

LEGAL IMPLICATIONS OF REGULATING ARTICLES 38 AND 39 OF LAW NUMBER 1 OF 2023 (CRIMINAL CODE) ON CRIMINAL LIABILITY FOR PERSONS WITH DISABILITIES

Canthika Mira Istiyanthi^{1*}, Faizin Sulistio², Abdul Madjid³

¹Magister of Law, Faculty of Law / Universitas Brawijaya, Malang

^{2,3}Faculty of Law / Universitas Brawijaya, Malang

E-mail: canthikamira@student.ub.ac.id*, faizin@ub.ac.id², majid@ub.ac.id³

Received : 17 March 2025

Revised : 30 March 2025

Accepted : 10 April 2025

Published : 20 May 2025

DOI : <https://doi.org/10.54443/ijerlas.v5i3.2951>

Publish link : <https://radjapublika.com/index.php/IJERLAS>

Abstract

This research analyzes the juridical implications of Articles 38 and 39 of Law Number 1 of 2023 (Criminal Code) on the construction of criminal liability for persons with disabilities in Indonesia's criminal justice system. Through a juridical-normative approach, the research identifies a paradigmatic transformation from a paternalistic model toward a rights-based approach, albeit with implementation challenges encompassing conceptual ambiguities, procedural limitations, and structural barriers. The findings demonstrate the urgency of reorienting criminal liability construction through developing a "Differential Criminal Responsibility" model that integrates principles of proportionality, individualization, and adaptive support aligned with international standards. Recommendations include legislative harmonization, assessment protocol development, institutional capacity enhancement, and diversification of rehabilitation-based legal consequences to optimize legal protection for persons with disabilities within an inclusive and equitable criminal justice system.

Keywords: *Criminal Liability, Persons with Disabilities, Criminal Code 2023*

INTRODUCTION

The dynamics of the development of Indonesia's criminal law have undergone a significant transformation through the enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP). This reform brought about fundamental changes in the construction of criminal liability, in particular in Articles 38 and 39 which regulate the conditions of incapacity for responsibility and reduced ability to be responsible. This regulation has crucial implications for people with disabilities in the criminal justice system who have not received proportionate and fair legal protection. The conception of fair criminal liability for persons with disabilities is a manifestation of the principle of equality before the law as well as a manifestation of Indonesia's commitment to the Convention on the Rights of Persons with Disabilities (CRPD) which has been ratified through Law Number 19 of 2011 (A. Priamsari, 2020).

The problem of criminal liability for persons with disabilities includes complex dimensions involving juridical, sociological, and psychological aspects. The provisions in Article 38 of the Criminal Code state that "A person who commits a criminal act because of mental disability and/or intellectual disability, so that he is unable to determine his will or is unable to realize the consequences of his actions, is not convicted". Meanwhile, Article 39 stipulates that "Every person who at the time of committing a criminal act is incapable of being responsible because of mental disability, intellectual disability, or mental disorder can have his crime reduced". These articles position disability as a determining factor in determining criminal liability, which has implications for disparities in treatment in the criminal justice system. The urgency of this research lies in a critical analysis of these dimensions that intersect with the principles of justice and non-discrimination in the construction of modern criminal law (Hidayat & Ibrahim, 2023).

The gap in the implementation of criminal liability provisions for persons with disabilities is inseparable from the limited understanding of law enforcement officials regarding the characteristics and special needs of persons with disabilities in the judicial process. Diversity of disabilities, which includes physical, sensory, mental, intellectual, and/or dual disabilities, requires a differential approach in the context of criminal liability. The inability of the criminal justice system to accommodate the needs of accessibility and reasonable accommodation for persons

LEGAL IMPLICATIONS OF REGULATING ARTICLES 38 AND 39 OF LAW NUMBER 1 OF 2023 (CRIMINAL CODE) ON CRIMINAL LIABILITY FOR PERSONS WITH DISABILITIES

Canthika Mira Istiyanthi et al

with disabilities has the potential to produce procedural and substantive injustices that are contrary to the spirit of national criminal law reform (Listiwati et al., 2023). The purpose of this study is to analyze the juridical implications of the regulation of Articles 38 and 39 of the Criminal Code on the construction of criminal liability for persons with disabilities within the framework of Indonesian criminal law reform. In addition, this study aims to formulate a model of fair criminal accountability by considering the disability dimension in accordance with the principles of modern criminal law and international human rights standards. Through a juridical-normative and comparative approach, this research is expected to produce theoretical and practical propositions in order to optimize legal protection for persons with disabilities in the Indonesian criminal justice system, as well as contribute to the development of inclusive and fair criminal law.

