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Criminal Sanction Reduction Policy: Mental and Intellectual Disabilities Review from the Purpose of Punishment

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Abstract
In the realm of criminal law, it is acknowledged that criminal offenses may be perpetrated by a broad spectrum of individuals, including those with disabilities, spanning both mental and intellectual realms. The term "disability" includes individuals with physical or intellectual impairments who could not previously be sanctioned. However, Law No. 1 of 2023 has provided for the imposition of sanctions for people with mental or intellectual impairments. This study employs a normative research methodology, utilizing a statutory approach through the examination of various literature and journals focused on criminal law policy. Specifically, it addresses the implementation of incarceration for individuals with mental and intellectual disabilities. Through descriptive-analytical methods, this research highlights that Article 38 of the New Criminal Code expands the scope of criminal sanctions applicable to individuals with mental and intellectual disabilities. This provision appears to be at odds with Article 44 of the Criminal Code, which exempts persons with such disabilities from criminal liability, suggesting a contradiction where Article 38 permits the application of reduced penalties. The conclusion posits that while individuals with disabilities might be seen as not fully accountable under certain circumstances, leading to exemption from criminal penalties, a human rights perspective advocates for prioritizing social rehabilitation.

Keywords: Criminal Law; Criminal Policy; Criminal Responsibility; Mental Disabilities

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INTRODUCTION

Intellectual and developmental disabilities, often manifesting as significant impairments in cognitive functioning and social adaptation, challenge individuals' capacity to comprehend the implications of their actions, including criminal behavior. Such disabilities, characterized by below-average intellectual capabilities, impede daily living activities and the ability to understand legal consequences or control impulses, mirroring behaviors akin to those of children and limiting self-protective capacities against threats (Kanter & Sianturi, 2002; Kartini Kartono, 1979)

The Universal Declaration of Human Rights (UDHR) and the Convention on the Rights of Persons with Disabilities—ratified by Indonesia through the CRPD Ratification Law (2011) Article 15—underscore the necessity for specialized consideration towards individuals with disabilities, advocating for their protection and rights. The term "degrading treatment or punishment" in this article can be interpreted as their inability to be put into the correctional center. Contrarily, the recent Article 38 of the New Criminal Code, which appears to treat persons with disabilities akin to those without, stands in opposition to Article 44 of the Criminal Code. This previous article exempted individuals with disabilities from criminal liability, highlighting dissonance within the legal framework when it comes to the treatment of disabled individuals in criminal law. The language of "reduction" in punishment, as stipulated by Article 38, hints at a potentially easier pathway to penalizing disabled individuals found guilty of crimes, thus necessitating a comprehensive psychological assessment to ascertain the extent of disability—a process that is both lengthy and complex.

Judicial decisions such as those in case numbers 16/Pid.Sus/2019/Pn.Wsb and 50/Pid.Sus/2013/Pn.Ska illustrates the judicial system's grappling with such complexities, whereas the court decided to punish the perpetrator for 10 months, especially in crimes involving moral turpitude against minors. However, The reliance on physiological capabilities as a determinant of culpability, as critiqued by Edwards (1997), overlooks the essential inability of individuals with intellectual disabilities to grasp the nature of their actions fully or to make informed decisions based on an understanding of law and morality.

The principle that individuals with intellectual disabilities inherently lack the capacity for legal responsibility—unable to recognize the unlawfulness of their actions or exercise in accordance with legal standards—calls into question the appropriateness of subjecting them to criminal penalties (Clare & Gudjonsson, 1995). This incapacity, suggesting a complete disengagement from the legal concept of culpability, necessitates a reevaluation of the approach towards rehabilitation and punishment. The goals of punishment, as outlined in the Corrections Law (2022), emphasize rehabilitation and social reintegration as primary objectives, which are unattainable through traditional penal measures for this demographic. Instead, a shift towards protective measures and rehabilitation aimed at fostering independence and improving quality of life aligns more closely with both human rights standards and the intended outcomes of the legal system. In essence, the legal system must navigate the delicate balance between ensuring public safety and upholding the rights of individuals with intellectual and developmental disabilities, fostering an approach that prioritizes rehabilitation over criminalization in recognition of their unique needs and capacities.

This journal article introduces a novel approach by integrating a multidisciplinary analysis that intersects forensic psychiatry, legal reforms, and human rights within the realm of intellectual disabilities, setting it apart from existing literature. While previous studies have either focused on the forensic psychiatric implications for individuals with intellectual disabilities or explored

mental health defenses within the legal framework, this article aims to bridge these areas comprehensively. It not only scrutinizes the legal mechanisms in place but also delves into the psychiatric assessments' intricacies, especially focusing on how these assessments are interpreted and utilized within the judicial process. This fusion of legal and psychiatric perspectives provides a richer, more nuanced understanding of the challenges at the intersection of mental health and criminal law, highlighting areas for potential improvement within the justice system that respects the rights and needs of individuals with intellectual disabilities.

