



Adaptive Criminal Liability in National Legal Reform: Accommodating Mental Disability in Criminal Law

Pertanggungjawaban Pidana yang Adaptif dalam Reformasi Hukum Nasional: Mengakomodasi Gangguan Mental dalam Hukum Pidana

M. Ghuftron Fazacholil^{*1}, Yusuf Saefudin² 

¹Faculty of Law, Muhammadiyah University of Purwokerto, Wonosobo, 56362, Indonesia

²Faculty of Law, Muhammadiyah University of Purwokerto, Purwokerto, 53182, Indonesia

*Corresponding Author: fazafazag6678@gmail.com

ARTICLE INFO

Article history:

Received 29 April 2025

Revised 16 May 2025

Accepted 26 June 2025

Available online 19 September
2025

E-ISSN: 2964-4011

How to cite:

Fazacholil, M.G. (2025).
Adaptive Criminal Liability in
National Legal Reform:
Accommodating Mental
Disability in Criminal Law.
Neoclassical Legal Review:
Journal of Law and
Contemporary Issues, 4(2), 52-
59.

ABSTRACT

The reformulation of criminal liability in the New Criminal Code through Articles 38 and 39 demonstrates the commitment of the Indonesian criminal law system to accommodate the principle of inclusive justice for persons with mental and/or intellectual disabilities. This article discusses the elimination and reduction of punishment for perpetrators with disabilities from a normative perspective, as well as the challenges of its implementation at the practical level. In the old Criminal Code, Article 44 only provides general criminal exemptions without procedural clarity and alternative measures. The 2023 Criminal Code, which will enter into force in 2026, changes this approach by distinguishing between offenders who are still able to understand the consequences of their actions (subject to punishment with reduction or alternative measures) and offenders who are in an acute state and unable to understand (subject to measures without punishment). This article uses a normative juridical approach and is supported by limited empirical juridical analysis to examine the effectiveness and challenges of this new provision. The results of the study show that Articles 38 and 39 have shifted the paradigm of punishment from retributive to humanistic, but their implementation still faces obstacles, especially regarding technical guidelines for assessing mental capacity, expert involvement, and potential treatment disparities. Therefore, a *lex specialis* is needed to support the general provisions so that they can be operationalized effectively, fairly, and non-discriminatively against persons with disabilities in the criminal law process.

Keyword: Mental Disability, Criminal Liability, New Criminal Code

ABSTRAK

Reformulasi pertanggungjawaban pidana dalam KUHP Baru melalui Pasal 38 dan 39 menunjukkan komitmen sistem hukum pidana Indonesia dalam mengakomodasi prinsip keadilan inklusif bagi penyandang disabilitas mental dan/atau intelektual. Artikel ini membahas penghapusan dan pengurangan pidana terhadap pelaku dengan disabilitas dalam perspektif normatif, serta tantangan implementasinya di tingkat praktik. Dalam KUHP lama, Pasal 44 hanya memberi pembebasan pidana secara umum tanpa kejelasan prosedural dan alternatif tindakan. KUHP 2023, yang akan berlaku pada tahun 2026, mengubah pendekatan ini dengan membedakan antara pelaku yang masih mampu memahami akibat perbuatannya (dikenai pidana dengan pengurangan atau tindakan alternatif) dan pelaku yang dalam keadaan akut dan tidak mampu memahami (dikenai tindakan tanpa pembedaan). Artikel ini menggunakan pendekatan yuridis normatif dan didukung analisis yuridis empiris terbatas untuk menelaah efektivitas dan tantangan ketentuan baru ini. Hasil kajian menunjukkan bahwa Pasal 38 dan 39 telah menggeser paradigma pembedaan dari retributif menuju humanistik, tetapi implementasinya masih menghadapi kendala, terutama terkait pedoman teknis penilaian kapasitas mental, keterlibatan ahli, dan potensi disparitas perlakuan. Oleh karena itu, diperlukan *lex specialis* untuk



This work is licensed under a Creative
Commons Attribution-ShareAlike 4.0
International.
([10.32734/nlrjolci.v4i2.20658](https://doi.org/10.32734/nlrjolci.v4i2.20658))

mendukung ketentuan umum tersebut agar dapat dioperasionalkan secara efektif, adil, dan tidak diskriminatif terhadap penyandang disabilitas dalam proses hukum pidana.