LITERATURE REVIEW

The academic discourse on criminal accountability for persons with disabilities has undergone significant developments in recent years, especially after the ratification of the CRPD and legislative reforms in various countries. Comprehensive study conducted (Lutz et al., 2022) Exploring the paradigm of criminal accountability for people with mental disabilities in a comparative perspective. They identified a transformation of approaches from a medical model that tends to be paternalistic to a social and human rights model that places capacity and support as central elements in the construction of criminal accountability. The study found that jurisdictions that adopt a human rights-based approach tend to develop justice systems that are more inclusive and responsive to the needs of persons with disabilities by emphasizing the principles of appropriate accommodation and support in decision-making, rather than on substitution of decision-making that is perceived to degrade the autonomy of persons with disabilities.

The normative aspects of criminal liability for persons with disabilities in the context of Indonesian law are critically analyzed by (Tarigan et al., 2024) which compares the provisions of the old Criminal Code (*Wetboek van Strafrecht*) with the formulation in the Criminal Code Bill (which was later passed into Law No. 1 of 2023). Their analysis reveals a paradigmatic shift in the conceptualization of criminal liability from a "mental disorder" based approach (*geestelijke storing*) towards a specific identification of mental and intellectual disabilities as the basis for the consideration of responsible ability. Although this shift reflects progress in the recognition of the diversity of conditions of persons with disabilities, there remain epistemological problems in the categorization of disabilities that tend to be simplistic and do not accommodate the complex spectrum of disabilities, especially in the context of mental and psychosocial disabilities whose manifestations are very heterogeneous.

Empirical research conducted by (Utami et al., 2025) reveal the implementive dimension of criminal accountability for persons with disabilities in Indonesian judicial practice. Through a case study of 18 court decisions (2015-2021) involving defendants with disabilities, it was found that there were inconsistencies and disparities in the application of the criminal liability doctrine. Determinant factors that affect these disparities include: (1) limited judges' understanding of the characteristics and needs of persons with disabilities; (2) the absence of standardization in forensic assessments of the capacity of persons with disabilities; (3) lack of procedural support and accommodation in the judicial process; and (4) the dominance of medical approaches that place clinical diagnosis as the primary determinant of criminal liability, ignoring the social context and environmental barriers that contribute to the legal capacity of persons with disabilities.

A theoretical discourse on the reconstruction of the concept of inclusive criminal liability was proposed by (Zubaidy et al., 2023) through the elaboration of the supported decision-making model as an alternative to the dominant substituted decision-making model in the Indonesian criminal justice system. They articulate a conceptual framework of "Differential Criminal Accountability" that integrates the principles of proportionality, individualization, and adaptive support in the determination of criminal liability. This model proposes a multi-dimensional approach in legal capacity assessment that does not solely focus on medical diagnoses, but rather considers contextual factors such as social support, environmental accessibility, and the availability of decent accommodation. The framework offers a solution to the conventional dichotomy between "able-bodied" and "incapable" that does not accommodate the variability of the capacity of persons with disabilities that are often situational and contextual.

The synthesis of these studies indicates that there is a significant gap between theoretical developments in the conceptualization of criminal accountability for persons with disabilities and its practical implementation in the Indonesian criminal justice system. The regulation of Articles 38 and 39 of Law No. 1 of 2023, although it brings progress in the recognition of disability as a factor of criminal liability, does not fully represent a rights-based paradigm that emphasizes universal legal capacity and support in decision-making as mandated in the CRPD.

METHOD

This study applies a qualitative methodology with a juridical-normative orientation, focusing on a comprehensive investigation of secondary legal materials including legislative documentation, especially Law Number 1/2023 (KUHP), academic publications, legal monographs, and jurisprudence related to criminal liability of persons with disabilities. Data collection was executed through a systematic literature search with a purposive sampling approach to legal sources that have thematic relevance. The analysis was carried out using hermeneutical-juridical techniques and systematic interpretation to reconstruct the conceptual framework of the normative implications of Articles 38 and 39 of the Criminal Code in the context of legal protection of persons with disabilities in the criminal justice system.

