

Criminal Liability for Perpetrators of Crimes with Intellectual Disabilities

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ABSTRACT

This study aims to analyze criminal liability for perpetrators of criminal acts with intellectual disabilities and its implications for the criminal justice process. The research problem focuses on determining whether the condition of intellectual disability can be the basis for criminal reduction or the application of provisions regarding the non-imposition of a crime based on applicable legal provisions, as well as the role of expert testimony in helping to determine the perpetrator's ability to be responsible. This study uses a normative legal research method with a statute approach and a conceptual approach. Legal materials are analyzed qualitatively by referring to the provisions of laws and regulations and the concept of criminal liability. The results of the study show that the condition of intellectual disability cannot be automatically used as a reason for removal or mitigation of criminal penalties. The determination of criminal liability must be carried out individually by considering the condition of the perpetrator and its influence on the ability to understand and control behavior at the time of the crime. In the context of the National Criminal Code, Article 38 regulates the reduction of criminal offenses and/or actions for persons with mental and/or intellectual disabilities, while Article 39 regulates certain conditions that cause the perpetrator not to be criminally sentenced, but can be subject to action. In addition, expert testimony, especially forensic psychiatrists and psychologists, plays a role in providing a professional assessment of the perpetrator's intellectual condition and functional ability as a consideration in the judicial process. Nevertheless, the determination of criminal liability remains the authority of the judge based on the overall facts of the trial and the applicable legal provisions. Therefore, the handling of cases involving persons with intellectual disabilities needs to pay attention to individual assessments, the proper application of the law, and the fulfillment of the rights and proper accommodations for persons with disabilities in the criminal justice process.

Keywords: *criminal liability, intellectual disability, responsible ability, expert testimony, National Criminal Code.*

A. Introduction

Indonesian criminal law recognizes the principle of no crime without fault (*geen straf zonder schuld*), which means that a person can in principle only be held criminally responsible if there is a mistake for the act he committed. One of the important aspects in determining criminal liability is the ability to be responsible (*toerekeningsvatbaarheid*), which is the ability of a person to understand the nature and consequences of his actions and determine his or her will based on that understanding. Ability to be responsible is closely related to the assessment of the perpetrator's guilt in criminal law. Therefore, conditions that affect a person's ability to understand his actions or control his or her will

need to be considered in determining criminal liability in accordance with the applicable law. The issue of criminal liability becomes more complex when criminal acts are committed by persons with intellectual disabilities. Law Number 8 of 2016 concerning Persons with Disabilities recognizes intellectual disability as one of the types of disabilities. This condition is related to limitations in intellectual function and adaptive behavior that can affect a person's conceptual, social, and practical abilities¹.

These limitations have the potential to affect the perpetrator's ability to understand legal norms, assess the consequences of his actions, and determine actions based on his or her understanding. However, people with intellectual disabilities cannot automatically be considered criminally incapable of responsibility. Assessments must be made individually taking into account the perpetrator's condition and ability at the time the act was committed as well as relevant legal provisions. Thus, the determination of criminal liability is not solely based on the category or degree of intellectual disability, but also on the relevance of those conditions to the perpetrator's ability to be responsible. Regulations regarding criminal liability for perpetrators who suffer from mental disorders or conditions that affect their ability to be responsible are contained in the old Criminal Code (KUHP), especially Article 44 paragraph (1), as well as in Law Number 1 of 2023 concerning the National Criminal Code (National Criminal Code), especially Article 38 and Article 39. Article 44 paragraph (1) of the old Criminal Code regulates the circumstances when a person commits an act that cannot be accounted for because his or her soul is disabled in growth or disturbed by illness².

This limitation has the potential to affect a person's capacity to understand legal norms, assess the consequences of actions, and control his or her own will³. However, not every person with intellectual disabilities automatically loses his or her ability to take responsibility criminally, because the degree of intellectual disability varies gradually, ranging from mild, moderate, to severe. Meanwhile, the National Criminal Code provides more detailed regulations regarding the condition of persons with mental and/or intellectual disabilities. Article 38 stipulates that persons with mental and/or intellectual disabilities may be subject to criminal reductions and/or actions, while Article 39 regulates certain conditions when persons with mental and/or intellectual disabilities cannot be sentenced to criminal charges, but can be subject to action. The difference in these regulations shows the importance of distinguishing the conditions that affect the degree of criminal responsibility from the conditions that cause the perpetrator to not be punished. Its application still requires an assessment of the individual circumstances of the perpetrator and the fulfillment of the legal criteria specified in each article, so that it cannot be concluded only based on the level of intellectual disability.

