








LEX JOURNAL: KAJIAN HUKUM DAN KEADILAN

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CRIMINAL LIABILITY OF CRIMINAL OFFENDERS WITH DISABILITIES

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ABSTRACT

This research aims to analyze the form of responsibility for perpetrators of criminal acts with special needs (disabilities) in various disability categories, as it is known that persons with disabilities in the context of both perpetrators and victims often get discriminatory treatment and are not considered capable of being responsible. For this reason, this thesis analyzes whether persons with disabilities, especially in the context of being perpetrators of criminal acts, are categorized as capable of being responsible or not based on the perspective of criminal law and the Law on Disabilities, and what form of legal protection for perpetrators of criminal acts with special needs (disabilities).

Keywords: Liability, Disability, Legal Protection

1. INTRODUCTION

The development of law in Indonesia, particularly in the field of criminal law, tends to lead to the specialization of regulation in almost all aspects of human life. The development of this legal institution has the potential always to create a *legal explosion*, namely a law that expands, increasing its regulation in various fields, which tends always

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to replace other control mechanisms that exist in a society. A criminal law system requires the existence of criminal liability. Criminal liability in Indonesia is the result of the adoption of Dutch *law*, which adheres to the *civil law system*, through the principle of concordance; the Criminal Code applies in Indonesia. This Dutch heritage law is far behind the development and needs of society for better criminal law regulation.

Criminal responsibility is a form of action from the perpetrator of a criminal offense against the wrongdoing. This leads to the criminalization of the offender if he has committed a criminal offense and fulfills the elements that have been determined in the law. From the point of view of the occurrence of a prohibited act, a person will be held accountable for these actions if the act is unlawful and there is no reason for the elimination of the punishment. From the point of view of the ability to be responsible, only someone "capable of responsibility" can be held accountable for the crime. Roeslan Saleh wrote that "In talking about criminal responsibility, it cannot be separated from one or two aspects that must be seen with philosophical views. One of them is justice, so that the discussion of criminal liability will provide clearer contours. Criminal responsibility as a matter of criminal law is intertwined with justice as a matter of philosophy".

About criminal liability as stipulated in Article 44 of the Criminal Code, namely: "(paragraph 1) Any person who commits an act for which the perpetrator cannot be held accountable due to a defect in mental development or an illness shall not be punished;", "(paragraph 2) If it turns out that the act cannot be held accountable due to a defect in mental development or an illness, the judge may order that the person be admitted to a mental hospital for a maximum period of one year as a probationary period".

To determine whether a defendant/examined person is psychiatrically disturbed, a psychiatric expert is required, and their testimony is requested. Psychiatric expert testimony in court in the form of oral and written (*Visum et Repertum Psychiatricum*) is

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needed as evidence to enlighten the judge about the defendant's mental condition and ability to take responsibility. A dignified state respects, values, fulfills, and provides protection for all its citizens without exception. The issue of people with disabilities or people with different abilities, often known as "difable" (differently abled people) or now known as "disability", is a problem that rarely gets attention from the Government and society.

Based on Article 9 letter b of the Draft Law on Persons with Disabilities, it is stated that persons with disabilities are recognized as legal subjects who are supporters of rights and obligations. Consequently, persons with disabilities can sue or be sued like other legal subjects before the court. People with special needs do not mean that people with disabilities of a certain variety are immune to the law or cannot be responsible in carrying out legal actions, including even committing a criminal offense. Herein lies the State's obligation to protect the human rights of its citizens, whoever they are. People with special needs do not mean that people with disabilities of a certain variety become immune to the law or cannot be responsible in carrying out legal actions, including even committing a criminal offense. This is where the State's obligation to protect the human rights of its citizens, whoever they are, lies.

In 2017, a person with a physical disability with the initials A, alias Aji, was arrested for killing and robbing his friend, AN, due to revenge for being insulted and accused of stealing. In Verdict Number 574/Pid.B/2017/PN.BKS, the judge did not consider the condition of disability because the perpetrator was considered conscious and physically healthy. In contrast, in 2019, the Tangerang District Court decided that Wendra Purnama, who has an intellectual disability, had committed a criminal offense as charged by the Public Prosecutor, namely Article 112 paragraph (2) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, but could not be held criminally

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responsible because it referred to Article 44 of the Criminal Code. The judge declared Wendra free from prosecution (*Onslag van recht vervolging*).