Kata kunci: Disabilitas Mental, Pertanggungjawaban Pidana, KUHP Baru

1. Introduction

In the framework of legal reform in Indonesia, the direction of national law formation must always be based on the fundamental objectives of the state as stated in the Preamble of the 1945 Constitution, namely: protecting all Indonesian people and the entire homeland, advancing public welfare, educating the life of the nation, and participating in the establishment of a world order based on independence, eternal peace and social justice. The state objectives that characterize the Indonesian nation must be embedded in the national legal system, including within the criminal law system (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945). Reform of the Criminal Code through the Codification of the new Criminal Code (KUHP) is therefore directed not only to uphold formal justice, but also to achieve social defence and promoting social welfare. This reform reflects a paradigm shift from repressive model of criminal law toward a criminal law that is more humanist, proportional, and adaptive to the social dynamics of Indonesia's pluralistic society (Remaja, 2019). Criminal law has a central role in maintaining social order and safeguarding justice. Beyond imposing sanctions for legal violations, it must also ensure the protection of human rights, particularly for vulnerable groups such as persons with mental and/or intellectual disabilities.

In both national and international contexts, diversity is recognized as an inherent part of social life. One form of diversity is the existence of vulnerable groups, which are groups that basically require basic assistance or services because they have obstacles or limitations in carrying out daily activities (Rahmasari, 2024). These groups often experience cognitive and emotional limitations that affect the ability to understand and control behaviour, as well as take responsibility for actions. Mental and/or intellectual disabilities, in particular, may impair a person's ability to think, behave, and interact socially. These conditions have implications not only on the quality of daily life, but also on their ability to participate in the legal process equally. In the realm of criminal law, differences in an offender's mental state should be an important consideration in determining criminal liability. Therefore, it is important for the legal system to provide fair and proportional treatment to persons with disabilities, from the investigation process until the sentencing process.

Under the old Criminal Code (colonial legacy), Article 44 stipulated that a person who committed a criminal offense while in a state of mental disorder or mental disability could not be punished. However, this provision was framed in broad and limited terms, without a detailed explanation for the classification of mental conditions, no clear procedures for assessing the capacity of the perpetrator, or alternative forms of action that can be applied. As a result, there is no comprehensive mechanism to ensure legal protection and remedy for persons with mental and/or intellectual disabilities, which is precisely what is needed in a modern and inclusive legal framework. Significant changes were introduced with the New Criminal Code, which was enacted through Law No. 1 of 2023. Within this new national legal framework, important reformulations have been made concerning the criminal liability of persons with mental and/or intellectual disabilities, most notably in Article 38 and Article 39, which provide a more structured and inclusive approach.

Article 38 of the New Criminal Code states that persons with mental and/or intellectual disabilities can still be held criminally liable, if at the time of committing a criminal offense, they still have the ability to understand the consequences of their actions. In such cases, the judge may consider reducing the sentence or replacing it with alternative measures. Conversely, Article 39 stipulates that if the perpetrator does not have the ability to understand the consequences of his/her actions due to severe mental and/or intellectual disabilities, then he/she cannot be punished, but may instead be subjected to measures in the form of rehabilitation or treatment. These two articles show a paradigm shift from a retributive approach model to a more humanistic approach. Persons with disabilities are no longer positioned merely as passive objects within the legal process, but rather as legal subjects who are entitled to treatment consistent to their conditions and abilities. This approach also aligns with Law No. 8/2016 on Persons with Disabilities, which

emphasizes the principles of respect, protection and fulfilment of the rights of persons with disabilities, including the right to justice and equal treatment in the legal process.

