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## Comparison of Indonesian and Norwegian Laws Regarding Criminal Responsibility of Perpetrators with Intellectual/Mental Disabilities

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### **Abstract**

*The criminal responsibility of offenders with mental or intellectual disabilities varies significantly across legal systems, influencing policies within the criminal justice framework. In some jurisdictions, provisions exist allowing for the consideration of disabilities as grounds for exoneration or mitigation of punishment. The reform of Indonesia's Criminal Code in 2023, particularly Articles 38 and 39, addresses the issue of criminal responsibility for individuals with mental or intellectual disabilities. However, challenges arise when the concept of diminished criminal liability is tied more to the defendant's mental or intellectual condition rather than their culpability in the criminal act itself. This study aims to examine and compare these legal regulations and policies with those of Norway. Using a juridical-normative method with legislative and comparative approaches, the research seeks to elucidate the differences in how Indonesia and Norway handle the criminal responsibility of offenders with disabilities. By doing so, this paper aims to clarify the regulatory frameworks governing the exoneration and reduction of criminal liability for individuals with disabilities in Indonesia, ensuring that law enforcement practices align with the rights and considerations afforded to such individuals*

**Keywords:** Disabled Offenders, Criminal Liability, and Comparative Studies

## A. INTRODUCTION

Criminal liability represents the legal consequences faced by individuals who commit unlawful acts. It hinges on the perpetrator's culpability for their actions, which are deemed illegal and devoid of justifiable grounds for exemption. Modern legal frameworks universally address the issue of how individuals with mental disabilities should be held accountable for criminal offenses. The formulation of criminal responsibility within a legal system holds profound implications both conceptually and practically (AlfRoss, 1975). It underscores the fundamental principle that criminal law necessitates accountability for unlawful conduct, positioning responsibility squarely on the offender for their criminal acts. The concept of criminal responsibility is intricately tied to the practical aspects of punishment, serving a preventive function within the framework of legal consequences. This perspective emphasizes the role of factual circumstances in determining culpability, highlighting its preventive dimension as prescribed by law.

E. Y. Kanter and S. R. Sinaturi in their book principles of criminal law in Indonesia and their application, explain that elements and responsibilities include mental states which include; not disturbed by continuous or temporary illness, not disabled in growth (nervous, idiotic, imbecile, etc.), not disturbed by surprise, hypnotism, overflowing anger, subconscious/reflex influences. In other words, he is conscious. Not being able to take responsibility is an abnormality in the maker's mental state, due to a mental defect or mental illness. In other words, a person is deemed capable of being responsible if this situation is not found. Many criminal cases occur where the perpetrator is a person with a mental disorder. People with mental disorders find it difficult to realize the actions they commit. So when asked to be responsible it is seen as not having the ability to be responsible. The Criminal Code provides provisions regarding reasons for not being able

to be held criminally responsible due to mental incapacity. In 2016, the Supreme Court of the Republic of Indonesia issued a Circular Letter of the Supreme Court of the Republic of Indonesia No. 2 of 2016 concerning Handling of Defendants and/or Convicts Who Experience Mental Disorders. This circular provides guidelines for courts in handling cases involving defendants and/or convicts with mental disorders, including mental or intellectual disabilities. Sentencing of criminals with disabilities is an important topic in the criminal justice system. Disability refers to a physical, mental, intellectual, or sensory condition that can affect an individual's function in interacting and participating in society. In the context of criminal law, protecting the rights and welfare of persons with disabilities is of particular concern. The handling of disabled offenders in the criminal justice system must consider various factors, including the individual's ability to understand the actions committed, the mistakes committed, and the impact of punishment on them. Principles such as justice, equality and humanity need to be integrated in criminal law enforcement against persons with disabilities.

The criminal prosecution of perpetrators with disabilities is a complex and sensitive issue in the legal systems of many countries, including Indonesia and Norway. Although there are similarities in the objectives of criminal law, namely providing justice and maintaining social order, the approaches used by the two countries in dealing with perpetrators with disabilities can be different. Indonesia, as a developing country with a large population, faces unique challenges in managing the criminal justice system for people with disabilities. Persons with disabilities in Indonesia often face difficulties in gaining access to a fair and adequate justice system. Factors such as lack of awareness, limited accessibility, and social and economic discrimination often prevent people with disabilities from obtaining proper legal protection.