These two cases demonstrate the importance of addressing the needs of persons with disabilities in the criminal justice system, as they often face barriers and are prone to becoming secondary victims. The old Criminal Code (Law No. 1/1946) and the new Criminal Code (Law No. 1/2023) only regulate criminal liability for persons with mental and intellectual disabilities, but do not include physical, sensory, and multiple disabilities as recognized in Law No. 8/2016. This creates discrepancies between regulations and demonstrates the need for the role of psychiatrists and a more equitable approach in the criminal law system for all persons with disabilities.

2. RESEARCH METHODS

The research used is normative legal research is a research process to examine and study the law as norms, rules, legal principles, legal principles, legal doctrines, legal theories, and other literature to answer the legal problems studied. Using a statutory approach and a conceptual approach. The types and sources of data in this research include primary legal materials, secondary legal materials, and tertiary legal materials. Techniques for reviewing and collecting both legal materials using literature studies, be it through libraries, the internet, e-journals, and others.

3. DISCUSSION

Criminal responsibility of criminal offenders with special needs in the Old Criminal Code

Every legal system should, in various ways, regulate how to hold people who have committed criminal offenses accountable. It is said 'in various ways' because different

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approaches to how a legal system formulates criminal liability influence both the concept and implementation.

In both civil law and common law countries, criminal liability is generally formulated negatively. This means that in Indonesian criminal law, as in other civil law systems, the law formulates the circumstances under which the perpetrator may not be held accountable.

Two factors influence the ability to be responsible, namely the will and the will or reason. Will is something that regulates behavior, consciously realizing an act is allowed or not, while reason is something that can distinguish whether an act is allowed or not. In the Criminal Code, a person can be held accountable for his actions if he commits an unlawful act; a person is declared unlawful if he fulfills 3 elements, namely, guilt (*culpa*), thinking power (mental ability), and age.

For the existence of criminal responsibility, one of the necessary criteria is responsibility. The Criminal Code does not contain a formulation of when a person is capable of being responsible, but only points to provisions in that direction. The ability to be responsible is necessarily related to one's psychological condition. The ability to be responsible is always associated with criminal responsibility. This makes the ability to be responsible one of the elements of criminal responsibility. The ability to be responsible is also a reference to determine the punishment of a person, and must be proven to exist or not.

In terms of the ability to be responsible, Simons states that "the ability to be responsible can be defined as a psychological state that is such, which allows for an effort to punish both from the point of view of the law and the person. A person who can be responsible must be mentally healthy, namely: a) Able to know or realize that what they do is against the law; and b) can determine their own will about what they do.

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The formulation of criminal responsibility negatively can be seen from the provisions of Article 44 of the Criminal Code on incapability of responsibility, Article 48 of the Criminal Code on force, Article 49 of the Criminal Code on forced defense, Article 50 of the Criminal Code on acts to carry out statutory provisions and Article 51 of the Criminal Code on acts to carry out official orders. All of them formulate matters that can exclude the perpetrator from the imposition of punishment. The exclusion of criminal imposition here can be read as the exclusion of criminal responsibility. In this case, it can mean the exclusion of fault.

Thus, the concept of criminal responsibility is a necessary condition to punish a criminal offender. Meanwhile, based on the monodualistic idea (*daad en dader strafrecht*), the due process of determining criminal liability is not only carried out by taking into account the interests of society, but also the interests of the perpetrator himself. The process depends on the fulfillment of the conditions and circumstances of the offender's culpability, so that it is legitimate to impose punishment.

