

# CHAPTER I

## INTRODUCTION

### A. Background

As a state of law, Indonesia is committed to guaranteeing justice and equality for all its citizens, including persons with intellectual disabilities. However, in practice, this group still often experiences discrimination and unfair treatment that hinders their participation in society. Unfair treatment that hinders their participation in society. In fact, every individual, regardless of his or her limitations, is entitled to equal treatment and equal opportunity to develop. To realize an inclusive society, a concerted effort is needed to remove negative stigmas, increase awareness, and provide disability-friendly facilities and services. Thus, people with intellectual disabilities can live a decent life, contribute to society, and achieve a high quality of life. People with disabilities contribute to society and achieve the same quality of life as other citizens. Equal to other citizens.

Persons with disabilities are individuals who experience long-term physical, mental, intellectual, or sensory limitations that interact with the environment so that they experience barriers to full participation in society. This is in accordance with the Convention on the Rights of Persons with Disabilities (CRPD).<sup>1</sup> Law No. 8 of 2016 on Persons with Disabilities provides a more specific definition of intellectual disability

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<sup>1</sup> Ramadhan, C. R., Manurung, F., & Saputro, A. A. (2016). *Difabel dalam peradilan pidana: Analisis konsistensi putusan* (p. 20). Faculty of Law, University of Indonesia Publishing House.

as a significant impairment of cognitive function, such as learning difficulties, intellectual disability, or Down syndrome.<sup>2</sup> Individuals with intellectual disabilities often require additional support in various aspects of life. It is important to understand that disability is a remarkably diverse condition and everyone with a disability has a unique experience. The social model of disability emphasizes that disability is not a shortcoming of the individual, but rather the result of the interaction between the individual and an environment that does not accommodate their needs.

This issue raises fundamental questions about how the law in Indonesia treats perpetrators with intellectual disabilities in the judicial process. Currently, the law in Indonesia is still lacking in providing protection for persons with disabilities, both in terms of legal substance, the quality of law enforcement officials, the availability of judicial facilities and infrastructure, and legal culture. This condition is contrary to the primary purpose of law as a shield that protects society from inequality. M. Syafit'e suggested that there are 4 (four) legal problems that cause the legal system in Indonesia to still discriminate against people with disabilities, the four problems mentioned are (1) legal substance that injures human values, (2) law enforcement officers who are not progressive, (3) accessible judicial facilities and infrastructure, (4) and a weak legal culture.<sup>3</sup>

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<sup>2</sup>Litiawati, E., Fauzi, E., Nate, L. M., & Jamaludin, A. (2023). Access to justice *penyandang disabilitas intelektual: Peradilan pidana sebagai implementasi equality before the law* (p. 175). SIMBUR CAHAYA.

<sup>3</sup>Hoky R. Ramadhan et al., *Difabel dalam Peradilan Pidana, op. cit.*, Page 20.

This can be seen from the provisions in the Criminal Code (KUHP) and Criminal Procedure Code (KUHAP) which do not specifically regulate the handling of individuals with intellectual disabilities. In the Criminal Code and Criminal Procedure Code, individuals with disabilities are often viewed as legally incapable. This view creates a large gap in the criminal justice system in Indonesia to deal with individuals with intellectual disabilities. This gap is evident, for example, in applying the concept of fault in criminal offenses. The concept is difficult to apply fairly to individuals with cognitive limitations. As a result, they become vulnerable to unfair treatment, including disproportionate punishment.<sup>4</sup>

Article 44 of the previous Criminal Code stipulates that an individual cannot be prosecuted for an act if they are incapable of being held accountable due to mental illnesses or developmental disorders.<sup>5</sup> The law recognizes that some psychological disorders may serve as a basis for exempting an individual from criminal liability, even when all elements of a criminal act are satisfied. In such instances, the judge possess the authority to assess whether the offender's condition warrants exemption from punishment. This clause indicates judicial discretion concerning psychiatric disorders as a basis for criminal exemption, yet it lacks a comprehensive and systematic

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<sup>4</sup> *Ibid*, Page 21-22.