On the other hand, Norway, as a developed country with a strong social welfare system, has a more inclusive approach towards offenders with disabilities in the criminal justice system. Norway places a strong emphasis on the rehabilitation and social reintegration of disabled offenders, in line with humanitarian and human rights principles. This approach aims to ensure that disabled offenders are given the opportunity to improve themselves and avoid repeating criminal behavior.

In a comparison between Indonesia and Norway, there are significant differences in the criminal law approach towards perpetrators with disabilities. Indonesia, with its complex social and economic challenges, still needs to develop policies and practices that are more inclusive and pay attention to the rights of people with disabilities in the criminal justice system. Meanwhile, Norway has taken steps forward in ensuring that disabled offenders receive fair treatment and opportunities for recovery and social reintegration. This research looks further at the comparison between Indonesia and Norway in terms of accountability provisions for perpetrators with mental/intellectual disabilities. This research involves a comparative analysis between existing criminal law policies in Indonesia and Norway, including laws, regulations and guidelines related to legal protection for perpetrators with mental/intellectual disabilities and also focuses on judicial procedures, case handling and assessment of mental disability capabilities/intellectual perpetrator. This includes an evaluation of how the justice systems in both countries recognize and consider mental/intellectual disability as a relevant factor in sentencing. In a comparative theoretical study between Indonesia and Norway regarding criminal punishment for perpetrators with mental/intellectual disabilities, there are several relevant perspectives and concepts. This approach views mental/intellectual disability as a medical or health condition in the context of criminal

justice. This approach will focus on medical evaluation and diagnosis of offenders with mental/intellectual disabilities as a factor influencing their ability to understand or control their behavior. This research can be carried out in terms of assessments and actions taken by the Indonesian and Norwegian criminal justice systems in recognizing and considering conditions of mental/intellectual disability in sentencing. This approach emphasizes efforts for social inclusion and reintegration of perpetrators with mental/intellectual disabilities after conviction.

The focus is on the rehabilitation and support provided to offenders to ensure that they can live independently, avoid repeating criminal behavior, and contribute positively to society. In a comparison between Indonesia and Norway, it is important to assess the steps taken by both countries in facilitating the reintegration and social inclusion of perpetrators with mental/intellectual disabilities after they have served their criminal sentences. In comparing the approaches of Indonesia and Norway regarding the imposition of criminal penalties for perpetrators with mental/intellectual disabilities, it is important to look at the legal aspects, policies, practices, as well as the social and cultural context of each country. By considering this theoretical framework, we can gain a more comprehensive understanding of the differences and similarities in criminal law approaches towards perpetrators with mental/intellectual disabilities between Indonesia and Norway. In a comparison between Indonesia and Norway regarding criminal penalties for perpetrators with mental/intellectual disabilities, there are several problems and gaps that can be identified, there is still low awareness and limited understanding of mental/intellectual disabilities in society both in Indonesia and in Norway. This can have an impact on the handling of cases involving perpetrators with mental/intellectual disabilities in the criminal justice system. Further efforts are needed to increase

understanding and awareness of mental/intellectual disabilities and their implications in the context of criminal law, even in the accessibility of the justice system in both Indonesia and Norway, accessibility of the justice system for people with mental/intellectual disabilities is still a problem. People with mental/intellectual disabilities may face difficulties understanding legal processes, communicating with law enforcement, or gaining access to legal assistance.

Concrete steps are needed to improve the accessibility of the justice system for people with mental/intellectual disabilities, such as the provision of sign language interpreters, physical adjustments, or appropriate assistance. In this way, steps can be taken to strengthen legal protection and the rights of perpetrators with mental/intellectual disabilities and increase inclusion and fairness in the criminal justice systems in both countries.