The ability to be responsible is not explicitly explained in the Criminal Code. Article 44 paragraph 1 only discusses the state of a person who is unable to be responsible, or if there is no one of the two mental states mentioned in the paragraph, namely Defective soul in growth and development, According to Kanter and Sianturi, the state of the soul that is defective due to growth is defined as "dumb", half-baked, or idiot, or imbecile, and is caused by the growth of the state of the soul that has been delayed. As for the disturbed soul due to a disease, according to Kanter and Sianturi, the disease referred to as "disturbed soul" is caused by a previously healthy soul having a disease called madness or pathological disease (*pathologische ziekteestand*). A person may suffer from a long-lasting illness, but sometimes only temporarily or again. In this case, Article 44 of the Criminal Code applies to relapses of insanity.

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Mentally disabled people with developmental disabilities cannot be convicted because they have disabilities from birth or during their infancy. Mentally disabled people with this condition usually have the temperament of a child tucked into an adult body. The level of mental disability differs from one individual to another; the term "developmental disability" is not universally accepted, and the function or disorder in a person's psyche can only be explained medically. As a result, the judge must call a psychiatrist or psychologist to explain. People with mental disabilities (mental retardation) are classified into 3 (three) parts from severe to moderate levels, according to Kartini Kartono, a psychology expert, namely severe mental disabilities (idiot), moderate mental disabilities (imbecile); and mild mental disabilities (debil).

Idiots usually have an IQ of less than 25. Their intellect and intelligence cannot develop; they cannot understand or learn anything. The imbecile IQ ranges between 25 and 49. They are similar to children aged three to seven. They cannot control themselves and take care of themselves. However, they can still be trained to become more sensitive to danger and to protect themselves from physical harm.

In addition, someone who is debilitated or has low thinking power (IQ 52-68) should not be categorized as incapable of responsibility (*onotoroekeningsvatbaarheid*) and can only be categorized as less capable of responsibility (*verminderdedetoerekeningsvatbaarheid*), where a person is considered capable of taking responsibility for their actions, but their shortcomings are considered as reasons to mitigate the crime.

Thus, the Old Criminal Code, particularly Article 44 on disability, has several weaknesses regarding persons with disabilities. One of them is the use of general and less specific terms, such as "mental disorder" and "imperfect growth of mind," which makes interpretation and application difficult and subjective. General terms in Article 44, such

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as "mental disorder" and "incomplete development of mind," can be interpreted differently by judges, legal experts, and medical experts. This causes uncertainty in the application of Article 44 and can lead to discrimination. Article 44 does not specifically mention different types of disabilities, raising doubts as to whether all types of disabilities, including intellectual disabilities, can be protected by this article. In addition, if Article 44 is related to criminal liability for disabilities, then perpetrators with disabilities are held criminally liable like normal people, meaning that Article 44 of the old Criminal Code regulates the excuse for perpetrators of criminal acts in the category of mental disorders (insanity) only.

Criminal Liability for Disability in Law Number 1 Year 2023 (New Criminal Code)

The government has gone through a long process in formulating the new Criminal Code as a replacement for the old Criminal Code inherited from the Dutch colonial era, which reflects efforts to reform the law to be in line with the times. Finally, in early 2023, the new Criminal Code was passed through Law Number 1 Year 2023 on the Criminal Code, which is three years after its ratification. However, in the new Criminal Code, provisions regarding people with physical disabilities are not specifically regulated. The regulations listed only focus on persons with mental disabilities and intellectual disabilities in Article 38, which states that perpetrators of criminal offenses with mental and/or intellectual disabilities may be granted criminal leniency or subject to certain legal actions. In addition, Article 39 stipulates that if a person with mental disability experiences an acute relapse condition accompanied by certain circumstances, then he/she can be exempted from criminal sanctions, although it is still possible to be subject to legal action as a form of protection and supervision.

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More specifically, the provisions in Article 38 and Article 39 of the Criminal Code only accommodate aspects of accountability for persons with mental disabilities, without covering persons with physical disabilities. Thus, it can be concluded that individuals with physical disabilities who follow out rules related to legal responsibility for their actions. Although the new Criminal Code has included regulations related to criminal liability for persons with mental and intellectual disabilities, these regulations still do not fully accommodate the conditions of other persons with disabilities. Therefore, further regulations are needed in the form of more specific and comprehensive laws to regulate criminal liability for persons with disabilities, both mental and physical. The establishment of this regulation aims to close legal gaps that have not been regulated in detail in the new Criminal Code, so as to provide fairer legal protection for all persons with disabilities.

