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Recommendations for Prosecution Policies Concerning Offenders with Mental Disabilities in Indonesia from a Victimological Perspective

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Abstract: The development of criminal law in Indonesia reflects a shift from a retributive approach toward a more humane and restorative justice-oriented approach, including in the treatment of offenders with mental disabilities. This study aims to analyze the forms of legal protection afforded to offenders with mental disabilities from a victimological perspective and to formulate more responsive prosecution policy recommendations. The research employed an empirical legal method with a qualitative approach through interviews, observations, and document analysis involving police investigators, public prosecutors, forensic psychiatrists, academics, and disability advocacy institutions. The findings indicate that legal protection has been provided through the postponement of legal status determination pending psychiatric assessment, the use of forensic psychiatric examinations, the provision of reasonable accommodation, and the prioritization of rehabilitative measures over imprisonment. However, its implementation remains suboptimal due to the absence of standardized technical guidelines, limited mental health facilities, and the persistence of punitive orientations within the criminal justice system. From a victimological perspective, offenders with mental disabilities occupy a dual position as both offenders and victims who are vulnerable to secondary victimization. Therefore, prosecution policies should emphasize rehabilitative and therapeutic approaches, as well as the protection of the rights of persons with disabilities, in order to achieve substantive justice within Indonesia's criminal justice system.

Keyword: Legal Protection; Mental Disability; Victimology; Prosecution Policy; Restorative Justice.

INTRODUCTION

The development of Indonesia's criminal justice system over the past decades has reflected a significant paradigm shift from a predominantly retributive approach toward a more humane, justice-oriented, and restorative justice framework (Agustin & Sulchan, 2025); (Khasanofa et al., 2025) This transformation has been driven by the growing recognition that criminal law should not merely function as an instrument for imposing punishment on

offenders but should also serve as a mechanism for protecting human rights, restoring social harmony, and safeguarding the interests of all individuals involved in criminal proceedings (Purnawati et al., 2025). One issue that has attracted growing attention in contemporary criminal law discourse is the protection of vulnerable groups (Saputra et al., 2026), particularly persons with mental disabilities who become involved as perpetrators of criminal offenses. This shift is reflected in various legal reforms in Indonesia, including the reformulation of the Criminal Code, the broader implementation of restorative justice policies, and the strengthening of legal recognition of the rights of persons with disabilities. Within this broader development, one vulnerable group that requires particular attention is persons with mental disabilities who become involved in criminal proceedings as offenders (Jayanti, 2024), (Bawazir, 2025). Whether they should be regarded solely as offenders or also as victims of their own psychological conditions, which may be beyond their full control. Mental disorders may substantially impair an individual's capacity to understand the nature and consequences of their actions or to control their behavior, thereby raising legal issues that differ fundamentally from those involving ordinary offenders. Consequently, ensuring legal protection for offenders with mental disabilities has become an increasingly important issue in contemporary criminal law, requiring approaches that extend beyond legal certainty to encompass substantive justice, human rights protection, and respect for the dignity of vulnerable individuals.

This issue highlights a fundamental dilemma within the Indonesian criminal justice system. Although Indonesia has established various legal instruments to protect persons with mental disabilities, their implementation within the criminal justice system remains challenging (Gizella, 2025); on the other hand, substantive justice requires differentiated treatment for individuals whose mental conditions impair their capacity for responsibility (Hutajulu et al., 2026). Article 44 of the Indonesian Criminal Code stipulates that individuals who commit criminal acts while suffering from mental disorders or intellectual impairments cannot be held criminally responsible when such conditions eliminate their capacity to understand the nature of their conduct or to control their behavior. Furthermore, Law Number 8 of 2016 concerning Persons with Disabilities guarantees the right of persons with disabilities to equal treatment before the law, including the provision of reasonable accommodation throughout criminal proceedings. Nevertheless, the implementation of these legal provisions remains far from optimal. Law enforcement officers frequently encounter difficulties in identifying the mental condition of suspects during the early stages of criminal investigations, particularly when forensic psychiatric examinations or mental health experts are unavailable. As a consequence, determinations regarding criminal responsibility often depend on the subjective assessment of individual investigators or prosecutors, resulting in inconsistent legal practices. Moreover, the absence of specific standard operating procedures governing the handling of offenders with mental disabilities has led to significant disparities in investigative and prosecutorial practices across jurisdictions, with decisions largely influenced by the discretion of individual law enforcement officials. Consequently, offenders with mental disabilities are often subjected to ordinary criminal procedures without receiving adequate psychological assessment, reasonable accommodation, or access to rehabilitation services. These circumstances illustrate a persistent discrepancy between the legal protection guaranteed in statutory provisions (law in the books) and its implementation in practice (law in action), exposing offenders with mental disabilities to legal uncertainty, discrimination, and violations of their fundamental rights throughout the criminal justice process.