Based on the viewpoint of the theory of criminal responsibility, the element of fault (*schuld*) constitutes the principal requirement for conviction. This fault includes both awareness and will of the act committed (Bawazir, 2025). Accordingly, the cognitive and volitive abilities of the perpetrator are decisive in determining whether a person can be held criminally responsible. In this regard, Articles 38 and 39 of the New Criminal Code provide a framework for evaluating the degree of an offender's mental capacity and its legal consequences in a proportional manner. Nevertheless, implementation challenges remain. Key issues include the establishment of clear standards for medical assessment of the perpetrator's mental capacity, the designation of competent authorities to conduct such evaluations, and the need for consistent application of these provisions by law enforcement and judicial officials.

The lack of technical guidelines can lead to imbalances in practice, and even potentially lead to discrimination or stigmatization if this special treatment is not applied carefully and proportionally. In addition, it should be noted that the new Criminal Code is still positioned as a general criminal law (*lex generalis*), so the provisions in Articles 38 and 39 should be supported by a *lex specialis* that specifically regulates the technicalities of psychiatric examination, implementation of rehabilitative measures, and legal protection during the criminal process. Without further regulation, this reformulation risks becoming an inoperative norm in law enforcement practice (Putri & Mardijono, 2024).

Several previous studies have examined normative changes in the new Criminal Code concerning persons with mental and/or intellectual disabilities. However, in-depth examinations of how restorative justice principles and rehabilitation-based criminal liability are applied in judicial practice remain limited. Accordingly, further analysis is needed to understand the effectiveness of the application of these provisions in the criminal justice system in Indonesia, such as research conducted by Kadek Januarsa Adi Sudharma (2021), which has discussed the criminal liability of persons with mental disabilities as perpetrators of the crime of sexual abuse under the old Criminal Code (Sudharma & Meiranda, 2021). In line with this, research by Trisno Raharjo and Laras Astuti (2017) also examines the concept of diversion for children with disabilities as perpetrators in the juvenile criminal justice system (Raharjo & Astuti, 2018). However, both studies have not specifically analysed the criminal liability arrangements for persons with mental and/or intellectual disabilities in the new Criminal Code (Law No. 1 Year 2023), particularly Articles 38 and 39. Furthermore, based on the research in the article "Criminal Liability for Perpetrators with Disabilities in Cases of Premeditated Murder" (Ni Putu Diah Indira Pramesti, 2022), the discussion still focuses on the normative analysis of the provisions of the new Criminal Code, but has not examined the challenges of its implementation in criminal justice practice (Pramesti & Darmadi, 2022). Therefore, this study aims to fill the void by analysing the new provisions in the Criminal Code related to criminal liability of persons with mental and/or intellectual disabilities.

Based on this description, this paper will discuss two main issues. First, reformulation of criminal liability in the new criminal code for persons with mental and/or intellectual disabilities, by examining how the new regulation builds a more inclusive and fair legal system. Second, special treatment for persons with mental and/or intellectual disabilities in Articles 38 and 39 of the Criminal Code, by examining the application, challenges, and practical implications of the legal policies that have been established.

2. Method.

This study employs a normative juridical approach, which emphasizes the analysis of positive legal norms contained in statutory regulations. The purpose of this study is to analyse the concept of criminal liability for perpetrators of criminal acts with mental and intellectual disabilities in the Indonesian legal system, especially as regulated in the 2023 Criminal Code (KUHP) which will come into force in 2026.