Furthermore, the article emphasizes the human rights implications of legal practices and reforms, offering a critical examination of how current approaches align or conflict with international human rights standards. By drawing attention to the ethical considerations in the treatment of individuals with intellectual disabilities in the criminal justice system, the article advocates for reforms that prioritize dignity, fairness, and rehabilitation over punitive measures. This human rights-focused analysis not only contributes to the legal and psychiatric discourse but also encourages a shift towards more humane and equitable justice system practices.

Additionally, through a comparative analysis incorporating case studies from different legal jurisdictions, the article presents innovative practices and reform strategies that have been effective elsewhere. This comparative perspective not only showcases the diversity of approaches to accommodating individuals with intellectual disabilities within the legal system but also offers valuable insights and models for policy reform in Indonesia and beyond. By proposing specific, actionable recommendations for the reformulation of Article 44 of the Indonesian Criminal Code, the article directly contributes to the discourse on legal reform, ensuring that it is grounded in comprehensive research and international best practices. This focus on practical solutions and stakeholder perspectives ensures that the proposed reforms are both feasible and aligned with the broader goal of enhancing the criminal justice system's responsiveness to individuals with intellectual disabilities.

The government's focus on Article 38 of the New Criminal Code. This study aims to examine the issues surrounding the reduction of penalties for those with intellectual and mental disabilities. The research, titled "The Policy of Reducing Criminal Sanctions for Individuals with Mental and Intellectual Disabilities in Article 38 of the New Criminal Code," seeks to understand this policy's implications from a psychological standpoint. Additionally, it intends to identify the optimal timeline for conducting assessments on affected individuals. The prevailing understanding that such individuals should not be criminally sanctioned, given their legal and psychological incapacity, underscores the need for this investigation. The extended duration required to ascertain disabilities may challenge the criminal justice system's timing constraints. These insights aim to guide the government in refining criminal law policies.

RESEARCH PROBLEM

1. How is the policy of reducing criminal sanctions for persons with mental and intellectual disorders in Article 38 of the New Criminal Code viewed from the purpose of punishment
2. What is the problem of the duration of the assessment in determining the severity of mental disability and intellectual disabilities?

RESEARCH METHODS

This study adopts a normative approach, scrutinizing legal matters through the lens of both the substantive law and its application within society. It undertakes a descriptive analysis to deeply investigate the current challenges, drawing on established legal doctrines to offer remedial suggestions (Kadir, 2004). The research methodology is primarily literature-based, characterized as normative juridical or library legal research in the field of law. This method denotes a focus on legal norms as abstract stipulations, employing a methodological framework that engages with secondary data to address research queries. By employing a statutory approach, this research reviews all pertinent legislation related to mental and intellectual disorders in the context of penal objectives (Marzuki et al., 2021). The findings of this research are twofold: descriptive-analytical, methodically outlining the problem, and prescriptive, offering legal strategies to navigate the complexities of criminal sanction policies for individuals with mental and intellectual disabilities (Sugiyono, 2013).

This study critically evaluates the impact of criminal sanctions on individuals with mental and intellectual disabilities within the Indonesian legal framework, focusing on the nuances and implications of amendments to Article 44 of the Criminal Code. The objective is to propose informed legal reforms that uphold human rights and offer equitable justice for vulnerable populations, aligning with both national and international standards.

Employing a multi-faceted approach, the research methodology combines normative legal analysis, case studies, and comparative legal examination. The normative aspect is essential for a comprehensive review of pertinent legislation, including the New Criminal Code, the existing Criminal Code, and specific case rulings such as Decision 16/Pid.Sus/2019/Pn.Wsb and Decision 50/Pid.Sus/2013/Pn.Ska, alongside Supreme Court Circular No. 2/2014 and Ministry of Health Regulation No. 77/2015. This approach enables an in-depth exploration of legal principles, their applications, and their implications for individuals with mental and intellectual disabilities.

The case study method enriches this analysis by providing detailed examinations of specific legal instances, highlighting the practical challenges and judicial interpretations within the current legal framework. This approach allows for a direct illustration of the issues at stake, offering concrete examples to

underscore the need for legislative reform. Furthermore, a comparative legal analysis extends the scope of this study by examining how similar issues are addressed in different jurisdictions. This global perspective sheds light on alternative legal practices and frameworks, offering valuable insights into possible reforms that could enhance the Indonesian legal system's alignment with international human rights standards.

Data collection for this study involved a thorough literature review, legal document analysis, and case law examination, utilizing public records, legal databases, and academic publications to gather relevant legal texts, case decisions, and regulatory guidelines. To complement the normative analysis and address the technical complexities associated with mental and intellectual disabilities, the study also incorporates a clinical research method. This method involves consulting psychiatric experts and reviewing clinical findings to gather empirical evidence about mental and intellectual disabilities. Integrating clinical insights with legal analysis ensures a well-rounded understanding of the issues, facilitating the development of comprehensive and compassionate legal reform proposals.