These practical challenges demonstrate that the conventional criminal law approach, which primarily views offenders as subjects of criminal liability, is insufficient to address the complexity of cases involving persons with mental disabilities. In this context, victimology provides a broader analytical framework by recognizing that individuals may experience harm not only as victims of criminal acts but also as victims of structural deficiencies, inadequate

social protection, and criminal justice procedures that fail to accommodate their particular vulnerabilities. From a victimological perspective, individuals with mental disabilities who commit criminal offenses should not be viewed solely as offenders in the conventional sense but also as legal subjects who may suffer harm as a consequence of law enforcement mechanisms that fail to accommodate their psychological conditions (Hutajulu et al., 2026). Victimology, as a field concerned with the study of victims, recognizes victims not only as individuals who directly suffer from the criminal acts of others, but also as those who experience harm arising from structural injustice, systemic neglect, or personal vulnerabilities that are inadequately addressed by the state. Within this framework, persons with mental disabilities who come into conflict with the law may be understood as victims of deficiencies in social protection and mental health systems, as well as victims of criminal justice procedures that are not fully responsive to their specific needs (Rohman, 2021). Therefore, a more comprehensive understanding of the forms of legal protection that should be afforded to offenders with mental disabilities is required, not only from the perspective of conventional criminal law but also from a victimological perspective that recognizes their vulnerability to secondary victimization throughout the criminal justice process (Angkasa et al., 2026; Budiarsih, S.H., M.Hum., 2021).

Although previous studies have discussed criminal responsibility under Article 44 of the Indonesian Criminal Code, the implementation of restorative justice, and the protection of the rights of persons with disabilities within the Indonesian legal system, most of these studies remain primarily normative and focus on the interpretation of statutory provisions. Existing scholarship has paid limited attention to how legal protection for offenders with mental disabilities is implemented in practice during the investigation and prosecution stages, particularly from a victimological perspective that recognizes them not only as offenders but also as victims of structural and procedural injustice. Furthermore, empirical research examining how investigators and prosecutors exercise discretion in handling such cases and how existing prosecution policies affect the risk of secondary victimization remains limited. These limitations reveal an important research gap that requires empirical examination not only to evaluate the practical implementation of legal protection but also to formulate prosecution policy recommendations that are more responsive to the needs and vulnerabilities of offenders with mental disabilities.

Indonesia's legal framework has established a normative basis for protecting persons with mental disabilities who come into conflict with the law. Law Number 8 of 2016 concerning Persons with Disabilities guarantees equality before the law, reasonable accommodation, and protection against discrimination. Likewise, Regulation of the Attorney General Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice provides prosecutors with opportunities to prioritize recovery over punishment under certain circumstances. Nevertheless, these legal instruments do not specifically regulate the procedural mechanisms for handling criminal cases involving offenders with mental disabilities, particularly regarding psychiatric assessment procedures, the exercise of prosecutorial and investigative discretion, standards for providing reasonable accommodation, and criteria for diversion to rehabilitation. Consequently, the implementation of legal protection continues to depend largely on the policies and experience of individual law enforcement officers, resulting in inconsistent practices across jurisdictions. These circumstances demonstrate that the existence of legal provisions alone is insufficient to ensure effective legal protection for offenders with mental disabilities and further reinforce the need for research that connects the normative framework with its practical implementation.