Based on the background above, the problems raised are two formulations of the problem, the first is the similarities and differences in criminal liability for perpetrators with intellectual/mental disabilities in Indonesia and Norway, the second is the reason for eliminating and reducing criminal penalties which can be adapted by Indonesia from a comparative study of the legal responsibility of perpetrators with intellectual or mental disabilities.

To conduct comparative research between Indonesia and Norway regarding criminal responsibility for perpetrators with mental/intellectual disabilities, several research methods that can be used are juridical research and comparative research. Normative juridical research is one approach in legal research that focuses on the analysis of legal documents and interpretation of applicable legal norms. This method is used to

understand the theoretical aspects and application of legal norms and to identify the legal principles underlying a problem. E. Saefuah Wiradipradja explained that normative legal research is "legal research that examines positive legal norms as the object of study". Law is no longer seen as merely a utopian thing but has been institutionalized and written in the form of existing norms, principles and legal institutions. This legal research uses literature study as a basis for answering these problems. Literature study is needed to collect the necessary legal materials, such as primary legal materials which include relevant laws and regulations in writing. There are secondary legal materials, such as books, scientific works, and other materials used to provide explanations of several terms used in this writing. The orientation in this writing uses a statutory approach and a comparative approach. The statutory approach is carried out by reviewing and analyzing various laws and regulations related to the legal issue being handled. The comparative approach is an approach that refers to a pattern of comparison by placing two cultural things on the same side and also explaining the different sides. And this method's case study approach involves in-depth analysis of concrete cases in Indonesia and Norway involving perpetrators with mental/intellectual disabilities. In this case study, researchers can analyze the judicial process, mental/intellectual ability assessments, criminal sentences, as well as rehabilitation and reintegration steps taken in these cases. This provides a deeper understanding of the implementation and impact of existing practices.

The choice of research method will depend on the research objectives, data availability, and the specific research context. In comparative research, it is important to use methods that allow accurate and objective comparisons between Indonesia and Norway in the context of criminal punishment for perpetrators with mental/intellectual disabilities.

## **B. RESULT AND DISCUSSION**

### **Similarities and Differences in Criminal Liability of Persons with Intellectual/mental Disabilities in Indonesia and Norway**

Talking about the responsibility of perpetrators with intellectual/mental disabilities, it is the state's responsibility to realize society's hopes for protection and a sense of security from threats that violate human rights as stated in Article 28G paragraph (1) of the 1945 Constitution as the basis for all forms of crime that occur in In society, there needs to be firm action and a deterrent effect on perpetrators. A crime can arise at any time without knowing who will commit a criminal act. Paul Mudigdo defines crime as a human act which is a violation of norms, where it is felt that it can be detrimental, annoying, so it must not be allowed to develop in society by enshrining it in norms. criminal law accompanied by threats of punishment.

Norway regulates criminal liability for perpetrators of intellectual/mental disabilities in the Norwegian Criminal Code of 1902, which came into force in 1905 and underwent changes until 1961 or better known as The General Civil Penal Code. According to Marc Ancel, the Norwegian Criminal Code is the result of the influence of the social defense movement which is a further development of the modern school (Arief, 1996: 121). A special characteristic of the Norwegian Criminal Code is the combination of new ideas with traditional bills. Apart from that, it is also based on the results of comparative criminal law. (The Norwegian Penal Code. Seeing these facts, this Criminal Code is explicitly able to regulate in a modern way how crimes can be committed by perpetrators with intellectual/mental disabilities.



Criminal liability in the Norwegian Criminal Code is included in Part One which is the General Part containing the scope of application of the Norwegian Criminal Code. Types of crimes and actions in the Norwegian Criminal Code are regulated in one chapter consisting of Part I Chapter II (Penal and Correctional Measures) Article 15 to Article 39. The 2023 Indonesian Criminal Code which regulates crimes and actions in one chapter but in separate sections which are almost the same with the Norwegian Criminal Code.