RESULTS AND DISCUSSION

Transformation of the Criminal Liability Paradigm for Persons with Disabilities in the 2023 Criminal Code

Significant changes in the construction of criminal liability for persons with disabilities occurred through the regulation of Articles 38 and 39 of Law Number 1 of 2023 concerning the Criminal Code. This transformation marks a paradigmatic shift from the paternalistic approach in the old Criminal Code to a more progressive and inclusive approach. In the historical context, the provision of criminal liability for persons with disabilities in the old Criminal Code (*Wetboek van Strafrecht*) was regulated in Article 44 which used the terminology "disabled in growth" and "impaired by disease", terminology that is currently considered problematic because it contains stigma and is not in line with the development of contemporary understanding of disability. (Hidayat & Ibrahim, 2023) identify the disharmony in the regulation of criminal liability for persons with mental disabilities in the Indonesian legal system that results in disparities in court decisions even though it involves expert testimony for the judge's consideration. The absence of specific provisions governing the criminal liability of persons with disabilities in the previous regulation created legal ambiguity that was detrimental to persons with disabilities in the criminal justice system.

The new formulation in Article 38 of the 2023 Criminal Code which states "Not convicted, a person who commits a criminal act because of mental disability and/or intellectual disability, so that he is unable to determine his will or is unable to realize the consequences of his actions" shows an explicit recognition of mental and intellectual disability as a factor that affects the ability to be responsible. Meanwhile, Article 39 stipulates that "Every person who at the time of committing a criminal act is less capable of being responsible because of mental disability, intellectual disability, or mental disorder can have his crime reduced". This arrangement reflects a more nuanced approach to assessing criminal liability by recognizing the spectrum of responsible ability, not just the dichotomy of "capable" or "incapable" responsibility. (Ardika & Harahap, 2024) in its analysis of the court decision Number 57/Pid.B/2021/PN. Kba, which involves people with mental disabilities who commit persecution, states that a person with an intellectual or mental disability cannot be punished if it has reached a moderate to severe level. In the verdict, the defendant should not have been sentenced because his mind was disturbed during his growth or because he was in a mental hospital if his actions could not be accounted for.

This paradigm transformation is also reflected in the shift in terminology used. The 2023 Criminal Code explicitly uses the terms "mental disability" and "intellectual disability" which are more in line with the human rights-based approach as carried out in the Convention on the Rights of Persons with Disabilities (CRPD). The use of this terminology shows a significant development in the conceptualization of disability from a medical model that sees disability as a "disease" or "disability" to a social model that recognizes disability as the result of the interaction between individual conditions and environmental barriers. (Ida & Suryawati, 2023) highlighting the problems in Article 44 of the old Criminal Code which does not explain the limits that can be accounted for from a person's mental state, so in this context it is necessary to know the relationship between psychiatric disorders and activities that can be held criminally responsible. The ambiguity in Article 44 of the old Criminal Code is one of the factors that encourages the reformulation of criminal liability in the 2023 Criminal Code.

This new arrangement can also be interpreted as an effort to harmonize Indonesia's criminal law system with international standards, especially the CRPD which has been ratified by Indonesia through Law Number 19 of 2011. Article 12 of the CRPD recognizes that persons with disabilities have equal legal capacity in all aspects of life, and Article 13 emphasizes access to equal justice for persons with disabilities. Nevertheless, as argued by (Rizqiqa et al., 2024) In the context of regulating gross human rights violations in the 2023 Criminal Code, integrating norms from special laws into the Criminal Code has the potential to create new problems in the form of fundamental conflicts to multiple interpretations. This analogy is relevant in the context of criminal liability arrangements for persons with disabilities, where there is a potential inconsistency between the provisions in the 2023 Criminal Code and Law

LEGAL IMPLICATIONS OF REGULATING ARTICLES 38 AND 39 OF LAW NUMBER 1 OF 2023 (CRIMINAL CODE) ON CRIMINAL LIABILITY FOR PERSONS WITH DISABILITIES

Canthika Mira Istiyanthi et al

Number 8 of 2016 concerning Persons with Disabilities which adopts a more comprehensive rights-based approach. This paradigm transformation, while marking significant progress, still requires further elaboration to ensure its implementation is in line with the principles of respect for the dignity and autonomy of persons with disabilities.

