

Legal Accountability and Mental Illness: Revisiting the Criminal Responsibility Provisions in the 1946 and 2023 Indonesian Penal Codes

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Abstract

This research aims to analyze the differences in provisions regarding criminal responsibility for individuals with mental disorders as outlined in the Old Indonesian Penal Code (KUHP 1946) and the New Indonesian Penal Code (KUHP 2023), as well as their implications for criminal justice practices. The purpose of the study is to evaluate how each legal framework addresses the accountability of mentally disordered offenders and to assess the legal system's orientation toward justice and rehabilitation. The methodology employed is normative juridical, incorporating conceptual and statutory approaches. The analysis is based on primary legal materials – namely, the old and new KUHP – as well as secondary sources such as scholarly literature and legal commentaries. The results indicate that the old KUHP provided minimal regulation on offenders with mental illness, often leading to ambiguity in legal processes. In contrast, the new KUHP introduces more comprehensive provisions, explicitly stating that individuals with severe mental disorders are exempt from criminal punishment but may be subjected to medical or rehabilitative measures. The originality of this study lies in its focused comparison between two codifications within the same national legal tradition, highlighting legal evolution over time. The implications emphasize the importance of psychiatric evaluation in ensuring substantive justice and reflect a shift toward a more humane, restorative, and socially protective criminal justice system.

INTRODUCTION

In recent years, the public has been increasingly alarmed by a number of criminal cases involving perpetrators with mental disorders. One notable example is the murder case in Lamantu Village, Pasimarannu District, on November 21, 2024, in which the perpetrator was declared to be suffering from a severe mental disorder based on psychiatric evaluation.¹ This case sparked widespread debate within society regarding the boundaries between criminal responsibility and an individual's mental condition. Criminal liability in cases involving mental disorders has become a complex issue that requires serious attention. The Indonesian Penal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP) regulates criminal acts, whereby an act is classified as a crime if it violates provisions contained in Book Two of the Penal Code. However, not all crimes are committed by individuals with sound mental health. In practice, the criminal justice system has the responsibility to maintain a balance between law enforcement and the protection of human rights,² especially in handling cases involving Persons with Mental Disorders (*Orang dengan Gangguan Jiwa*, ODGJ).

Under the old Penal Code, Article 44 stipulates those perpetrators suffering from mental illness cannot be held criminally responsible. Although this provision offers a legal exception, it lacks detailed explanations regarding procedural mechanisms for dealing with such cases.³ As a result, a normative gap exists in legal practice. ODGJ who commit criminal acts often do not receive adequate medical treatment; instead, they are placed in detention environments unsuitable for their mental condition. This situation creates a legal protection gap and amplifies the risk of stigma and discrimination against ODGJ within society.

On the other hand, the new Penal Code—through Articles 38 and 39—offers a more comprehensive approach. Article 38 affirms that perpetrators with mental disorders remain exempt from criminal liability but now includes a requirement that such individuals undergo rehabilitation or medical treatment. Additionally, Article 39 provides the procedural framework for implementing such treatment, ensuring that individuals with mental disorders who commit criminal acts receive appropriate care

¹ Redaksi SelayarNews, "Polres Selayar Serahkan Pelaku Kasus Pembunuhan Ke Dinsos Karena Terbukti Gangguan Jiwa," *Selayarnews*, 2024, <https://selayarnews.com/21/07/2025/polres-selayar-serahkan-pelaku-kasus-pembunuhan-ke-dinsos-karena-terbukti-gangguan-jiwa/>.

² Rahmansyah Fadlul Al Karim Rambe and Muhammad Aufa Abdillah Sihombing, "Implikasi Perlindungan Hak Asasi Manusia Dalam Hukum Pidana," *Jurnal Ilmiah Penegakan Hukum* 11, no. 1 (2024): 24–31.