<sup>5</sup> Indonesia, Law No. 1 of 1915 on the Criminal Code (Article 44).

framework for addressing individuals with intellectual disabilities, especially in safeguarding their rights and equitable treatment within the criminal justice system.<sup>6</sup>

Law Number 1 of 2023 on Criminal Code (the National Indonesian Code) has important updates regarding the treatment of individuals with Mental and/or Intellectual Disabilities. Article 38 states: *“Every person who at the time of committing a criminal offense has a mental disability and/or intellectual disability may have his/her punishment reduced and/or be subject to measures”*. This article recognizes that the condition of disability can affect a person's ability to take full responsibility for their actions, thus allowing for leniency in sentencing or the application of appropriate measures.

Meanwhile, Article 39 states: *“Every person who at the time of committing a criminal offense has a mental disability which is in a state of acute recurrence and accompanied by psychotic symptoms and/or intellectual disability of moderate or severe degree cannot be sentenced but may be subject to action”*. This article provides an exception, namely if a person with a Mental and/or Intellectual Disabilities is experiencing an acute relapse accompanied by psychotic symptoms or has a moderate to severe degree of intellectual disability, they cannot be sentenced. However, they can still be subject to certain measures to ensure proper treatment.

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<sup>6</sup> Chanif, M. (2021). Implementasi Pasal 44 KUHP sebagai alasan penghapus pidana dalam proses pemeriksaan perkara pidana. *MAGISTRA Law Review*, 2(1), 64–78. <http://jurnal.untagsmg.ac.id/index.php/malrev/article/view/2067>

Japan regulates the treatment of offenders with mental disabilities through Article 39 of the Penal Code Act No. 45 of 1907, which states that acts committed in a state of insanity are not punishable, while acts committed by individuals with diminished mental capacity are punishable with leniency. This regulation seeks to guarantee that criminal responsibility can only be imposed on those fully aware of their activities. Declared insane offenders are typically sent to medical rehabilitation centers, whereas individuals with limited mental competence get punishment that considers their circumstances. Furthermore, Japan adopted the Medical Treatment and Supervision Act (MTSA) system in accordance with the 2003 Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity.<sup>7</sup> The purpose of this system is to assist those who have committed heinous crimes, such murder or arson, while insane or with diminished mental capacity, in their social reintegration.

In addition, important questions arise regarding the determination of legal capacity stipulated in Article 38 and Article 39. Is this determination based solely on the decisions of investigators, prosecutors, and judges? Or is an evaluation from an expert, such as a psychologist or psychiatrist, required to provide an objective and

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<sup>7</sup> Fujii, C., Fukuda, Y., Ando, K., Kikuchi, A., & Okada, T. (2014). Development of forensic mental health services in Japan: Working towards the reintegration of offenders with mental disorders (P. 11). *International Journal of Mental Health Systems*, 8(21). BioMed Central.

professional analysis of the individual's mental and/or intellectual condition in question?

In judicial practice, handling cases involving individuals with intellectual disabilities often results in inconsistent decisions. Judges often face a dilemma in determining the perpetrator's criminal responsibility capacity. There is a tendency for different opinions to prioritize expert testimony, trial evidence, or even the judge's direct observation. This uncertainty obscures clear criteria in determining whether an individual with intellectual disabilities can be held accountable for their actions.<sup>8</sup>

For example, the Suherman case in Wonosobo (Decision No. 16/Pid.Sus/2019/PN.WSB) demonstrates the complexity of the Indonesian criminal justice system in dealing with individuals with mental disabilities. According to Article 82 of Law No. 35 of 2014 on Children Protection, Suherman, a 27-year-old male with mental problems, was accused of encouraging a youngster to engage in obscene behavior. The Wonosobo District Court first gave him a six-year prison sentence and a fine, but he was eventually cleared of all charges and ordered to receive therapy at a mental health facility.<sup>9</sup> The case also shows that there is no clear legal foundation for determining whether people with mental disabilities are capable of criminal responsibility, even if this ruling acknowledges the necessity for rehabilitation. Laws

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<sup>8</sup> hoky R. Ramadhan et al., *Difabel dalam Peradilan Pidana, op. cit.*, Page 40-42

<sup>9</sup> Elita, Z., Hanuring, A. A. P., & Nourma, D. (2024). Legal analysis of criminal sanctions for individuals with intellectual disabilities committing crimes (p. 130). *Jurnal Dimensi*, 13(1), 128-138.

mandating mental health testing before court cases are frequently not followed regularly.<sup>10</sup> Liability in criminal law must be determined by an individual's capacity to comprehend and regulate their behavior.