DISCUSSION

1. The Policy Of Reducing Criminal Sanctions for Individuals With Mental and Intellectual Disabilities in Article 38 of New Criminal Code Reviewed in Terms of The Purpose of Punishment

Criminal activities can be perpetrated by anyone, including individuals with mental and intellectual disabilities. The Disability Law (2016), specifically Article 1 Paragraph 1, defines "Persons with Disabilities" as individuals who face long-term physical, mental, intellectual, and/or sensory limitations, which may hinder their full participation and equal rights when interacting with their environment. This aspect of disability is further addressed in the forthcoming revisions to the Indonesian Criminal Code.

With the introduction of Article 38 in the New Criminal Code, set to supersede Article 44 of the current Criminal Code by 2026, there is a notable shift in how the legal system approaches individuals with mental and/or intellectual disabilities who commit criminal offenses. Article 38 articulates that individuals in such conditions "may be subject to a reduction in punishment and/or subject to action," contrasting with Article 44, which exempts from punishment those whose actions stem from developmental or illness-related cognitive impairments. This change implies that individuals facing legal consequences are considered to have mental disturbances or impairments, opening the door to potential sentence reductions for those with mental and intellectual disabilities, as well as others experiencing mental disorders.

In the Indonesian legal framework, the introduction of a double-track system in criminal sentencing is designed to accommodate both traditional criminal penalties and alternative measures (maatregelen), particularly for individuals affected by mental health issues or intellectual disabilities. This nuanced approach

permits judges to apply measures instead of, or in addition to, standard penalties, acknowledging the diminished culpability of individuals who may not be fully accountable for their actions due to mental disorders or intellectual challenges.

Specifically, Articles 38 and 39 of the New Criminal Code, as elaborated in the accompanying academic paper, detail the implementation of this system. Article 38 allows for the reduction or modification of penalties for individuals with mental or intellectual disabilities, recognizing their limited capacity to understand or control their actions. Conversely, Article 39 provides that in cases where individuals have severe mental disorders or intellectual disabilities, traditional criminal punishments may be wholly inappropriate. Instead, alternative measures can be imposed which focus on care, rehabilitation, and the protection of society.

These measures include returning the individual to the custody of parents or guardians, supervision by a competent person, treatment in psychiatric facilities, care within social welfare institutions, and obligations to engage in formal education or vocational training. Other options include the revocation of certain licenses, such as driving permits, or mandates to make restitution or other forms of amends for the crime committed. Such provisions underscore a shift towards a rehabilitative approach in the criminal justice system, emphasizing support and rehabilitation for individuals with mental health issues or intellectual disabilities while also safeguarding societal interests and promoting social order.

Nonetheless, applying such measures to individuals with mental or intellectual disabilities is impractical, as they lack the full capacity to bear responsibility for their actions or to engage in conscious decision-making when committing offenses (Kadek Januarsa Adi Sudharma, 2021). Consequently, holding them criminally responsible is inappropriate, and they should not face criminal penalties, aligning with the stipulations of Article 44 of the Criminal Code. Instead, these individuals require specialized support and care rather than criminal sanctions, echoing the principles of the Universal Declaration of Human Rights (UDHR) and the Convention on the Rights of Persons with Disabilities, ratified by the CRPD Ratification Law (2011). This legislation underscores the right of persons with disabilities in conflict with the law to access justice as per Article 13. However, it does not explicitly address the accountability of those with mental disabilities, thus defaulting to the guidance of Article 44 of the Criminal Code.

Subjecting criminal offenders with declared mental or intellectual disabilities to court proceedings and criminal sanctions, as contemplated by Article 38, leads to protracted and burdensome legal processes, contravening the justice system's objective for simplicity, speed, and cost-effectiveness. The challenges individuals with disabilities face in adhering to societal norms are exacerbated in legal settings, where providing clear testimony or participating effectively in proceedings is particularly demanding. Rehabilitation treatments, rather than extensive legal trials, are more appropriate for individuals with mental and intellectual disabilities involved in criminal activities.

Imposing penalties on individuals with disabilities not only violates their human rights but also obstructs their intellectual growth and their ability to exercise their rights and responsibilities as citizens of Indonesia. Imposing penalties on individuals with disabilities for their disability-related needs or behaviors directly contravenes the principles of equality and non-discrimination as outlined in the United Nations Convention on the Rights of Persons with Disabilities (CRPD), to which Indonesia is a signatory. This Convention emphasizes that all persons with disabilities must be provided with the necessary accommodations and support to participate fully in society, free from discrimination and harm.

