

Paradox of Criminal Responsibility for Persons with Mental Disabilities in the 2023 Penal Code

Submitted 23 January 2025, Revised 8 July 2025, Accepted 4 August 2025, Published 26 August 2025

Nasrullah¹, Zaini Munawir²

¹Faculty of Law, Islamic University of Sumatra, Medan, Indonesia

²Faculty of Law, University of Medan Area, Medan, Indonesia

E-mail Corresponding Author: bunginas3@gmail.com

DOI: <https://doi.org/10.35879/jik.v19i2.632>

Abstract

Criminal law reform in Indonesia through the ratification of the new Criminal Code has given rise to various complexities in legal governance, including the treatment of individuals with mental disabilities involved in criminal cases. Although the new Criminal Code is designed to integrate the principles of respect for Human Rights (HR) and emphasize a more humanistic approach in the law enforcement process, several provisions within it reveal normative contradictions. In particular, criminal regulations for people with mental disabilities often contradict the standards set out in the Convention on the Rights of Persons with Disabilities (CRPD). This phenomenon has sparked legal and ethical debates regarding the adequacy of the domestic regulatory framework regarding international commitments. Furthermore, law enforcement practices by the police, who are at the forefront of handling such cases, tend to prioritize a repressive approach rather than a rehabilitative one, thus potentially leading to human rights violations. This study examines the inconsistency between the normative ideals of the new Criminal Code and the factual implementation in the field, while emphasizing the urgency of developing policies that are inclusive, based on restorative justice, and consistently respect the dignity of individuals with mental disabilities. This research employed a qualitative method based on a normative legal approach, utilizing a statutory and conceptual approach as the primary analytical frameworks. The data in this study are sourced from a comprehensive literature review that encompasses laws and regulations, legal documents, previous research results, and various relevant scientific works. The data processing process is carried out through in-depth legal analysis to identify, interpret, and evaluate applicable legal norms. This approach allows research to produce a comprehensive understanding of the legal issues studied, while providing significant academic contributions to the development of legal theory and practice.

Keywords: human rights, mental disabilities, new criminal code, law enforcement

Copyright (c) 2025 Jurnal Ilmu Kepolisian



This work is licensed under a Creative Commons Attribution 4.0 International License.

INTRODUCTION

Contemporary global legal frameworks increasingly emphasize the importance of protecting the human rights of individuals with mental disabilities (Van Hout et al., 2023). This increased focus arises from their inherent limitations and differential treatment compared to individuals without disabilities. In the context of criminal liability, the handling of mental disabilities presents a paradox that requires critical examination, especially through an analysis based on the Criminal Code (KUHP) No. 1 of 2023. A thorough examination of the complex relationship between criminal justice and human rights protection requires critical evaluation to ensure that the law is enforced fairly and inclusively.

The challenges in the implementation of Human Rights (HAM) trials in Indonesia reflect a paradoxical dilemma, like a double-edged sword. On the one hand, the judicial process must be carried out to uphold the principle of Equality Before the Law. However, on the other hand, law enforcement officers are an integral

part of the government system, which often presents conflicts of interest in practice (Rofingi et al., 2022; Rosnida, 2020). Until now, the fundamental problems that have not been resolved include how human rights regulations are reflected in the legal framework in Indonesia and how the implementation of these human rights is integrated into the national criminal justice system effectively and consistently (Wardani & Suroto, 2023).

Human Rights (HAM) are a universal moral foundation that guarantees the protection of the dignity and freedom of every individual, regardless of their social status, physical condition, or mental condition (Melani et al., 2024). Within this framework, individuals with mental disabilities also have equal rights to be treated as dignified human beings (Pawestri, 2017), by ensuring respect and fulfillment of their human rights in their entirety (Kadir & Fadillah, 2023).

People with mental disabilities often face systemic discrimination (Bonaccio et al., 2020), including inequities in access to health and social services, negative stigma, and legal harassment (Saba et al., 2024; Wolbring & Nasir, 2024). Moral calls and legal frameworks require people with mental disabilities to be placed in a human rights protection pathway that takes into account their special conditions. Although the principle of equality before the law applies universally, people with mental disabilities cannot be subject to the same standards of criminal responsibility as individuals who are physically and mentally healthy (Arifin et al., 2021; Van Hout et al., 2023; Yana, 2024). This reflects the need for a more inclusive and equitable approach in the justice system.

The case of Zainal Abidin, a mentally ill man suspected of having schizophrenia and accused of murdering a woman in Banyuwangi in 2025, highlights the systematic criminalization of people with mental disorders (ODGJ) in the criminal justice system in Indonesia. The unpreparedness of law enforcement officers in understanding mental conditions and the absence of a legal mechanism that is responsive to the needs of mental disabilities caused Zainal to be processed like a criminal in general. In fact, according to the principles of human rights protection and national law, individuals with mental disabilities should receive special legal treatment, based on rehabilitation and oriented towards recovery, not repressive action (Komnas HAM RI, 2023).

Discriminatory behavior towards people with disabilities generally stems from negative awareness of the concept of disability and the individuals who have it (Castillo & Larson, 2020; Madhesh, 2022). This negative view is often rooted in the mindset of society, which is still dominated by the concept of normality, which tends to position people with disabilities as a different or less valuable group than individuals without disabilities (Park et al., 2023; Vuong & Palmer, 2024). This kind of mindset reinforces stereotypes and worsens social exclusion against them.

Article 1 of Law Number 8 of 2016 concerning Persons with Disabilities defines persons with disabilities as individuals who have long-term physical, intellectual, mental, and/or sensory limitations, who in their interactions with the environment face obstacles and difficulties in participating fully and effectively with other citizens, based on the principle of equal rights (Law of the Republic of Indonesia Number 8 of 2016 concerning Persons with Disabilities, 2016). From the definition above, Law Number 8 of 2016 concerning Persons with Disabilities mentions 4 types of persons with disabilities, including: a. Persons with physical disabilities; b. Persons with intellectual disabilities; c. Persons with mental disabilities, and/or developmental disabilities. Persons with sensory disabilities.