Based on the above, the criminal justice system in Indonesia still faces significant challenges in handling cases involving individuals with intellectual disabilities. Japan, on the other hand, has created a more thorough and organized legal system that guarantees offenders with mental and/or intellectual disabilities the proper legal care and rehabilitation, demonstrating a more organized and methodical approach. This raises fundamental questions, such as how the comparison of criminal liability for offenders with mental and/or disabilities in Indonesia and Japan, and what is the ideal procedural legislation for offenders with Mental and/or Intellectual Disabilities in Indonesia.

## **B. Problem Formulation**

- a) How is the comparison of criminal liability for offenders with Mental and/or Intellectual Disabilities in Indonesia and Japan?
- b) What is the ideal procedural legislation for offenders with Mental and/or Intellectual Disabilities in Indonesia?

## **C. Research Objective**

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<sup>10</sup> Law Number 18 of 2014 concerning Mental Health. Article 71 paragraph (1)

- 1) To analyze the comparison of the criminal liability framework for offenders with mental and/or intellectual disabilities in Indonesia and Japan.
- 2) To analyze an ideal legislative framework for criminal procedures concerning offenders with mental and/or intellectual disabilities in Indonesia.

#### D. Originality of Research

| No. | Sources   | Discussion   | Difference  |
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| 1   | Development of forensic mental health services in Japan: Working towards the reintegration of offenders with mental disorders | The journal covers the evolution and challenges of Japan's forensic mental health services after the 2005 Medical Treatment and Supervision Act (MTSA), which was introduced to address the lack of legislation and facilities for mentally ill offenders. Notwithstanding the advancements brought about by the MTSA, issues still exist, such as the low percentage of | This thesis compares Indonesia's legal framework for offenders with intellectual and mental disabilities with the Japanese approach and attempts to create the best possible judicial procedures for this specific group in the Indonesian context, while the journal looks at how forensic mental health |

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|   |  | <p>individuals with personality disorders who receive treatment, regional differences, and the requirement for a national database. For a more successful approach to mental health care for criminals in Japan, the essay advocates for enhancements in welfare services, victim support, and outpatient therapy.</p>   | <p>services in Japan changed after the MTSA, emphasizing the difficulties and advancements for offenders with mental illness.</p>  |
| 2 | <p><i>Difabel dalam Peradilan Pidana: Analisis Konsistensi Putusan</i></p> | <p>This journal discusses how the criminal justice system in Indonesia treats individuals with disabilities, both as victims and perpetrators of criminal offenses. The availability of interpreters for people with disabilities during trials, judges' evaluation of expert testimony about the criminal culpability of disabled criminals, and the calculation of</p> | <p>My thesis specifically focuses on offenders with intellectual and mental disabilities, analyzing Indonesia's legal framework for this group and designing an ideal judicial procedure for them. This journal looks at how the Indonesian criminal justice system treats people with disabilities,</p> |

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|   |   | <p>calendar or mental age for disabled victims and offenders are the three primary concerns highlighted by the study. The journal analyzes court rulings to find discrepancies in how disability issues are handled and makes suggestions to increase this disadvantaged group's access to justice. The study also shows that the legal system must adopt a more inclusive stance, which includes both regulation change and a better understanding of the law enforcement personnel.</p> | <p>focusing on issues like the availability of interpreters and the evaluation of expert testimony.</p>   |
| 3 | <p>Access to justice<br/><i>penyandang disabilitas intelektual: Peradilan pidana sebagai implementasi</i> equality before the law</p> | <p>The journal addresses the difficulties and significance of guaranteeing people with intellectual disabilities access to the criminal justice system in Indonesia. It emphasizes how law</p>  | <p>This thesis specifically examines the legal framework for offenders with intellectual and mental disabilities, analyzing the current framework and</p> |

