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# RECHTSIDEE

PUBLISHED BY  
UNIVERSITAS  
MUHAMMADIYAH  
SIDOARJO

ISSN 2443-3497  
(online)



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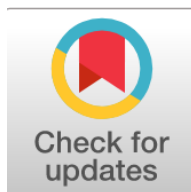
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# Punishment for Perpetrators with Special Needs (Disability) in the Current Criminal Process

## *Pemidanaan terhadap Pelaku Berkebutuhan Khusus (Disabilitas) dalam Proses Pidana Saat Ini*

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### Abstract

**General background** of this research emphasizes the state's vital role in ensuring the rights of persons with disabilities within the legal framework, particularly in criminal proceedings. The **specific background** highlights the challenges these individuals face in the justice system, often encountering biases that hinder their access to justice. The **knowledge gap** identified indicates a lack of comprehensive research on the legal treatment and punishment of offenders with disabilities in Indonesia, especially under the new Criminal Code. This research aims to analyze punishment implementation for such offenders and the collaboration between judges and psychiatrists for fair legal processes. The **results** reveal that a normative descriptive method, incorporating expert assessments and judicial discretion, is crucial for adjudicating these cases. The **novelty** lies in proposing a collaborative approach that encourages judges to consider legal principles alongside individual circumstances. The **implications** advocate for systemic reforms to enhance protections and treatment of persons with disabilities in the criminal justice system, ensuring equitable rights and justice for all citizens. This study contributes to the dialogue on legal reform and social justice, urging policymakers to foster an inclusive legal environment.

### Highlights:

- Emphasizes the importance of integrating expert assessments in legal proceedings for offenders with disabilities.
- Advocates for a collaborative approach between judges and psychiatrists to ensure fair treatment.
- Highlights the need for systemic reforms to protect the rights of persons with disabilities in the justice system.

**Keywords:** Disability, Punishment, Legal Reform, Equality, Criminal Offenders

Published date: 2024-11-01 00:00:00

## Introduction

All Indonesian people have an obligation to uphold the existing law in order to later create the Indonesian state as a law-abiding country, to be able to realize it requires responsibility and high awareness for every citizen [1]. On this basis, one of the most important principles is the guarantee of equality for everyone before the law, therefore everyone is entitled to recognition, guarantees, protection and certainty of a fair law and equal treatment before the law [2].

The principle of equality before the law guarantees justice for all levels of society without exception, especially for persons with disabilities. All citizens have the same rights before the law [3]. The existence of concerns about persons with disabilities is not an impossible matter, many persons with disabilities face the law, generally they become victims but not a few of them become perpetrators of crimes and get treatment that is not in accordance with their conditions (physical/mental).

Internationally, the principle of equality before the law is guaranteed in Article 7 of the UDHR and Article 26 of the ICCPR which then in the Indonesian state order is stipulated in Article 27 paragraph (1) of the 45th Constitution. The principle of equality before the law has placed everyone in the same position before the law. In the context of difables, although they experience body dysfunction in carrying out their activities or different activities, this certainly cannot be used as an excuse for not realizing the principle of equality before the law.

In the aspect of law enforcement, there are two controversies that must be resolved, namely the first is related to persons with disabilities who are dealing with the law as victims of criminal acts, then law enforcers seem to respond less well, this is due to difficulties in reconstructing the law in prosecuting perpetrators on the grounds that victims cannot provide adequate testimony and this cannot be continued. Second, people with disabilities are seen as perpetrators of criminal acts, on this side law enforcement officers also have difficulty applying criminal law rules.

Although the 1945 Constitution has contained a clear statement to encourage non-discrimination, the laws and regulations related to persons with disabilities do not realize this, one of which is the rules in the Criminal Code and Criminal Procedure Code that view persons with disabilities as legally incapable. In the new Criminal Code related to criminal liability with various obstacles that can hinder the participation of persons with disabilities does not mean that certain types of persons with disabilities become immune to the law or cannot be prosecuted in the event of committing a criminal offense. This is stated in Article 38 and Article 39 of Law Number 1 Year 2023 on Criminal Code.

In writing this research, the author has not found any writing related to research on persons with disabilities, while the previous writing was conducted by Sugiharti entitled "Determinants of Disability in the Elderly in Indonesia (Secondary Data Analysis of Basic Health Research in 2017)". The main objective in this writing is to analyze and find the implementation or application of punishment for perpetrators with special needs (disabilities) in the current criminal process.