In Indonesia, according to the 2016 LPEM FEB Universitas Indonesia Research, the number of people with disabilities in Indonesia was 12.15 percent. Those in the moderate category were 10.29 percent, and those in the severe category were 1.87 percent. Meanwhile, the prevalence of disability in provinces in Indonesia is between 6.41 percent and 18.75 percent. The three provinces with the highest prevalence rates are West Sumatra, East Nusa Tenggara, and South Sulawesi. Of the 12.15 percent of people with disabilities, 45.74 percent of the education level of people with disabilities have never graduated from elementary school, compared to non-disabled people who are 87.31 percent of non-disabled people who have an elementary school education or above (Susilawati, 2024). From the data on the disability information system in March 2020, there were 197,582 people with disabilities (Al Anshori, 2024).

People with disabilities are people who have disorders/that can interfere with activities (Mordini et al., 2018). Disability (impairment) or functional limitations are actually not related to the inability to carry out activities or social participation (Backe et al., 2018; Linden, 2017). Therefore, they should not be discriminated against because of their special conditions, but rather, their accessibility must be supported (Hikam, 2023).

In Canada, it is expressly stated that a person with a mental disorder cannot be held criminally responsible for his/her actions. Section 16 of the Criminal Code of Canada states that no person is criminally responsible for any act done or omission done while suffering from a mental disorder which causes the person to be unable to appreciate the nature and quality of the act or omission or to know that it is wrong (Criminal Code (R.S.C., 1985, c. C-46), 1985).

In the Criminal Code No. 1 of 2023, the article on criminal liability for people with mental disabilities is an article that is discussed specifically. The explanation of criminal liability for people with mental disabilities is in 3 articles, each of which contains paradoxes in narrative and substantive terms. The three articles are Article 38, Article 39, and Article 99, which explain the status of criminal liability for people with disabilities when committing criminal acts (Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code, 2023). There were inconsistencies between each article and indications that criminal law is still being applied to people with mental disabilities. From a human rights perspective, there is also a gap between the contents of the article and the criminalization that is still being applied to people with mental disabilities.

Based on this conceptual fact, this study conducts an analytical study of Human Rights and the Paradoxical Criminal Responsibility for Persons with Mental Disabilities from the Criminal Code No. 1 of 2023. This study uses a qualitative method through a normative legal approach by taking a statutory approach and a conceptual approach. This study uses secondary data sources or library research consisting of (1) primary legal materials, namely binding legal materials from basic norms or regulations, laws, and regulations. (2) secondary legal materials, namely those that provide explanations regarding primary legal materials, such as research results, scientific works, and books written by experts. (3) tertiary legal materials, namely legal materials that guide primary and secondary legal materials, such as legal dictionaries and encyclopedias that are elaborated systematically.

DISCUSSION

Definition of Mental Disability

The term "disability" is used to replace the term "disabled," which has negative connotations and tends to be discriminatory (Suharto et al., 2016). The use of this term is based on the understanding that every human being, as a creature of God, has unique differences (Audyandari, 2024). These differences do not only refer to physical aspects, disabilities, or abnormalities, but rather to the condition of humans as creatures in diverse social realities (Kafaa & Mada, 2024). This reflects respect for human diversity and rejects stereotypes that degrade the dignity of individuals with disabilities.

Furthermore, normatively, people with disabilities are defined as individuals who have long-term physical, intellectual, mental, and/or sensory limitations, who in their interactions with the environment face obstacles and difficulties in participating fully and effectively with other citizens, by the principle of equal rights (Suharto et al., 2016). In the Great Dictionary of the Indonesian Language, "penyandang" is defined as a person who has (suffers from) something. Meanwhile, "disability" is an Indonesian word derived from the English loanword disability (plural: disabilities), which means defect or inability (Ministry of National Education, 2012). The term "penyandang cacat" is now used to replace the term "penyandang cacat," which was previously better known by the public. This replacement was made because the term "penyandang cacat" was considered to have a negative connotation that could strengthen social stigma. The use of the term "penyandang cacat" reflects an effort to respect the dignity of individuals with certain limitations and eliminate discriminatory stereotypes (Barbareschi et al., 2021; Gutterman, 2021).

On the other hand, one of the fundamental problems faced by people with disabilities is the limited understanding of society and government officials regarding the meaning of disability and their important role as part of the nation's citizens. The view that considers disability as a disgrace, curse, or shameful thing often makes families reluctant to be open about family members who have disabilities. This kind of social stigma exacerbates the neglect of the rights of people with disabilities and prevents them from fully participating in

social and community life (Fajri Nursyamsi et al., 2015; Hastuti et al., 2020). People with disabilities are often equated with people who are sick or helpless, who are considered not to need access to education and work. As a result, they are only considered to need to be pitied and cared for for their survival. This kind of view ignores their rights and potential, so that people with disabilities often do not get the same opportunities to develop or participate in various aspects of social, economic, and cultural life as other citizens (Purnomosidi, 2017; Sudika Mangku, 2020).

The variety of people with disabilities can be known and explained through Article 4, paragraph (1) of Law Number 8 of 2016 concerning People with Disabilities. First, people with physical disabilities, namely impaired motor function, including amputation, paralysis, or stiffness, paraplegia, cerebral palsy (CP), due to stroke, due to leprosy, and small people. Second, people with intellectual disabilities, namely impaired thinking function due to below-average intelligence levels, including slow learning, mental disabilities, and Down syndrome. Third, people with mental disabilities, namely impaired thinking, emotional, and behavioral functions, including: (a) psychosocial disorders, such as schizophrenia, bipolar disorder, depression, anxiety, and personality disorders; (b) developmental disabilities that affect social interaction abilities, including autism and hyperactivity. Fourth, people with sensory disabilities, namely impaired function of one of the five senses, including blindness, deafness, and/or speech disabilities (Shaleh, 2018; Triana et al., 2022).

In the research described in this article, the focus of the study is only on people with mental disabilities because this community is part of the discussion mentioned in the Criminal Code No. 1 of 2023. The definition outlined by the Ministry of Social Affairs of the Republic of Indonesia, that people with mental disabilities are individuals who experience mental disabilities or mental disorders who have been treated in a Mental Hospital and are recommended in a calm condition and therefore are obstacles or barriers for them to carry out their social functions in meeting needs, solving problems and daily activities (Social Rehabilitation, 2012).