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|   |  | <p>enforcement must give them more consideration and defend their rights to stop prejudice and guarantee equality. Inadequate implementation of current legislative frameworks, such as the Law on Persons with Disabilities, results in discriminatory treatment and a lack of facilities. To ensure equitable treatment and enhance accessibility throughout the legal process, the report urges affirmative action, legal reforms, and improved law enforcement comprehension.</p> | <p>creating an ideal judicial procedure for their unique needs within the criminal justice system. This journal focuses on the larger challenges of ensuring people with intellectual disabilities have access to justice within the Indonesian criminal justice system, highlighting the need for better implementation of existing laws and improved law enforcement understanding.</p> |
| 4 | <p><i>Disharmoni<br/>Pertanggungjawaban<br/>Pidana Disabilitas<br/>Mental Dalam Hukum<br/>Positif Di Indonesia</i></p> | <p>The journal addresses the criminal liability of people with mental disorders under Indonesian law, emphasizing the current laws' contradictions and</p>  | <p>While this journal examines the criminal liability of people with mental disorders under Indonesian law, highlighting the need for</p>   |

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|  |  | <p>absence of precise requirements, especially considering the recently passed Criminal Code. To guarantee equitable treatment and legal clarity for disabled criminals, it highlights the necessity of more precise rules and amendments to current laws, such as the Law on Persons with Disabilities. To better meet the needs of people with mental disorders and lessen inequities in court rulings, the study promotes a progressive and responsive legal strategy.</p> | <p>legal reforms, this thesis specifically focuses on the criminal justice system's treatment of offenders with intellectual and mental disabilities. It seeks to evaluate the existing legal system for this population and create a perfectly legal process that particularly considers their requirements and situation in the Indonesian setting.</p> |
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This review of existing literature reveals that while several studies have examined various aspects of disability within the Indonesian criminal justice system, such as access to justice for individuals with disabilities in general, the treatment of individuals with disabilities as victims, and the broader challenges of criminal liability for individuals with mental disabilities, the thesis uniquely focuses on the specific legal

and procedural needs of offenders with intellectual and mental disabilities. In contrast to these studies, which focus on more general problems with the Indonesian criminal justice system, my research will go more deeply into the precise legal framework that applies to this specific offender population. Additionally, it will suggest a perfect legal process created especially to meet their requirements and situation in the Indonesian setting.

## **E. Literature Review**

### **1. Criminal Liability**

Criminal liability is a legal concept that refers to the imposition of punishment on a person for actions that violate the law or cause circumstances prohibited by law. According to Simons, the act in question is an act committed by a human being, contrary to the law, and committed by a person who can be held accountable for his actions. In this context, criminal responsibility is not only determined by the fulfillment of the elements of the criminal offense, but also by the guilt of the perpetrator<sup>11</sup>.

In the National Criminal Code, Article 36 paragraph (1) explains that a person can only be held criminally liable for their actions if they are committed intentionally or due to negligence. This means that a person cannot be sentenced to criminal punishment if there is no provable fault on the part of the perpetrator. Thus, a person

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<sup>11</sup> Fadlian, A. (2020). *Pertanggungjawaban pidana dalam suatu kerangka teoritis*. (p. 13). Jurnal Hukum Positum.

who does not commit a criminal act cannot be held liable, and even if a person commits a criminal act, they cannot necessarily be convicted in the absence of fault that meets the legal requirements.

Article 38 and Article 39 of the National Criminal Code provide more specific explanations regarding criminal liability for persons with mental and/or intellectual disabilities. Criminal offenders with mental and/or intellectual disability are eligible for a lighter sentence, according to Article 38. According to Article 39, individuals with moderate to severe intellectual disabilities, as well as those with mental disabilities experiencing acute recurrence circumstances with psychotic images, are not eligible for punishment but may be subject to measures. Thus, the essence of these two articles is that Article 38 regulates criminal leniency for persons with mental and/or intellectual disabilities, while Article 39 regulates that persons with mental disabilities in acute relapse conditions or with certain other circumstances can be exempted from criminal sanctions but can still be subject to actions in accordance with applicable law.<sup>12</sup> However, because of ambiguities in their definitions and technical implementation, the requirements in these two articles remain inadequate. For instance, the criteria or process for assessing the level of mental or intellectual disability, as well as how acute relapse can be objectively evaluated, are not thoroughly explained. People with Mental

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<sup>12</sup> Hidayat, F. A. M., & Ibrahim, A. L. (2023). *Disharmoni Pertanggungjawaban Pidana Disabilitas Mental Dalam Hukum Positif Di Indonesia* (p. 334). JUSTISI: Universitas Muhammadiyah Sorong.

and/or Intellectual Disabilities may experience less legal certainty because of the possibility of varying interpretations in legal practice.