The application of these provisions is also related to the protection of the rights of persons with disabilities in the criminal justice process. Law Number 8 of 2016 concerning Persons with Disabilities is one of the important foundations in ensuring the respect, protection, and fulfillment of the rights of persons with disabilities, including when dealing with the law. In practice, the assessment of the ability to be responsible may require expert testimony, such as a psychiatrist or psychologist according to the

¹Moeljatno, *Criminal Acts and Criminal Responsibility: Two Basic Definitions in Criminal Law*, cet. 3 (Jakarta: Aksara Baru, 1983).

²Indonesia, Central Government, *Law Number 8 of 2016 concerning Persons with Disabilities*, April 15, 2016, <https://peraturan.bpk.go.id/Details/37251/uu-no-8-tahun-2016>.

³Indonesia, Central Government, *Law No. 8 of 1981 concerning Criminal Procedure Law*, December 31, 1981, <https://peraturan.bpk.go.id/Details/47041/uu-no-8-tahun-1981>.

competence and scope of expertise. This information can help explain the intellectual, psychological, and adaptive conditions of the perpetrators relevant to the case. However, expert testimony is not the only basis for determining criminal liability because the final assessment is still carried out based on the overall facts of the trial and the applicable legal provisions. Therefore, it is necessary to have a proper understanding of the relationship between the condition of intellectual disability, proof in the criminal justice process, and the application of the provisions of the National Criminal Code so that law enforcement can take place fairly and pay attention to the rights of persons with disabilities⁴

Research on the criminal liability of persons with intellectual disabilities needs to be placed in the development of Indonesian criminal law, especially after the enactment of the National Criminal Code. The focus of the research does not only lie on the ability of persons with intellectual disabilities to account for their actions, but also on the distinction of legal consequences based on Article 38 and Article 39 of the National Criminal Code as well as the relevance of expert testimony in the criminal justice process. This focus needs to be studied by paying attention to previous research so that aspects that have not been discussed or have not received adequate explanations can be clearly identified. Thus, the contribution of this research is directed at a normative analysis of the application of criminal liability provisions for persons with intellectual disabilities and the relationship between the assessment of responsible ability, expert testimony, and the protection of the rights of persons with disabilities in the criminal justice process⁵.

Based on this description, this study aims to analyze the regulation of criminal liability for perpetrators of crimes against persons with intellectual disabilities based on the provisions of the National Criminal Code, especially Article 38 and Article 39, as well as examine the implications of the condition of intellectual disability on the criminal justice process, especially related to the role of expert testimony in assessing the ability to be responsible. This research is expected to contribute to the development of criminal law studies, especially in understanding the application of criminal liability provisions that are not only oriented to the actions of the perpetrator, but also consider individual conditions and the protection of the rights of persons with disabilities in accordance with applicable legal provisions.

B. Research Methods

1. Types of Research

This research is *normative legal research*, which is research that examines the law based on applicable legal norms, principles, principles, and doctrines. This research focuses on the analysis of the regulation of criminal liability for perpetrators of criminal acts of persons with intellectual disabilities, especially regarding the ability to be responsible, criminal mitigation, and circumstances that cause perpetrators to be unable to be sentenced based on the provisions of Indonesian criminal law. In addition, this study examines the relationship between laws and regulations that regulate criminal liability and the protection of the rights of persons with disabilities in the judicial process to determine the suitability of the application of relevant legal norms.

2. Research Approach

⁴Indonesia, Central Government, *Law Number 1 of 2023 concerning the Criminal Code*, January 2, 2023, <https://peraturan.bpk.go.id/Details/234935/uu-no-1-tahun-2023>.