In line with that, Mental disability is a condition that is episodic or not permanent, where individuals experience impaired mental function, but they can still live a normal life and can make good decisions for themselves. Despite experiencing mental challenges, many people with mental disabilities can function effectively in everyday life, contribute to society, and make decisions that align with their needs and aspirations (Lawson, 2014; Linden, 2017). People with mental disabilities refer to individuals who experience mental and/or behavioral disorders as a result of congenital factors or disease (Moons et al., 2023). These individuals face difficulties in learning and performing activities that are generally carried out by others who are considered normal (Totsika et al., 2022), so this becomes an obstacle in carrying out daily activities. This condition often requires special support so that they can function optimally in society (Wan Ali et al., 2024).

According to the American Psychiatric Association, a mental disorder is defined as a clinically significant psychological or behavioral syndrome or pattern that occurs in a person and is associated with distress and disability or is accompanied by an increased risk of painful death, pain, disability, or loss of freedom (Stein et al., 2010, 2021). The World Health Organization (WHO) in the International Classification of Impairment, Disability, and Handicap states that there are three definitions related to disability, namely impairment, disability, and handicap. Impairment is the loss or abnormality of psychological, physiological, or anatomical structure or function. Disability is a limitation or loss of ability (as a result of impairment) to perform an activity in a manner or within limits that are considered normal for a human being. Handicap is a disadvantage for a particular individual, as a result of an impairment or disability, that limits or hinders the implementation of a normal role. However, this also depends on age, gender, and social or cultural factors (Schuntermann, 1996) (et al., Eds.) Peden, M., 2019). The definition outlined above emphasizes that people with mental disabilities need to receive special attention and protection due to the psychological factors they experience, without discrimination or criminalization.

Human Rights and Protection of Persons with Mental Disabilities

The concept of Human Rights (HAM) includes three main elements for human existence as social beings, namely human integrity, freedom, and equality (Budiardjo, 1990; Melani et al., 2024; Tampubolon, 2024). Of these three main elements, the author elaborates on them with the following explanatory space:

First, Human Integrity refers to a person's moral and social ethical character, which is applied consistently and honestly in various life decisions. This attitude includes cohesion between the values adopted and a person's

real actions, as well as the capability to maintain moral principles even under any pressure or temptation. Human integrity is not only about not committing unethical acts, but much more about upholding the true principles of life.

Second, Freedom is a fundamental principle that refers to every individual when expressing themselves in making decisions, always acting on their own behalf, which is not easily influenced by others or oppression from other entities. This freedom is a form of intrinsic recognition of oneself and dignity that must be upheld.

Third, Equality refers to a basic principle that every individual is born with equal dignity and rights. This is also true regardless of differences in race, skin color, gender, language, religion, nationality, social status, and other factors. This equality is proof that everyone has and must feel equal justice in the eyes of the law, especially in the context of social interaction.

Since the founding of the Unitary State of the Republic of Indonesia (NKRI) in 1945, the state has been committed to upholding and implementing Human Rights (HAM). This commitment is reflected in the values contained in the Pancasila and the 1945 Constitution of the Republic of Indonesia, which contains various provisions regarding respect for human rights for all citizens. These principles underline the importance of recognizing, protecting, and fulfilling the basic rights of every individual in community and state life. Even though people with disabilities are not explicitly mentioned in the 1945 Constitution of the Republic of Indonesia, they are part of humans with equal status (Pawestri, 2017).

Legally, people with mental disabilities are included as Indonesian citizens (WNI) who have the same constitutional rights, so that they must be respected, protected, and fulfilled by the state. Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law". This norm can be understood to expressly prohibit any differentiation in treatment before the law (Rahmanto, 2019).

The results of the 2018 National Commission on Human Rights (Komnas HAM) report show that the stigma that is currently developing in society still considers people with mental disabilities to be humans who are possessed by evil spirits, unable/capable of making decisions, considered dangerous, need to be concentrated/confined, and have no hope (Hartanto & Yulianti, 2018). This stigma causes discriminatory treatment felt by people with mental disabilities (Rahmanto, 2019).

Discrimination against people with disabilities shows the ineffectiveness of law enforcement. This can be caused by three factors, namely legal substance, legal structure, and legal culture (Barid et al., 2022; Bintari Kusumastuti, 2023). These factors are interrelated and have an impact on people with mental disabilities who feel quite discriminated against by law enforcement itself.

Analysis of Criminal Code No. 1 of 2023 and the Paradoxical Criminal Responsibility

Legal systems around the world often critically consider the appropriateness of punishing people with mental disabilities for the crimes they have committed (Van Hout et al., 2023). Fair law enforcement assumes that every individual sentenced must have the capacity to understand the nature and consequences of their actions (Dolata & Schwabe, 2023). People with mental disabilities often face challenges in this regard, depending on the level of dependency and severity of their disability. This raises the need for a more sensitive and inclusive legal approach that takes into account an individual's mental capacity in determining their criminal responsibility (Morgan, 2021).

In some jurisdictions, there is a procedure to assess someone with a mental disability involving a medical or psychological diagnosis for an unlawful act that can be subject to legal consequences (Irmansyah et al., 2009; Dixon et al., 2024). The limitations and backwardness of people with mental disabilities have always been debatable, as the legal perspective does not view them the same as normal humans (Craigie et al., 2019; Kadir & Fadillah, 2023; Rizka & Fadhillah, 2022).

Social life cannot be separated from criminal acts or crimes (*strafbaar feit*), which makes the existence of law very important to maintain order and justice. Specifically, people with mental disabilities are individuals who experience mental health disorders or conditions that affect their cognitive, emotional, behavioral, and social

functions. Mental disabilities can include a variety of disorders, such as bipolar disorder, depression, anxiety, schizophrenia, or neurodevelopmental disorders such as autism. People with mental disabilities are often involved in criminal acts, either as victims or as perpetrators. When they become perpetrators, criminal liability becomes a highly debatable issue and requires special attention, given their limited ability to understand the consequences of their actions (Meghrajani et al., 2023).

Criminal liability is known as *toerekenbaarheid* or criminal responsibility, which can be interpreted as the punishment of a perpetrator of a crime to determine whether the perpetrator can be held accountable for the crime that has been committed or vice versa. Criminal liability is a form of legal consequence given to someone who has committed an act that violates applicable criminal law (Leweokeda, 2019).