Regarding the obstruction of intellectual growth, punitive measures against individuals with disabilities can significantly impede their educational and developmental opportunities. According to research by the World Health Organization, environments that support the inclusion and active participation of individuals with disabilities are crucial for fostering their cognitive and emotional development. Penalties or negative reinforcement can lead to decreased selfesteem, increased dependency, and reduced motivation for learning and engagement, all of which are detrimental to intellectual growth. This approach by the judiciary and law enforcement amounts to exploitation and discrimination against persons with disabilities, clashing with Article 28 (c) and Article 28 (I) of the 1945 Constitution of the Republic of Indonesia and Articles 5 and 7 of the UDHR.

According to Williams C (2003), the United States legal framework incorporates the "Not Guilty By Reason Of Insanity" (NGRI) doctrine, which exonerates individuals from criminal guilt if they were deemed "insane" at the time of the crime, lacking the mental capacity to understand their actions. This concept, rooted in Western legal tradition, argues for the non-liability of mentally ill individuals, equating them with minors and those with significant intellectual impairments who are incapable of grasping the nature or consequences of their actions. Following this principle, individuals with mental or intellectual disabilities in Indonesia should also not be held criminally liable if they were unaware of the wrongfulness or outcomes of their actions.

However, the Indonesian legal system has shown deficiencies in fairly addressing the rights and needs of individuals with disabilities. A study by LBH Masyarakat on criminal cases involving defendants with mental disabilities between 2011 and 2018 revealed a glaring lack of involvement from healthcare professionals. Out of 78 defendants, only a fraction had assessments from psychiatric experts, psychologists, or general practitioners, and a similar scarcity of expert consultations was observed among witnesses or victims. Moreover, a significant percentage of defendants with mental disabilities lacked legal representation (Yosua Octavian dan Albert Wirya, 2018).

This situation calls for a critical reassessment. In instances where individuals with mental and intellectual disabilities are at risk of criminal sanctions, it is imperative for courts to involve psychologists in every trial to evaluate the defendant's mental state comprehensively. This approach not only aids judges in

rendering fair judgments but also addresses the complexities of determining the defendant's capacity. Nevertheless, caution must be exercised to ensure that judges do not defer decision-making on uncertain grounds, potentially invoking the "in dubio pro reo" principle to the detriment of justice (Risaldi et al., 2018). Therefore, striking a balance is essential, leveraging the insights provided by psychologists without compromising the judge's duty to adjudicate based on evidence, legal standards, and facts (Shuman & Greenberg, 2003). Enhancing the collaboration between the judiciary and psychological experts is crucial for informed decision-making, ensuring that all relevant factors are considered in the legal process.

The statistics referenced pertain to practices under the old Criminal Code, specifically Article 44(1), which absolved individuals with mental disabilities from criminal penalties. In contrast, the New Penal Code introduces Articles 38 and 39, modifying the approach towards individuals with mental and intellectual disabilities by permitting the imposition of penalties. Article 39 updates the previous Article 44 by stipulating that individuals with moderate to severe disabilities cannot be criminally punished, though alternative measures may be considered. This adjustment casts doubt on the efficacy of Article 38, which suggests the possibility of penalizing those with mild disabilities. Given that even mild disabilities can significantly impair social interaction, communication, and emotional regulation—criteria established by the American Psychiatric Association—the applicability of punishment under these conditions is questionable (American Psychiatric Association, 2022).

Determining the presence and severity of a mental or intellectual disability is a detailed process. Absent such an evaluation, accurately classifying disabilities as low, moderate, or severe becomes problematic. Despite the intricacies involved, these assessments are indispensable, providing critical evidence that bolsters judicial confidence in meting out equitable punishments. A lack of comprehensive evaluations could lead to judicial indecision concerning appropriate sentencing. The absence of definitive guidelines for implementing these assessments underscores the urgent need for procedural clarity that incorporates psychological insights. Profiling assessments are pivotal in recognizing the specific needs and challenges faced by individuals with disabilities within the legal framework, ensuring that the degree of impairment is considered in sentencing decisions (Marzuki et al., 2021).

Article 38 of the New Criminal Code, aimed at mitigating criminal sanctions for those with mental and intellectual disabilities, raises concerns regarding its alignment with the objectives of criminal punishment and its impact on the advancement of criminal law in Indonesia. This regulation does not adequately account for the unique circumstances of individuals with disabilities, who may not fully understand the legal implications of their actions. Rather than subjecting these individuals to the criminal justice system, a more fitting approach would involve targeted guidance and rehabilitation, emphasizing their exclusion from judicial proceedings.

Given the unique needs and circumstances of offenders with mental or intellectual disabilities, the justice system should prioritize therapeutic and rehabilitative strategies over punitive ones. Article 51, Section d of the New Criminal Code, which aims to instill remorse and guilt absolution in the convicted, suggests a move towards acknowledging the emotional and psychological aspects of punishment. However, for individuals with mental and intellectual disabilities, rehabilitation efforts should be enhanced, consistent with the restorative justice framework. This approach not only aligns with Article 53, Paragraph (2), which underscores the importance of justice in the face of conflicts between legal certainty and the need for justice but also ensures that the justice system remains compassionate and accommodating to all, particularly those unable to understand or control their actions due to their disabilities fully.