As has been explained, persons with disabilities are not immune from legal actions because even though they are disabled, it is very clear that persons with disabilities are recognized as subjects of law. With the recognition of persons with disabilities as legal subjects, the state should provide adequate and friendly facilities for persons with disabilities, of course not only public facilities but where the role of the state is very important to pay attention to persons with disabilities who are dealing with the law. Especially persons with physical disabilities who become perpetrators of criminal acts. This is quite a heavy task where the state must guarantee the rights of every person with disabilities. Currently, it is clear that access to justice for persons with disabilities in the criminalization process has not been fully implemented.

## Method

This legal research is conducted to solve the issue at hand, it requires the ability to identify legal problems in conducting a legal reasoning, analyzing the problem at hand and then subsequently providing a solution to the problem [4]. This legal research uses a method that is in accordance with the scientific characteristics of legal science, namely normative legal research in which studies are carried out on laws and regulations related to this dissertation research, as well as conducting studies on the principles, legal theories and philosophy of aspects of criminal liability for persons with disabilities.

The approaches used in this research are the statutory approach, case approach, conceptual approach and comparative approach. This research approach is used to examine all the provisions of the applicable rules in order to later find responsibility for perpetrators with disabilities who commit criminal offenses. There are several legal materials used in this research, namely primary legal materials that are authoritative in nature which have authority in this case, namely statutory rules, official records or minutes in making legislation and judge decisions. Furthermore, primary legal materials are used which contain all publications on law that are not official

documents. This publication includes books, legal dictionaries, legal journals and comments on a court decision.

## Result and Discussion

### A. Criminal Liability of Persons with Disabilities as Perpetrators of Criminal Acts

Liability is a central concept known as the doctrine of fault. In Latin, the doctrine of fault is called *mens rea*. This doctrine explains that a person's actions cannot make the person guilty unless the person's mind is evil. When considered from this principle, there are two conditions that must be met if a person is to be held accountable, namely the existence of an outward act that is prohibited and there is a mental attitude of evil [5].

In criminal law, the question of "whether the person was at fault in committing the crime" is an important basis for determining whether the punishment imposed on the perpetrator of the crime is appropriate. This question is very important because it has been explained in the teachings of criminal law that "There is no punishment without fault", which means that the assessment of criminal responsibility is aimed at the inner attitude of the perpetrator, not at the assessment of his actions. Therefore, based on this principle, the issue of responsibility is closely related to guilt.

Criminal liability occurs because someone has committed a criminal offense. In essence, criminal liability is a mechanism created by criminal law to respond to violations of agreements to reject certain actions [6]. According to Roeslan Saleh, "criminal responsibility is defined as the continuation of the objective reproach that exists in the criminal act and subjectively qualifies to be punished for the act" [7]. Objective censure means that a person's actions are prohibited. This indicates that the act is unlawful, both formally and materially. However, the intent of subjective censure refers to the individual who commits the prohibited act. If a person commits a prohibited act, they cannot be held criminally liable.

The fundamental nature of the criminal law context is that a person who commits a criminal offense will be sentenced in accordance with what is threatened, of course depending on the issue of "whether a person in committing a criminal offense has a mistake". This is because there is a principle in the teaching of criminal law which explicitly states that "no one is punished without guilt". Undoubtedly, guilt is closely related to the issue of liability, so it is necessary to rethink whether a person can be considered guilty when committing a criminal offense [8].

As previously explained, fault is a subjective component of criminal offenses. Fault itself is seen from two perspectives, namely from a juridical and psychological perspective. From a juridical point of view, fault is seen from the perspective of the person responsible for the criminal offense. Until now, Indonesian law has not adopted these changes. As stated by Moeljatno, it should be noted that in Article 44 the word "power of reason" (*verstandelijkevermogens*) is used to describe "soul" in Dutch, but in Swb Nederland it is changed to "*gees vermogens*" (spiritual power = soul). This is because the soul is not only related to the intellect but also to feelings and desires. Although Indonesian law has not done so before, in practice it is considered a change [9].

Van Hamel referring to MvT says that the ability to be responsible is a mature and normal mental state that includes three (3) additional abilities [10]:

1. Understand the factual direction and purpose of his/her own actions
2. Awareness that the action is socially prohibited
3. The existence of free will with respect to the act

Taking into account the above definitions, criminals who are capable of being held responsible can be characterized by a state of mind that is not disturbed by illness, either continuous or temporary. They are in a state of consciousness (not influenced by subconsciousness), do not have the mental ability to realize the purpose of their actions, determine their will, and know the reprehensibility of the perpetrator.