Indonesia and Norway are also looking at the criminal responsibility received by perpetrators with intellectual/mental disabilities. The following are the provisions in the 2023 Criminal Code in Indonesia: Article 38 of the Criminal Code, perpetrators with intellectual/mental disabilities who are found to have committed a criminal offense will receive a reduced sentence and/or be subject to action. Different exceptions in Article 39 Perpetrators with intellectual/mental disabilities in a state of acute relapse accompanied by psychotic features and/or moderate or high degrees are not subject to criminal penalties, but may be subject to action. In this case, it can be clearly stated that Article 38 of the Criminal Code regulates the implementation of criminal reductions and Article 39 is the reason for abolishing criminal penalties. This is also implemented in Norway. The reason for abolishing criminal penalties is a regulation that is primarily aimed at judges. This regulation determines under what circumstances a perpetrator, who has fulfilled the formula for the offense that should be punished, is not punished.

Norway has something in common, namely in Section 44 of the Norwegian Criminal Code, perpetrators who are psychotic/unconscious, mentally retarded to a high level who commit a criminal act will not be subject to punishment (reason for expunging the crime) and Section 56c regulates that the court has a policy of reducing the sentence below the minimum for the perpetrator. with a disability (reason for reducing the sentence).

However, the criminal justice system continued to update its definition of criminal responsibility in 1994 (Ministry of Justice, 1994). The classification of persons with the most serious offenses and those with a high risk of reoffending is separated into responsible and irresponsible offenders. Irresponsible offenders are classified into 2 groups: someone who suffers from mental illness and someone who is intellectually disabled (IQ below 55). In this case, if the perpetrator falls outside these qualifications and is found to be responsible for his actions when committing a crime, he can be sentenced to detention. The existence of legal reforms outlined in the Forensic Law in Norway in 2002 regulates how a person who is found not responsible due to a serious mental disorder is sentenced and placed in a regional mental hospital. The boundaries of the Norwegian Criminal Code are relatively narrow, based on mandatory treatment sentences for perpetrators with intellectual disabilities. Attached is a comparison table regarding regulations for perpetrators of intellectual/mental disabilities:

**Table. 1**  
**Comparison of Criminal Regulations and Sentencing**

No.	Aspect	Indonesia	Norway
1.	Legal Basis	<p><b>Article 38 of the Criminal Code:</b> "Any person who at the time of committing a crime has a mental disability and/or intellectual disability may have their sentence reduced and/or be subject to action."</p> <p><b>Article 39 of the Criminal Code:</b> "Any person who at the time of committing a crime has a mental disability which is in a state of acute relapse</p>	<p><b>Section 44 Norway General Civil Penal Code :</b> <i>A person who was psychotic or unconscious at the time of committing the act shall not be liable to a penalty. The same applies to a person who at the time of committing the act was mentally retarded to a high degree</i></p> <p>(Perpetrators with high levels of mental disability cannot be punished)</p> <p><b>Section 56c Norway General Civil Penal Code :</b></p>

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and is accompanied by psychotic features and/or a moderate or severe degree of intellectual disability cannot be punished, but can be subject to action.

*“The court may reduce the penalty below the minimum prescribed for the act and to a milder form of penalty: c) when the offender at the time of committing the act had a serious mental illness with a considerable reduced capacity for making a realistic assessment of his relationship to his surroundings, but was not psychotic, cf. section 44, or was slightly mentally retarded or acted under a severe disturbance of consciousness that was not a consequence of self-induced intoxication;”*

**Section 52 Norway General Civil Penal Code :**

*“1. The court may in its judgment decide that determination or execution of the penalty shall be deferred for a period of probation. A decision to defer execution may only be made in regard to a custodial sentence or a fine.*

*2. If a custodial sentence is imposed, deferment of its execution may be limited to part of the sentence. The unsuspended part of the sentence shall then not be fixed at less than 14 days.*

*3. In addition to a suspended sentence the court may impose an unconditional fine. This*

*applies even if fines are not prescribed as a penalty for the offence committed.*

*4. The provisions relating to a suspended sentence apply correspondingly to a writ giving the option of a fine or confiscation or both as far as they are appropriate.”*