#### **a) Intellectual Disabilities**

Based on the limitations put forward by the American Association on Intellectual & Developmental Disabilities (AAIDD) in 2010 which defines intellectual disability as one of the disabilities characterized by significant limitations in both intellectual functioning (general mental capacity, such as learning, reasoning, problem solving, etc.) and adapted behavior which includes many social and practical daily skills.<sup>13</sup> Individuals with intellectual disabilities still need support and help from those closest to them.

Based on the classification made by the American Psychological Association (APA), individuals with intellectual disabilities are divided into four categories, namely mild, moderate, severe, and profound. This classification is based on intelligence levels or IQ scores.<sup>14</sup> Individuals in the mild category have an IQ range of 50-70 and are educable, especially in basic education. They do not show any noticeable physical abnormalities, but they often struggle to maintain concentration for extended periods of time and are easily distracted.<sup>15</sup>

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<sup>13</sup> Anlianna, Sunanto, M., Nursalim, M., & Rahmasari, D. (2023). Problems of children with intellectual and mental disabilities at school (p. 83). Sentra Cendeki.

<sup>14</sup> *Ibid.* Page 84

<sup>15</sup> *Ibid*

In the moderate category, with an IQ range of 35-49, individuals can be trained to master specific skills. Although their response to education and training tends to be slow, they can still be able to adapt and learn jobs that require basic skills. They usually exhibit congenital physical abnormalities, although not in severe conditions.<sup>16</sup>

Furthermore, individuals in the severe category, with an IQ range of 20-34, are unable to take care of themselves without assistance from others. They require ongoing life protection and careful supervision. This group often has speech impairment, severe physical abnormalities, and weak physical condition.<sup>17</sup>

Individuals in the profound category, with an IQ range below 20, have serious problems that include physical condition and intelligence. In general, they show brain damage and physical abnormalities such as hydrocephalus or Down syndrome. Their speech is severely limited, and adaptability is almost non-existent. Therefore, they need good and intensive medical care. This classification helps to understand the specific needs of individuals with intellectual disabilities so that appropriate interventions and support can be provided according to the conditions of each category.<sup>18</sup>

Assessing people with intellectual impairments' comprehension and participation in legal processes requires an understanding of their limits. Within the Indonesian legal system, special procedures must be implemented, like designating

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<sup>16</sup> *Ibid*

<sup>17</sup> *Ibid*

<sup>18</sup> *Ibid*. Page 84-85

legal guardians, offering streamlined channels of contact, and ensuring their rights are upheld during the court proceedings. As required by national laws and international agreements like the Convention on the Rights of Persons with Disabilities (CRPD), the recognition of this classification can assist Indonesian policymakers and legal professionals in creating more equitable and inclusive procedures.

### **b) Mental Disability**

Significant impairments in intellectual functioning and adaptive behavior are hallmarks of mental disability, a disorder that impairs a person's capacity to operate in daily life. According to the mainstream perspective, mental disability is viewed as an anomaly that can be controlled and addressed with the right measures but cannot be cured.<sup>19</sup> For people with mental disabilities to adapt and enjoy fulfilling lives, this condition necessitates continuous care from families, communities, and institutions. These covers having access to health care, education, and skill development as well as fostering an inclusive atmosphere. People with mental disabilities can be empowered to overcome their limits and make positive contributions to their surroundings with a well-thought-out and sustained approach.