According to Law Number 1 Year 2023, Article 38, disability is classified into 2 types, namely: a). Mental disabilities are disorders of thought function, emotions, and behavior, such as *schizophrenia*, bipolar disorder, depression, anxiety, and personality disorders b). Intellectual disabilities are impairments in thinking caused by below-average intelligence levels. Examples of intellectual disabilities include Down syndrome, intellectual learning, and intellectual disability. Persons with mental disabilities or intellectual disabilities are considered less capable of recognizing the unlawful nature of the acts they have committed or of acting with the knowledge that they can be punished if they commit a criminal offence.

Article 39 states that a person with a mental disability with acute recurrence accompanied by psychotic symptoms or moderate and severe mental disability is considered incapable of being held responsible for the criminal offense they have committed. This indicates that mental disabilities with acute recurrence accompanied by

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psychotic symptoms are no longer able to take responsibility because they are no longer able to control their emotions. As a result, treatment in a mental hospital is required for mental disabilities that have reached the stage of acute relapse, accompanied by psychotic symptoms, to compensate for criminal acts that cannot be held accountable.

In case number 57/Pid.B/2021/PN Kba, expert witness Dr. Imelda Gracia Gani Sp. K.J. stated that the defendant Suwandi Pradika Alias Suwandi Bin Supri has a slow flow of thought and cannot analyze and solve problems, and suffers from a psychiatric disorder known as Mild Mental Retardation.

According to the *American Association on Intellectual and Development Disabilities*, mental retardation is a persistent condition accompanied by a decline in overall intellectual functioning that occurs with age and is associated with impaired social adaptation. Examples of impaired social adaptation include difficulties with communication, self-care, safety and health, work, and academic functioning. Mental retardation that is classified as *educable* is called mild mental retardation. A person with language impairment can use it for daily communication needs and clinical interviews. They are usually able to take care of themselves, but they grow more slowly than the average person. Academic ability is usually the main obstacle, mostly in writing and reading. There are no problems in the sociocultural context, but when social and emotional problems arise, they are impaired. For example, they cannot cope with marital problems, taking care of children, and have difficulty adjusting to the surrounding environment.

One of the causes of mental retardation is postnatal causes, such as infection (meningitis, encephalitis), trauma, prolonged seizures, and intoxication (lead, mercury). It is known from the testimony of the expert witness that since adolescence the defendant has had a history of abusing addictive substances in the form of inhaled glue, resulting in

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a decrease in thinking ability/cognitive function, which contains the substance *Lysergic Acid Diethylamide* or LSD, which is class I narcotic number 36, this substance can cause seizures when abused.

To find out whether a person with mental or intellectual disabilities is capable of being held accountable for their actions, from a medical perspective, they need to be examined by an expert so that they can be assessed as capable or not responsible. Article 38 and Article 39 of Law No. 23 of 2023 (New Criminal Code) regulate criminal liability for persons with mental and/or intellectual disabilities. Article 38 states that persons with mental and/or intellectual disabilities may have their punishment reduced or be subject to measures.

Meanwhile, Article 39 stipulates that persons with mental disabilities in a state of acute relapse and accompanied by psychotic images, or persons with moderate or severe intellectual disabilities, cannot be sentenced, but may be subject to measures. The article in the new Criminal Code only focuses on disabilities categorized as mental and intellectual disabilities, without accommodating other disabilities such as physical and sensory disabilities. So the new Criminal Code focuses more on the ability to be responsible from the psychological and mental aspects of the perpetrators of criminal acts, so that in the case of physical and sensory disabilities, the legal position is the same as normal people in general who commit criminal acts.