³ Said Farhan, "Perlakuan Hukum Terhadap Pelaku Tindak Pidana Yang Mengalami Gangguan Jiwa (Ditinjau Menurut Undang-Undang Nomor 18 Tahun 2014)" (UIN Ar-Raniry Banda Aceh, 2025).

aimed at restoring their mental health. This approach aligns more closely with the principles of restorative justice, increasingly recognized in modern legal literature – such as in the works of Tony Marshall and Howard Zehr – which emphasize the need to treat offenders as individuals in need of recovery, particularly in the context of mental illness. The focus thus shifts from mere punishment to the rehabilitation of individuals so they may reintegrate into society in an improved state.⁴

This study builds on previous research that forms a crucial foundation for examining how earlier studies have addressed similar issues. These prior works offer insight into relevant findings and help position the present study within the broader academic discourse.

Mulyadi, A. (2011) examined the evolution of criminal liability for perpetrators with mental disorders, as reflected in the new Penal Code. He argued that the old Penal Code lacked clear provisions regarding mental illness as a defense, whereas the new Penal Code better accommodates this condition by stipulating that mentally disordered offenders who lack criminal responsibility must undergo treatment in a psychiatric hospital. This aligns with the first research question of the current study, which seeks to understand how criminal liability is regulated in the old and new Penal Codes. However, Mulyadi did not explore in depth the substantive differences or the practical implications in legal implementation.⁵

Sudirman, H. (2014) investigated how criminal liability for offenders with mental disorders is addressed in both versions of the Penal Code. His research found that despite significant changes in the new Penal Code, challenges remain in implementing the provisions for medical rehabilitation. This study is relevant to both research questions posed in the current study. Sudirman examined criminal responsibility in the context of mental disorders under both Codes, although he focused more on the obstacles in practical implementation – a key aspect of both research questions. However, his study did not sufficiently elaborate on the legal aspects or normative differences between the two Penal Codes.⁶

Supriyadi, W. (2016) offered a comparative perspective on criminal law in European countries, particularly concerning criminal responsibility for mentally disordered

⁴ Sahat Maruli Tua Situmeang and Krusitha Meilan, "Evolusi Kejahatan Dan Pidanaan: Tantangan Dalam Penegakan Hukum Dan Penologi Modern: The Evolution of Crime and Punishment: Challenges in Law Enforcement and Modern Penology," *Res Nullius Law Journal* 7, no. 2 (2025): 87–97.

⁵ A. Mulyadi, "Reformasi Hukum Pidana Dalam KUHP Baru Indonesia," *Jurnal Hukum, Universitas Indonesia*, 2011.

⁶ H. Sudirman, "Pertanggungjawaban Pidana Bagi Pelaku Dengan Gangguan Jiwa Dalam Sistem Hukum Pidana Indonesia," *Jurnal Pidana Dan Kriminologi, Universitas Gadjah Mada*, 2014.

offenders. He highlighted that countries such as France and Germany place greater emphasis on rehabilitation and care within their legal systems. While he acknowledged that the new Indonesian Penal Code adopts a more rehabilitative approach, his comparative legal analysis offers valuable insights for improving Indonesia's legal system in handling such offenders. Although not directly aligned with a concrete comparison between the old and new Penal Codes, this research enriches the understanding of how reforms in Indonesia's rehabilitation system may be implemented more effectively – particularly in relation to the second research question on changes in the new Penal Code.⁷

This study aims to systematically analyze the differences in the regulation of criminal liability for mentally disordered offenders in the old and new Penal Codes. The analysis focuses on legal responsibility, the protection of the human rights of ODGJ, and the rehabilitation mechanisms outlined in both legal frameworks. The research is expected to contribute theoretically to the development of a criminal law system that is responsive to the mental health conditions of offenders. Practically, this study seeks to assess the effectiveness of the new Penal Code as a foundation for implementing a more humane and recovery-oriented justice policy. Accordingly, this research not only enriches academic discourse but also provides policy recommendations for handling criminal cases involving ODGJ in Indonesia.⁸

The comparison between Article 44 of the old Penal Code and Articles 38–39 of the new Penal Code reveals a significant shift in legal treatment of ODGJ. The new Penal Code emphasizes a more humane and rehabilitative approach, consistent with the principles of restorative justice and the protection of human rights in the modern era.