In the Criminal Code No. 1 of 2023 concerning criminal liability for people with mental disabilities, it is regulated in articles 38, 39, and 99. These three articles explicitly affirm the position of people with mental disabilities regarding criminal liability for criminal acts. Some articles are interrelated, but some are contradictory and paradoxical regarding criminal liability for people with mental disabilities.

Article 38 states that anyone who, at the time of committing a crime, has a mental disability and/or intellectual disability can have their sentence reduced and/or be subject to action. This article places the position of people with mental disabilities as legal subjects who must be held accountable for their actions if they commit an unlawful act, with the criminal sentence being reduced, of course, with special considerations. Criminal acts for people with mental disabilities, if understood from the text of this article, are divided into two forms of accountability, namely (a) still given in the form of criminal sanctions (*straf stelsel*) but the criminal sentence can be reduced, (b) and/or given sanctions (*maatregel stelsel*) as their criminal accountability.

The paradox is very different from Article 39, which states that anyone who, at the time of committing a crime, has a mental disability that is in an acute relapse and is accompanied by psychotic symptoms and/or moderate or severe intellectual disability cannot be sentenced to criminal penalties, but can be subject to action. People with mental disabilities who commit crimes cannot be sentenced to criminal penalties at all. The responsibility for their unlawful actions is only up to the point of being subject to action. The action in question is certainly a rehabilitation measure that is not a prison sentence.

There is a debate about understanding the contents of the text of these two articles. The sentence about mental disabilities in acute relapse and accompanied by psychotic symptoms in Article 39 is the basis for releasing the criminal penalty for people with mental disabilities. This means that if a person with mental disabilities is not in an acute relapse and accompanied by psychotic symptoms, then a criminal penalty can be imposed, although it can be reduced. However, if we interpret mental disabilities themselves, of course, there is a situation and mental condition of a person who is suffering from mental disabilities that is not in a normal condition, whose relapse cannot be predicted, and whose psychotic symptoms are very dependent on the mental situation and environment of the person with mental disabilities.

So, Article 38 and Article 39 are very contradictory because a person with mental disabilities is not someone who is always in a state of normality. Relapse or non-relapse of his mental normality shows that the psychotic situation of a person with mental disabilities is always in an abnormal state. So it is very irrational to impose criminal penalties or not criminalize only the measure of relapse and psychotic disorders.

There is a disharmony in the regulations related to criminal liability in positive law in Indonesia, which results in ambiguity. This condition can give rise to disparities in the uncertainty of the law by the judge's decision because it gives rise to multiple interpretations (Koedoeboen, 2020; Suartha & Ivory, 2024; Syamsudin et al., 2022). In this context, the position of the new Criminal Code, which has accommodated regulations regarding the criminal liability of people with mental disabilities, is not in line with the legal principle of *lex specialis derogat legi generali*. Further regulations at the level of laws are needed to regulate and cover the problems of criminal liability of people with mental disabilities, the aim of which is to cover parts that are not specifically regulated by the new Criminal Code.

Article 99 of the Criminal Code No. 1 of 2023 (new Criminal Code) further emphasizes that people with mental disabilities are still not removed from their criminal penalties, and can be sentenced to death. The

contents of the text of Article 99 are that the implementation of the death penalty against pregnant women, women who are breastfeeding their babies, or people who are mentally ill is postponed until the woman gives birth, the woman is no longer breastfeeding her baby, or the mentally ill person recovers.

Before being sentenced to death, people with mental disabilities (mentally ill people) must certainly go through the trial stages in our justice system. Before the verdict is handed down, the trial process certainly runs and positions the mentally ill person starting as a witness, then a suspect, and finally a defendant. Imagine law enforcement like this is very irrational, inhumane, and far from the principles of justice and human rights. A mentally ill person continues to live with his status as a defendant by accepting the death penalty, even though the execution of his death must wait for recovery. This means that the criminal sentence against him is not lost; it is only postponed with consideration of psychotic disorders.

The paradox of criminal responsibility for people with mental disabilities is increasingly evident because human rights for people with mental disabilities are still not fully on their side. Lowekada explains that in the Indonesian criminal law system, several elements must be met to determine a person's criminal responsibility (Hidayat & Ibrahim, 2023), including:

1. Fault (culpa): A person can only be held criminally responsible if his/her actions are intentional or due to his/her negligence that can be accounted for. In the Criminal Code, there is a division between intentional criminal acts (*dolus*) and negligent criminal acts (*culpa*).
2. Mindfulness (mental ability): A person must have sufficient mental ability or mindfulness to be held criminally responsible. If a person has a severe mental disorder that makes him unable to understand the consequences of his actions, then he may not be held criminally responsible.
3. Age: Based on the Criminal Code, children under the age of 12 are considered not criminally responsible. Children aged between 12 and 18 years can be subject to special measures by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. However, these minors can still be held criminally responsible if they commit crimes that endanger society or crimes that are punishable by the death penalty or life imprisonment, as regulated in Article 81, paragraphs (1) and (6) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

If it is analyzed that criminal responsibility can be imposed on someone who commits an unlawful act, or commits a crime, it must touch on 3 elements, namely;

1. The act was committed due to an element of intent or negligence. Intention means that the act was planned in a conscious state without coercion, or not under pressure. While negligence means that the act was carried out without planning, it was carried out in a conscious state without coercion or under pressure.
2. Have normal normative thinking abilities and mental abilities that are not in psychotic disorders, according to the results of medical and psychological diagnoses.
3. A person who is declared to be of sufficient age (over 12 – 18 years old), or is considered an adult who can distinguish logical actions, and/or can judge whether an action is against the law.

The Approach of Police Investigators in Handling Criminal Cases Against People with Mental Disabilities

In handling criminal cases, Polri investigators are required to comply with applicable legal and ethical standards by ensuring the protection of the rights of perpetrators of criminal acts, especially for individuals with mental disabilities (Rizkyandi et al., 2024). Investigators are expected to have an effective and appropriate approach in interacting with people with mental disabilities during the investigation process, which takes into account their special conditions and ensures fair and dignified treatment by the principles of justice and human rights.