There are three ways in the criminal field to determine whether or not an offender is capable of responsibility in a given situation [11]:

1. With the biological method, it means that by investigating abnormal symptoms or conditions, it can then be linked to irresponsibility;
2. The psychological method means that by investigating the psychological characteristics of the person, it is possible to assess whether the person is capable of taking responsibility or not;

3. With the combined method, the two methods above can be used together. by continuing to investigate abnormal symptoms, as well as examining the psychological characteristics of the person, a conclusion can be drawn as to whether the person can be held responsible or not.

Law on Persons with Disabilities No. 8/2016 regulates legal protection for persons with disabilities. Article 30 paragraph (1) states that before examining persons with disabilities, law enforcers must seek consideration or advice from doctors or health personnel on medical conditions, psychologists or psychiatrists on psychiatric conditions, and social workers on psychosocial conditions. As a result, opinions or recommendations from the aforementioned experts are required in this case when persons with disabilities face legal problems.

Adaptive stimulation, parenting, environment and understanding of the person affect the behavior and personality of a person with intellectual disabilities. This is very important because most people do not realize that their children have disabilities, but they still force them to live their daily lives, which can make things worse due to other influences. Bullying can make the situation worse.

In criminal cases, they must be examined by an expert. The aim is to find out whether a person with mild intellectual disability falls into an unhealthy mental state so that they can be held accountable for their actions or not. As a result, the judge determines whether the intellectual disability in this case is so mild that he or she cannot be held responsible for the act. At trial, the judge determines whether the person with intellectual disability can be held accountable for his or her actions.

The judge cannot determine whether there is criminal liability based on the expert examination in this case. In criminal law, the judge is the only party who has the authority to make a decision that differs from the expert's decision on fitness and propriety. The judge is the one who has full authority to determine whether a person is capable or not. It is crucial to determine whether the acts committed by the defendant are directly related to his or her intellectual disability. Thus, it can be decided whether the individual has the capacity to be criminally responsible.

In this case, a person with intellectual impairment cannot be held accountable for their actions; this falls under the category of "incomplete development" according to Article 39 of Law No. 1 of 2023 on the Criminal Code. The level of inability to take responsibility for one's actions is determined by one's adaptive behavior to concepts, social norms, and rules. The examination is conducted to find out whether a person understands what they are doing and knows the risks of their actions. A judge is the only person who can determine whether a person is criminally responsible if the person meets the above requirements during the examination.

Basically, people with disabilities are still considered and recognized as legal subjects with the same rights and obligations as other legal subjects. They have the right to file charges or be named as defendants in court. However, Law No. 1 of 2023 on the Indonesian Criminal Code (KUHP) was enacted in 2023. This provision regulates one of the grounds for abolishing criminal liability, namely "incapacity to be responsible". Article 39 of the KUHP clarifies this, providing special rules for those who cannot be held accountable for their actions because they are "in a state of acute relapse and accompanied by psychotic features and/or moderate or severe intellectual disability."

Persons with disabilities are not free from the possibility of committing criminal acts, like other people. Persons with mental and intellectual disabilities are very likely to be used to commit criminal acts (such as being couriers, spies, or selling merchandise stolen by others) or even directed by other criminals to commit criminal acts.

This happens because both people with mental and intellectual disabilities lack the ability to understand and differentiate between good and bad actions, as well as their tendency to want to be accepted in the social environment. As a result, people with mental and intellectual disabilities often agree to perform certain actions to gain friendship [12]. In addition, people with intellectual disabilities do not receive special treatment (education, therapy, and assistance) related to violating the law or their behavior that is prone to violating the law. This causes people with disabilities to continue behaving as before, even without realizing that the behavior violates the law [13].

Therefore, the concept of irresponsibility in criminal law refers to the condition and mental capacity of a person who is considered abnormal compared to the general population. Article 39 of the Criminal Code describes situations where a person cannot be held responsible for their actions. This shows how criminal law looks at the special conditions of individuals who may not be held criminally responsible for their actions due to mental defects or mental disorders that affect their ability to understand and control their behavior. Article 39 of the Criminal Code is listed below.

Article 39 of the KUHP is included as the first article in Chapter II, the second part, which deals with criminal responsibility and criminal offenses. Article 44 of the old Criminal Code provides a clear explanation of the situations in which a perpetrator of a criminal offense cannot be held accountable for their actions. Only those who are responsible can be held criminally liable or punished from the perspective of culpability [14].