This study is limited to examining legal protection for offenders with mental disabilities from a victimological perspective. To ensure that the discussion remains focused and aligned with the research questions, the scope of the study is restricted to two principal aspects. First,

the study focuses on how law enforcement officers apply existing legal provisions and exercise their discretion in providing legal protection to offenders with mental disabilities. Particular attention is given to investigators and prosecutors because these stages involve the most significant discretionary authority in determining the direction of legal protection. Second, the study specifically addresses efforts to prevent secondary victimization, namely additional suffering experienced by offenders with mental disabilities as a result of the criminal justice process itself, including inhumane treatment, neglect of rehabilitation rights, and stigmatization by law enforcement personnel. Through these limitations, the study seeks to provide a focused analysis of legal protection and the position of offenders with mental disabilities within victimological theory while generating practical prosecution policy recommendations.

Based on the identified research gap, this study aims to provide a more comprehensive understanding of the implementation of legal protection for offenders with mental disabilities within the Indonesian criminal justice system from a victimological perspective. Specifically, the study seeks not only to examine how existing legal provisions are implemented during the investigation and prosecution stages but also to identify the practical challenges encountered by law enforcement officers and to formulate prosecution policy recommendations that are more responsive to the rights and needs of offenders with mental disabilities. In doing so, this study is expected to contribute both to the development of victimological scholarship and to the improvement of prosecution policies within Indonesia's criminal justice system. Accordingly, this study addresses two principal research questions. First, what forms of legal protection are provided to offenders with mental disabilities from a victimological perspective during the investigation and prosecution stages? Second, what prosecution policy recommendations should be developed to ensure more effective legal protection and prevent secondary victimization of offenders with mental disabilities?.

METHOD

This study employed an empirical legal research method, which examines how law operates in society in practice rather than merely as a body of written norms. The empirical legal approach was considered appropriate because the objective of this study was not merely to examine statutory provisions governing offenders with mental disabilities, but also to investigate how those legal norms are interpreted and implemented by investigators and prosecutors in actual criminal justice practices. By combining normative legal analysis with empirical findings from law enforcement agencies and related institutions, this approach enables a more comprehensive understanding of the gap between legal norms and their practical implementation. This approach was selected because the study focuses on the implementation of legal protection for offenders with mental disabilities during investigation and prosecution processes, as well as the effectiveness of legal provisions such as Article 44 of the Indonesian Criminal Code, Law Number 8 of 2016 concerning Persons with Disabilities, Supreme Court Regulation Number 1 of 2020, and Regulation of the Attorney General Number 15 of 2020 concerning Restorative Justice.

The research population consisted of law enforcement officials involved in handling criminal cases involving offenders with mental disabilities, as well as relevant experts and practitioners. Participants were selected based on their direct involvement and professional experience in handling criminal cases involving offenders with mental disabilities. This criterion was intended to ensure that the information obtained reflected actual law enforcement practices and institutional policies relevant to the research objectives. Interviews continued until data saturation was achieved, indicating that no substantial new information emerged from subsequent participants.

The study was conducted at regional police offices, district prosecutor's offices, district courts, and supporting institutions, including psychiatric hospitals, legal aid organizations, and

disability advocacy organizations in Jakarta, Bandung, and Surabaya. Data collection was carried out over a six-month period. The researcher served as the primary research instrument, while supporting instruments included semi-structured interview guidelines, observation sheets, document review protocols, audio recording devices, and field notes.

The research procedure consisted of four stages: preparation, including obtaining the necessary permissions; data collection through interviews, observations, and document analysis; data processing through transcription, categorization, and data reduction; and data analysis followed by conclusion drawing. These locations were purposively selected because they represent major urban jurisdictions with relatively high numbers of criminal cases, established law enforcement institutions, and better access to forensic psychiatric services compared to many other regions in Indonesia. Consequently, the selected sites were considered capable of providing rich empirical data relevant to the implementation of legal protection for offenders with mental disabilities.