2. The Assessment Period in Determining The Severity Level of Mental Disability and Intellectual Disability.

The severity of mental and intellectual disabilities can be determined through various factors. Cooper et al (2007) found that mental ill-health in adults with intellectual disabilities is associated with more life events, female gender, type of support, lower ability, more consultations, smoking, incontinence, and not having severe physical disabilities or immobility. McClintock et al (2003) identified risk markers for challenging behavior, such as gender and the degree of intellectual disability. Sanderson & Andrews (2002) highlighted the significant disability associated with various mental disorders, and Bittles et al (2002) found a negative association between the severity of intellectual disability and life expectancy. These studies collectively suggest that the assessment period in determining the severity level of mental and intellectual disabilities should consider a range of factors, including gender, type of support, and the presence of other physical disabilities.

The implementation of criminal penalties against individuals with mental and intellectual disabilities stands in stark opposition to the principles of human rights, foundational to the ethos of the Indonesian populace. The introduction of the New Criminal Code, particularly with its controversial Articles 38 and 39, has sparked debate over the criminal accountability of persons with such disabilities. Article 38, with its stipulation "Can be Reduced," raises alarms by suggesting that individuals with disabilities might readily face criminal sanctions upon conviction. This clause complicates judicial decision-making, leading to potential sentencing disparities. Such inconsistencies in penalizing identical crimes contribute to perceptions of injustice and undermine confidence in the Indonesian judicial framework. Addressing this challenge necessitates the involvement of psychologists in all trials concerning individuals with mental and intellectual disabilities.

However, the scarcity of forensic psychologists poses a significant hurdle. As of November 2023, Indonesia has only around 300 forensic psychology professionals (Apsifor, 2019), indicating a resource gap that impacts the efficacy of local judicial units (Deti & Diamanty, 2020). Forensic psychologists play a pivotal role across the

four stages of law enforcement: prevention, intervention, prosecution, and detention (Yuliana et al., 2023). Their responsibilities include criminal profiling to identify potential offenders, ascertain common traits, and isolate specific characteristics (Erdélyi, 2023). Consequently, the involvement of forensic psychologists is crucial in every stage of police examinations, particularly during investigations, to ensure that expert testimony informs the legal process.

Forensic psychologists play a crucial role in the legal process, performing assessments to gather comprehensive information about individuals and making predictions about their behavior (Gregory, 2015). The duration of these assessments can vary significantly, influenced by the individual's specific condition and requiring an evaluation of factors like intellectual capabilities, mental health status, and personality traits. Such evaluations are designed to ensure the individual is in a stable condition for accurate assessment outcomes.

These psychological assessments utilize a range of systematic and standardized methods to collect data, aiming to understand the individual's abilities, personality, and mental health. This information is vital for formulating diagnosis, determining prognosis, and planning interventions (Leppma & Jones, 2013). The findings from forensic psychologists are then presented in court, serving as critical evidence in judicial decisions. It is imperative for these professionals to remain impartial, ensuring their analyses do not bias the court's verdicts.

In the courtroom, forensic psychologists may employ various assessment techniques such as interviews, observations, examination of life records, utilization of checklists, and psychological testing. The life record method involves collecting comprehensive data about the individual, including educational certificates, personal diaries, photo albums, awards, and medical history. The checklist method, often combined with observations, offers robust validity in the assessment process. Interviews, a key component of the assessment, aims to gather detailed historical information from the individual (autoanamnesis) as well as from their relatives or acquaintances (alloanamnesis), providing a holistic view of the person's background and current condition (Daniaty et al., 2022).

When undertaking psychological assessments, it's crucial to adhere to a structured four-step process as outlined by Ekyana et al (2021):

a. *Planning*
   This initial phase involves determining the specific needs of the individual and the desired outcomes of the assessment. This step sets the framework for what information needs to be gathered and what aspects of the individual's condition should be focused on.
b. *Data Collection*
   In this stage, data is gathered through various methods, which could include qualitative (e.g., interviews, observations), quantitative (e.g., standardized testing), or mixed approaches. This diversity in methodology ensures a comprehensive understanding of the individual's psychological state.
c. *Evaluation*

This process involves the critical summarization and analysis of the data collected. It's where the psychologist sifts through the information to identify patterns, discrepancies, and significant indicators of the individual's mental and emotional status.

d. *Diagnosis and Professional Judgment*
Based on the evaluation, the psychologist then makes informed professional judgments or diagnoses. This step encapsulates the essence of the assessment, translating the collected data into actionable insights and conclusions.