Criminal liability in disability law

1. Criminal Liability of Persons with Disabilities in Law No. 4 of 1997

Law No. 4 of 1997 on Persons with Disabilities does not specifically regulate the criminal liability of persons with disabilities, so it still refers to Article 44 of the Criminal Code. Nevertheless, this Law emphasizes the importance of the social

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welfare of persons with disabilities as a basic principle. Therefore, if a person with a disability is deemed criminally responsible, the court must consider the impact of its decision so as not to harm the future of the person with a disability.

2. Criminal Liability of Persons with Disabilities in Law No. 8/2016

Law No. 8/2016 replaces the previous law because it was considered not in line with the Convention on the Rights of Persons with Disabilities. Although this law also does not specifically regulate criminal liability, Article 30 requires law enforcement to involve doctors, psychologists/psychiatrists, and social workers before examining persons with disabilities. The legal examination process must be postponed if expert opinions are not available. The law also regulates legal protection for children with disabilities, including procedures for determining legal incapacity through the courts (Articles 32-34), and the obligation of detention centers and correctional institutions to provide special service units (Articles 36-37). However, Article 35 states that the judicial process for persons with disabilities still follows the applicable criminal law and criminal procedure, without further regulation of the type of disability in detail.

3. Legal Protection of Criminal Offenders with Special Needs (Disabilities)

Persons with disabilities are Indonesian citizens who are guaranteed to have the same rights, position, and role as stipulated in the 1945 Constitution. According to Article 1, point 1 of Law No. 8/2016, disability includes physical, intellectual, mental, and/or sensory limitations that cause barriers to full interaction and participation in society. However, people with disabilities still face internal barriers, such as rejection of their condition, and external barriers in the form of negative stigma from society that considers them a social burden. This makes them vulnerable to discrimination and social exclusion.

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Law No. 8/2016 guarantees 22 rights of persons with disabilities, including the right to justice and legal protection as stipulated in Article 36, paragraph (2). This provision is strengthened by Government Regulation No. 39/2020 on Reasonable Accommodation in the Judicial Process for Persons with Disabilities, which aims to ensure a fair, equal, and discrimination-free legal process. In its implementation, this PP emphasizes the importance of Personal Assessments, Disability Assistants, and Translators, so that the judicial process can adjust to the needs of individuals with disabilities, whether as perpetrators, victims, or witnesses. Law enforcement agencies are also required to provide reasonable accommodation and physical and non-physical accessibility, including requests for assessments by medical personnel or psychological professionals to identify the conditions and special needs of persons with disabilities.

Legal protection for persons with disabilities in the judicial process is an obligation of the state, including the provision of reasonable accommodation such as escorts, interpreters, and accessible facilities such as wheelchairs, special restrooms, priority seats, parking lots, and drop zones. This access must be provided from the investigation stage to the trial. To ensure the effectiveness of such access, the state needs to equip law enforcement officers, such as police, prisoner guards, and wardens, with special training on handling persons with disabilities. However, based on Article 35 of Law No. 8/2016, the judicial process for persons with disabilities still follows the criminal procedure law, so those who are found guilty are still subject to criminal sanctions.

Article 27, paragraph (2) of the 1945 Constitution affirms that every citizen has the right to a decent job and livelihood, including persons with disabilities. As citizens, they are entitled to protection from discrimination and human rights violations.

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According to Article 1, paragraph (5) of Law No. 8/2016, protection for persons with disabilities is a conscious effort to protect and strengthen their rights. Special treatment for disabilities is intended to ensure the respect and fulfillment of human rights as a whole. In everyday life, people with disabilities still face limited access in public spaces. The visually impaired, for example, need braille and guiding blocks; the physically impaired need easy access to movement; and the hearing impaired need text or sign language assistance. To address this, Indonesia already has regulations such as Permen PUPR No. 3 Year 2006 on Technical Guidelines for Facilities and Accessibility. The President of Indonesia also encourages the provision of disability-friendly public facilities and has directly reviewed the progress of facilities at Gelora Bung Karno, which is claimed to be 80% complete by October 2018.