Law No. 8/2016 states that people with mental disabilities are those who have problems with their ability to think, feel, and act. Psychosocial impairments, including

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<sup>19</sup> Prakosa, P. W. B. 2005. *Dimensi sosial disabilitas mental di komunitas Semin, Yogyakarta: Sebuah pendekatan representasi sosial*. Jurnal Psikologi, 32(2), (p. 68). Fakultas Psikologi, Universitas Gadjah Mada

schizophrenia, bipolar disorder, depression, anxiety, and personality disorders, and developmental disabilities that impact social interaction skills, such as autism and hyperactivity, comprise the two primary categories of these illnesses. People with mental disabilities confront several obstacles, particularly when it comes to social engagement, community involvement, health care access, and the exercise of their fundamental rights.<sup>20</sup> It is envisaged that an inclusive strategy may be used to guarantee their welfare and rights are fulfilled once their condition is better understood.

## **2. Criminal Penalties**

The Indonesian court system adheres to the principle of equality before the law, one of the most important principles in the modern legal system. Article 28D (1) of the Second Amendment of the 1945 Constitution states that every person is entitled to recognition, guarantees, protection and certainty of a just law and equal treatment before the law. Every person must have access to justice as a fundamental right to pursue justice and prevent discrimination. By ratifying the Convention on the Rights of Persons with Disabilities (CRPD) in 2011, Indonesia made a significant contribution to protecting the rights of people with disabilities.<sup>21</sup> The Convention seeks to end all types of discrimination against people with disabilities and guarantee that their rights

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<sup>20</sup> M. Syafii'e. (2021, November 5). *Difabel mental berhadapan hukum*. Universitas Islam Indonesia. Retrieved from <https://law.uii.ac.id/blog/2021/11/05/difabel-mental-berhadapan-hukum/>.

<sup>21</sup> Litiawati, E., Fauzi, E., Nate, L. M., & Jamaludin, A., *op. cit.*, P. 178.

are fully acknowledged and enjoyed. Freedom from exploitation and degrading treatment is one of the rights that are given priority.<sup>22</sup>

According to Article 12 of the CRPD, states are required to guarantee that people with disabilities have fair treatment and equitable access to the legal system. In the meantime, states are required by Article 13 of the CRPD to give law enforcement personnel—including police and prison officers—specialized training so they can comprehend the special needs of people with disabilities.<sup>23</sup> It is intended that by taking these steps, the judicial system will become more inclusive and capable of upholding the values of justice for all parties.

Meanwhile, Japan has a special court system for handling offenders with mental and/or intellectual disabilities, namely the Medical Treatment and Supervision Act (MTSA) which was passed in 2003. The MTSA aims to provide specific arrangements for the treatment of serious offenders with mental and/or intellectual disabilities. The system is designed to ensure they receive appropriate and ongoing medical treatment and supervision under the responsibility of the government, thereby creating a fair and inclusive justice system.<sup>24</sup> The Indonesian justice system should adopt systems like MTSA because they can give criminals with Mental and/or Intellectual Disabilities more inclusive justice. In addition to considering the mental or intellectual state of

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<sup>22</sup> Pawestri, A. (2017). *Hak penyandang disabilitas dalam perspektif HAM internasional dan HAM nasional* (p. 164). *Era Hukum*, 2.

<sup>23</sup> Litiawati, E., Fauzi, E., Nate, L. M., & Jamaludin, A., *op. cit.*, P. 179.

<sup>24</sup> Fujii, C., Fukuda, Y., Ando, K., Kikuchi, A., & Okada, T., *op. cit.*, p. 11.

criminals and offering possibilities for suitable rehabilitation, it guarantees that court rulings are impartial and do not jeopardize their fundamental rights.

#### **a) Criminal Sanctions**

The penalties meted out to those found guilty of crimes are referred to as criminal sanctions. Offenders with intellectual disabilities or mental illnesses need to have their capacity for criminal culpability properly evaluated. A person who commits a crime while suffering from a mental illness is not subject to criminal prosecution, according to Article 44 of the Criminal Code (KUHP). However, ambiguity in the terminology and standards for judging the severity of Mental and/or Intellectual Disabilities frequently results in inconsistent court rulings and legal ambiguity.<sup>25</sup> The revised Criminal Code includes more detailed rules to handle this issue. Because of their inadequate capacity for accountability, criminals with Mental and/or Intellectual Disabilities are eligible for a reduced sentence, according to Article 38. Meanwhile, Article 39 stipulates that individuals who experience acute relapse of mental disabilities accompanied by psychotic symptoms and/or have moderate to severe intellectual disabilities cannot be sentenced. This clause highlights the significance of a comprehensive mental health assessment in identifying suitable legal remedies, reflecting a move towards a more restorative approach in Indonesia's criminal justice system.