The complexity of these assessments is further compounded by the existence of four severity levels of mental and intellectual disabilities, as categorized by American Psychiatric Association (2013). These levels—mild, moderate, severe, and profound—demand distinct considerations and interventions, underlining the importance of having psychological expertise in legal settings. Such expertise is vital to ensure that the nuances of an individual's condition are accurately represented and considered in judicial decisions, thereby preventing unjust sentencing outcomes. Each severity level presents unique characteristics that must be carefully evaluated to ensure equitable treatment and appropriate interventions.

Table 1. Severity levels of mental and intellectual disabilities

Severity Level	Conceptual Domain	Social Domain	Practical Domain
Mild	In preschool children, there doesn't appear to be a notable distinction in disabilities. Nevertheless, as individuals progress into adolescence, they often encounter	People may encounter challenges in social interactions compared to their peers. For instance, they might face difficulties in communication and accurately interpreting signals from others. Issues with emotional regulation,	To enable individuals to function in line with their age, it is essential to offer support and assistance. This is due to the fact that individuals may need help in performing intricate tasks in their everyday lives. Furthermore, support in

	academic challenges, particularly in areas like reading, writing, and math. In adulthood, difficulties may arise in abstract thinking, planning, strategizing, cognitive flexibility, and even short-term memory functionality. Consequently, they may exhibit distinct differences from their peers in a more concrete manner.	limited understanding, and the display of immature social judgment could make them more vulnerable to manipulation by others.	terms of financial assistance, housing, food, and lifestyle is equally vital to ensure that individuals can acquire skills comparable to their peers
Moderate	Throughout their development, individuals with disabilities frequently experience a significant delay in acquiring conceptual skills compared to their peers. In preschool children, language and preschool skills may develop at a slower pace. For school-aged children, progress in areas such as reading, writing, math, and understanding time and money tends to be slow and significantly restricted compared to their peers throughout the academic year. In adulthood, academic skill development generally remains at a basic level, requiring support to apply learning skills in both work and personal	Individuals with disabilities often demonstrate the capability to manage personal needs, such as eating, dressing, and maintaining personal hygiene, akin to adults; however, achieving independence in these domains necessitates more guidance and an extended period for learning. They can undertake independent tasks with minimal and conceptual and communicative skills. Yet, considerable assistance sometimes from coworkers, family members, and other adult supports is essential for However, individuals navigating social norms, may struggle to handling job-related accurately understand or complexities, and fulfilling interpret social cues. Social broader responsibilities, judgment and decision- including scheduling, making skills are impaired, transportation, managing and they require healthcare benefits, and assistance in making overseeing financial affairs. important life decisions. Friendships	Individuals possess significant differences from their peers in social and eating, dressing, and communicative behavior maintaining personal during development. Spoken hygiene, akin to adults; language is usually the however, achieving primary means of social independence in these communication but is much domains necessitates more complex than that of their same-age peers. Social relationships are reflected in their interactions with family and friends, and they have successful friendships and romantic relationships throughout their adult lives.

	life. Continuous daily assistance is crucial for performing conceptual tasks in daily life, and others may need to assume full responsibility for these tasks on behalf of the individual.	with peers are often hindered by communication or social limitations. Social support is crucial in all aspects of life.	
Severe	The achievement of conceptual skills is limited. Individuals generally have a limited understanding of written language or concepts involving numbers, quantities, time, and money. Caregivers provide extensive support for problem-solving throughout life.	In communication, the vocabulary and grammar used are very limited. The language used in communication focuses only on everyday language. Understanding simple language and gestures is common. Relationships with family and loved ones serve as a source of comfort and support.	In managing personal needs such as eating, dressing, and maintaining hygiene like adults, constant supervision is necessary, especially in adulthood. Additionally, individuals are unable to make responsible decisions regarding their own wellbeing or the well-being of others. They require longterm support and special handling. In some individuals, self- injurious behaviors may occur.
Profound	Conceptual skills generally involve the physical world rather than symbolic processes. Individuals can use objects in goal-directed ways for self-care, work, and recreation. Certain visuospatial skills, such as matching and sorting based on physical characteristics, can be acquired. However, co-occurring motor and sensory impairments may hinder the functional use of objects.	The person's grasp of symbolic communication, whether in spoken language or sign language, is significantly limited. They are able to understand basic instructions or prompts. Communication of their wants and emotions is predominantly through nonverbal means rather than through conventional symbolic methods. They show a preference for engaging with well-known family members, caregivers, and trusted acquaintances, initiating and reciprocating in social exchanges via gestures and emotional cues. The presence	Individuals who do not have severe physical disabilities are capable of helping with certain household chores, like bringing plates to the table. They can also engage in everyday activities with assistance. Nevertheless, when physical and sensory impairments coexist, these conditions frequently obstruct active participation in domestic, recreational, and workrelated tasks, limiting the individual's involvement to observation.

	of additional sensory and physical	
	challenges may further restrict their ability to participate in many social activities.	