Comparative Analysis of Criminal Liability Arrangements for Persons with Disabilities in an International Perspective

A comparison of criminal liability arrangements for persons with disabilities in different jurisdictions shows significant variations in legislative and implementing approaches. The United States adopted the doctrine of "insanity defense" codified in the Model Penal Code with the criterion of inability "to appreciate the criminality of his conduct or to conform his conduct to the requirements of law". Meanwhile, the UK in the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 applies an "unfitness to plead" approach that focuses on the capacity of the accused to participate effectively in the judicial process. This approach is gradually shifting towards a more inclusive model as reflected in the Mental Capacity Act 2005 which adopts the principles of "presumption of capacity" and "decision-specific assessment". Australia through the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 in Victoria integrated an element of support in the capacity assessment process that allows people with disabilities to obtain adequate support before an "unfitness" determination is made. This comparison, as analyzed by Rizqiqa et al. (2024), reflects a global trend towards the recognition of the legal capacity of persons with disabilities with an emphasis on adaptive support in the criminal justice system, a trend that has begun to be implemented in the formulation of Articles 38 and 39 of the 2023 Criminal Code although it still requires more comprehensive elaboration.

Jurisdictions that adopt a human rights-based approach such as Canada through the decision of *R v. Swain* (1991) and the Criminal Code Amendment Act 2005 legislation showed significant evolution by developing diversion mechanisms and special procedural accommodations for persons with disabilities in the criminal justice system. Germany in StGB (Strafgesetzbuch) §20 and §21 regulates "incapacity" and "diminished capacity" with a similar approach to the formulation of Articles 38 and 39 of the 2023 Criminal Code, but with a stronger emphasis on the individualization of assessments and diversification of legal consequences based on capacity gradation. This approach allows for greater flexibility in the justice system to accommodate the capacity spectrum of persons with disabilities. (Chang, 2024) In its comparative study of CRPD implementation in Asian countries, it identifies that countries with higher CRPD implementation rates tend to develop justice systems that are more responsive to the needs of persons with disabilities, including in the context of criminal liability, relevant observations in the context of evaluation of the implementation of Articles 38 and 39 of the 2023 Criminal Code in Indonesia.

Sweden through comprehensive legislative reforms following the ratification of the CRPD has abolished the concept of "criminal insanity" and replaced it with an support-based approach to decision-making that is integrated into all stages of the criminal justice system. This approach emphasizes the universal capacity of persons with disabilities as autonomous legal subjects, focusing on the provision of adaptive support and procedural accommodations, rather than exemptions from criminal liability that could potentially degrade the autonomy of persons with disabilities. New Zealand through the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 developed a "compulsory care order" system as an alternative to conventional punishment for people with intellectual disabilities who commit criminal offences, with an emphasis on rehabilitation and reintegration. This variation of the approach, as argued by (Sudharma & Meiranda, 2021), offers a spectrum of legislative and practical solutions that can be adapted in the Indonesian context to optimize the implementation of Articles 38 and 39 of the 2023 Criminal Code.

Comparative analysis reveals a global convergence towards the integration of CRPD principles in the criminal justice system, particularly the recognition of the universal legal capacity of persons with disabilities and the state's obligation to provide adequate support and accommodation. However, the implementation of these principles varies significantly based on the specific socio-legal context of each country. In this perspective, the regulation of Articles 38 and 39 of the 2023 Criminal Code can be positioned as a progressive step in the continuum of reform of the Indonesian criminal justice system towards a more comprehensive recognition of the rights and needs of persons with disabilities. (Irawan, 2023) emphasizing that legislative transformation requires simultaneous changes in the institutional infrastructure and capacity of criminal justice actors to ensure effective implementation, an aspect that requires special attention in the context of the operationalization of Articles 38 and 39 of the 2023 Criminal Code in Indonesia.

Problems of Implementation of Articles 38 and 39 of the Criminal Code in the Context of the Protection of the Rights of Persons with Disabilities

The implementation of Articles 38 and 39 of the 2023 Criminal Code in the Indonesian criminal justice system is faced with various conceptual, procedural, and structural problems. Conceptually, these articles contain ambiguity in defining and categorizing "mental disability" and "intellectual disability" as well as criteria for determining "inability to determine the will" or "inability to realize the consequences of actions". This ambiguity in definition has the potential to lead to inconsistencies in criminal justice practice, as identified by (Sudharma & Meiranda, 2021) through an analysis of Decision Number 16/Pid.Sus/2019/PN.Wsb. In that case, the judge decided to acquit the defendant with a mental disability from all lawsuits with the consideration that a person with a mental disability cannot be held accountable for his actions. This ruling reflects an extensive interpretation of the concept of "irresponsible incapacity" that potentially ignores the variability of the capacities of persons with disabilities and their right to be recognized as equal subjects of the law.