METHODS

This research employs a normative juridical method with a descriptive-analytical character.⁹ It examines the legal norms and the concept of criminal liability for individuals with mental disorders, as stipulated in both the old and new Indonesian Penal Codes (KUHP). The normative juridical method is applied to analyze how the legislation regulates offenders with mental disorders and exempts them from criminal liability. The approaches used in this study include the conceptual approach, which

⁷ W. Supriyadi, "Perbandingan Sistem Hukum Pidana Negara-Negara Eropa Dan Implementasi Dalam KUHP Baru Indonesia," *Jurnal Hukum Internasional, Universitas Airlangga.*, 2016.

⁸ Denys Putra Alim et al., "Peran Forensik Di Berbagai Disiplin Ilmu" (DJKI, 2023).

⁹ S H I Jonaedi Efendi, S H Johnny Ibrahim, and M M Se, *Metode Penelitian Hukum: Normatif Dan Empiris* (Prenada Media, 2018).

explores the legal concepts underlying criminal liability—particularly in relation to mental disorders—as well as legal theories that support the exclusion of liability; and the statutory approach, which aims to examine relevant articles in both the old and new Penal Codes, especially those related to the criminal responsibility of mentally disordered offenders.

The legal sources utilized in this study consist of primary legal materials, namely the texts of the old and new Penal Codes, particularly articles regulating criminal liability for offenders with mental disorders. Secondary legal materials include legal literature, scholarly journals, books on criminal law, and academic articles that discuss criminal responsibility in the context of mental disorders as comparative study materials.

The data analysis technique employed is comparative analysis,¹⁰ which compares the provisions of the old and new Penal Codes regarding the criminal liability of mentally disordered offenders. The analysis involves interpreting legal norms and comparing the content of relevant articles in both versions of the Penal Code. The comparative dimension focuses on three main aspects: (1) formulation of the articles, including the wording and scope of regulation; (2) legal treatment of offenders, such as punishment, rehabilitation, and medical care; and (3) legal consequences, both in terms of the protection of the offender's rights and implications for criminal justice practices. Through this approach, the study aims to identify substantial differences and similarities that may influence the effectiveness of law enforcement in cases involving persons with mental disorders (ODGJ).

RESULTS AND DISCUSSION

1. Criminal Liability of Offenders with Mental Disorders Who Are Not Criminally Responsible Under the Old Indonesian Penal Code (KUHP)

Criminal liability for offenders with mental disorders under the old Indonesian Penal Code is governed by Article 44, which states that a person who commits a criminal act cannot be held criminally liable if the act cannot be attributed to them due to a mental disorder or intellectual disability. In criminal law, the element of culpability (*dolus* or *culpa*) is a fundamental requirement for holding someone criminally responsible.¹¹ However, if an individual is proven to lack the ability to understand or control their

¹⁰ SH Suyanto, *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan* (Unigres Press, 2023).

¹¹ Gabriel Rafael Putera Mumu, "Pertanggungjawaban Pidana Pencurian Terhadap Penderita Kleptomania," *LEX PRIVATUM* 13, no. 1 (2024).

actions due to a mental disorder, criminal liability is nullified, as the person is deemed to lack sufficient legal awareness.¹²

Article 44 of the old Penal Code also grants the judge the authority to take certain measures to protect society while ensuring the offender receives necessary care. In this context, if it is established that the offense occurred due to a mental disorder, the judge may order the offender to be committed to a mental health facility for up to one year on a probationary basis. This measure does not constitute a punishment, but rather a form of treatment and protection for an individual whose mental condition requires special attention. The placement also serves to prevent potential danger to the surrounding community.¹³