The main theory behind Article 44 of the Criminal Code is that everyone basically has the ability to be responsible,

because everyone is considered to have a healthy state of mind. Therefore, the inability to be held responsible is formulated in Article 44 of the Criminal Code through a redenering *a contrario* approach [15]. In this regard, Article 44 of the Criminal Code states that incapacity for responsibility occurs when a person suffers from mental disorders due to illness or defects in the growth of reason. Therefore, a person is deemed liable if they do not fulfill these conditions.

Based on the above explanation, a person cannot be held criminally responsible if they meet two main conditions: imperfect growth of reason and mental defect caused by illness. Before it can be decided that the defendant cannot be held accountable for the criminal act he committed, these two requirements must be proven. "There is no punishment without guilt," says the doctrine of *mens rea* in legal language.

## B . Implementation of the Judicial Process for Persons with Disabilities

While the application of the law may occur peacefully and ordinarily, violations may also occur. In this case, the offending law must be enforced. Enforcement is what ensures that the law becomes a reality. Legal certainty, benefit, and justice are three components that are always considered in law enforcement. In law enforcement, every one of the three elements should receive equal attention. However, it is sometimes difficult to reach a balanced agreement between the three elements [16].

Police in the field of criminal law are law enforcement agencies that carry out legal decision-making functions in the field and often deal with the public in relation to law enforcement. It is not surprising that the police are considered to be the living law because they are the ones who carry out the law every day. After the police arrest a person, the legal team calls a psychiatric expert to examine and prove that the person is suffering from a mental disorder, so the police must treat him in a mental hospital.

Kanter and Sianturi state that, "what is meant by the state of the soul that is defective because of its growth is someone who is an adult, but his behavior is like a child. This kind of situation is referred to as "dumb", half-baked or idiotism, imbecility, which is caused by a delay in the growth of a person's soul" [15]. Factors that can be used as benchmarks to determine how effective the application of a rule is the law itself or the Law. The next factor is law enforcement, which is the party that compiles and applies the law, facilities or facilities that support the performance of law enforcement, and the community where the law applies and is applied. Culture as art and taste based on human desires in the association of life.

Government Regulation (PP) No. 39 of 2020 on Reasonable Accommodation for Persons with Disabilities in Courts is one of the laws resulting from the Law on Persons with Disabilities. To ensure that this government regulation can be used properly in the field, as it is still very new. Therefore, all expectations and objectives of making the regulation can be monitored and supervised by all interested parties. in accordance with its duty, which is to ensure a fair judicial process for the disabled community. People with disabilities can provide information in various ways during the legal process. Information must be provided to the difable victim, their family, or their companion. The consent of the disabled person or his/her family must be obtained before an assistant or interpreter is provided.

Among other facilities that must be provided by law enforcement agencies are rooms that comply with standards and are easily accessible for persons with disabilities; transportation that is easily accessible to examination locations according to authority; and facilities that are in accordance with applicable laws. Government Regulation of the Republic of Indonesia Number 39 of 2020 concerning Reasonable Accommodation for Persons with Disabilities in the Judicial Process was made to realize a fair judicial process for persons with disabilities based on equal rights and opportunities and to eliminate discriminatory practices in the judicial process. This regulation was made to ensure that persons with disabilities have easy access and proper facilities during the judicial process. Courts, as law enforcement agencies, should treat persons with disabilities fairly and provide both physical and non-physical accessibility to the judicial process. Removing all barriers that prevent persons with disabilities from obtaining justice should be the first step. Courts are well versed in how to provide services to persons with disabilities in accordance with predetermined standards. Therefore, it is necessary to cooperate and attend specialized training.

The judicial services provided to persons with disabilities have helped to create a safe and orderly atmosphere. When there are issues regarding legal mechanisms that tend to be rigid and procedural, the courts provide advocates to provide emotional support, reduce fear or intimidation, and ensure smooth communication [17]. The provision of services and infrastructure is embedded in all aspects of the service, not just in the building. Courtroom instructions, sign language interpreters, and audio-visual information media are examples of this [18].

The law enforcers and the society are the most important based on the above factors. Basically, law enforcers are responsible for drafting and implementing laws, which makes them important. In the same way, the community regards law enforcers as examples to be followed. The judicial services provided by the Courts must comply with the mandate provided by Law No. 8 of 2016 on Persons with Disabilities. As a state of law, Indonesia must respect human dignity, and persons with disabilities are no exception. Constitutionally, persons with disabilities have equal

rights and positions before the law and government. As citizens with special physical, mental, intellectual, or sensory needs, persons with disabilities may face various challenges that may prevent them from participating fully and effectively in society, which is based on the principle of equality with other citizens.