Procedural problems arise in the form of the absence of a clear mechanism and standard for assessing the capacity of persons with disabilities in the context of criminal liability. The 2023 Criminal Code does not explicitly regulate assessment procedures, qualifications of the parties conducting the assessment, and objective criteria to determine the gradation of responsible ability. The absence of these standards has the potential to result in varied and subjective assessment practices, which in turn results in disparities in the treatment of persons with disabilities in the criminal justice system. (Hutagalung et al., 2022) In the context of criminal proof accountability for persons with disabilities who commit narcotics crimes, it highlights the importance of an ergonomic approach in the judicial process to accommodate the special needs of persons with disabilities. This ergonomic aspect is not limited to physical accessibility, but it also includes procedural accessibility and communication in all stages of criminal justice, from investigations to court rulings.

Structural aspects include the limited capacity and understanding of law enforcement officials on disability issues and the lack of supporting infrastructure to accommodate the special needs of people with disabilities in the criminal justice system. (Irawan, 2023) emphasizing the importance of special treatment in the form of legal protection for persons with disabilities, both from a sociological perspective and related rules, which must begin from the beginning of the investigation and investigation, prosecution, and judicial process by placing accessibility to adequate accommodation both from infrastructure and understanding of their disability by Law Enforcement Officials. Furthermore, Irawan highlighted the importance of personal assessments that must be carried out at an early stage when people with intellectual disabilities are faced with the law, an aspect that is not explicitly regulated in Articles 38 and 39 of the 2023 Criminal Code.

The disharmony between the provisions in the 2023 Criminal Code and Law Number 8 of 2016 concerning Persons with Disabilities also presents problems in implementation. Although the 2023 Criminal Code recognizes disability as a factor that affects criminal liability, the Law on Persons with Disabilities emphasizes more on aspects of protection and fulfillment of rights, including in the context of access to justice. This disharmony, as argued by (Hidayat & Ibrahim, 2023), has the potential to produce disparities in judges' decisions that are detrimental to people with disabilities. This indicates the need for revision of the Law on Persons with Disabilities as a form of positive legal harmonization in Indonesia, especially to provide further explanations and discussions regarding criminal liability as stipulated in Articles 38 and 39 of the 2023 Criminal Code.

Another problem that arises in implementation is the potential imbalance between aspects of protection and recognition of the legal capacity of persons with disabilities. On the one hand, exemption from criminal liability can be seen as a form of protection; On the other hand, it has the potential to ignore the capacity and autonomy of people with disabilities in the legal context. (Trihardianto, 2020) highlighting aspects of criminal liability in the context of corporations that hinder the fulfillment of labor rights of persons with disabilities. In this perspective, persons with disabilities are positioned as subjects of rights that must be protected, not objects of protection that their legal capacity overrides. This approach reflects a rights-based paradigm that is in line with the principles of CRPD, which unfortunately is not comprehensively reflected in the formulation of Articles 38 and 39 of the 2023 Criminal Code, which still shows paternalistic tendencies in defining the capacity of persons with disabilities.

Reorientation of the Construction of Criminal Accountability for Persons with Disabilities in a Human Rights Perspective

The reformulation of criminal accountability for persons with disabilities in the Indonesian legal system requires a fundamental reorientation based on a human rights perspective. This approach recognizes persons with disabilities as legal subjects equivalent to universal legal capacity, not objects of protection to whom legal capacity

LEGAL IMPLICATIONS OF REGULATING ARTICLES 38 AND 39 OF LAW NUMBER 1 OF 2023 (CRIMINAL CODE) ON CRIMINAL LIABILITY FOR PERSONS WITH DISABILITIES

Canthika Mira Istiyanthi et al

is overruled. This paradigm is in line with Article 12 of the CRPD which emphasizes the recognition of the legal capacity of persons with disabilities in all aspects of life, including in the context of criminal liability. Its implementation requires a shift from a substituted decision-making approach to a supported decision-making approach. (Hidayat & Ibrahim, 2023) underlined the importance of harmonization of laws and regulations through the revision of the Law on Persons with Disabilities to overcome the disharmony that results in disparities in judges' decisions in cases involving persons with disabilities. These harmonization efforts should be oriented towards the development of a normative framework that integrates human rights principles in the conceptualization of criminal accountability.