During the data reduction stage, interview transcripts and documentary materials were coded and grouped into thematic categories related to legal protection, victimological perspectives, secondary victimization, and prosecution policy. The categorized data were subsequently displayed in comparative matrices to facilitate pattern identification across participant groups. Finally, conclusions were drawn through an iterative verification process by continuously comparing interview findings, documentary evidence, and relevant legal provisions to enhance the credibility and consistency of the analysis. To minimize researcher bias, preliminary findings were also discussed with several participants during the member-checking process to confirm the accuracy of the interpretations. This procedure enhanced the trustworthiness and credibility of the qualitative findings.

RESULTS AND DISCUSSION

Forms of Legal Protection for Offenders with Mental Disabilities from a Victimological Perspective

The findings demonstrate that legal protection is not uniformly implemented throughout the criminal justice process. Instead, its application varies according to the stage of proceedings, the availability of psychiatric assessments, and the discretion exercised by individual law enforcement officers. Although both investigators and prosecutors recognize the importance of accommodating offenders with mental disabilities, differences in institutional practices and the absence of standardized operational guidelines often result in inconsistent forms of legal protection.

Stages	Empirical Findings	Normative Basis
Investigation	- The investigator asked the family about their mental health history. - The determination of legal status is postponed until there is an expert assessment. - Forensic psychiatric examination is submitted if the perpetrator's statement is illogical. - Perpetrators who are dangerous can be placed in a mental hospital (not prison) - Obstacles: There is no special SOP for handling mental disabilities; examination room facilities are not yet disability-friendly.	Article 44 of the Criminal Code (reformulation of Law 1/2023) Law No. 18/2014 concerning Mental Health Article 71 paragraph (1) Law No. 8/2016 concerning Persons with Disabilities
Prosecution	- The prosecutor examines the completeness of the file, ensuring that there is a psychiatric	Article 28D paragraph (1) of the 1945 Constitution Law No. 8/2016

examination.- If not, the file is returned (P-19) with instructions for psychiatric visum et repertum (VERP).	Article 30 paragraph (2) of Perja No. 15/2020 concerning Restorative Justice
- Reasonable accommodation: simple language, flexible time, mentoring.- Demands can be directed at rehabilitative actions, not imprisonment.- Obstacles: No special Perja/SOP; VERP is often late; limited mental health facilities; Public pressure to punish.	

Overall, the empirical findings indicate that legal protection currently provided to offenders with mental disabilities remains predominantly procedural rather than substantive. Most protective measures are intended to ensure compliance with existing legal procedures, such as delaying legal status determination or requesting psychiatric examinations. However, these measures have not yet been integrated into a comprehensive protection mechanism capable of consistently safeguarding the rights and specific needs of offenders with mental disabilities throughout the criminal justice process.

From a victimological perspective, offenders with mental disabilities occupy a dual position, commonly referred to as the *victim-offender overlap*. Formally, they are regarded as perpetrators of criminal offenses; however, they may simultaneously be considered structural victims resulting from the inadequacies of mental health services and social protection systems. The findings indicate that law enforcement officials, particularly investigators and prosecutors, have attempted to provide legal protection through several measures: (1) postponing the determination of legal status until an expert psychiatric assessment has been conducted as a precautionary measure; (2) requiring consideration of expert psychiatric opinions; (3) providing reasonable accommodation during legal proceedings; and (4) directing prosecutorial responses toward rehabilitative rather than punitive measures. These findings support the victim-offender overlap theory, which recognizes that certain offenders simultaneously occupy the position of victims due to structural and institutional factors. In this study, the vulnerability experienced by offenders with mental disabilities does not primarily arise from their mental condition itself, but rather from the inability of criminal justice institutions to provide consistent procedural safeguards, adequate psychiatric support, and disability-sensitive legal processes. Consequently, the criminal justice process may unintentionally contribute to secondary victimization instead of fulfilling its protective function.