According to Article 9 letter b of the Law on Persons with Disabilities, persons with disabilities are recognized as legal subjects who support their rights and obligations. As such, persons with disabilities have the right to sue or be sued in court like any other legal subject. Articles 248-263 of the Criminal Code provide legal protection to the rights of persons with disabilities before Law No. 1 of 2023 on the Criminal Code is passed.

They are seen as a weak group and only need compassion because of their limitations. Often, their rights as human beings are ignored. There are many rights, including the right to life, the right to education and medical care, and the right to easy access to public facilities. However, the 1945 Constitution has provided clear protection for people with disabilities. At least in Article 28H paragraph (2) of the 1945 Constitution, it states that everyone is entitled to special treatment and facilities to obtain equal opportunities and benefits in an effort to achieve equality and justice. In addition, persons with disabilities have the right to physical and mental integrity equal to other people, including the right to obtain protection and social services for independence and in emergencies.

Courts see people with disabilities as the same legal subjects as everyone else. Courts also do not discriminate against people with disabilities when adjudicating. They adjudicate in accordance with the law and remove barriers and obstacles for people to obtain justice. Courts take into account the limitations of persons with disabilities and provide services appropriate to their needs to ensure that persons with disabilities have an equal opportunity to obtain justice services

## C. Law Enforcement by Judges on Perpetrators with Disabilities

The judge's decision is the "crown" as well as the "peak" of the representation of the values of justice, truth, human rights, and mastery of established, qualified, and factual law or facts, as well as the ethics and morality of the judge concerned. According to Article 5 Paragraph 1 of the Judicial Power Law, judges and constitutional judges are required to study, follow, and understand the sense of justice that exists in society. It is possible that a judge should have the ability and activeness to find the law (rech finding) in cases where there is a void of rules or the rules are unclear. Law finding is a process carried out by judges or other law enforcement officials to apply general regulations to specific legal events, and the results become the basis for decisions.

Judges can consider many things when making decisions in court. These include the offender's guilt; the motivation and purpose of committing the offense; the procedure for committing the offense; the offender's inner feelings; social and economic life; sixth, the offender's attitude and actions after committing the offense; seventh, the impact of the offense on their future; and eighth, the perspective of others.

Judges are responsible for thoroughly adjudicating before making a decision in the event of a criminal offense where an act has been committed that is prohibited by the prohibition law and is accompanied by a threat of certain criminal sanctions. According to Article 1 point 9 of the Criminal Procedure Code, trial is a series of actions by a judge to receive, examine, and decide criminal cases freely, honestly, and impartially in court in the cases and in the manner provided for in the law. According to Article 1 point 11 of KUHAP, a court decision is a judge's statement pronounced in an open court session, which can be in the form of punishment or acquittal or release from a criminal case.

All of these actions must be carried out by the judge, because the judge cannot refuse to examine and try a case, even if the law is unclear or does not regulate the action. The defendant must be charged, examined and tried in court for the criminal offense he or she committed because of the defendant's actions or circumstances. Taking into account the principle of equality before the law, whoever the person is must be served fairly.

An independent judiciary has two objectives. First, they want to perform their judicial duties and responsibilities fairly and honestly. The second objective is for them to have the ability to be accountable and oversee all actions taken by the government. One of the main duties of judges is to uphold truth, justice and legal certainty. If there is legal uncertainty, i.e. differences to current legislation, upholding truth and justice is of utmost importance. Since judges do not only function as representatives of the law, and they are not allowed to distinguish between justice and truth, their functions do not match the formulation of the law. In this case, the role of the judge is very important [19].

In the practice of upholding the law, judges must consider the principle of *similia similibus*, which means that similar cases will be treated in the same way. However, in practice, judges find cases that are ostensibly similar but do not actually represent similar interests. This is because there are basically no cases that are exactly the same, as each case has its own special reasons. As a result, judges must have the ability to deal with cases one by one. It makes no sense to simply follow a decision that has already been made without considering the special conditions present in the case. This is because each case has its own characteristics, which ultimately require specialized treatment. As mentioned in the saying "absolute law is the greatest injustice", generalization of treatment will

undermine the sense of justice.