The Indonesian National Police, as one of the subsystems in the criminal justice system, has the authority to conduct investigations and inquiries (Sembiring & Halimah, 2023). In carrying out this task, the Police must have the capacity and readiness to handle cases involving individuals with disabilities, either as victims, witnesses, or perpetrators. An inclusive and professional approach is essential to ensure the protection of their rights and fair and dignified law enforcement (Ramadhany, 2022). In handling criminal cases involving people with mental disabilities, the police must be able to understand the perpetrator's mental disorder and understand the characteristics of criminal responsibility as stipulated in the latest Criminal Code number 1 of 2023.

In some countries, including the United States, national laws have established special protections for people with disabilities in their interactions with law enforcement, especially the police. The Americans with Disabilities Act (ADA) explicitly regulates the fair treatment of people with disabilities in a variety of contexts, including law enforcement (Justice, 2010; Sidebari, 2021). About people with mental disabilities, the specific approach stipulated emphasizes the importance of understanding the individual's psychological condition. For the police, this requires a focus on the deeper psychological aspects, not just a psychic approach, to ensure a fair and appropriate legal process for their needs.

In the context of handling criminal cases involving people with mental disabilities, investigators of the Indonesian National Police need to receive special training on how to interact effectively with this group. This training includes an in-depth understanding of the psychological condition of the perpetrator, empathetic communication skills, and de-escalation techniques without intimidation. The goal is to minimize the potential for violence and misunderstanding during the interaction process, so that people with mental disabilities can be treated fairly and with dignity by the principles of human rights and professionalism in law enforcement.

Police investigators need to prepare a special protocol in the process of collecting verbal information that begins with an assessment, so that investigators can assess whether the crime committed can be distinguished, whether it was planned or spontaneous. Of course, this initial assessment can be a benchmark for the mens rea of the perpetrator himself. There are concerns with stigma and discrimination that people with mental disabilities are often treated unfairly, with inadequate forms of risk for their mental condition. People with disabilities are often portrayed as weak individuals, dependent on others, and unable to contribute productively to society.

Police investigators need to undergo special training in the form of a Crisis Intervention Team (CIT) model program to teach investigators communication and crisis management skills so that they can easily interact with every individual experiencing a mental disorder crisis and people with mental disabilities. The importance of this training is to ensure that the Police, as a leading law enforcement institution, also has human rights standards that maintain and enforce the law, while maintaining and enforcing the principles of humane justice.

In handling perpetrators of criminal cases for people with mental disabilities, the examination is evaluative or forensic, namely (1) Measuring the perpetrator's ability to take responsibility, (2) Assessing a person's sanity, (3) Assessing whether a person can understand and know the risks of an act (Budiono et al., 2023). Police investigators really need to explore these three evaluations in order to make it easier to measure the results of the investigation carried out.

Training should include in-depth information about the different types of mental disabilities, including psychotic disorders (such as schizophrenia), mood disorders (such as major depression and bipolar disorder), anxiety disorders, and developmental disabilities. This helps investigators understand the symptoms, behaviors, and unique needs of people with mental disabilities. Training should include information on how to work with mental health professionals, such as psychiatrists and psychologists, to obtain assessments and recommendations regarding the mental health of individuals involved in a case.

A healthy mental condition in each individual cannot be equated (Ardiansyah et al., 2023). This condition is what makes the discussion of mental health with a special approach and treatment for people with mental disabilities involved in criminal cases, being handled by police investigators, increasingly urgent.

Recommendations and Solutions

People with mental disabilities have the same rights to be treated fairly without discrimination in the criminal justice system. People with disabilities should not be treated inhumanely, especially in the context of executing criminal sentences. Criminal liability in the form of criminal penalties for people with mental disabilities needs to be reviewed, considering that psychotic disorders require medical and psychological treatment. The most likely criminal liability is medical, social, and psychosocial rehabilitation.



To avoid multiple interpretations and to have legal certainty, it is necessary to create government regulations regarding criminal liability for people with mental disabilities. Through these regulations, the human rights of people with mental disabilities can be protected, and legal protection for all parties can be ensured as a legal principle that everyone is equal before the law.

CONCLUSION

Today, the real challenge of the paradox of criminal responsibility for people with mental disabilities requires a more inclusive and sensitive legal approach to ensure true justice in a legal system that is aligned with human rights principles. Protection of human rights, especially the rights of people with disabilities, must be a primary focus in the formation and implementation of fair and ethical legal policies.

Mental disability is a condition that is not permanent and episodic, in which a person experiences impaired mental function so that it is difficult to learn and carry out activities that can generally be done by individuals without obstacles. Discrimination against people with disabilities reflects weak law enforcement, which is influenced by aspects of legal substance, legal structure, and legal culture. The paradox in criminal liability for people with mental disabilities is increasingly apparent, indicating that human rights protection for this group is still not fully impartial and adequate.

The birth of the Criminal Code No. 1 of 2023 is expected to be an entry point into a firm, characterful, and cultured law enforcement space, according to the culture of the Indonesian nation. The entrance must also be decorated with a window of justice, humanity, and certainty by understanding and appreciating the side of limitations for existing legal subjects, especially people with mental disabilities.

Police investigators also need to receive special training when handling cases of people with mental disabilities. This special training is part of the professionalism of the Police in handling cases and placing the position of human rights for every perpetrator of a crime in undergoing the verbal process in the police.