The main references in this study include the 2023 Criminal Code, Law No. 8/2016 on Persons with Disabilities, and Law No. 18/2014 on Mental Health. This normative juridical approach is limitedly supported by qualitative empirical analysis through the review of non-doctrinal secondary data, such as the results of previous studies and academic publications, to provide context to the challenges of norm implementation in the field. This empirical component does not stand alone but is complementary to the normative study to show the gap between legal norms and practice. The data used in this study consist

entirely of secondary data, comprising: (1) primary legal materials, such as statutory provisions directly relevant to the research focus; (2) secondary legal materials, including books, journals, articles, and previous studies addressing criminal law and disability; and (3) tertiary legal materials, such as legal dictionaries and encyclopaedias, to clarify core concepts.

Data collections were conducted through library research, namely by reviewing legal documents and relevant academic literature sources. The data were then analysed descriptively and qualitatively, by systematically describing and interpreting the content of legal norms and their application, with the aim of explaining the relationship between regulatory provisions and the protection of persons with mental and intellectual disabilities in Indonesia's criminal justice system.

3. Result and Discussion.

3.1 Reformulation of Criminal Liability in the New Criminal Code for Person with Mental and/or Intellectual Disabilities

The reformulation of criminal liability in the new Criminal Code shows a progressive step in aligning the Indonesia's criminal law system with inclusive principles of justice and a human rights perspective, especially for persons with disabilities. The old Criminal Code, which is a colonial legacy, does not provide comprehensive arrangements regarding criminal liability for perpetrators with disabilities, especially mental and intellectual disabilities. This gap is being reformulated in the 2023 Criminal Code, which will come into force in 2026.

Law No. 8/2016 on Persons with Disabilities defines disability as long-term physical, intellectual, mental, and/or sensory limitations which, in interaction with the environment, may hinder full and effective participation in society. More specifically, mental disability refers to functional disorder in mental function that can affect a person's mood, thought patterns and behaviour, including developmental disorders, mental disorders, anxiety disorders, schizophrenia or mood disorders. Meanwhile, intellectual disability is characterized by significant limitations in intellectual functioning and adaptive behaviour, affecting conceptual, social and practical skills in daily life, and usually presents before the age of 18 (Silitonga et al., 2023). Both disabilities have a major impact on a person's capacity to understand reality and be held legally accountable for their actions.

Criminal responsibility in Indonesian law is based on the principle that liability arises only when the elements of guilt, mental capacity, and the absence of exculpatory conditions are fulfilled. In the Indonesian legal system, fault includes the existence of intent (*dolus*) or negligence (*culpa*), as well as a person's ability to understand and control their actions. The old Criminal Code, in Article 44 paragraph (1), does provide excuses for people who commit acts in a state of mental disorder or mental defect, but the formulation is still very broad and general, and does not explicitly distinguish between mental and intellectual disabilities, and is not accompanied by an appropriate assessment mechanism or alternative measures.

Criminal liability in Indonesia is regulated in the Criminal Code. A person can be held criminally responsible if he/she commits an act that violates the applicable criminal law. In the Indonesian criminal law system, there are several main elements that must be fulfilled to determine a person's criminal liability, which are (Hidayat & Ibrahim, 2023):

- a) Fault (*culpa*), a person can only be held criminally responsible if the act is committed intentionally (*dolus*) or due to culpable negligence (*culpa*). The Criminal Code distinguishes between intentional and negligent criminal acts.
- b) Mental capacity, a person must have sufficient mental capacity to be criminally responsible. A person suffering from severe mental disorders that prevent comprehension of their actions' consequences may be deemed not punishable.
- c) Age, under the Criminal Code, children under the age of 12 are not considered criminally responsible. Meanwhile, children aged 12 to 18 may be subject to special measures in accordance with Law No. 35/2014 on Child Protection. However, in certain cases, minors can still be held criminally responsible, especially if they commit criminal offenses that endanger the community or are punishable by death penalty or life imprisonment, as stipulated in Article 81 paragraphs (1) and (6) of Law No. 11/2012 on Juvenile Justice System.