The reorientation of the construction of criminal liability also requires the development of inclusive and rights-based assessment mechanisms and procedures. (Ardika & Harahap, 2024) highlighting the importance of a comprehensive assessment of the capacity of persons with disabilities, which not only focuses on medical diagnosis but also considers contextual factors such as social support, environmental accessibility and availability of decent accommodation. This assessment mechanism should be developed through multidisciplinary cooperation involving not only legal and health experts, but also disability experts and representatives of disability organizations to ensure a holistic and rights-based approach. This approach is in line with the principle of "nothing about us without us" which emphasizes the active participation of people with disabilities in the development of policies and practices that affect their lives.

Reform of the inclusive criminal justice system is an essential component in the reorientation of criminal accountability for persons with disabilities. (Irawan, 2023) and (Sudharma & Meiranda, 2021) Both emphasized the importance of providing adequate accommodation in all stages of criminal justice, from investigation to verdict implementation. These accommodations are not limited to physical accessibility, but also include procedural and communication modifications to ensure the effective participation of persons with disabilities in judicial proceedings. This reform requires increasing the capacity and understanding of law enforcement officials on disability issues, developing special handling protocols, and providing adequate support and assistance for persons with disabilities who face the law. (Hutagalung et al., 2022) illustrates the importance of ergonomic approaches in accommodating the special needs of persons with disabilities in the justice system that include not only physical aspects but also psychosocial dimensions that affect the capacity of persons with disabilities to interact with the justice system.

The development of the "Differential Criminal Accountability" model can be a conceptual foundation in this reorientation. The model recognizes the variability of the capacity of persons with disabilities and integrates the principles of proportionality, individualization, and adaptive support in the determination of criminal liability. His approach focuses on situational and contextual capacity assessments, rather than static, reductive medical diagnoses. This reorientation also requires a shift from a punitive approach to a restorative approach that focuses more on rehabilitation, rehabilitation, and reintegration of persons with disabilities in society, rather than punishment alone. (Putra et al., 2024) highlighting the importance of clarity on regulations regarding criminal liability, including in the context of corporations that obstruct the fulfillment of the rights of persons with disabilities, as part of efforts to protect and fulfill the rights of persons with disabilities in a holistic manner. This approach reflects a paradigmatic shift in the construction of criminal accountability that focuses not only on the retributive aspect but also on the restorative and transformative dimensions of the criminal justice system.

CONCLUSION

This research reveals that the regulation of Articles 38 and 39 of the 2023 Criminal Code represents a paradigmatic transformation in the construction of criminal accountability for persons with disabilities in Indonesia, moving from a paternalistic approach to a rights-based model. However, its implementation faces multidimensional problems including ambiguity of definition, the absence of a standardized assessment mechanism, and the limited capacity of the judicial system. The urgency of reorienting towards a "Differential Criminal Accountability" model that integrates CRPD principles is imperative to optimize legal protection for persons with disabilities. The study recommends: (1) legislative harmonization between the Criminal Code and the Law on Persons with Disabilities; (2) development of multidisciplinary assessment protocols; (3) increasing the capacity of law enforcement officials; and (4) the development of diversification of legal consequences that emphasize rehabilitation and reintegration, not mere retribution.