In legal language, the term "*audio alterampartem*" means that the judge must listen to both sides. Every judge in Indonesia must adhere to the following principles of behavior according to the code of ethics [20]:

1. Behave and act in accordance with what is justified in the applicable law;
2. Not showing partiality or sympathy or antipathy to the parties to the litigation, either in speech or behavior;
3. Must be courteous, firm, and wise in presiding over the trial, both in speech and conduct;
4. Must maintain the dignity and solemnity of the trial by, among other things, being serious in examining, not harassing the parties, either by word or deed; as well as
5. Earnestly seek truth and justice

If we talk about people with disabilities, especially those with intellectual disabilities, their views and the way they think are generally the same as 7 (seven) year old children. Even their basic logic is not in accordance with children 7 (seven) years old and below, it is still childish. Although their age far exceeds the age of maturity, which is 18 (eighteen) years old, defendants with intellectual disabilities should only be subject to the same actions as normal children aged 12 (twelve) to 14 (fourteen) years old.

The legislature, as lawmakers, have actually prepared and considered this. Law No. 1 of 2023 on the Criminal Code, drafted by the DPR, regulates how criminal law for persons with disabilities is applied. "Any person who at the time of committing a criminal offense suffers from mental and/or intellectual disabilities, the punishment may be reduced and subject to measures," Article 38 of the Criminal Code states. In addition, Article 39 of the 2023 Criminal Code reads as follows: "Any person who at the time of committing a criminal offense suffers from mental disability in a state of acute exacerbation and accompanied by psychotic features and/or intellectual disability of moderate or severe degree shall not be sentenced, but may be subject to measures." Perpetrators of criminal offenses with mental or intellectual disabilities are considered less capable of realizing the unlawful nature of their actions or of acting with conviction.

Knowledge about the ability of people with intellectual disabilities to take responsibility for their criminal acts has changed and evolved. to make judges believe in this knowledge. However, applying it will be a very difficult task for judges. In addition to having the ability to accurately interpret laws and amend laws in accordance with progress without deviating from the principles of relevant legislation, judges must also dare to play the role of creator or shaper of new laws.

The author tries to obtain a strong court decision that will outline the elements of criminal offenses committed by persons with disabilities related to judges' law enforcement against persons with disabilities who commit criminal offenses. In decision No. 57/Pid.B/2021/PN Kba, the Public Prosecutor charged the defendant Suwandi Pradika, aged 26, with committing the crime of "Penganiayaan" by hitting the victim with a machete or cleaver. According to Article 351(2) of the Criminal Law, this act fulfills the requirements.

After being treated for two weeks, according to the expert statement in the decision. According to the Visum et Repertum Psychiatricum issued by the UPTD Regional Mental Hospital of Bangka Belitung Islands Province, the defendant suffered from mild intellectual disability. However, the defendant's IQ was not mentioned. According to Dr. Prija Djatmika, S.H., M.H., a legal expert from Brawijaya University Malang, based on decision No. 57/Pid.B/2021/PN.Kba, paragraph 44 of the Criminal Code can be used as an excuse to remove the guilt that makes the defendant cannot be held responsible for his actions.

Decision Number 57/Pid.B/2021/PN.Kba, based on Article 44 of the Criminal Code, is First, Article 44 paragraph (1) of the Criminal Code defines mild intellectual disability experienced by the defendant as "imperfect growth". Second, the experts involved in the trial were presented directly. There was a Visum et Repertum Psychiatricum signed by Dr. Imelda Gracia Gani, Sp.KJ., a mental medicine specialist, and Dr. Prija Djatmika, S.H., M.H., a law faculty lecturer. In this case, psychiatry confirmed that the defendant had a mild intellectual disability. Third, the defendant was considered to still have the moral capacity to distinguish moral actions. The defendant committed serious maltreatment by swinging a machete at the victim. Fourthly, the judge decided that the defendant could still be held responsible for his actions because he knew the consequences of his actions but did not realize them, because the judge considered the defendant to have the ability to understand the causal or cause and effect relationship of the actions committed as well as an understanding of moral values and principles. Fifthly, this decision is based on the opinion of the psychiatric examining expert. Therefore, this decision uses a normative descriptive system.

Psychiatry had explained the defendant's mild intellectual disability. Then the judge decided that the defendant's circumstances influenced the act because he was considered to still have the ability to understand the causal relationship of the cause and effect of his actions. Therefore, it seems that the judge decided on the punishment of the defendant in his decision. The defendant was sentenced to 8 (eight) months imprisonment because the

interpretation of Article 44 of the Criminal Code was not fulfilled.