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			(Pengadilan Norwegia dapat menanggukhan hukuman penjara sebagaimana ketentuan Pasal <i>a quo</i> )
2.	Legal Policy	Implementing general criminal penalties with the principle of reducing penalties for intellectual/mental disabilities. The application of "actions" for disabled perpetrators is regulated in Article 103 of the Criminal Code.	Punishment is based on a utilitarian perspective. Has a system of preventive detention/preventive supervision (PS) which is used in sentencing criminals with disabilities. The offender is placed under the supervision of the probation service. Given to disabled offenders with crimes: serious violence, sexual crimes or life-threatening arson, with a high risk of recidivism (Ministry of Justice, 1994).  Mandatory care (MC) to distinguish between irresponsible offenders and those with mental disorders and intellectual disabilities, and to reduce the number of offenders sentenced with this special option (Mæland, Sagfossen, & Revis, 2008)
3.	Types of Mental and/or Intellectual Disabilities	<b>Mental Disabilities</b> Psychosocial: schizophrenia, bipolar, depression, anxiety, and personality disorders and developmental disabilities that affect social interaction abilities: autism and hyperactivity <b>Intellectual Disability:</b> Slow learning, mental disabilities, and down syndrome.	<b>Intellectual Disability</b> IQ below 55 <b>Mental Disability</b> Borderline Disability (IQ

Based on table 1 above, it shows that there is a legal comparison between Norway and Indonesia regarding the responsibility of perpetrators with

intellectual/mental disabilities. First, regarding the legal basis of the two countries, seen from their respective countries' Criminal Codes. Second, legal policy is a form of action or policy carried out by a country if a case is found where the perpetrator is a person with a disability. Third, the type or classification of intellectual/mental disabilities from the two countries.

**Table. 2**  
**Prevalence of prisoners with intellectual disabilities in research over the last 10 years (2009)**

<b>Reference</b>	<b>Subject</b>	<b>Prevalence</b>
Hayes et al., 2007	140 prisoner	7.1% IQ<70
(Chitsabesan et al., 2006)	301 young offender	20%IQ<70
(Murphy et al., 2000)	264 prisoner	28.8% IQ<70
(Hayes,2000)	339 prisoner	20% IQ<70
(Petersilia, 2000)		10%IQ<70
(Dwyer & Frierson, 2006)	270 accused of murder	15.5% IQ<70
(Søndenaa et al., 2008)	143 prisoner	10,8% IQ<70

Source: Doctoral theses at NTNU, 2009:6

Based on table 2, it is known how doctors analyze IQ to make it easier to classify perpetrators as having disabilities or not. This is a determinant to find out whether the perpetrator can be held responsible for his actions, or not, or is subject to reasons for

eliminating the criminal reduction for the acts committed by his intellectual/mental disability.

### **Reasons for Abolition and Reduction of Crimes that Indonesia can Adapt from Comparative Studies of the Law of Responsibility for Offenders with Intellectual/Mental Disabilities**

At this time, the need to implement accountability for perpetrators with mental/intellectual disabilities is very important, but Indonesia is still looking at different concepts of criminal reduction. The concept of criminal reduction should be attached to the defendant's role in the crime committed, not to his mental/physical condition. In Indonesia there is too much focus on mental/intellectual conditions as if classifying someone who has a disability as being given criminal leniency. Adapting criminal law related to criminal liability in Norway to Indonesian law can be carried out by the government by making special regulations related to the Criminal Procedure Law in implementing punishment for perpetrators with intellectual disabilities/ mentally. Norway has a different view on the criminal liability system for disabled offenders. The reasons for expunging sentences in the Norwegian criminal justice system are focused on someone who is psychotic/unconscious and has high disabilities. However, the court, on the basis of reducing the sentence applied, focuses on certain acts committed by perpetrators with disabilities even though they have serious mental/intellectual retardation.

The most basic difference is clearly that in Article 38 of the Criminal Code, when applied, the reduction of punishment for those with disabilities is not based on the actions they commit because the reduction of punishment can be compared to someone who has the capacity to be responsible. Article 56c in Norway, as above, sees a reduction

in criminal penalties through acts committed by perpetrators with intellectual/mental disabilities but who have self-awareness, as stated in this article, sentences are given below the minimum sentence when the perpetrator has a serious mental condition with minimal ability to assess his environment or is retarded. self-inflicted mental illness. This explains that Norway is trying to remain firm in complying with the law regarding all actions that harm other people, especially serious actions.

