciding criminal cases based on law and valid evidence. Each stage in the criminal law enforcement process must fulfil the principle of due process of law, which guarantees the human rights of the defendant during the legal process, including the right to self-defence. (Sardor, 2021).

The structure of criminal law in Indonesia also provides room for the application of the principle of restorative justice in the handling and resolution of criminal cases. Restorative justice emphasises out-of-court settlements with the aim of restoring the victim's loss, repairing the relationship between the perpetrator and the victim, and restoring balance in society. (Pamungkas & M.Hum, 2023). This principle has begun to be applied in certain cases, such as in the handling of minor offences or first-time cases, where mediation between offenders and victims and peaceful settlements are favoured over retributive punishment. The application of restorative justice aims to prioritise a more humane settlement and can provide more substantial justice for all parties involved.

### **Criminal Law Framework in Malaysia**

The criminal law regulation of mentally ill offenders in Malaysia is regulated in the Kanun Keseksaan which is the main criminal law in the country. According to Section 84 of Malaysia's Kanun Keseksaan, a person who at the time of committing a criminal offence is of unsound mind due to mental disorder cannot be held criminally responsible for the offence committed. (Diana et al., 2024). This article is in line with the principle of insanity defence, which provides an exemption from punishment for offenders who do not have the ability to understand the nature and consequences of their actions. (Putri & Waluyo, 2024)..

To determine whether an offender was mentally ill at the time of the offence, a medical and psychiatric examination conducted by a competent specialist is required. The court plays an important role in assessing the evidence and expert testimony to ensure that the offender is indeed innocent due to mental illness. The results of the examination will be the main consideration in the court process to determine whether the offender should be exempted from criminal punishment or referred to specialised treatment. (Novianti & Soponyono, 2024)..

If the court finds that the perpetrator is indeed suffering from mental illness, then the perpetrator will not be subject to criminal penalties such as imprisonment or other corporal punishment. Instead, the court may decide to place the offender in the

care of a mental health institution for further rehabilitation and treatment. This step aims to provide the offender with the necessary medical treatment and at the same time protect the community from the possible risks posed if the offender remains in a free environment without adequate supervision. (Felthous, 2020).

The treatment of mentally ill offenders in Malaysia reflects an approach that focuses on a hybrid of retributive and rehabilitative justice. This approach seeks to ensure that people with mental illness are not treated unfairly within the legal system. At the same time, mental health institutions and law enforcement officials work together to ensure the offender's recovery and safe reintegration into society. This approach strikes a balance between the need to enforce the law and the protection of the rights of individuals with mental illness. (AVRAMENKO, 2023).

It should be noted that the implementation of this legal policy requires synergy between several relevant institutions, including law enforcement agencies, psychiatric hospitals, and the justice system. Proper assessment and effective rehabilitation mechanisms require adequate support and facilities. This includes the provision of sufficient resources for psychological assessment, rehabilitation services, and ongoing follow-up for individuals with mental illness. (Neubacher, 2020).

In addition, there are challenges within this system that must be addressed to ensure justice for mentally ill offenders. One of the biggest challenges is the issue of social stigma that is often attached to those suffering from mental illness. In society, there is still fear and discrimination that needs to be reduced through education and awareness campaigns on mental health. It is important that families and communities can also play their role in supporting the recovery and reintegration of people with mental illness into society. (Umanailo & Setiyono, 2023).

Another important factor is training for law enforcement officers and policy makers on how to handle cases involving mentally ill offenders humanely and in accordance with the law. With a better understanding of mental health issues, law enforcement officers can be more sensitive and judicious in handling cases involving people with mental illness. This training could include ways to identify signs of mental illness and treatment methods that do not rely solely on physical detention. (Malunga, 2023).