The reformulation of criminal liability for persons with mental and/or intellectual disabilities gains a more concrete footing in the 2023 Criminal Code, specifically through Articles 38 and 39. Article 38 stipulates that perpetrators who are persons with disabilities may be subject to punishment with a reduction or replaced with certain measures, depending on the ability of the perpetrator to understand the nature and consequences of his actions. Meanwhile, Article 39 stipulates that perpetrators, who at the time of committing a criminal offense are in an acute condition (relapse) and are unable to understand that their actions violate the law, can be released from punishment but can still be subject to rehabilitative measures. These two provisions reflect a paradigm shift in Indonesia's punishment system from repressive to more inclusive and rehabilitative, as well as considering the individual condition of the perpetrator as part of substantive justice.

While normatively Articles 38-39 have indeed shown progress, the implementation of these provisions still leaves significant problems. The provisions of Articles 38 and 39 have not been supported by adequate technical instruments, such as standard guidelines for assessing mental capacity, psychiatric assessment mechanisms, or the appointment of authorities responsible for the assessment process. This creates uncertainty in legal practice, especially when law enforcement officials are faced with cases involving persons with disabilities. Without clear guidelines, there is a risk of disproportionate or even discriminatory treatment, both in the process of investigation, prosecution, and punishment. In fact, persons with disabilities have the right to be treated equally and obtain access to justice in accordance with Law No. 8/2016 on Persons (Putri & Mardijono, 2024).

To answer this lacuna, it needs to be emphasized that the new Criminal Code remains a general criminal law (*lex generalis*) that requires strengthening through implementing regulations that are *lex specialis*. These special regulations should include psychiatric examination procedures, medical and psychological indicators to assess criminal responsibility, as well as guidelines for rehabilitation and legal protection for persons with disabilities during the criminal process. In addition, special training for law enforcement officials on handling people with autism, as well as the integration of the role of psychiatrists and psychologists in every stage of the law, are important steps that must be taken immediately. Judges and law enforcement officers must use a collaborative approach, involving psychologists, psychiatrists and social workers in the examination process. This is not only about medical considerations, but also about substantive justice, namely providing decisions that truly reflect the real conditions of the perpetrator and not just formally carrying out legal procedures (Rahayu, 2024). Legal reforms that are more inclusive and based on restorative justice approaches will not only strengthen the effectiveness of the new Criminal Code but also become a tangible form of respect for the dignity and human rights of persons with disabilities in Indonesia.

3.2 Special Treatment for Person with Mental and/or Intellectual Disabilities in Articles 38 and 39 of the Criminal Code

In the discourse of criminal responsibility, the monistic view articulated by Simon conceptualizes the *strafbaar feit* as a unity that does not separate objective elements (the unlawful act) from subjective elements (the guilty and accountable perpetrator). This view implies that if the elements of the *strafbaar feit* are fulfilled, then the perpetrator can automatically be sentenced. However, this approach began to shift along with the development of legal thinking that emphasizes the personal condition of the perpetrator, particularly their capacity to be legally responsible. In this context, Articles 38 and 39 of the new Criminal Code represent innovative steps that provide special attention to perpetrators of criminal acts with mental and/or intellectual disabilities. The regulation reflects the state's recognition of the vulnerability of people with disabilities in the criminal law system, as well as showing a change from the traditional approach that places fault (*schuld*) as the main element of punishment, towards an approach that is more oriented towards human values and contextual (Candra, 2013). Normatively, these provisions are formulated as follows:

- a. Article 38: any person, who, at the time of committing a criminal offense is mentally disabled and/or intellectually disabled, may have his/her punishment reduced and/or be subject to alternative measures.
- b. Article 39: every person, who, at the time of committing a criminal offense, suffers from a mental disability which is in a state of acute recurrence and accompanied by psychotic symptoms and/or intellectual disability of moderate or severe degree, shall not be subject to punishment but may be subject to measures.