The normative descriptive method requires cooperation between the judge and the psychiatrist. The psychiatrist determines the presence of the illness, while the judge determines whether the illness affected the conduct. Whether the defendant is capable of understanding that the act committed is not good or against the law is the normative method used. In the decision, there is expert evidence. A judge can use this evidence or not when making a legal decision. According to Article 186 of the Criminal Procedure Code, "Expert testimony is what an expert states in court." Expert testimony is a known conclusion based on the expert's power of attorney. Because it is free, this expert explanation is not actually binding. Expert testimony actually helps judges find the truth, but judges can exclude it if the expert's opinion contradicts their beliefs.

However, it should not be set aside without a clear reason. The judge alone has the authority to request a re-search if deemed necessary. Nieboer, a jurist-psychiatrist, argues that it is important to integrate both fields of knowledge, namely psychiatry and criminal law. Because the causal function of the psychic must also be considered in an offense; the greater the role of psychic deviations, the less culpable the offender will be [21]. If the greater the role of psychological deviations, the smaller the degree of guilt. The descriptive normative method used by Moeljatno is in line with Nieboer's opinion. In the normative description itself, psychiatrists and judges work together to determine whether a person who commits a criminal offense has the ability to be responsible or not. When the psychiatrist tells the state of a person's soul, the judge assesses the relationship between the state of the soul and the actions of the person.

To admit people with intellectual disabilities to psychiatric hospitals, their needs are considered first. Because intellectual disabilities require training rather than medication. People with intellectual disabilities are given skills training at social rehabilitation centers. If a person with an intellectual disability has comorbidities, such as a more aggressive person or frequent anger, then it can be considered. Judges can impose punishment on a defendant if the defendant is deemed capable and fit to bear the legal responsibility. This is the ultimate demand for justice, which a judge must make. By considering the subject of the litigant, you can determine the main consideration of the verdict. Can the defendant be held accountable and is he or she mentally disabled? So, the judge must be brave enough to do *contra legem* or set aside the provisions of a particular article after examining and investigating that the article is really contrary to public order, interest, and benefit.

The use of law by judges when trying a defendant in a case is carried out to fulfill the functions of the judge's decision: social control, settlement of disputes (settle the dispute), integration of various interests, renewal, and social engineering. Two objectives of criminal law allow the imposition of criminal sanctions on people who violate them. The first is the conceptual or philosophical nature, where criminal law should be considered as a law that provides sanctions, with general explanations sufficient to become a parameter in resolving criminal offenses. The second is pragmatic in nature, with measures that are clear and concrete, and relevant to criminal law issues [22].

As not everyone has the ability to take legal responsibility, judges must be careful when dealing with defendants with disabilities. It is very difficult to handle cases where the perpetrator is a person with mental illness, let alone the psychological impact experienced by the victim and their family. However, Law No. 1 of 2023 on the Criminal Code stipulates that people with mental illness who cannot take responsibility for their actions cannot be criminalized.

The judge determines that the defendant is guilty based on a conviction derived from a pure conscience, not influenced by external factors, and always preceded by the words, "For the Sake of Justice Based on the Almighty God." Based on the facts and the judge's beliefs during the trial, the judge's judgment is very important to determine whether the defendant is guilty and how severe the sentence will be.

One of the most important components in determining the value of a judge's decision is the judge's consideration. This consideration must be addressed carefully, well, and meticulously because it is an important part of the decision that contains justice (*exaequoetbono*), legal certainty, and benefits for the parties concerned. The High Court or Supreme Court can cancel the judge's decision made by the judge if it is not thorough, good, and careful [23].

According to the goal theory, consideration should not only take into account the past, but also the future. Therefore, the judge, the offender, and the community must be satisfied with the determination of the punishment. Therefore, there must be a balance between the punishment imposed and the crime committed. Therefore, criminal sanctions are not intended to avenge anything the defendant has done. Instead, these sanctions are intended to correct the defendant so that they do not do the same thing again and realize that they have made a mistake. This sanction is also intended to provide a warning so that other people do not do the same thing.

## Conclusion

To ensure fairness, adjustments are often necessary when sentencing offenders with special needs. The justice system usually considers their special needs, such as accessibility or more humane treatment, and may offer sentencing alternatives or specialized treatment to maintain their health during the legal process. Judges and

psychiatrists should work together to use normative descriptive methods when sentencing offenders with disabilities. The psychiatrist determines the presence of the illness, while the judge determines whether the illness affected the conduct. Whether the defendant is able to understand that their actions are not good or against the law should be done by means of the normative method.