In conclusion, the criminal law regulation of mentally ill offenders in Malaysia reflects the state's commitment to protect the rights of mentally ill individuals through a balanced and fair justice system. The mechanisms in place under the Kanun Keseksaan allow offenders who are not criminally responsible due to mental illness to receive appropriate medical treatment instead of criminal punishment. While challenges such as social stigma and training needs for law enforcement officials remain, concerted efforts from various parties can help ensure the implementation of this system is effective and humane, and maintains a balance between legal justice and mental health protection.

## **Singapore's Criminal Law Framework**

Singapore's criminal law treatment of mentally ill offenders is handled with care, considering both legal and mental health aspects. Singapore's legal system draws on the principle that individuals who suffer from mental illness and are unable to understand their actions, or the consequences of those actions, may not be held legally responsible. (Rizayeva, 2020). In this context, Singapore applies a legal exemption or reduction of criminal responsibility for offenders who are found to be mentally ill when committing a crime. This is in line with legal principles found in many other common law-based jurisdictions (Bows & Herring, 2020). (Bows & Herring, 2020).

To determine whether a defendant can be held criminally responsible, courts in Singapore often involve psychiatric experts in the assessment process. The expert will assess the mental state of the offender at the time of the criminal offence. If it is found that the offender is indeed suffering from a serious mental disorder, which renders them incapable of understanding their actions or their impact, then the court may decide to give an alternative sentence. One option is to refer the offender for treatment and rehabilitation at a mental health facility, instead of imposing the usual prison sentence. (Storey et al., 2022)..

However, this system is also not free from challenges. One of the main challenges is to ensure that there are clear boundaries and standards in assessing mental illness, so that it is not abused or used as an excuse to waive responsibility entirely. In addition, there are also efforts to develop policies that ensure that when mentally ill offenders are exempted from standard legal responsibility, the public is still protected from potential threats. (Selin & Shannon, 2024). In this regard, rehabilitation and continued monitoring are often an important part of the measures taken.

Amidst all this, stigma towards mental illness remains a significant social challenge in Singapore, as it does in many other countries. This stigma can affect how individuals with mental illness are treated in the justice system. Therefore, public education and awareness-raising on mental health is important to support a more humane and effective implementation of the law. (Kojongian, 2023).

In conclusion, Singapore takes a balanced approach to dealing with mentally ill offenders, combining legal justice with mental health care needs. While there are challenges to overcome, such as potential abuse of exemptions and social stigma, appropriate policies and effective rehabilitation mechanisms can help ensure that individuals with mental illness receive fair treatment. These measures are also important to protect society while providing rehabilitation opportunities for those affected.

## **Thailand's Criminal Law Framework**

Thailand's criminal law treatment of mentally disordered offenders is based on the principle that an individual cannot be held criminally responsible if it is medically proven that he or she had a significant mental disorder at the time of committing the unlawful act. Thai law, as in many other countries, recognises that mental conditions can affect a person's ability to understand or control their behaviour. (Akhsya & Wahyudi, 2023)..

In Thai legal proceedings, the court will engage a psychiatric expert to evaluate the mental state of an accused. The expert is tasked with assessing whether the perpetrator suffers from a mental disorder that makes them unable to understand the nature and consequences of their actions or unable to control their actions. If it is proven that this mental disorder does exist, the defendant may be found not legally responsible. In addition, the court may decide to place the defendant in specialised medical care, either in a mental hospital or through a rehabilitation programme, rather than imposing a prison sentence. (Hardianti & Rusdiana, 2022)..

However, this system also faces specific challenges. One of the main challenges is ensuring accurate and unbiased judgement in determining the defendant's mental disorder. There is concern that the argument of mental illness may be misused as a defence strategy to avoid criminal conviction. Therefore, Thai courts endeavour to apply strict standards and objective procedures in the assessment of a defendant's mental state. This includes ensuring psychiatric experts are credible and adequately qualified. (Hoseini, 2021).

More broadly, the stigma of mental illness in Thailand also affects how mentally ill offenders are treated in the criminal justice system. Discrimination and lack of understanding about mental health often make it difficult to implement more humane and inclusive policies. To address this, Thailand needs to continue to raise public awareness about the importance of mental health and ensure better access to mental health services. (Bung, 2020).