Y.A. Triana Ohoiwutun, in her research, notes that in practice, judges require expert testimony, such as from psychiatrists, to determine the mental state of the offender at the time the crime was committed. If the psychiatric evaluation confirms that the offender was not mentally capable of being held responsible, they are exempt from criminal punishment. Therefore, criminal liability in such cases is based on the principle that only mentally sound individuals with full awareness of their actions can be held legally accountable.¹⁴

In the old Penal Code, the principle of criminal liability refers to a person's capacity to understand and be held accountable for their actions. If a person suffers from a mental disorder or intellectual disability, their actions are considered legally non-attributable.¹⁵ This is stipulated in Article 44 of the old KUHP, which states:

"Whoever commits an act that cannot be attributed to them due to a mental defect or mental illness shall not be punished."

a. Fundamental Principles of Article 44 of the Penal Code

Article 44 emphasizes that the element of culpability (*dolus/culpa*) in criminal law cannot be fulfilled if:

- 1) The offender lacks the mental capacity to comprehend the nature of their actions.

¹² Orintina Vavinta Ida and Nany Suryawati, "Pertanggungjawaban Pidana Bagi Pelaku Tindak Pidana Dengan Gangguan Kejiwaan Menurut Ketentuan Hukum Positif," *Binamulia Hukum* 12, no. 2 (2023): 263–75.

¹³ Rahmat Rahmat et al., "Sanksi Bagi Pelaku Pembunuhan Yang Menderita Gangguan Bipolar Perspektif Hukum Islam," *Bustanul Fuqaha: Jurnal Bidang Hukum Islam* 2, no. 2 (2021): 194–208.

¹⁴ Y A OHOIWUTUN et al., "Fungsionalisasi Pasal 44 KUHP Dalam Penyidikan Tindak Pidana Pembunuhan (Suatu Re-Orientasi Dan Re-Evaluasi Menuju Reformulasi)," 2019.

¹⁵ Raden Soesilo, "Kitab Undang-Undang Hukum Pidana (KUHP): Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal," 1995.

- 2) The offender is unaware of their actions due to a mental disorder or psychological impairment.
- 3) In such cases, the offender is excluded from criminal liability because the requirement of accountability is not met.
- b. Two Types of Mental Disorders in Article 44 (as explained by R. Soesilo)
 - 1) Intellectual Disability (Impaired Mental Development):
 - a) The offender has a congenital mental defect, such as idiocy, imbecility, or being congenitally deaf-blind-mute, resulting in a mental age comparable to that of a child.
 - b) The individual cannot understand their actions or their legal consequences due to limited intellectual capacity.
 - 2) Acquired Mental Illness:
 - a) The offender suffers from mental illnesses such as schizophrenia, epilepsy, or hysteria, which affect awareness and behavior.
 - b) These disorders may be temporary or chronic, leading to an inability to understand the nature of the offense.¹⁶
- c. Judicial Measures Under Article 44(2)

If the offender is found to be mentally disordered, the judge holds specific authority under Article 44(2):

 - 1) The judge may order the offender to be committed to a mental health institution as a treatment measure.
 - 2) The period of confinement is limited to one year as a probationary measure.
 - 3) The aim is not to punish but to protect the public and ensure medical care for the offender.
- d. Legal Subject Principle and Capacity for Responsibility

In criminal law, an individual can only be punished if they are a legal subject possessing the capacity to act. Mental disorders eliminate this capacity because:

 - 1) The offender cannot comprehend their actions.
 - 2) The offender cannot distinguish right from wrong or control their behavior.
- e. Judicial Considerations and Medical Examinations
 - 1) Judges consider expert testimony, particularly from psychiatrists, to assess the offender's mental condition.

¹⁶ Afridus Darto, Arief Syahrul Alam, and Fifin Dwi Purwaningtyas, "Pertanggungjawaban Pidana Bagi Pelaku Tindak Pidana Pembunuhan Pengidap Gangguan Kejiwaan Dalam Prespektif Hukum Pidana," *Jurnal Ilmu Hukum Wijaya Putra* 1, no. 2 (2023): 257-64.