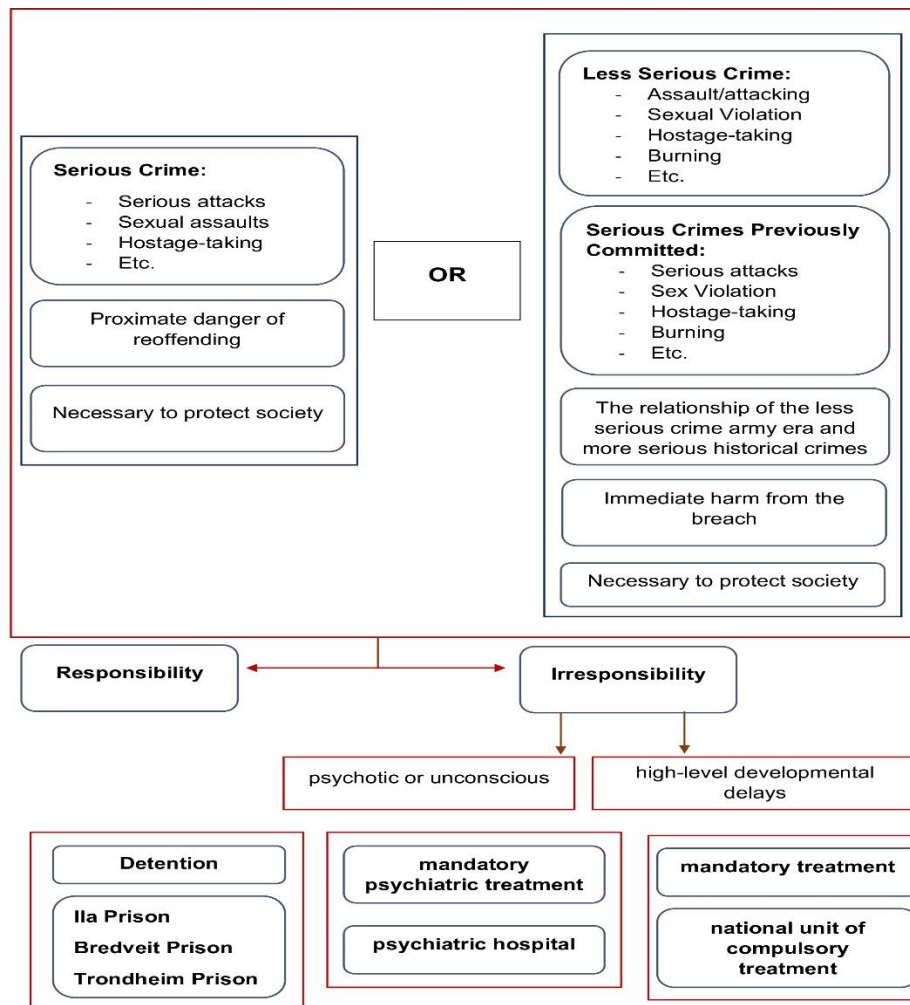
The most basic difference is clearly that in Article 38 of the Criminal Code, when applied, the reduction of punishment for those with disabilities is not based on the actions they commit because the reduction of punishment can be compared to someone who has the capacity to be responsible. Article 56c in Norway, as above, sees a reduction in criminal penalties through acts committed by perpetrators with intellectual/mental disabilities but who are aware of themselves, because as stated in this article, sentences are given below the minimum sentence when the perpetrator has a serious mental condition with minimal ability to assess his environment or is retarded. self-inflicted mental illness. This explains that Norway is trying to remain firm in complying with the law regarding all acts that harm other people, especially serious acts.