REFERENCES

- Al Anshori, A. N. (2024). Jumlah Penyandang Disabilitas di Indonesia Menurut Kementerian Sosial. *Dalam Tps://Www.Liputan6.Com/ Disabilitas/Read/4351496/Jumlah_Penyandang- Disabilitas- Di-Indonesia- Menurut- Kementerian- Sosial. Diakses Pada Tanggal 10 Juli 2024.*
- Ardiansyah, S., Yunike, Ardiansyah, S., Tribakti, I., Suprpto, Saripah, E., Febriani, I., Zakiyah, Kuntoadi, G. B., Muji, R., Kusumawaty, I., Narulita, S., Juwariah, T., Akhriansyah, M., Putra, E. S., & Kurnia, H. (2023). *Buku Ajar Kesehatan Mental.*
- Arifin, R., Baiquni, I., Taduri, J. N. A., Rasdi, R., & ... (2021). The International Law Principle for People with Disabilities: Analyzing Access to Justice. ... Law Journal: Jurnal ..., 7(2), 371–404. <https://doi.org/https://doi.org/10.15294/ulj.v7i2.50180>
- Audyandari, N. K. N. (2024). God, love, and death in Trunyan Village. *Life and Death: Journal of Eschatology*, 2(1), 38–50. <https://doi.org/10.61511/lad.v2i1.2024.941>
- Backe, I. F., Patil, G. G., Nes, R. B., & Clench-Aas, J. (2018). The relationship between physical functional limitations and psychological distress: Considering a possible mediating role of pain, social support, and sense of mastery. *SSM - Population Health*, 4(0403), 153–163. <https://doi.org/10.1016/j.ssmph.2017.12.005>
- Barbareschi, G., Carew, M. T., Johnson, E. A., Kopi, N., & Holloway, C. (2021). “When they see a wheelchair, they’ve not even seen me”—factors shaping the experience of disability stigma and discrimination in Kenya. *International Journal of Environmental Research and Public Health*, 18(8). <https://doi.org/10.3390/ijerph18084272>
- Barid, V. B., Indriyani, D. A., Yulianti, Y., Putra, S. G. M. S. R., & Utami, P. N. (2022). Legal Protection for Disabilities Persons with Disabilities with Language Limitations in Law Enforcement. *Jurnal HAM*, 13(3), 631. <https://doi.org/10.30641/ham.2022.13.631-645>
- Bintari kusumastuti, A. (2023). Legal Standing Penyandang Disabilitas Dalam Uu No.8 Tahun 2016 Tentang Disabilitas. *MAGISTRA Law Review*, 4(01), 32. <https://doi.org/10.56444/malrev.v4i01.3588>
- Bonaccio, S., Connelly, C. E., Gellatly, I. R., Jetha, A., & Martin Ginis, K. A. (2020). The Participation of People with Disabilities in the Workplace Across the Employment Cycle: Employer Concerns and Research Evidence. *Journal of Business and Psychology*, 35(2), 135–158. <https://doi.org/10.1007/s10869-018-9602-5>
- Budiardjo, C. (1990). Human rights in Indonesia. In *Index on Censorship* (Vol. 19, Issue 8). <https://doi.org/10.1080/03064229008534930>
- Budiono, A., Wardani, S. W. K., Mamun, A. Al, & Prasetyo, Y. (2023). Legal Protection of Mental Hospital Patients Who Experienced Acts of Violence Committed by Medical Personnel (A Study at Dr. Arif Zainudin Regional Mental Hospital Surakarta, Indonesia). *Jurnal Penegakan Hukum Dan Keadilan*, 4(2), 59–66. <https://doi.org/10.18196/jphk.v4i2.18106>
- Castillo, Y. A., & Larson, A. (2020). Attitudes towards people with disabilities: a systematic review of intervention effectiveness. *Couns-Edu: The International Journal of Counseling and Education*, 5(2), 40–57. <https://doi.org/10.23916/0020200526120>
- Craigie, J., Bach, M., Gurbai, S., Kanter, A., Kim, S. Y. H., Lewis, O., & Morgan, G. (2019). Legal capacity, mental capacity, and supported decision-making: Report from a panel event. *International Journal of Law and Psychiatry*, 62(June 2018), 160–168. <https://doi.org/10.1016/j.ijlp.2018.09.006>
- Criminal Code (R.S.C., 1985, c. C-46) (1985). <https://laws-lois.justice.gc.ca/eng/acts/C-46/>
- Departemen Pendidikan Nasional. (2012). *Kamus Besar Bahasa Indonesia*. Gramedia Pustaka Utama. https://opac-perpustakaan.ummi.ac.id/index.php?p=show_detail&id=12773
- Dixon, J., Bark, H., Fang, C., Laing, J., & Patsios, D. (2024). The Use of Mental Capacity and Mental Health Laws in the Care of People Living with Dementia in Residential and Hospital Settings: A Systematic Review. <https://doi.org/10.13140/RG.2.2.11696.78080>
- Dolata, M., & Schwabe, G. (2023). Moving beyond privacy and airspace safety: Guidelines for just drones in policing. *Government Information Quarterly*, 40(4), 101874. <https://doi.org/10.1016/j.giq.2023.101874>
- et al. (Eds.) Peden M., O. K. O.-S. J. H. A. A. B. C. (2019). International classification of functioning, disability and health. In *the World Report on Child Injury Prevention*.
- Fajri Nursyamsi, Arifianti, E. D., Aziz, M. F., Bilqish, P., & Marutama, A. (2015). *Kerangka Hukum Disabilitas Indonesia*. <https://www.neliti.com/publications/45395/kerangka-hukum-disabilitas-di-indonesia-menuju-indonesia-ramah-disabilitas>
- Guterman, A. (2021). Ageism and Disability. *SSRN Electronic Journal*, May. *Jurnal Ilmu Kepolisian*