- 2) If the individual is proven to be mentally disordered, they will be exempt from punishment and referred for medical treatment.

Under the old Penal Code, criminal liability for offenders with mental disorders is nullified due to the absence of culpability. Article 44 clearly states that a criminal act committed by a person with a mental defect or disorder cannot be attributed to them, thereby excluding them from punishment.¹⁷ However, to ensure safety and provide care, judges are authorized to order placement in a mental institution as a measure of protection and recovery.

2. Criminal Liability for Offenders with Mental Disorders Who Are Deemed Not Criminally Responsible under the New Indonesian Penal Code

Mental disorders or intellectual disabilities are regulated under Articles 38 and 39 of the new Indonesian Penal Code. The articles are as follows:

Article 38: *"Any person who, at the time of committing a criminal act, has a mental and/or intellectual disability may receive a reduced sentence and/or be subjected to certain measures."*

Article 39: *"Any person who, at the time of committing a criminal act, has a mental disability accompanied by an acute psychotic relapse and/or a moderate or severe intellectual disability shall not be sentenced to punishment but may be subjected to specific measures."*

Under the new Indonesian Penal Code, criminal liability for offenders with mental disorders is determined by considering their mental condition as a factor that negates the ability to be held accountable. The explanation is as follows:¹⁸

a. Criteria for Non-Liability

An offender is declared not criminally responsible if the following conditions are met:

- 1) The offender suffers from a severe mental disorder or psychiatric illness that renders them incapable of understanding their actions.
- 2) This condition must be verified through an assessment by a psychiatric expert (psychiatrist) or psychologist, the results of which serve as the basis in court proceedings.

b. Legal Consequences

If a person is declared incapable of being held criminally responsible due to a mental disorder, the judge may:

- 1) Exempt the offender from criminal punishment.

¹⁷ Faqih Darajati, "Penegakan Hukum Bagi Pelaku Tindak Pidana Disabilitas Dalam Tinjauan Hukum Pidana Islam," *PUSKAPSI Law Review* 5, no. 1 (2025): 263–85.

¹⁸ Elyada Umbu Ndapabehar and R Rahaditya, "Penentuan Pertanggungjawaban Pidana Bagi Terdakwa Yang Memiliki Gangguan Jiwa Skizofrenia Paranoid Dalam Tindak Pidana Penganiayaan," *UNES Law Review* 5, no. 4 (2023): 3141–53.

- 2) However, for the sake of public safety and the offender's rehabilitation, the judge may order specific measures such as placement in a mental hospital or rehabilitation institution and supervision by the authorities to ensure the offender does not pose a threat to society.

c. Measures as Substitutes for Punishment

In the new Penal Code, judges are authorized to impose non-punitive measures as substitutes for criminal punishment. These include:¹⁹

- 1) Medical care and rehabilitation.
- 2) Placement in a psychiatric care facility.
- 3) Intensive supervision by the competent authorities.

d. Importance of Expert Evidence in Legal Proceedings

Proving the presence of a mental disorder requires:²⁰

- 1) A *visum et repertum psikiatrikum* (official psychiatric report) issued by a psychiatrist or mental health expert.
- 2) Expert witness testimony during the trial to explain the offender's mental condition.

Criminal liability for mentally disordered offenders under the new Penal Code (Law No. 1 of 2023) remains consistent with the fundamental principle in criminal law that there can be no punishment without fault (*geen straf zonder schuld*).²¹ Article 44 of the new Penal Code stipulates that an individual cannot be held criminally liable if, at the time of committing the criminal act, they suffered from a mental disorder or intellectual disability that eliminated their capacity to comprehend or control their actions. Thus, individuals proven to have such conditions are exempt from criminal liability due to the absence of *mens rea* (criminal intent).²²

According to Muhammad Dwi Rafky in his research, this provision reflects a dualistic view in criminal law, which distinguishes between the criminal act (*actus reus*) and criminal liability. In this context, even if a criminal act occurs, if the perpetrator lacks full awareness or the mental capacity to understand the consequences of their actions, they cannot be held criminally liable. In practice, judges will require a psychiatric evaluation

¹⁹ S H Nandang Sambas and S H Dian Andrisari, *Kriminologi: Perspektif Hukum Pidana* (Sinar Grafika (Bumi Aksara), 2021).