⁵Faiz Aqiel Maula Hidayat and Aji Lukman Ibrahim, "Disharmony in Mental Disability Criminal Liability in Positive Law in Indonesia," *Justisi* 9, no. 3 (2023): 326–343, <https://doi.org/10.33506/journaljustisi.v9i3.2474>

This research uses a statute *approach* and a *conceptual approach*.

a. Statute *Approach*

The legislative approach is carried out by examining regulations related to criminal liability and the protection of the rights of persons with disabilities. The regulations studied include the old Criminal Code (KUHP), Law Number 1 of 2023 concerning the Criminal Code, Law Number 8 of 2016 concerning Persons with Disabilities, Government Regulation Number 39 of 2020 concerning Appropriate Accommodation for Persons with Disabilities in Judicial Processes, and Supreme Court Regulation Number 2 of 2025 concerning Guidelines for Adjudicating Cases for Persons with Disabilities in Face to Law in Court. The study focused on the provisions regarding the criminal liability of persons with intellectual disabilities, especially Article 38 and Article 39 of the National Criminal Code, as well as their relation to the protection of the rights of persons with disabilities in the judicial process

b. Conceptual Approach

The conceptual approach is carried out by examining the views and doctrines that have developed in criminal law regarding errors, the ability to be responsible (*toerekeningsvatbaarheid*), criminal liability, the reasons for criminal expungement, and the reduction of criminal offenses. This approach is used to build legal arguments regarding the relationship between the individual conditions of persons with intellectual disabilities, the ability to be responsible, and the legal consequences that can be applied based on the provisions of laws and regulations.

c. Legal Ingredients

The legal materials used in this study consist of primary, secondary, and tertiary legal materials.

1) Primary Legal Material

Primary legal materials are legal materials that have binding power and are the main basis for research analysis. The primary legal materials used include the old Criminal Code, Law Number 1 of 2023 concerning the Criminal Code, Law Number 8 of 2016 concerning Persons with Disabilities, Government Regulation Number 39 of 2020 concerning Appropriate Accommodation for Persons with Disabilities in Judicial Processes, and Supreme Court Regulation Number 2 of 2025 concerning Guidelines for Adjudicating Cases for Persons with Disabilities in Face to Law in Court. These legal materials are used to analyze the legal basis of criminal liability, regulations regarding persons with intellectual disabilities, and the protection of the rights of persons with disabilities in judicial proceedings.

2) Secondary Legal Materials

Secondary legal materials include criminal law books, scientific journals, legal articles, previous research results, and expert opinions relevant to criminal liability, responsibility, and intellectual disability. Secondary legal materials are used to support the interpretation of primary legal materials, strengthen legal arguments, and identify differences and contributions of this research compared to previous research.

3) Tertiary Legal Materials

Tertiary legal materials include legal dictionaries, language dictionaries, legal encyclopedias, and other reference sources that provide explanations of

terms or concepts in primary and secondary legal materials. These legal materials are used to clarify terminology and support the understanding of the legal concepts being analyzed.

3. Legal Material Collection and Analysis Techniques

The collection of legal materials is carried out through library *research* by tracing and inventorying laws and regulations, law books, scientific journals, legal articles, and the results of previous research that are relevant to the object of research. The collected legal materials are then classified based on their relevance to the formulation of the problem, especially regarding the regulation of criminal liability for persons with intellectual disabilities and their implications for the criminal justice process. The analysis of legal materials is carried out qualitatively using a deductive method, which is to draw conclusions from general legal norms and principles to answer specific problems regarding the criminal liability of persons with intellectual disabilities. The analysis was carried out through the systematic interpretation and review of laws and regulations by paying attention to the relationship between the National Criminal Code, regulations regarding persons with disabilities, and provisions that regulate appropriate accommodation in the judicial process. Furthermore, the results of the analysis were prepared prescriptively to formulate legal arguments regarding the application of Articles 38 and 39 of the National Criminal Code as well as the relevance of expert testimony in assessing the responsible capacity of persons with intellectual disabilities.

C. Results and Discussion

A. Ability to Be Responsible as a Condition for Criminal Responsibility

Criminal liability is one of the important elements in the criminal law system because it determines whether a person can be held accountable for the criminal act he committed. In criminal law, the proof of an act that meets the formula of a criminal act does not necessarily mean that the perpetrator can be sentenced to a criminal offense. Criminal sentencing must also consider whether or not the conditions for criminal liability are met, including the ability of the perpetrator to understand the nature of his act and determine his will based on that understanding. Thus, criminal liability is not only related to acts that are objectively unlawful, but also to the personal circumstances of the perpetrator that are legally relevant at the time the crime is committed⁶. Ability to be responsible is related to conditions that allow a person to understand the meaning of his act, be aware of the unlawful nature of the act, and control his behavior according to his understanding. Assessments of such abilities cannot be based solely on a person's physical appearance, visible behavior, or disability diagnosis.