- <https://doi.org/10.2139/ssrn.3936792>
- Hartanto, M. F. B., & Yulianti, I. (2018). HAM Penyandang Disabilitas Mental di Panti Rehabilitasi Sosial.
- Hastuti, Dewi, R. K., Pramana, R. P., & Sadaly, H. (2020). Kendala mewujudkan pembangunan inklusif. https://smeru.or.id/sites/default/files/publication/wp_disabilitas_in_0.pdf
- 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>
- Hikam, A. B. (2023). Konsruksi Taklif Penyandang Disabilitas Dalam Perspektif Al Qur'an. *Madza Media*.
- Irmansyah, I., Prasetyo, Y. A., & Minas, H. (2009). Human rights of persons with mental illness in Indonesia: More than legislation is needed. *International Journal of Mental Health Systems*, 3(14), 1–10. <https://doi.org/10.1186/1752-4458-3-14>
- Justice, D. of. (2010). Americans with Disabilities Act, Title II Regulations: Nondiscrimination based on Disability in State and Local Government Services. Department of Justice. https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.pdf
- Kadir, M. Y. A., & Fadillah, D. R. (2023). Shackling Persons with Mental Disability within the Perspective of International Human Rights Law and its Implementation in Indonesia. *Lajil*, 5(1), 27–38. <https://doi.org/10.25041/lajil.v5i1.2895>
- Kafaa, K. A., & Mada, U. G. (2024). Between normality and abnormality : Understanding the social support of people with physical disabilities among their families. 9(2), 120–129. <https://doi.org/10.25273/gulawentah.v9i2.20485>
- Koedoeboen, A. (2020). Disharmonisation of Criminal Liability Related to Land Fire Due to Clearing Plantation Land. *Pena Justicia : Media Komunikasi Dan Kajian Hukum*, 19(1), 133–149. <https://doi.org/https://doi.org/10.31941/pj.v19i1.3607>
- Komnas HAM RI. (2023). Laporan Tahunan Komnas HAM RI Tahun 2023.
- Lawson, S. (2014). Understanding schizophrenia. *American Scholar*, 83(3), 4. <https://doi.org/10.1136/bmj.305.6856.775-b>
- Leweokeda, K. M. D. (2019). Pertanggungjawaban Pidana Tindak Pidana Terkait Pemberian Delegasi Kewenangan. *Mimbar Keadilan*, 14(28), 183–196. www.satuuntukindonesia.com/2011/11/
- Linden, M. (2017). Definition and Assessment of Disability in Mental Disorders from the Perspective of the International Classification of Functioning Disability and Health (ICF). *Behavioral Sciences and the Law*, 35(2), 124–134. <https://doi.org/10.1002/bsl.2283>
- Madhesh, A. (2022). Awareness of disability among Saudi university graduates. *Heliyon*, 8(11), e11647. <https://doi.org/10.1016/j.heliyon.2022.e11647>
- Meghrajani, V. R., Marathe, M., Sharma, R., Potdukhe, A., Wanjari, M. B., & Taksande, A. B. (2023). A Comprehensive Analysis of Mental Health Problems in India and the Role of Mental Asylums. *Cureus*, 15(7). <https://doi.org/10.7759/cureus.42559>
- Melani, Y., Salahudin, S., Firdaus, M., & Sumitro, S. (2024). Human Rights Studies: A Systematic Literature Review (SLR). *QISTINA: Jurnal Multidisiplin Indonesia*, 3(1), 584–596. <https://doi.org/10.57235/qistina.v3i1.2348>
- Mitchell, P. B. (2010). Understanding bipolar disorder. *Medical Journal of Australia*, 192(3), 163–163. <https://doi.org/10.5694/j.1326-5377.2010.tb03457.x>
- Moons, P., Van Bulck, L., Daelman, B., & Luyckx, K. (2023). Mental health in adult congenital heart disease. *International Journal of Cardiology Congenital Heart Disease*, 12(March), 100455. <https://doi.org/10.1016/j.ijcchd.2023.100455>
- Mordini, E., Nierling, L., Wolbring, G., Maia, M. J., Bratan, T., Capari, L., Čas, J., Krieger-Lamina, J., & Kuk, P. (2018). Assistive Technologies for People with Disabilities. Part II: Current and emerging technologies (Issue January). <https://doi.org/10.2861/567013>
- Morgan, J. N. (2021). Policing under disability law. In *Stanford Law Review* (Vol. 73, Issue 6).
- Park, K., Esfahani, H. N., Novack, V. L., Sheen, J., Hadayeghi, H., Song, Z., & Christensen, K. (2023). Impacts of disability on daily travel behaviour: A systematic review. *Transport Reviews*, 43(2), 178–203. <https://doi.org/10.1080/01441647.2022.2060371>
- Pawestri, A. (2017). Hak Penyandang Disabilitas Dalam Perspektif HAM Internasional dan HAM Nasional. *Era Hukum*, 2(1), 164–182. <https://media.neliti.com/media/publications/90075-ID-hak-penyandang-disabilitas-dalam-perspek.pdf>
- Purnomosidi, A. (2017). Inklusi Penyandang Disabilitas di Indonesia. *Jurnal Refleksi Hukum*, 1(2), 161–174. <https://doi.org/https://doi.org/10.24246/jrh.2017.v1.i2.p161-174>