Nevertheless, these efforts remain largely incidental and highly dependent on the discretion of individual law enforcement officers. The absence of specific standard operating procedures and technical guidelines has resulted in inconsistencies in case handling. From a victimological perspective, such conditions create a risk of secondary victimization, namely additional suffering caused by legal processes that fail to accommodate the individual's mental condition. For example, delays in obtaining a forensic psychiatric evaluation may result in continued detention despite uncertainty regarding the offender's criminal responsibility. Similarly, conducting examinations in the same environment as non-disabled suspects may generate psychological distress, while public pressure to impose punishment may encourage law enforcement officials to overlook the offender's mental health condition.

Accordingly, the existing forms of legal protection can be characterized primarily as procedural protection aimed at safeguarding fundamental rights, rather than substantive protection that fully accommodates the specific needs and mental condition of the offender. A victimological perspective requires that offenders with mental disabilities be recognized as structural victims whose vulnerabilities necessitate a criminal justice response centered on

recovery and rehabilitation through a *therapeutic justice* approach, rather than punishment alone.

Unlike previous studies that primarily emphasized normative interpretations of criminal responsibility, the present study demonstrates through empirical evidence that the principal weakness of Indonesia's criminal justice system lies not in the absence of legal norms but in the lack of standardized implementation mechanisms. This finding provides an important contribution by showing that improving legal protection requires institutional reforms, including standardized psychiatric assessment procedures, disability-sensitive operational guidelines, and prosecution policies grounded in therapeutic justice principles.

Recommendations for Prosecution Policy for Persons with Mental Disabilities in Indonesia

Based on the gap between norms and practices, as well as input from the Public Prosecutor, seven prosecution policy recommendations were formulated that are operational and victim-oriented:

No	Recommendations	Purpose
1	Preparation of a Attorney General's Regulation (Perja) specifically for the handling of perpetrators with mental disabilities	Provide binding guidelines: indicators of suspected disability, screening obligations, standards for termination of prosecution, detention criteria, guidelines for rehabilitative prosecution
2	Establishment of <i>lex specialis</i> (special arrangements)	Regulates the classification of mental disability, a flexible (non-dichotomous) criminal liability model, and the type and mechanism of estorate (treatment, rehabilitation, supervision)
3	Integration of <i>therapeutic justice</i> approaches in prosecution policy	Making treatment and rehabilitation the main response, prison as the <i>ultimate remedium</i>
4	Standardization of estoratetic psychiatric examination as a formal pre-prosecution requirement	VERP menjadi bagian kelengkapan berkas P-21; mencegah kesalahan arah penuntutan
5	Special and ongoing training for Public Prosecutors	Improve psychiatric competence, understanding disability rights, inclusive communication, reduce bias and stigma
6	Strengthening cross-sector coordination	Formal cooperation between the prosecutor's office mental hospital restorati office BPJS for smooth medical referral
7	Affirmation of the victimology perspective in prosecution policy	Encourage a restorative-therapeutic approach, seeing perpetrators as part of the social protection system, not just perpetrators of crimes

The recommendations proposed in this study are not merely administrative in nature but also require a fundamental cultural transformation within the criminal justice system. Without adequate training and a paradigm shift from a retributive orientation toward a rehabilitative approach, written policies are unlikely to be effectively implemented. Therefore, short-term priorities should focus on the issuance of a specific Prosecutor General Regulation and the provision of specialized training for prosecutors. Medium-term priorities should include the establishment of a *lex specialis* framework and the standardization of forensic psychiatric evaluations, while long-term efforts should aim at integrating the criminal justice system with mental health and social welfare services.

Based on the data, analysis, and interpretation of the findings, this study concludes that legal protection for offenders with mental disabilities from a victimological perspective encompasses both procedural and substantive dimensions. Procedural protection is reflected in measures such as postponing the determination of legal status pending expert psychiatric assessment, requiring forensic psychiatric evaluations, and providing reasonable accommodations throughout the investigation and prosecution processes. Substantive protection is manifested through prosecutorial approaches that prioritize rehabilitative measures over imprisonment. However, the implementation of such protection remains constrained by a significant gap between legal norms and actual practice, resulting from the absence of specific standard operating procedures, limited disability-friendly facilities, and persistent public pressure favoring punitive responses. Consequently, offenders with mental disabilities continue to face a substantial risk of secondary victimization within the criminal justice process.