A person with an intellectual disability must still be assessed based on his or her individual circumstances, the level of his intellectual function, the ability to understand the situation, and the influence of these conditions on the alleged act. Therefore, intellectual disability needs to be placed as a condition that must be carefully examined in the law enforcement process, not as a basis for automatically declaring a person capable or incapable of being responsible. In the development of Indonesian criminal

⁶Ika Andri Mellana, M. Faki, Muhtadi, Ahmad Irzal Fardiansyah, and Yulia Kusuma Wardani, "Juridical Analysis of the Application of Article 44 of the Criminal Code to Perpetrators of Crimes of Persons with Mental Disabilities and Intellectual Disabilities," *Jurnal Qanun* 4, no. 4 (2026), <https://doi.org/10.61104/jq.v4i4.8955>.

law, the regulation regarding criminal liability for persons with intellectual disabilities has been changed through Law Number 1 of 2023 concerning the Criminal Code. The law takes effect from January 2, 2026 and distinguishes the regulations regarding persons with mental disabilities and/or intellectual disabilities in Article 38 and Article 39. Article 38 stipulates that every person who, at the time of committing a criminal act, has a mental disability and/or intellectual disability, his or her sentence may be reduced and/or subject to action. Meanwhile, Article 39 stipulates that any person who, at the time of committing a criminal act, has a mental disability in a state of acute relapse accompanied by a psychotic picture and/or moderate or severe intellectual disability, cannot be punished, but can be subject to action. The two provisions have different legal consequences so they should not be interchangeable in explaining the basis for criminal liability.⁷

Law Number 1 of 2023 concerning the Criminal Code corrects these weaknesses by formulating a more scientific and hierarchical distinction. Article 39 of the National Criminal Code stipulates that a person cannot be convicted if at the time of committing a criminal act he experiences mental disability and/or intellectual disability in such a way that he is unable to recognize the unlawful nature of his act or is unable to adjust his actions to that awareness (*verminderde toerekeningsvatbaarheid*), but can still be subject to action⁸. Article 38 of the National Criminal Code regulates the condition of being incapable of responsibility (*verminderde toerekeningsvatbaarheid*), namely when the perpetrator's cognitive and volitional ability is impaired but not completely lost, so that the penalty imposed must be reduced and/or can only be subject to action.

The difference between Article 38 and Article 39 of the National Criminal Code lies in the legal consequences that can be applied to the perpetrator. Article 38 opens up the possibility of criminal reduction and/or the imposition of action against people with mental disabilities and/or intellectual disabilities. Article 39 regulates certain circumstances when the perpetrator cannot be sentenced to a crime, but can still be subject to action. The explanation of Article 39 explains that persons with moderate or severe intellectual disabilities included in the provisions are considered incapable of being responsible. To explain the inability to be responsible from a medical point of view, expert testimony is needed so that the perpetrator's condition can be appropriately assessed in the judicial process. Thus, the application of Article 39 is not enough based solely on mentioning the diagnosis or category of disability without a relevant examination of the perpetrator's condition.

This provision shows that national criminal law recognizes the existence of different circumstances that can affect a person's criminal liability. However, the regulation should not be interpreted simply that all people with intellectual disabilities are definitely incapable of being responsible or that everyone with certain conditions automatically receives a reduction in criminal penalties. The assessment must still take into account the condition of the perpetrator at the time the crime was committed, the facts revealed in the examination, and the results of relevant expert assessments. Medical diagnosis and disability category are important parts of the assessment, but

⁷Indonesia, Central Government, *Law Number 12 of 2022 concerning the Crime of Sexual Violence*, May 9, 2022, <https://peraturan.bpk.go.id/Details/207944/uu-no-12-tahun-2022>.