Accessibility is an important key in ensuring the independence and participation of persons with disabilities in all aspects of life, not only in physical access to public facilities, but also in health, education, and legal services. In the field of education, efforts to fulfill the rights of persons with disabilities are carried out through coordination between agencies such as the social and education offices to record and socialize the importance of education for children with disabilities. However, challenges such as the lack of educators, economic limitations, and stigma from parents are still major obstacles.

People with disabilities, whether physical or mental, still have equal rights with other citizens. They are also entitled to fair legal treatment and protection. Unfortunately, regulations in Indonesia are still limited, both in terms of legal substance, readiness of law enforcement officers, and supporting facilities in the court. Law enforcement officers often face difficulties when dealing with persons with disabilities who are suspects in criminal offenses. They have the right to provide

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testimony without pressure and receive equal treatment. The legal protection provided includes legal counsel assistance, both from private lawyers, the state, and LBH, as well as other assistants such as family, psychiatrists, social workers, and sign language interpreters as needed. This is an important step in realizing an inclusive and non-discriminatory criminal justice system for persons with disabilities.

4. CLOSING

Criminal responsibility for persons with disabilities in the old Criminal Code is regulated in Article 44, but does not specifically explain the types of disabilities that are considered capable or incapable of responsibility, thus creating uncertainty for law enforcement. Meanwhile, the new Criminal Code (Law No. 1 Year 2023) through Articles 38 and 39 begins to regulate more clearly the responsibility for perpetrators of criminal acts with mental and/or intellectual disabilities, which can be subject to action or reduction of punishment.

Legal protection for persons with disabilities in conflict with the law is regulated in Law No. 8 of 2016 and Government Regulation No. 39 of 2020, which emphasize the right to accessibility and equality in the judicial process. However, implementation in the field still faces obstacles, such as limited legal substance, readiness of apparatus, and lack of disability-friendly judicial facilities. Assistance by legal counsel and other professionals is key to ensuring a fair and nondiscriminatory legal process. Therefore, concrete steps are needed to realize a justice system that is inclusive, responsive, and accommodating to the needs of persons with disabilities at every stage of the legal process.

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4. REFERENCES

- Amiruddin & Zainal Asikin. *Pengantar Metode Penelitian Hukum*. Jakarta. PT. Raja Grafindo Persada. 2006.
- Eddyono, S. W., & Kamilah, A. G. (2015). *Aspek-Aspek Criminal Justice Bagi Penyandang Disabilitas*, . Jakarta: Institute for Criminal Justice Reform.
- Huda, C. (2006). *Dari Tindak Pidana Tanpa Kesalahan Menuju Kepada Tindak Pertanggungjawaban Pidana Tanpa Kesalahan*. Jakarta: Prenada Media.
- Lestari, E. Y., Sumarto, S., & Isdaryanto, N. (2017). Pemenuhan Hak Bagi Penyandang Disabilitas Di Kabupaten Semarang Melalui Implementasi Convention On The Rights Of Persons With Disabillities (CPRD) Dalam Bidang Pendidikan. *INTEGRALISTIK Volume 28 Nomor 1*, 5.
- Moeljatno. (2008). *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta.
- Raharjo, T., & Astuti, L. (2017). Konsep Diversi Terhadap Anak Penyandang Disabilitas Sebagai Pelaku Tindak Pidana Dalam Sistem Peradilan Pidana Anak . *Jurnal Hukum Volume 24 Nomor 2*, 184.
- Saleh, R. (1982). *Pikiran-Pikiran Tentang Pertanggungjawaban Pidana*. Jakarta: Ghalia Indonesia.
- Sudarto. (1990). *Hukum Pidana I*. Semarang: Yayasan Sudarto Fakultas Hukum Universitas Diponegoro.
- Sutjihati, T. (2006). *Psikologi Anak Luar Biasa*. Bandung: Refika Aditama.
- Syafi'ie, M. (2014). *Potret Difabel Berhadapan Dengan Hukum Negara*.
- Yazfinedi. (2018). Konsep, Permasalahan, Dan Solusi Penyandang Disabilitas Mental di Indonesia . *Quantum Vol. 14 No. 26*.