In conclusion, Thailand's criminal law arrangements for mentally ill offenders promote a comprehensive and medically-based assessment of the defendant's mental state. Nonetheless, challenges such as potential abuse of legal exceptions and stigmatisation of mental illness still exist. With proper policies, strict procedures, and increased public awareness, Thailand can create a fair and effective legal system that not only protects the public but also provides proper care and attention to individuals with mental illness.

### **Comparison and analysis of the similarities and differences in the regulation and application of criminal law in these countries.**

In comparing and analysing the regulation and application of criminal law for mentally ill offenders in different countries, it is important to see how each jurisdiction defines and addresses this issue in their justice system. While there are internationally

recognised general principles, such as that individuals with significant mental illness cannot be fully held criminally responsible, there are variations in their implementation across countries. (Bung, 2020).

For example, in Thailand, the criminal law treatment of mentally ill offenders requires the involvement of a psychiatric expert to evaluate the defendant's mental state. The results of this evaluation influence the court's decision on whether or not the defendant is held legally responsible. (Khakimov, 2023). The court may also decide on specialised medical treatment as an alternative to imprisonment. The main similarity with many other countries, including the United States and the United Kingdom, is the use of psychiatric experts as a source of independent assessment of the defendant's mental state. However, a notable difference may lie in the degree of seriousness with which the court applies the results of this assessment to the final judgement. (Jaya & Prasetyo, 2023).

In the United States, the criminal legal system for mentally ill offenders also involves psychiatric experts, and some states even have specific rules detailing how the defence of "not guilty by reason of mental disorder" can be raised. For example, the M'Naghten standard and the "Model Penal Code" provide specific guidelines on the mental capacity of the accused at the time of the crime. Even so, approaches to rehabilitation and treatment integrated with the legal system vary between states, something that may not be as great as the attention given in countries such as Sweden, which focus more on rehabilitation and health care than imprisonment (Peay, 2023).

Meanwhile, in European countries such as Sweden, the criminal law against mentally ill offenders places more emphasis on recovery and reintegration into society. Offenders with serious mental illness are often referred to intensive psychiatric treatment rather than being pushed into the conventional prison system. This suggests a fundamental difference in approach, with Sweden being more proactive in prioritising mental health and rehabilitation over the more traditional and repressive legal approach. (Miśkiewicz & Vadokas, 2024)..

Analysis of these similarities and differences underscores that while there is general agreement that mentally ill offenders require specialised treatment, implementation varies widely depending on the social, cultural, and legal context of each country. Factors such as stigmatisation of mental illness, mental health resources, and judicial philosophies play an important role in how law and justice are implemented. In conclusion, a more holistic and integrated approach that includes medical and rehabilitation aspects rather than solely punishment, seems to be more effective in managing offenders with mental illness.

## **Conclusion**

From a comparative analysis of the criminal legal framework for mentally ill homicide offenders in ASEAN countries, it appears that there is significant variation in



approach and implementation. In countries such as Indonesia and Malaysia, the legal definition and treatment of mentally ill offenders shows differences in the use of psychiatric evaluations and court decisions. Both countries generally recognise the importance of the defendant's mental state, but the implementation can be quite different, especially in terms of rehabilitation and long-term care provided after a psychiatric assessment is conducted. Thailand, as another example, appears to be more structured in its use of psychiatric experts to determine offender responsibility.

Thus, while the basic principle that mentally ill offenders require specialised treatment is widely accepted, the practical approaches taken by ASEAN countries vary considerably. This suggests that social, cultural factors and the availability of mental health facilities play an important role in policy formation and legal implementation. From a criminal law perspective, the adoption of a more integrated and rehabilitation-focused approach, as observed in some countries, can be more effective in managing cases of mentally ill offenders, emphasising not only the punitive aspects but also recovery and reintegration into society.

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