⁸Indonesia, Central Government, *Government Regulation Number 39 of 2020 concerning Adequate Accommodation for Persons with Disabilities in Judicial Proceedings*, July 20, 2020, <https://peraturan.bpk.go.id/Details/142170/pp-no-39-tahun-2020>.

the application of legal consequences must still be carried out based on the provisions of the law and legal considerations of the case being examined. Prior to the enactment of the National Criminal Code, provisions regarding circumstances that could affect criminal liability were contained in Article 44 paragraph (1) of the old Criminal Code, among others. These provisions regulate the circumstances when the act cannot be accounted for to the perpetrator because his or her mind is disabled in growth or disturbed by illness. The regulation is relevant to explain the development of the doctrine of criminal liability in Indonesia, but it must be distinguished from the provisions that apply based on the National Criminal Code. Therefore, Article 44 paragraph (1) of the old Criminal Code can be used for historical or doctrinal discussions as long as the context is explained, while the analysis of the current legal provisions must refer to Article 38 and Article 39 of Law Number 1 of 2023.

B. Intellectual Disability: Between the Elimination and Mitigation of Criminal Liability

Persons with intellectual disabilities who are faced with criminal law require treatment that takes into account individual conditions, the right to equal treatment, and provisions regarding criminal liability. Intellectual disability is related to limited intellectual functions that can affect the learning process, information comprehension, reasoning, decision-making, and adaptability. However, the influence of these conditions on a person's behavior cannot be equalized. The level of intellectual function, the ability to understand certain situations, environmental conditions, and circumstances at the time of the crime can differ from one person to another. Therefore, people with intellectual disabilities cannot be immediately considered incapable of responsibility based on their diagnosis or condition. The legal framework that specifically regulates these issues is contained in Article 38 and Article 39 of Law Number 1 of 2023 concerning the Criminal Code. Article 38 stipulates that every person who at the time of committing a criminal act has a mental disability and/or intellectual disability can be reduced in his or her sentence and/or subject to action. This norm provides space for judges to consider the condition of the perpetrator in determining the appropriate legal consequences⁹.

Meanwhile, Article 39 stipulates that any person who, at the time of committing a criminal act, has a mental disability in a state of acute relapse accompanied by a psychotic picture and/or moderate or severe intellectual disability, cannot be sentenced, but can be subject to action. These differences show that the reduction of the criminal sentence and the impossibility of imposing a sentence are two legal consequences that must be clearly distinguished. The application of Article 38 does not mean that every person with an intellectual disability must obtain a reduction in criminal punishment of a certain amount. The formulation of the article uses the word "may", so its application must take into account the relevant circumstances of the case. Similarly, Article 39 should not be understood as a provision that can be applied simply by stating that the defendant is an intellectual person with an intellectual disability. The article specifically mentions moderate or severe intellectual disabilities. The determination of the condition and level of disability needs to be supported by a relevant assessment, including expert testimony if necessary to explain the perpetrator's medical condition. The results of the assessment must then be linked to the facts of the case and the applicable legal provisions. This distinction is important because intellectual disability

⁹Ishmul Azham Choliq, "Rehabilitation and Compensation for Victims of Error in Persona: A Comparative Study between Islamic Criminal Law and National Law" (IAIN Parepare, 2025).

is a condition that has a variety of characteristics and the level of support needs. It is not appropriate for all people with intellectual disabilities to be considered to have the same ability to understand actions and control behavior. However, it is also inappropriate if certain categories of disabilities are immediately used as the only basis to conclude all aspects of a person's abilities without further examination.

In the context of Article 39, the category of medium or severe degrees is expressly mentioned in the formulation of the law. Therefore, legal analysis must still respect the formulation while paying attention to the need for individual proof and assessment in concrete cases¹⁰. In addition to the National Criminal Code, the protection of persons with disabilities in legal proceedings is also regulated through Law Number 8 of 2016 concerning Persons with Disabilities. The law recognizes the right of persons with disabilities to obtain justice and legal protection and regulates the obligation to fulfill their rights in various areas of life. This provision is an important basis to ensure that persons with disabilities can access the judicial process equally and do not experience discrimination because of their disability. However, the right to justice and legal protection in the law cannot be directly interpreted as a provision that specifically provides a reduction in criminal penalties. The basis for the reduction of penalties and the imposition of measures for persons with mental and/or intellectual disabilities is specifically regulated in Article 38 of the National Criminal Code, while Article 39 regulates the circumstances when a criminal cannot be imposed.