The condition and needs of the accused must be taken into consideration when deciding cases. Experts' statements and explanations can help a judge gain a thorough understanding and consideration of different types of disabilities. Therefore, the judge not only concentrates on the law, but also, most importantly, strengthens the judge's conviction in determining justice.

## References

1. A. Wahid, F. Hamdani, and A. Fauzia, *Pengujian Undang-Undang: Mengurai Konsep Judicial Review & Judicial Preview*. Bandung: Alfabeta, 2024.
2. H. Santoso, 'Perlindungan Hukum Bagi Anak Korban Tindak Pidana Pelecehan Seksual', *Lex J. Kaji. Huk. dan Keadilan*, vol. 3, no. 2, pp. 1-21, 2019.
3. A. Fauzia and F. Hamdani, 'Aktualisasi nilai-nilai Pancasila dan konstitusi melalui pelokalan kebijakan Hak Asasi Manusia (HAM) di daerah', *J. Indones. Berdaya*, vol. 2, no. 2, pp. 157-166, 2021.
4. Peter Mahmud Marzuki, *Penelitian Hukum*, 13th ed. Jakarta: Kencana, 2017.
5. H. Amrani and M. Ali, *Sistem Pertanggungjawaban Pidana (Perkembangan dan Penerapan)*. Depok: Rajagrafindo Persada, 2015.
6. C. Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*. Jakarta: Kencana, 2006.
7. R. Saleh, *Sistem Pertanggungjawaban Pidana: Perkembangan dan Penerapan*. Depok: Rajawali Pers, 2015.
8. D. Mekanoneng, 'Cacat Kejiwaan Sebagai Alasan Penghapus Pidana', *Lex Crim.*, vol. 5, no. 4, pp. 131-137, 2016.
9. Moeljatno, *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta, 2002.
10. J. Remmelink, *Hukum Pidana: Komentar atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Pदानannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*. Jakarta: Gramedia Pustaka Utama, 2003.
11. A. Chazawi, *Pelajaran Hukum Pidana Bagian 2: Penafsiran Hukum Pidana, Dasar Peniadaan, Pemberatan, Peringatan, Kejahatan Aduan, Perbarengan, dan Ajaran Kausalitas*. Jakarta: Raja Grafindo Persada, 2009.
12. J. Petersilia, *Doing Justice: The criminal justice system and offenders with developmental disabilities*. Berkeley: California Policy Research Ctr, 2000.
13. S. Hayes, 'Criminal Behavior and Intellectual and Developmental Disabilities: An Epidemiological Perspective', in *The Wiley Handbook on Offenders with Intellectual and Developmental Disabilities: Research, Training, and Practice*, W. R. Lindsay and J. L. Taylor, Eds. New York: John Wiley & Sons, 2018.
14. E. A. Zulfa, *Gugurnya Hak Menuntut, Dasar Penghapus Peringatan dan Pemberat Pidana*. Jakarta: Ghalia Indonesia, 2010.
15. S. Sianturi, *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya*. Jakarta: Stora Grafika, 2002.
16. S. Mertokusumo, *Mengenal Hukum Suatu Pengantar*. Yogyakarta: Cahaya Atma Pustaka, 2010.
17. MAPPI FHUI, *Panduan Penanganan Perkara Penyandang Disabilitas Berhadapan Dengan Hukum*. Depok: MAPPI FHUI dan Australia Indonesia Partnership For Justice, 2019.
18. H. Kurniawan, *Aksebilitas Peradilan Bagi Penyandang Disabilitas*. Yogyakarta: PUSHAM UII, 2015.
19. S. Rahardjo, *Masalah Penegakan Hukum*. Bandung: Sinar Baru, 1983.
20. B. Kuntjoro, *Kemandirian Kekuasaan Kehakiman*. YLBHI, 1980.
21. H. Alamri, 'Kedudukan Keterangan Ahli Sebagai Alat Bukti Menurut Kitab Undang-Undang Hukum Acara Pidana', *J. Lex Priv.*, vol. 5, no. 1, pp. 31-38, 2017.
22. T. Prasetyo, Y. P. Ginting, and R. K. Karo, *Hukum Pidana*. Depok: Rajawali Pers, 2010.
23. M. Arto, *Praktek Perkara Perdata pada Pengadilan Agama*. Yogyakarta: Pustaka Pelajar, 2004.