Article 39 of the New Criminal Code outlines that individuals experiencing a mental disorder with acute recurrence and psychotic symptoms, or those with moderate or severe intellectual disabilities, are exempt from punishment but may face alternative measures. This suggests a differentiation in treatment based on the severity of the mental and intellectual impairments, leaving room for individuals with mild impairments to potentially face criminal sanctions. This raises concerns, especially when considering the American Psychological Association's stance on the challenges faced by individuals with mild impairments. Such individuals often struggle with social interactions, communication, and understanding, making them susceptible to being taken advantage of by others (American Psychiatric Association, 2013).

In the biological approach, psychiatrists are tasked with assessing whether a defendant suffers from a mental disorder that impacts their criminal responsibility. This approach mandates that the judges acquire a medical rationale from a psychiatrist to establish the defendant's criminal liability. It is imperative for judges to seek psychiatric expertise to inform their judgments. The critical role of psychiatrists in this context means that any inaccurate or unqualified psychiatric input could jeopardize the judicial outcome, making the verdict heavily reliant on the psychiatric evaluation (Dewi, 2019). The biopsychological approach merges

biological and psychological assessments, incorporating both the mental or intellectual condition of the defendant and the connection between this mental state and the committed crime.

Individuals with mild mental or intellectual disabilities often require close supervision and face significant challenges in understanding the implications of their actions, including their legality. This inherent difficulty raises serious questions about the fairness and appropriateness of holding them criminally responsible. Given these considerations, it seems more just and effective to guide such individuals toward rehabilitation instead of pursuing traditional legal prosecution and imposing criminal penalties. Such an amendment would align the legal framework more closely with the principles of equity and appropriate treatment for individuals with cognitive challenges. Their need for constant supervision and the difficulty in comprehending the nature of their actions, including the illegality of such actions, questions the appropriateness of holding them criminally responsible (American Psychiatric Association, 2013). Given these challenges, directing individuals with mild impairments towards rehabilitation rather than pursuing legal prosecution and imposing criminal penalties appears to be a more equitable approach. It would be beneficial for the clarity and fairness of the New Criminal Code if Articles 38 or 39 were amended to explicitly include individuals with mild impairments in the category of those who are not subject to criminal sanctions.

Responsibility is contingent upon both intellectual and volitional faculties. Roeslan Saleh points out the critical role of intellectual capacity in discerning responsibility, as it allows an individual to differentiate between acceptable and unacceptable actions. However, volition, while not determining responsibility on its own, is crucial in establishing culpability, of which responsibility is a component. It is through volition that one's actions are guided by an understanding of legal limits (Sudarto, 2018). In essence, being responsible entails awareness of the law's stipulations, holding individuals accountable if they possess the intellectual capacity to recognize their actions as criminal, and deliberately choosing to act within legal norms. Therefore, it is argued that individuals with mental or intellectual impairments who lack the requisite intellectual understanding should not be subjected to criminal penalties.

Particularly, individuals with mild mental or intellectual disabilities who are under the protection of the UDHR and the Convention on the Rights of Persons with Disabilities warrant a focus on rehabilitation rather than punishment. Dr. Marc Tasse highlights the importance of rehabilitation, aiming for their potential recovery and integration into society. Proper support and rehabilitation can enhance their independence and ability to contribute positively to society, contrasting with the adverse effects of criminal prosecution, which can exacerbate stress, deteriorate mental health, and increase the likelihood of relapse (Ahzami & Purnamasari, 2021).

Forensic psychologists play a pivotal role in the criminal justice system, tasked with conducting comprehensive assessments of individuals with mental or

intellectual disabilities. These assessments are critical as they provide key insights that inform judicial decisions. According Thomas et al (2019), the duration of these psychological evaluations varies significantly. This variability is attributed to the diverse complexities involved in assessing intellectual functioning and adaptive behavior. Such assessments are not uniformly straightforward; they must be tailored to the specifics of each case, considering the unique psychological profile and needs of the individual involved.

This variability in assessment duration can potentially clash with the judiciary's operational mandates, such as the Supreme Court's Circular Letter No. 2 of 2014, which sets a five-month maximum resolution time for cases. This directive aims to promote efficiency and reduce case backlog, fostering a system of expedient justice. However, the thorough and nuanced nature of psychological assessments needed for individuals with mental or intellectual disabilities often requires more time, thereby creating tension between the need for swift justice and the requirements of detailed and accurate psychological evaluation.

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Moreover, according to by the Guidelines for Mental Health (Minister of Health Regulation) are designed to streamline the assessment process the stipulated duration for these examinations is only 14 days, extendable by another 14 days if necessary. While this timeframe might seem adequate for straightforward cases, it may not suffice for more complex situations where a deeper understanding of the individual's mental state is required. Such cases may involve multiple sessions of interviews, observations, and tests to accurately diagnose and understand the extent of the disability and its impact on the individual's ability to understand and participate in legal processes.