Furthermore, the study identifies the development of a specialized Prosecutor General Regulation governing the handling of criminal cases involving offenders with mental disabilities as the most urgent and strategic policy recommendation. Such a framework should be accompanied by the standardization of forensic psychiatric assessments as a formal prerequisite during the pre-prosecution stage. In addition, continuous professional training for prosecutors, strengthened intersectoral cooperation with mental health and social service institutions, and the institutionalization of therapeutic justice and victimological principles are essential to ensure that prosecutorial policies emphasize recovery, long-term protection, and the prevention of secondary victimization. These measures contribute to the advancement of criminal justice scholarship and practice by promoting a rehabilitative–therapeutic paradigm capable of achieving substantive justice for offenders with mental disabilities within the Indonesian criminal justice system.

CONCLUSION

Based on the data, analysis, and interpretation of the research findings, it can be concluded that legal protection for offenders with mental disabilities from a victimological perspective encompasses both procedural and substantive forms of protection. Procedural protection is reflected in measures such as postponing the determination of legal status until an expert psychiatric assessment has been conducted, requiring consideration of forensic psychiatric opinions, and providing reasonable accommodations throughout the investigation and prosecution processes. Substantive protection, on the other hand, is manifested through prosecutorial approaches that prioritize rehabilitative measures rather than imprisonment. Nevertheless, the implementation of such protection continues to face a significant gap between legal norms and practice due to the absence of specific standard operating procedures, limited disability-friendly assessment facilities, and public pressure that tends to favor punitive responses. As a result, offenders with mental disabilities remain vulnerable to secondary victimization arising from criminal justice processes that are not yet fully responsive to their mental health conditions. These findings demonstrate that the principal challenge in protecting offenders with mental disabilities does not lie in the absence of legal norms, but rather in the inconsistency of their implementation within the criminal justice process. Accordingly, ensuring substantive justice requires not only compliance with statutory provisions but also institutional mechanisms capable of consistently accommodating the psychological conditions and legal rights of offenders with mental disabilities.

This study contributes to the development of victimological scholarship by providing empirical evidence that offenders with mental disabilities should be understood within the victim-offender overlap framework. Unlike previous studies that predominantly focused on normative legal analysis, this research demonstrates that institutional practices, rather than

legal norms alone, significantly influence the effectiveness of legal protection during criminal proceedings. Furthermore, based on the empirical and normative findings, the most urgent and strategic prosecutorial policy recommendation is the formulation of a specific Prosecutor General Regulation that explicitly governs the handling of criminal cases involving offenders with mental disabilities, accompanied by the standardization of forensic psychiatric assessments as a formal requirement during the pre-prosecution stage (P-21). In addition, continuous specialized training for public prosecutors is necessary to enhance their competence in forensic psychiatry and disability rights, while stronger intersectoral coordination with mental health institutions and social service agencies should be established. The incorporation of therapeutic justice principles and a victimological perspective into prosecutorial policies is also essential to ensure that legal responses move beyond purely retributive approaches and instead emphasize recovery, long-term protection, and the prevention of secondary victimization. Accordingly, future prosecutorial policies should institutionalize a rehabilitative–therapeutic paradigm as a fundamental framework for achieving substantive justice for offenders with mental disabilities within the Indonesian criminal justice system.

From a practical perspective, the findings of this study may serve as a reference for policymakers, prosecutors, investigators, and other criminal justice institutions in developing more standardized, disability-sensitive, and rehabilitation-oriented legal procedures. The implementation of these recommendations is expected to strengthen legal certainty while simultaneously ensuring the protection of the dignity and human rights of offenders with mental disabilities.

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