REFERENCES

- A. Priamsari, R. P. (2020). A law that is fair to persons with disabilities. *Legal Issues*, 48(2), 215. <https://doi.org/10.14710/mmh.48.2.2019.215-223>
- Ardika, R., & Harahap, M. M. (2024). CRIMINAL LIABILITY FOR PEOPLE WITH DISABILITIES WHO COMMIT ABUSE. *Legal Standing : Journal of Legal Sciences*, 8(2), 382–395.
- Chang, H. H. (2024). Disability Rights and Cultural Contexts Dynamics of Policy, Activism, and Socio-Economic Realities in East Asia. *International Journal of Disability and Social Justice*, 4(1), 4–9. <https://doi.org/10.13169/intljofdissocjus.4.1.0004>
- Hidayat, F. A. M., & Ibrahim, A. L. (2023). Disharmony of Criminal Liability for Mental Disabilities in Positive Law in Indonesia. *Justice*, 9(3), 326–343. <https://doi.org/10.33506/jurnaljustisi.v9i3.2474>
- Hutagalung, M., Damanik, M. J., & Sibuea, D. K. (2022). Criminal Proof Accountability for Persons with Disabilities Perpetrators of Narcotics Crimes in accordance with Law No. 35 of 2009. *Journal of Technology, Health and Social Sciences*, 5(2), 327–337.
- Ida, O. V., & Suryawati, N. (2023). Criminal Liability for Perpetrators of Criminal Acts with Mental Disorders According to Positive Legal Provisions. *Binamulia Law*, 12(2), 263–275. <https://doi.org/10.37893/jbh.v12i2.620>
- Irawan, A. (2023). Legal Protection for Women with Intellectual Disabilities Victims of Sexual Violence. *Legal Journal: RESPUBLICA*, 22(2), 1–21.
- Listiawati, E., Fauzi, E., Mande Nata, L., & Jamaludin, A. (2023). Access to Justice for Persons with Intellectual Disabilities: Criminal Justice as an Implementation of Equality Before the Law. *Light Science*, 15(1), 178–187. <https://doi.org/10.28946/sc.v30i1.2796>
- Lutz, M., Zani, D., Fritz, M., Dudeck, M., & Franke, I. (2022). A review and comparative analysis of the risk-needs-responsivity, good lives, and recovery models in forensic psychiatric treatment. *Frontiers in Psychiatry*, 13(October), 1–12. <https://doi.org/10.3389/fpsyt.2022.988905>
- Putra, K. S. W., Dewi, A. M. C., Yuliantari, I. G. A. E., & Astawa, I. N. D. (2024). Criminal Liability of Private Companies for Acts of Obstructing the Fulfillment of Labor Rights of Persons with Disabilities. *Fundamentals: Scientific Journal of Law*, 13(1), 29–46. <https://doi.org/10.34304>
- Rizqia, L. D., Wulandari, W., & Putri, N. S. (2024). The Implications of Regulating Gross Human Rights Violations in the 2023 Criminal Code on the Applicability of Principles, in particular: Strengthening or Weakening? *Litigation*, 25(1), 21–60. <https://doi.org/10.23969/litigasi.v25i1.12416>
- Sudharma, K. J. A., & Meiranda, A. (2021). CRIMINALIZATION OF PERSONS WITH MENTAL DISABILITIES AS PERPETRATORS OF CRIMINAL ACTS OF OBSCENITY (STUDY OF CASE DECISION NUMBER 16/Pid.Sus/2019/Pn.Wsb). *Saraswati Law Journal (JHS)*, 03(02).
- Tarigan, E. K., Darmayanti, E., Amaniarsih, D. S., & Simatupang, B. D. (2024). Comparative Juridical Review of the Old Criminal Code and the New Criminal Code. *Journal of Clinical Psychology*, 18(3), 590–604. <https://doi.org/10.46576/wdw.v18i3.4449>
- Trihardianto, R. (2020). Corporate Criminal Liability for the Rights of Persons with Disabilities in the Employment Sector in Law Number 8 of 2016 concerning Persons with Disabilities. *IUS Journal of Law and Justice Studies*, 6(1), 48. <https://doi.org/10.29303/ius.v6i1.537>
- Utami, S. D., Agulia, C. P., Harningtyas, A. R., & Suherman, A. (2025). ANALYSIS OF CRIMINAL LIABILITY AND LEGAL PROTECTION FOR PERPETRATORS WITH DISABILITIES IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM. *Journal of Law and Citizenship*, 11(1), 195–222. <https://doi.org/10.1201/9781032622408-13>

LEGAL IMPLICATIONS OF REGULATING ARTICLES 38 AND 39 OF LAW NUMBER 1 OF 2023 (CRIMINAL CODE) ON CRIMINAL LIABILITY FOR PERSONS WITH DISABILITIES

Canthika Mira Istiyanthi **et al**

Zubaidy, A., Addres Akmaluddin, M., & Prangsi Rakisa Wijaya Kusuma, D. (2023). The Adoption of Supportive Decision-Making System As a Substitute to Amnesty for People With Mental Disabilities in the Indonesian Legal System. *KnE Social Sciences*, 2023, 706–714. <https://doi.org/10.18502/kss.v8i9.13384>