Therefore, while the guidelines provided by Guidelines for Mental Health are designed to streamline the assessment process, they may not always align with the reality of conducting in-depth forensic psychological evaluations. This discrepancy highlights the need for a flexible approach that can adapt to the complexity of individual cases, ensuring that assessments are both thorough and sensitive to the nuances of mental health issues without being unnecessarily constrained by rigid time limits. This flexibility would help reconcile the objectives of expedient justice with the imperative of conducting comprehensive and just evaluations for individuals with mental or intellectual disabilities.

The disparity between the assessment timelines and the mandated speedy resolution framework complicates the pursuit of justice that is both swift and

sensitive to the needs of defendants with disabilities. The extended duration necessary for a comprehensive assessment, often ranging from three to six months, challenges the principles of simplicity, expeditiousness, and cost-effectiveness enshrined in Article 2(4) of the Judicial Authority Law (2009). These principles are not merely administrative but are foundational to the legal process, aiming for efficiency, timeliness, and public accessibility in legal proceedings. "Simplicity" in this context underscores the need for an efficient legal process that accommodates thorough case examination within the stipulated time frame. "Expeditiousness" prioritizes the prompt resolution of cases to uphold justice without undue delay, emphasizing the importance of swift processes and outcomes. "Affordability" focuses on making litigation costs accessible to all, ensuring justice is not commodified (Lewis, 2011).

The necessity for in-depth psychological evaluations, especially for individuals with mental or intellectual disabilities involved in criminal activities, strains these principles. The requirement for forensic psychologists to confirm disabilities introduces additional layers to the legal process, potentially leading to procedural delays and increased costs. This situation underlines a critical need for balancing the judicial system's efficiency with the imperative to deliver fair and informed justice, particularly for vulnerable populations.

CONCLUSION

The policy outlined in Article 38 of the New Criminal Code, which allows for the reduction of criminal sanctions for individuals with mental and intellectual disabilities, raises significant questions when viewed through the lens of the objectives of punishment. This approach contrasts sharply with the principles outlined in Article 44, Paragraph (1) of the older Criminal Code, which exempts individuals with significant mental health issues or intellectual disabilities from criminal liability due to their inability to fully comprehend their actions or the consequences thereof. The shift in Article 38 towards potentially more punitive measures seems at odds with the foundational goals of rehabilitation and social reintegration that are central to modern correctional philosophy, as further emphasized in the Corrections Law (2022).

This discrepancy highlights a tension between the need to protect society and the rights of individuals who may not be fully responsible for their actions due to mental impairments. Ideally, the legal system should lean more towards rehabilitation rather than punitive measures for those who are deemed incapable of fully understanding or controlling their actions. By potentially subjecting these individuals to reduced penalties rather than complete exemption, Article 38 may not sufficiently acknowledge the limited culpability associated with mental and intellectual impairments.

Furthermore, the effectiveness of Article 38 is also impacted by the practical challenges associated with assessing the severity of mental and intellectual

disabilities. The duration and depth of psychological assessments, as stipulated in various health regulations, may not always align with the judicial timelines prescribed by law, such as the five-month resolution directive outlined in the Supreme Court's Circular Letter No. 2 of 2014. The complexity of accurately diagnosing mental and intellectual conditions necessitates a flexible time frame that can accommodate thorough evaluation, which is critical to ensuring that justice is both fair and informed. The prescribed short duration for assessments may be insufficient for complex cases, potentially leading to decisions that do not fully consider an individual's mental state, thus complicating the application of Article 38.

In conclusion, while Article 38 introduces a mechanism for reducing penalties for those with mental and intellectual disabilities, it requires careful consideration to ensure it aligns with the objectives of punishment and the practical realities of psychological assessment. A more nuanced approach that fully considers the rehabilitative needs of the individuals and the procedural demands of thorough assessments is essential for the fair application of justice.

In light of the unique challenges faced by individuals with mental or intellectual impairments, it is essential that the criminal justice system integrates a collaborative model with forensic psychology to provide tailored rehabilitative care and treatment, as sanctioned by Article 103 paragraph (3) of the New Criminal Code. This approach should emphasize rehabilitation over punitive measures, aligning with the principles of Restorative Justice to ensure fair and humane treatment. By prioritizing the well-being of these individuals, the justice system can fulfill its role in upholding both justice and compassion, fostering a legal environment that accommodates the needs of the most vulnerable members of society and supports their reintegration into the community. This strategy not only adheres to the legal framework set by Article 53(2) of the New Criminal Code, which advocates for prioritizing justice over strict legal certainty but also ensures that court decisions are effectively informed by expert assessments from forensic psychologists.

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