Thus, the difference in content material between Law Number 8 of 2016 and Law Number 1 of 2023 does not in itself indicate a conflict of norms. The two laws have different regulatory scopes but can be read in a complementary manner. Law Number 8 of 2016 provides a framework for the protection of the rights of persons with disabilities, while the National Criminal Code determines criminal consequences related to the condition of mental disability and/or intellectual disability at the time of the crime. In its application, the judge needs to assess the perpetrator's circumstances as a whole and not only focus on the type of criminal act or diagnosis that the defendant has. The assessment can include the perpetrator's ability to understand information, explain the events that occurred, understand the consequences of the action, and other relevant circumstances at the time the crime was committed. Expert testimony can help explain medical and psychological aspects that cannot be assessed through legal knowledge alone. Meeting these needs does not reduce the obligation to examine cases objectively, but rather supports a fair examination process and produces a more accurate assessment¹¹. As a *lex specialis*, the Law on Persons with Disabilities should provide more specific provisions than the Criminal Code as a *lex generalis*, but in reality the formulation is more general¹².

¹⁰Fadhil Habibi, Husin Rianda, and Muhamad Sadi Is, "Criminal Accountability for Perpetrators of Sexual Violence Against Persons with Disabilities According to the Perspective of Islamic Criminal Law," *ACCELERATION: National Scientific Journal* 8, no. 1 (2026): 36–42.

¹¹Sri Herlina, Lutfi Yusup Rahmathoni, and Ahmad Rizqi, "The Problem of Criminal Liability of Perpetrators with Mental Disabilities in the Perspective of Article 39 of Law Number 1 of 2023 concerning the Criminal Code," *Batuah: Journal of Social Sciences and Humanities* 2, no. 1 (2026), <https://batuahjournal.my.id/index.php/cjish/article/view/257>.

¹²International Criminal Justice Reform (ICJR), "The Issue of Criminal Liability for Persons with Disabilities in the Criminal Code Must Be a Concern, the House of Representatives Must Invite Special Experts," September 7, 2015, <https://icjr.or.id/masalah-pertanggungjawaban-pidana-disabilitas-dalam-r-kuhp-harus-jadi-perhatian-dpr-harus-mengundang-ahli-khusus/>.

C. Implications for the Judicial Process: The Urgency and Role of Experts

The handling of criminal cases involving persons with intellectual disabilities is not only related to the determination of fault and criminal liability, but also to ensuring that all stages of the judicial process are accessible equally. Persons with intellectual disabilities may face obstacles in understanding questions, following complex communications, remembering or describing events, and understanding their rights and obligations during examinations. These obstacles need to be considered by law enforcement officials so that the process of investigation, prosecution, and examination in court does not result in erroneous assessments due to communication methods or examination procedures that are not in accordance with individual needs. One of the important legal bases in fulfilling this right is Government Regulation Number 39 of 2020 concerning Adequate Accommodation for Persons with Disabilities in the Judicial Process. This regulation regulates the provision of adequate accommodation in the form of services as well as facilities and infrastructure. The arrangements include non-discriminatory treatment, the fulfillment of a sense of security and comfort, effective communication, the delivery of information about the rights of persons with disabilities and the development of the judicial process, as well as other forms of support as needed.

The regulation also regulates personal assessment and the provision of disability companions and interpreters as needed. Thus, the fulfillment of adequate accommodation is not just an additional facility, but part of an effort to ensure access to a fair judicial process. Personal assessment plays an important role in identifying barriers faced by persons with disabilities and determining the necessary accommodations. In cases involving persons with intellectual disabilities, these needs may relate to the way questions are presented, the use of simple sentences, the provision of sufficient time to answer, the repetition of information if necessary, or the support of competent parties. The form of accommodation should not be determined based solely on assumptions about the condition of the disability, but rather needs to be tailored to the actual needs of the individual. This approach helps law enforcement officials obtain more understandable information and reduces the risk of misinterpretation of the person's answers or behaviour.