Regulations regarding criminal responsibility that can be adapted by Indonesia using the comparative method described previously are regarding criminal responsibility for perpetrators with mental/intellectual disabilities as a reason for expunging sentences and reducing sentences. The forensic law in Norway also explains how criminal responsibility is classified for perpetrators of crimes. All improvements in the criminal justice system in Norway continue to be carried out for the expected purposes. There is a need for legal certainty regarding criminal sanctions that can be imposed on perpetrators with intellectual/mental disabilities as a guide for perpetrators to be able to realize their

actions. There are standards and provisions regarding who can be classified as having an intellectual/mental disability and how Norway is trying to create a fair legal umbrella in the criminal justice system for disabilities.

Figure . 1

Forensic law in Norway since 2002 (Revis,2007)



Regarding the provisions of sanctions and accountability, the Norwegian system has a fairly strict policy, which does not focus on the intellectual/mental disorders experienced by the perpetrator but rather the Norwegian system focuses on the need for prison accommodation, cooperation, multidisciplinary,



recidivism, alternatives and evidence-based research (Ministry of Justice, 2008). Currently, Norway has an alternative in the form of supervision and treatment, often called preventive supervision, provided by national units on a mandatory basis for treatment, although local services work together to adapt services for each offender. The national unit for treatment has major responsibility for public safety and the rehabilitation of offenders. This supervision is considered to be less effective considering the disturbance experienced by the perpetrator, causing a feeling of awkwardness in being treated and concerns that not needing services could cause major risks to other people (Hayes, 2004; Holland et al., 2002; Jones, 2007). So finally the mandatory treatment punishment model is considered helpful in the criminal justice system in Norway for disabled offenders, providing community services aimed at offenders with intellectual/mental disabilities has been supported internationally (Barron et al., 2004) and in an article (Benton & Roy , 2008) reports explain that services in the community reduce risk, are more cost-effective, and provide high-quality community support compared to more limited forensic hospitals as one of the aims of implementing criminal reduction reasons in Norway.

Regarding the accountability of perpetrators with disabilities, laws and the Indonesian Criminal Code need to have regulations that are able to accommodate the rights of perpetrators with disabilities and recovery for the disabilities experienced to minimize legal violations committed on the basis of minimal intellectual/mental retardation in the perpetrators. Indonesia must have a clear, firm direction towards the law but remain wise in dealing with all forms of criminal acts committed by various parties, especially those committed by

perpetrators with intellectual/mental disabilities, community services can also be implemented as part of helping and controlling the progress of perpetrators realizing the actions they have committed so that A fair criminal justice system can be achieved for perpetrators with intellectual/mental disabilities who need to pay attention to the rights of the perpetrator's personal disorders.

### **C. CONCLUSION**

Indonesia and Norway are also looking at the criminal responsibility received by perpetrators with intellectual/mental disabilities, the following are the provisions in the 2023 Criminal Code in Indonesia: Article 38 of the Criminal Code, perpetrators with intellectual/mental disabilities who are found to have committed a criminal offense will receive a reduced sentence and/or be subject to action, Norway regulates criminal liability for perpetrators of intellectual/mental disabilities in the Norwegian Criminal Code of 1902, which came into force in 1905 and underwent changes until 1961 or better known as The General Civil Penal Code.

Regulations regarding criminal responsibility that can be adapted by Indonesia using the comparative method described previously are regarding criminal responsibility for perpetrators with mental/intellectual disabilities as a reason for expunging sentences and reducing sentences. The forensic law in Norway also explains how to classify criminal responsibility for perpetrators of crimes. All improvements in the criminal justice system in Norway continue to be carried out for the expected goals.

A comparison between Indonesian and Norwegian criminal law in terms of criminal liability for perpetrators with intellectual/mental disabilities can pay attention to several important aspects. While this advice attempts to provide a general overview, it is

important to note that the law can be very complex and varied, and that this advice does not replace specific legal advice from a professional. However, here are some points that may serve as a comparison between the two countries. Legal treatment of perpetrators with disabilities, both countries pay attention to the protection and welfare of perpetrators with intellectual or mental disabilities. Typically, rehabilitation or treatment approaches take precedence over harsh punishment. The goal is to help offenders recover and engage in society in a way that suits their abilities.

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