The official elucidation of Articles 38 and 39 clarifies that mental disabilities encompass thought, emotional, and behavioural disorders such as schizophrenia, bipolar disorder, depression, anxiety, and personality disorders. Intellectual disabilities include limitations in thinking functions due to below-average

intelligence levels such as mental disabilities, slow learning, and Down syndrome. This means that the perpetrators of criminal acts with disabilities are considered less able to realize the unlawful nature of their actions or act based on legal awareness, thereby limiting or negating their criminal responsibility.

Article 38 accommodates conditions where the perpetrator still has some capacity for criminal responsibility, albeit limited. Therefore, the approach used is diminished responsibility, namely the reduction of punishment or replacement with alternative measures. By contrast, Article 39 emphasizes that if the offender's condition is in the stage of acute relapse with a psychotic picture or a level of intellectual disability that is classified as moderate to severe, then the offender is considered incapable of being criminally responsible (non-imputable) and can only be subject to non-penal measures.

Measures that may be imposed as referred to Article 105 paragraph (2) of the new Criminal Code include:

- a) Medical rehabilitation: clinical interventions aimed at restoring bodily or psychiatric functions;
- b) Social rehabilitation: re-functionalization and reinforcement of social skills, including community-based therapy;
- c) Psychosocial rehabilitation: services designed to restore independence, adaptive abilities, and social integration.

This distinction marks a paradigm shift in the criminalization of persons with mental and/or intellectual disabilities from a retributive approach towards a restorative and rehabilitative approach. Doctrinally, this approach expands the meaning of culpability by recognizing the existence of variations in the capacity of responsibility based on the psychological and intellectual condition of the perpetrator. Compared with Article 44 of the old Criminal Code, which merely recognizes one form of treatment in the form of criminal elimination against persons with “mental disability or disorder due to illness”, Articles 38 and 39 of the New Criminal Code offer a graduated response model that is more adaptive and contextual.

As a form of national legal innovation, the graduated response approach adopted in Articles 38 and 39 of the New Criminal Code has similarities with several models of criminal liability in other jurisdictions. For example, the English legal system recognizes the concept of diminished responsibility, which allows for a reduction in punishment for offenders with mental disorders that significantly affect their capacity to understand or control their actions. In the Netherlands, the Criminal Code provides for criminal exceptions based on “*gebrekkige ontwikkeling of ziekelijke stoornis van de geestvermogens*” (developmental limitations or psychiatric disorders) which can result in exemption or reduction of criminal responsibility based on psychiatric assessment (Johnston et al., 2023).

The UN Convention on the Rights of Persons with Disabilities (CRPD) encourages courts to use an individualized capacity-based approach rather than medical diagnosis alone, when determining the legal liability of persons with disabilities. Thus, the graduated response in the new Criminal Code reflects a progressive step towards a more contextual and inclusive legal system, as well as filling the void of the previous model of differentiation of criminal responsibility in Indonesian criminal law. The formulation in the old Criminal Code used stigmatizing terms that are not in line with the development of human rights, while the new Criminal Code uses terminology that is in line with a rights-based approach, as stipulated in the CRPD and Law No. 8/2016 on Persons with Disabilities.

Clarity of implementation is the main factor that determines the effectiveness of this norm. The elucidation of Article 39 explicitly states that to prove the condition of medical incapacity, an expert must be presented. However, the Criminal Code does not further detail the assessment mechanism, the scientific standards to be applied (e.g. DSM-5 or ICD-11), and the authority responsible for conducting such diagnosis and evaluations. This gap risks legal uncertainty, unequal treatment between regions, and potential misdirected criminalization of persons with disabilities (ICJR, 2015). Therefore, *lex specialis* or derivative regulations are needed derivative regulations that govern:

1. Procedures for identification and medical-forensic assessment of the perpetrator;
2. Objective criteria for determining capacity for criminal responsibility;
3. Authorized institutions and experts;
4. Guidelines for the imposition of non-penal measures by judges;
5. Cross-sector coordination mechanisms, including the provision of standardized rehabilitation services.