In addition to Government Regulation Number 39 of 2020, Supreme Court Regulation Number 2 of 2025 concerning Guidelines for Adjudicating Cases for Persons with Disabilities Facing the Law in Court is also relevant in discussing procedural protection in the judicial environment. The regulation serves as a guideline for judges and court officials to ensure the fulfillment of the rights of persons with disabilities in the judicial process. The regulation emphasizes early identification and/or personal assessment, the provision of appropriate accommodation, and the obligation to avoid discriminatory treatment. In the context of criminal cases, this provision is important so that the examination of defendants with intellectual disabilities is not only oriented towards proving criminal acts, but also pays attention to the ability of the defendant to understand and follow the course of the judicial process.

The role of experts is important when law enforcement needs to understand the medical, psychological, or intellectual function condition of a person related to the case. Experts who have competence according to the needs of the case can explain the results of the examination, the characteristics of the conditions found, the limitations of relevant functions, and the influence of these conditions on the individual's abilities in certain situations. Expert testimony is needed, especially when law enforcement must assess whether the condition of people with intellectual disabilities falls into the category regulated by Article 38 or Article 39 of the National Criminal Code. In the application of Article 39, an explanation of medical incapacity requires expert testimony so that the assessment of the perpetrator's circumstances has an adequate basis. However, the role of experts must be distinguished from the judge's authority in determining legal consequences. Experts provide explanations based on competence and the results of the examination carried out, while judges assess the information along with other evidence and facts revealed at trial. An expert's diagnosis or opinion does not in itself replace a legal assessment of the elements of criminal acts and criminal liability. On the other hand, the judge's assessment also needs to consider expert testimony carefully when the case contains medical or psychological problems that are beyond the general legal knowledge.

The relationship between expert testimony and juridical assessment is necessary so that the decision taken is not only based on assumptions, but also supported by relevant and accountable information. The current evidentiary provisions need to be considered in explaining the position of expert testimony. Law Number 20 of 2025 concerning the Criminal Procedure Code comes into effect on January 2, 2026 and repeals Law Number 8 of 1981 concerning the Criminal Procedure Law. Based on Article 235 paragraph (1) of Law Number 20 of 2025, evidence includes witness statements, expert statements, letters, defendant statements, evidence, electronic evidence, judge's observations, and everything that can be used for the purpose of proof at trial as long as it is obtained unlawfully. Meanwhile, Article 238 regulates the submission of expert testimony directly at trial under oath or promise regarding matters known in accordance with his expertise. Therefore, the discussion of proof in the current legal context should refer to the new Criminal Code, no longer making Article 184 of the old Criminal Procedure Code the main basis.

In cases involving persons with intellectual disabilities, expert testimony can be an important part of the evidence, but it should not be treated as the sole basis for determining criminal liability without considering the overall facts of the case. The assessment needs to be carried out in an integrated manner by taking into account the defendant's statement, witness statements, examination documents, other valid evidence, and relevant circumstances when the criminal act was committed. The judge needs to assess whether the expert testimony has an adequate basis for examination, in accordance with his field of expertise, and is relevant to the legal issues to be decided. Thus, the use of expert testimony must be placed as part of the evidentiary system, not as a substitute for judicial judgment.

Another implication relates to the need for coordination between investigators, public prosecutors, legal counsel, experts, disability companions, and the court. Coordination is necessary so that information about the defendant's condition can be obtained and understood appropriately, while ensuring that his or her procedural rights are protected. The delivery of information about rights, examinations, and the trial process needs to be carried out in a manner that is in accordance with the individual's ability to understand. If necessary, law enforcement officials need to use appropriate accommodations based on the needs of the defendant so that he or she can effectively follow the legal process. This step is not intended to provide preferential treatment that is contrary to the principle of equality before the law, but rather to overcome obstacles that can prevent persons with disabilities from enjoying their rights equally. Thus, the handling of criminal cases involving persons with intellectual disabilities requires the application of material law and procedural law in an integrated manner. Article 38 and Article 39 of the National Criminal Code are the basis for assessing the legal consequences related to the condition of mental disability and/or intellectual disability, while Government Regulation Number 39 of 2020 and Supreme Court Regulation Number 2 of 2025 support the fulfillment of appropriate accommodation in the judicial process. In the aspect of proof, Law Number 20 of 2025 concerning the Criminal Code regulates the position of expert testimony and other evidence. The application of all these provisions must be directed at a judicial process that is careful, non-discriminatory, and respects the rights of persons with disabilities without neglecting the obligation to assess the facts of the case and apply the law appropriately.