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<sup>25</sup> Orintina, V. I., & Suryawati, N. (2023). *Pertanggungjawaban pidana bagi pelaku tindak pidana dengan gangguan kejiwaan menurut ketentuan hukum positif* (p. 265-266). *Binamulia Hukum*, 12(2), 263-275

## **b) Criminal Measures**

Criminal measures are alternative legal actions used against criminals who have mental illnesses or intellectual disabilities, with an emphasis on rehabilitation as opposed to punitive punishment.<sup>26</sup> Although people with mental disabilities are exempt from criminal liability in Indonesia under Article 44 of the Criminal Code, there are still a number of barriers to the adoption of rehabilitative measures, particularly those pertaining to the lack of suitable rehabilitation programs and facilities. This problem is made worse by the dearth of state-run rehabilitation facilities, as well as the shortage of legal and medical professionals who are qualified to deal with mentally ill offenders. In comparison, Japan implemented the Medical Treatment and Supervision Act (MTSA), which allows individuals with mental illness to receive medical treatment under supervision as an alternative to imprisonment, thus balancing justice and rehabilitation.<sup>27</sup>

## **F. Definition of Term**

### **1. Comparison**

This research compares the regulations on criminal liability for offenders with Mental and/or Intellectual Disabilities under the Indonesian Criminal Code (Law No.

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<sup>26</sup> Dwi Wiharyangti. (2011). Implementasi sanksi pidana dan sanksi tindakan dalam kebijakan hukum pidana di Indonesia (p. 80). *Pandecta*, 6(1), 263-275. Universitas Negeri Semarang.

<sup>27</sup> Fujii, C., Fukuda, Y., Ando, K., Kikuchi, A., & Okada, T., op. cit., p. 11.

1 of 2023), the Japanese Penal Code, and the Medical Treatment and Supervision Act (MTSA) of Japan.

## **2. Mental Disability**

According to the Directorate of Social Rehabilitation of persons with disabilities of the Indonesian Ministry of Social Affairs, persons with mental disabilities are people with mental problems and people with mental disabilities who have difficulty socializing and participating in the community<sup>28</sup>.

## **3. Intellectual Disability**

The American Psychiatric Association (APA, 2013) defines intellectual impairment as a reduction in adaptive functioning, which includes adaptive functioning in the conceptual, social, and practical domains and happens before the age of 18.<sup>29</sup>

## **4. Criminal Liability**

According to Simons, criminal liability is the legal concept of punishing someone for actions that violate the law or create situations that are prohibited by law. In this context, criminal responsibility is based on the perpetrator's guilt and the fulfillment of the elements of the criminal offense. The act in question is defined as an

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<sup>28</sup> Badra, N. K. P., & Sukranatha, A. A. K. (2022). *Problematika penyandang disabilitas mental dalam perspektif hak asasi manusia* (p. 4). Jurnal Kertha Wicara: Fakultas Hukum Universitas Udayana.

<sup>29</sup> American Psychiatric Association. (2013). *Diagnostic and statistical manual of mental disorders (5th ed.)*. Washington, DC: American Psychiatric Publishing.

act committed by a human being, contrary to the law, and by someone who can be held accountable for his actions.<sup>30</sup>

## **G. Research Method**

### **1. Type of Research**

This research employs normative legal research, which focuses on studying legal norms, principles, and regulations. The research examines laws related to intellectual and mental disabilities and their application in Indonesia's criminal justice system. It is supported by the analysis of relevant statutes and doctrinal legal studies to understand and address the gaps in the existing legal framework.

### **2. Method of Approach**

#### **a) Statutory Approach**

The statutory approach involves analyzing the applicable laws and regulations related to discussed the legal issue. This approach is used to examine Indonesia's legal framework concerning the protection and treatment of individuals with intellectual and mental disabilities, particularly within the context of criminal law. The laws and regulations, such as the Criminal Code (KUHP) and the Law on Persons with Disabilities (UU No. 8 Tahun 2016), provide some degree of protection; however, there are legal vacuums in ensuring individuals with

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<sup>30</sup> Fadlian, A., *Op. Cit.*, p. 25.

intellectual and mental disabilities to receive fair treatment and adequate legal protections in the criminal justice system. This approach highlights the need for further legal reforms to address these issues comprehensively.