Articles 38 and 39 of the new Criminal Code thus provide a form of special treatment for persons with mental and/or intellectual disabilities by recognizing that not all perpetrators of criminal acts can be held fully accountable. By distinguishing between mild and severe disabilities, the new Criminal Code introduces a graduated response system in the form of a reduction in punishment or replacement with non-penal measures such as medical, social, and psychosocial rehabilitation. This provision reflects a more humanistic and inclusive approach, where perpetrators are not immediately convicted, but are first assessed for their capacity to take responsibility based on their mental and intellectual conditions. This is a concrete form of legal protection as well as state recognition of the vulnerability of persons with disabilities, in accordance with the principles of non-discrimination and the right to equal justice as stipulated in Law No. 8/2016 and the CRPD (Convention on the Rights of Persons with Disabilities, 2006).

However, the special treatment provided for in Articles 38 and 39 will only be effective if supported by an adequate implementation system. In practice, clarity is needed on medical-forensic assessment procedures to determine whether a perpetrator meets the criteria for disability as intended. In addition, the role of experts, referral institutions, and the availability of standardized rehabilitation facilities are crucial in ensuring that perpetrators are not wrongly criminalized and receive appropriate action. A report from the Faculty of Psychology, Universitas Gadjah Mada (2022), highlights Indonesia's shortage of forensic psychology professionals, which has an impact on the effectiveness of the psychological assessment process in the criminal justice system (UGM, 2019). Thus, special treatment is not only a matter of differentiation in sentencing, but also an instrument to ensure that persons with disabilities are treated fairly in the criminal justice process, according to their unique capacities and needs.

4. Conclusion.

The reformulation of criminal liability for persons with mental and/or intellectual disabilities in the 2023 new Criminal Code which will come into force in 2026, reflects a paradigm shift towards a more inclusive, equitable, and human rights-oriented criminal law system. Through the provisions of Article 38 and Article 39, the new Criminal Code not only considers the mental ability of the perpetrator to understand the nature and consequences of his/her actions, but also provides room for the application of lighter sanctions or non-criminal alternatives in the form of rehabilitation or treatment. This adjustment is in line with the principles set out in Law No. 8/2016 on Persons with Disabilities and Law No. 18/2014 on Mental Health. This emphasizes the importance of a legal approach that is able to accommodate the needs of vulnerable groups proportionally. Persons with mental and/or intellectual disabilities are no longer solely viewed as perpetrators who must be sentenced to criminal punishment, but rather as individuals who have the right to protection, restorative justice, and recovery. However, the implementation of Article 38 and Article 39 in practice faces a number of challenges, especially regarding the mechanism for assessing mental conditions, the involvement of medical experts, and the consistency of law enforcement officials in applying these provisions in the judicial process.

Therefore, it is necessary to support technical regulations in the form of *lex specialis* that regulate disability identification procedures, medical evaluation standards, and appropriate special treatment models in the criminal justice system. As a strategic step, policy makers and stakeholders need to accelerate the preparation of derivative regulations to ensure the effective implementation of these principles. In addition, increasing the capacity of law enforcement officials and cross-sector collaboration involving mental health institutions and disability protection institutions are key so that this legal reform does not only stop at the normative level, but also materializes in fair and humane legal treatment for every citizen, including persons with mental and/or intellectual disabilities.

References

- Bawazir, F. (2025). *Pertanggungjawaban Pidana Pelaku Penderita Skizofrenia dalam Perspektif Hukum Pidana di Indonesia* [Master Thesis, Universitas Jambi]. <https://repository.unja.ac.id/76406/>
- Candra, S. (2013). Pembaharuan Hukum Pidana: Konsep Pertanggungjawaban Pidana dalam Hukum Pidana Nasional yang Akan Datang. *Jurnal Cita Hukum*, 1(1), 327–337. <https://doi.org/10.15408/jch.v1i1.2979>
- Convention on the Rights of Persons with Disabilities (2006). <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