D. Conclusions and Recommendations

Conclusion

1. The condition of intellectual disability cannot be absolutely generalized as a reason for removal or a reason for criminal relief. The determination must be made in a caustic manner by considering the individual condition of the perpetrator, the ability to understand the nature and consequences of his actions, and the ability to control behavior at the time of the crime. Therefore, the degree of intellectual disability, whether mild, moderate, or severe, cannot be used as the only basis for determining whether or not there is criminal liability. The assessment must be based on individual examinations and applicable legal provisions. In the context of the National Criminal Code, Article 38 regulates criminal reductions and/or actions for persons with mental and/or intellectual disabilities, while Article 39 regulates certain conditions that cause perpetrators not to be criminally sentenced, but can be subject to action. Thus, the application of the two articles must be carefully differentiated so that the determination of criminal liability is not only based on medical diagnosis or classification, but also on the individual conditions and abilities of the legally relevant perpetrators.
2. Intellectual disability has important implications for the criminal justice process, especially in the assessment of the perpetrator's ability to be responsible and the fulfillment of his rights during the legal process. The involvement of experts, especially forensic psychiatrists and psychologists, is needed to provide a professional assessment of the intellectual condition, cognitive ability, and the influence of these conditions on the perpetrator's behavior when a criminal act is committed. Expert testimony is one of the considerations for law enforcement officials in linking medical and psychological findings with relevant legal elements. Nevertheless, the

determination of criminal liability remains the judge's authority based on the overall facts of the trial and the provisions of laws and regulations. In addition, persons with intellectual disabilities must obtain appropriate accommodations during the judicial process in order to understand the legal process, submit evidence, and exercise their rights effectively. Thus, the handling of cases involving persons with intellectual disabilities needs to integrate medical, psychological, and juridical considerations to realize substantive justice.

Recommendations

1. For lawmakers and the government, it is necessary to strengthen technical arrangements regarding the handling of criminal cases involving persons with intellectual disabilities, especially related to examination procedures, criteria for assessing the ability to be responsible, and the application of actions based on the National Criminal Code. These regulations need to be aligned with Law Number 8 of 2016 concerning Persons with Disabilities and Government Regulation Number 39 of 2020 concerning Appropriate Accommodation for Persons with Disabilities in Judicial Processes. Clarity of guidelines is needed to help law enforcement officials distinguish between conditions that are relevant to criminal reduction and conditions that can be the basis for the application of provisions regarding non-criminal punishment, in accordance with applicable legal requirements.
2. For law enforcement officials, namely investigators, public prosecutors, and judges, it is necessary to increase capacity in handling cases involving persons with intellectual disabilities. Examinations of the perpetrator's condition should be carried out individually by involving competent experts if necessary to explain the perpetrator's medical, psychological, and functional condition. Expert testimony must be assessed together with evidence and other legal facts, not used as the sole basis for determining criminal liability. In addition, law enforcement officials need to ensure the availability of appropriate accommodations in accordance with Government Regulation Number 39 of 2020, including communication adjustments, provision of easy-to-understand information, and assistance according to the needs of persons with intellectual disabilities. These steps are needed to ensure a fair, accessible, and non-discriminatory judicial process.
3. For academics and professionals in the field of mental health, it is necessary to develop multidisciplinary research on the relationship between intellectual disability and the ability to be responsible in criminal law. Further research can be directed towards the preparation of guidelines for psychological and forensic psychiatric examinations that pay attention to the individual condition of the perpetrator and its relevance to the ability to understand and control behavior at the time of the crime (*tempus delicti*). The guidelines need to distinguish between clinical diagnosis, level of intellectual function, adaptive ability, and juridical assessment of criminal responsibility. In addition, increased cooperation between legal experts, forensic psychiatrists, psychologists, and judicial practitioners is needed to produce measurable, consistent, and scientifically accountable recommendations. Thus, the results of a professional examination can help the judge understand the perpetrator's condition more comprehensively without overriding the principles of criminal law and the protection of the rights of persons with disabilities.

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