²⁰ Y A Triana Ohoiwutun et al., "Peran Ahli Jiwa Dalam Pembuktian Tindak Pidana Kekerasan Psikis Dalam Rumah Tangga," *Veritas et Justitia* 8, no. 1 (2022): 219–42.

²¹ Romli Atmasasmita, *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan* (Gramedia Pustaka Utama, 2017), 17.

²² JUNTRIYONO PAKPAHAN, "Pertanggungjawaban Pidana Perbuatan Ujaran Kebencian Yang Berkonten SARA Dalam Perspektif Peraturan Perundang-Undangan," *Journal of Law Education and Business* 2, no. 2 (2024).

by an expert to ascertain the mental condition of the offender at the time of the offense. Moreover, the new Penal Code allows judges to impose alternative measures, such as medical treatment or rehabilitation in a mental health facility, to ensure both the protection of the offender and public safety.²³

This provision aims to uphold substantive justice in law enforcement. That is, a person who, for medical reasons, lacks the capacity to be held responsible should not be punished solely based on their actions. This also aligns with humanitarian principles that emphasize fair treatment for individuals with mental limitations. Through this regulation, the new Penal Code ensures legal certainty while also integrating moral and justice-based considerations in the imposition of criminal sanctions.

CONCLUSION

Criminal responsibility for individuals with mental disorders under the Old Criminal Code (KUHP Lama) is governed by Article 44, which stipulates that a person cannot be held criminally liable if their actions cannot be accounted for due to mental illness or intellectual disability. The main principle underlying this provision is that the element of culpability must be fulfilled for an individual to be held criminally responsible. In the context of mental disorders, the perpetrator is deemed incapable of understanding or controlling their actions. Nevertheless, the judge is authorized to impose an alternative measure in the form of treatment in a psychiatric hospital for a maximum period of one year. This reflects an effort to balance public protection with respect for the mental condition of the offender.

Meanwhile, the New Criminal Code (KUHP Baru), through Articles 38 and 39, provides more specific and adaptive regulations aligned with the developments of modern legal thought, particularly regarding mental and intellectual disabilities. Article 38 allows for the reduction of punishment or the imposition of measures on offenders with mental disabilities, while Article 39 states that individuals with severe mental disorders cannot be sentenced but may be subjected to measures such as rehabilitation. The New Criminal Code maintains the principle of "no punishment without culpability," but introduces a significant addition in the form of mandatory expert assessment to evaluate the offender's mental condition. These provisions not only ensure legal certainty but also embody humanitarian principles and protect individuals who lack legal accountability.

²³ Rafky Muhammad Dwi, "Pertanggungjawaban Pidana Terhadap Pelaku Penganiayaan Penyandang Dissociative Identity Disorder," *UNJA Journal of Legal Studies* 1, no. 1 (2023): 307–26.

Reflecting on these developments, the changes introduced in the New Criminal Code indicate a shift towards a more responsive criminal justice system that considers individual conditions and aligns with the advancement of human rights. In practice, law enforcement authorities must demonstrate a firm commitment to consistently implementing these provisions, including involving psychiatric experts from the investigation stage. Moreover, it is essential to ensure the availability of adequate rehabilitation facilities to support the effective implementation of this more humane legal approach. Consequently, the criminal justice system should not merely serve as a punitive instrument but also as a means of protection and recovery for vulnerable groups such as persons with mental disorders (ODGJ).

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