#### b) Comparative Approach

The comparative approach examines how Japan and Indonesia define and address "intellectual disabilities" and "mental disabilities" within their criminal justice systems. It analyzes the ethical and philosophical principles underlying the treatment of these individuals, focusing on justice, fairness, and compliance with international human rights standards. By comparing the Indonesian Criminal Code (Law No. 1 of 2023) and the Japanese Penal Code, as well as Japan's Medical Treatment and Supervision Act (MTSA), this approach aims to identify best practices and ensure better protection and support for individuals with disabilities in both legal systems.

#### c) Conceptual Approach

A conceptual approach is used to understand basic concepts related to legal protection for persons with intellectual disabilities in the criminal justice system. This method involves analyzing many legal

doctrines, principles, and perspectives of pertinent legal scholars to establish a normative comprehension of the legal status of individuals with intellectual disabilities as legal subjects, together with the constraints of their criminal responsibility. This technique enables academics to develop a coherent and systematic framework for examining relevant laws and regulations, as well as assessing optimal protection within the Indonesian legal system.

### **3. Object of Research Data**

1. The comparison of the criminal liability framework for offenders with Mental and/or Intellectual Disabilities in Indonesia and Japan.
2. An ideal regulatory framework for criminal procedures concerning offenders with Mental and/or Intellectual Disabilities in Indonesia.

### **4. Sources of Research Data**

#### **a) Primary Legal Material**

Primary legal materials are binding and form the basis of this research. These include:

- Law No. 1 of 2023 on Criminal Code.
- Law No. 1 of 1946 Criminal Code.
- Law No. 8 of 2016 on Persons with Disabilities.
- Japanese Penal Code Act No.45 of 1907

#### **b) Secondary Legal Material**

Secondary legal materials explain and interpret primary legal materials.

Examples of secondary legal materials used in this research include:

- Doctrines or expert opinions,
- Legal books,
- Literature on the Criminal Code,
- Legal journals,

c) Tertiary Legal Material

Tertiary legal materials provide further clarification of primary and secondary legal materials, such as:

- Black's Law Dictionary,
- Legal Encyclopedias.

## **5. Method of Data Collecting**

The data collection involves a literature review of legal documents, journal articles, and relevant case studies. This method ensures a comprehensive understanding of the challenges and legal frameworks applicable to the research problem.

## **6. Method of Data Analysis**

This research will analyze the criminal liability frameworks for offenders with intellectual and mental disabilities in Indonesia and Japan

through two primary methods: content analysis and comparative legal analysis. To find important clauses and ideas, content analysis will methodically review legal documents. After that, comparative legal analysis will compare and contrast the two legal systems, emphasizing the parallels and divergences between their methods. The conclusions drawn from these evaluations will provide suggestions for improving Indonesian law.

## **H. Writing Frameworks**

### 1) Chapter I

This chapter presents an overview of the research, including the background of the study, problem formulation, research objectives, literature review, research methodology, and writing structure. It will make the thesis's goals easier for readers to understand.

### 2) Chapter II

An outline of Indonesia's legal system under the recently enacted Criminal Code (KUHP) and how it applies to criminals with intellectual and mental disabilities is given in this chapter. It critically analyzes important clauses like articles 38 and 39 to assess the criminal justice system's capacity to guarantee these people equitable treatment and protection. To advance a more inclusive and equitable justice system,

the chapter attempts to identify areas for reform as well as strengths and flaws.

### 3) Chapter III

In this chapter, the author analyzes the legal framework for offenders with intellectual and mental disabilities under Articles 38 and 39 of the new Indonesian Penal Code (KUHP). The chapter compares this framework with the approach adopted in Japan's legal system and explores the challenges and gaps in Indonesia's current system. Additionally, the author proposes an ideal design for judicial criminal procedures to ensure fair treatment, protection, and more inclusive legal processes for offenders with intellectual and mental disabilities.

### 4) Chapter IV

This final chapter offers conclusions and recommendations derived from the preceding research.