- Hidayat, F. A. M., & Ibrahim, A. L. (2023). Disharmoni Pertanggungjawaban Pidana Disabilitas Mental Dalam Hukum Positif Di Indonesia. *Justisi*, 9(3), 326–343. <https://doi.org/10.33506/jurnaljustisi.v9i3.2474>
- ICJR. (2015). *Masalah Pertanggungjawaban Pidana Disabilitas Dalam R KUHP Harus Jadi Perhatian , DPR Harus Mengundang Ahli Khusus* [Official Website]. Institute for Criminal Justice Reform. <https://icjr.or.id/masalah-pertanggungjawaban-pidana-disabilitas-dalam-r-kuhp-harus-jadi-perhatian-dpr-harus-mengundang-ahli-khusus/>
- Johnston, E. L., Runyan, K. D., Silva, F. J., & Fuentes, F. M. (2023). Diminished Criminal Responsibility: A Multinational Comparative Review. *International Journal of Law and Psychiatry*, 91(101919), 45–47. <https://doi.org/10.1016/j.ijlp.2023.101919>
- Pramesti, N. P. D. I., & Darmadi, A. A. N. O. Y. (2022). Pertanggungjawaban Pidana bagi Pelaku Penyandang Disabilitas dalam Kasus Pembunuhan Berencana. *Kertha Wicara: Journal Ilmu Hukum*, 11(11), 1794–1802. <https://doi.org/10.24843/KW.2022.v11.i11.p6>
- Putri, D., & Mardijono, H. R. A. (2024). *Perkembangan Hukum Penyandang Autisme di Indonesia*. 4(1), 781–788.
- Raharjo, T., & Astuti, L. (2018). Konsep Diversi Terhadap Anak Penyandang Disabilitas Sebagai Pelaku Tindak Pidana Dalam Sistem Peradilan Pidana Anak. *Jurnal Media Hukum*, 24(2), 181–192. <https://doi.org/10.18196/jmh.2017.0094.181-192>
- Rahayu, L. (2024). Pemidanaan terhadap Pelaku Berkebutuhan Khusus (Disabilitas) dalam Proses Pidana Saat Ini. *Rechtsidee*, 12(2), 1–14. <https://doi.org/10.21070/jihr.v12i2.1030>
- Rahmasari, F. (2024). *Perlindungan Hukum Bagi Penyandang Disabilitas Mental dalam Lingkungan Kerja Sebagai Upaya Pencegahan Pemutusan Hubungan Kerja* [Undergraduate Thesis, Universitas Islam Indonesia]. <https://dspace.uui.ac.id/handle/123456789/49390>
- Remaja, I. N. G. (2019). Rancangan KUHP Nasional sebagai Rancangan Pembaharuan Hukum Pidana yang Perlu Dikritisi. *Kertha Widya: Jurnal Fakultas Hukum UNIPAS*, 7(2), 1–19. <https://doi.org/10.37637/kw.v7i2.514>
- Silitonga, T., Purba, Y., Munthe, H., & Herlina, E. S. (2023). Karakteristik Anak Berkebutuhan Khusus. *Jurnal Pendidikan Sosial Dan Humaniora*, 2(3), 11155–11179.
- Sudharma, K. J. A., & Meiranda, A. (2021). Pemidanaan Terhadap Penyandang Disabilitas Mental sebagai Pelaku Tindak Pidana Pencabulan (Studi Putusan Perkara Nomor 16/Pid.Sus/2019/Pn.Wsb). *Jurnal Hukum Saraswati*, 3(2), 56–71. <https://doi.org/10.36733/jhshs.v3i2.2957>
- UGM, F. P. (2019). *Indonesia Kekurangan Tenaga Psikologi Forensik* [Official Release]. Universitas Gadjah Mada Fakultas Psikologi. <https://psikologi.ugm.ac.id/indonesia-kekurangan-tenaga-psikologi-forensik/>
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (1945).