- Rahmanto, T. Y. (2019). Hak Pilih Bagi Penyandang Disabilitas Mental Ditinjau dari Perspektif Hak Asasi Manusia. *Journal HAM*, 1(3), 19–38. <https://doi.org/http://dx.doi.org/10.30641/ham.2019.10.19-37>
- Ramadhany, M. B. (2022). Objektifitas Penyidik Dalam Penanganan Tindak Pidana Pembunuhan Oleh Pelaku Disabilitas [Universitas Lampung]. <http://digilib.unila.ac.id/id/eprint/67276>
- Rehabilitasi Sosial, D. J. (2012). Rencana Strategis Direktorat Jenderal Rehabilitasi Sosial 2020-2024 (Revisi 2021). 28, 1–109.
- Rizka, R., & Fadhilah, A. (2022). One Form of Protection for Persons with Mental Disabilities: An Exploration Study of Indonesian Legislation on the Protection of Inheritance Rights of Persons with Mental Disabilities. *Society*, 10(1), 220–228. <https://doi.org/10.33019/society.v10i1.411>
- Rizkyandi, M. D. R., Rodliyah, & H, R. R. (2024). The role of police officers in handling criminal acts through the concept of restorative justice. *Journal of Law Science*, 6(1), 183–191. <https://doi.org/https://doi.org/10.35335/jls.v6i1.4668>
- Rofingi, Rozah, U., & Asga, A. R. (2022). Problems of Law Enforcement in Realizing The Principle of Equality Before The Law in Indonesia. *Law Reform: Jurnal Pembaharuan Hukum*, 18(2), 222–237. <https://doi.org/10.14710/lr.v18i2.47477>
- Rosnida, R. (2020). The settlement of Indonesian human rights violations in the past through restorative justice approaches. *Jurnal Hukum Volkgeist*, 5(1), 21–33. <https://doi.org/10.35326/volkgeist.v5i1.932>
- Saba, J., Nessa, Z., Islam, S., Kaley, A., & Koly, K. N. (2024). “I don’t care about my mental health because I have a physical disability”: A qualitative study on the mental healthcare-seeking behaviours of people with disabilities in Bangladesh. *Acta Psychologica*, 251(November), 104624. <https://doi.org/10.1016/j.actpsy.2024.104624>
- Schuntermann, M. F. (1996). The International Classification of Impairments, Disabilities and Handicaps (ICIDH) - Results and problems. *International Journal of Rehabilitation Research*, 19(1), 1–11. <https://doi.org/10.1097/00004356-199603000-00001>
- Sembiring, R., & Halimah. (2023). Peran Kepolisian Negara Republik Indonesia Dalam Penerapan Sistem Peradilan Pidana. *Jurnal Ilmu Kepolisian*, 17(3), 1–17. <https://doi.org/10.35879/jik.v17i3.416>
- Shaleh, I. (2018). Implementasi Pemenuhan Hak bagi Penyandang Disabilitas Ketenagakerjaan di Semarang. *Kanun Jurnal Ilmu Hukum*, 20(1), 63–82. <https://doi.org/10.24815/kanun.v20i1.9829>
- Sidebari, L. (2021). The Americans with Disabilities Act (ADA) and On-the-Street Police Encounters. *Congressional Research Service*, 1, 1–6. <https://crsreports.congress.gov>
- Stein, D. J., Palk, A. C., & Kendler, K. S. (2021). What is a mental disorder? An exemplar-focused approach. *Psychological Medicine*, 51(6), 894–901. <https://doi.org/10.1017/S0033291721001185>
- Stein, D. J., Phillips, K. A., Bolton, D., Fulford, K. W. M., Sadler, J. Z., & Kendler, K. S. (2010). What is a mental/psychiatric disorder? From DSM-IV to DSM-V. Stein, D. J., Phillips, K. A., Bolton, D., Fulford, K. W. M., Sadler, J. Z., & Kendler, K. S. (2010). What is a mental/psychiatric disorder? From DSM-IV to DSM-V. *Psychological Medicine*, 40(11), 1759–1765. <https://doi.org/10.1017/S0033291709992261>
- Suartha, I. D. M., & Ivory, J. (2024). Corporate Crime Liability: Beyond Rule Reform on Indonesia Criminal Policy. *Focus Journal Law Review*, 4(2), 38–54. <https://doi.org/https://doi.org/10.62795/fjl.v4i2.281>
- Sudika Mangku, D. G. (2020). Perlindungan Hukum Terhadap Anak-Anak Disabilitas Terkait Hak Pendidikan di Kabupaten Buleleng. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 9(2), 353–365. <https://doi.org/10.24843/jmhu.2020.v09.i02.p11>
- Sugiono, S., Ihamuddin, I., & Rahmawan, A. (2014). Klasterisasi Mahasiswa Difabel Indonesia Berdasarkan Background Histories dan Studying Performance. *IJDS Indonesian Journal of Disability Studies*, 1(1), 20–26. <https://doi.org/10.21776/ub.ijds.2014.01.01.03>
- Suharto, S., Kuipers, P., & Dorsett, P. (2016). Disability terminology and the emergence of ‘diffability’ in Indonesia. *Disability & Society*, 31, 1–20. <https://doi.org/10.1080/09687599.2016.1200014>
- Susilawati, D. (2024). Indonesia Miliki 12 Persen Penyandang Disabilitas. <https://www.republika.co.id/berita/nasional/umum/16/12/16/019,47384-Indonesia-Miliki-12-Persen-Penyandang-Disabilitas>. Diakses Pada 8 Juli 2024.
- Syamsudin, Ridwan, Zuhrah, Irwansyah, D., & Wulandari, A. (2022). Criminal Liability Against Crime Defense Forced (Noodweer). *The Indonesian Journal of Legal Thought (IJLETH)*, 2(1), 26–34. <https://doi.org/https://doi.org/10.23917/ijleth.v2i1.18884>
- Tampubolon, M. (2024). Human Rights in Indonesia. In Iksad Publishing House.
- Totsika, V., Liew, A., Absoud, M., Adnams, C., & Emerson, E. (2022). Mental health problems in children with intellectual disability. *The Lancet Child & Adolescent Health*, 6. <https://doi.org/10.1016/S2352-Jurnal Ilmu Kepolisian>

4642(22)00067-0

- Triana, F. U., Astuti, R. S., & Santoso, R. S. (2022). Determinan Implementasi Kebijakan Pemenuhan Hak Ketenagakerjaan Bagi Penyandang Disabilitas di Kota Semarang. *Journal of Public Policy and Management Review*, 11(1), 66–82. <https://ejournal3.undip.ac.id/index.php/jppmr/article/view/32908>
- Undang-Undang Republik Indonesia No 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (2023).
- Undang-Undang Republik Indonesia Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas (2016). [file:///C:/Users/Win10/Downloads/UU Nomor 8 Tahun 2016](file:///C:/Users/Win10/Downloads/UU%20Nomor%208%20Tahun%202016)
- Van Hout, M. C., Kaima, R., Mhango, V., Kewley, S., & Mariniello, T. (2023). Judicialisation of the mentally ill and/or mentally incapacitated in the Malawi criminal justice system: Gaps and flaws of human rights protection. *Forensic Science International: Mind and Law*, 4(October), 100121. <https://doi.org/10.1016/j.fsimpl.2023.100121>
- Vuong, V., & Palmer, M. (2024). Love Thy Neighbour? Social Attitudes Towards Persons With Disabilities. *World Development*, 174(November 2023), 106464. <https://doi.org/10.1016/j.worlddev.2023.106464>
- Wan Ali, W. A. R., Abdul Kassim, A., & Mohd Rashid, S. M. (2024). Assistive Technology for Persons with Physical Disabilities: A Literature Review. *International Journal of Academic Research in Business and Social Sciences*, 14(2). <https://doi.org/10.6007/ijarbss/v14-i2/20823>
- Wardani, W. I., & Suroto. (2023). The Implementation of Regulations on Human Rights Violations in Legislation in Indonesia. *Journal of Law and Sustainable Development*, 11(12), e1530. <https://doi.org/10.55908/sdgs.v11i12.1530>
- Wolbring, G., & Nasir, L. (2024). Intersectionality of Disabled People through a Disability Studies, Ability-Based Studies, and Intersectional Pedagogy Lens: A Survey and a Scoping Review. *Societies*, 14(9), 176. <https://doi.org/10.3390/soc14090176>
- Yana, T. (2024). Rights and Obligations of Persons with Intellectual Disabilities as Perpetrators of Criminal Acts. 7(1), 46–57. <https://doi.org/10.32699/resolusi.v7i1.8055>