

# Post-Judicial Review of Article 433: The Position of Persons with Disabilities in Making Agreements

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Constitutional Court Decision No. 93/PUU-XX/2022 has fundamentally changed the construction of legal capacity for persons with disabilities in the Indonesian civil law system, which for more than a century and a half has been dominated by a discriminatory substitute guardianship regime. This study aims to analyze the transformation of legal capacity norms for persons with disabilities following the decision and examine the operationalization of the *supported decision-making paradigm* in contract law in Indonesia. This research is a normative legal study with a legislative approach, a conceptual approach, and a case approach. The results show that the Constitutional Court decision has given rise to three fundamental transformations: first, a change in the nature of guardianship from imperative ("must") to facultative ("can"), which opens up room for judicial discretion; second, the elimination of the stigmatizing terminology of "dumb, brain-sick, or dark-eyed" to "person with mental and/or intellectual disabilities"; third, recognition of the episodic nature of mental disabilities, which allows for a case-by-case assessment of capacity. This transformation aligns with the global paradigm shift from *substituted decision-making* to *supported decision-making* mandated by the CRPD. However, its implementation in contract law faces serious challenges related to the lack of legal parameters, the validity of the agreement, and the role of notaries. Legal construction is needed that integrates the principle of *supported decision-making* through voluntary assistance institutions and changes in the mindset of law enforcement officials and the public so that people with disabilities can fully participate as autonomous legal subjects in civil law.

**Keywords:** Legal Competence, Persons with Disabilities, Constitutional Court Decision

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## 1. Introduction

For more than a century and a half, the Dutch colonial Civil Code (KUHPerduta) has served as the foundation of civil law in Indonesia, yet it contains articles that systematically silence millions of citizens with disabilities from determining their own destiny. Article 433 of the Civil Code, which states that "*every adult who is consistently imbecile, mentally ill, or blind must be placed under guardianship,*" has operated as an instrument of structural discrimination that deprives people with mental and intellectual disabilities of their humanity as autonomous legal subjects. In practice, this provision, bridged by Article 1330 of the Civil Code, has produced destructive consequences in the form of systematic rejection of people with disabilities as parties to various civil contracts ranging from insurance agreements, opening bank accounts, to land sales transactions. The greatest irony occurs when people with mental disabilities who are in good health are still treated as incompetent subjects, so that their right to autonomy to control their own property and enter into agreements independently is lost to the erroneous and discriminatory doctrine of guardianship [1].

Criticism of the guardianship regime cannot be separated from the major paradigm shift in international human rights instruments, particularly when Indonesia ratified the Convention on the Rights of Persons with Disabilities (CRPD) through Law Number 19 of 2011. The CRPD explicitly introduced the concept of

irreducible *legal capacity for every person with a disability, where Article 12 of the CRPD mandates that persons with disabilities have equal legal capacity with others in all aspects of life, and the state is obliged to provide access to the necessary support. The key concept introduced by the CRPD is a fundamental shift from the substituted decision-making model adopted by the Civil Code to the supported decision-making model.* In the substitutive model, persons with disabilities are considered incapable of making decisions so that others take over all their legal authority, while the supported model emphasizes that persons with disabilities remain the primary decision-makers with assistance as needed. The CRPD Committee has even expressed serious concerns about the practice of guardianship in Indonesia which is considered contrary to the spirit of the convention, urging that Article 433 of the Civil Code be immediately reviewed to guarantee the rights of all persons with disabilities to equal recognition before the law [2].

On July 31, 2023, Indonesian legal history recorded a significant moment when the Constitutional Court, through Decision Number 93/PUU-XX/2022, partially granted the petition for judicial review of Article 433 of the Civil Code. In its legal reasoning, the Court stated that the phrase "*stupid, mentally ill, or blind*" and the word "*must*" in Article 433 of the Civil Code were conditionally contrary to the 1945 Constitution and had no binding legal force. The Court then provided a revolutionary constitutional interpretation by changing the word "*must*" to "*can*," which carries a fundamental legal meaning that guardianship is no longer automatic and imperative, but rather optional and subject to strict proof in court. Furthermore, the Court emphasized that district courts, as the institutions authorized to issue guardianship decisions, must act with great care and precision based on the results of expert examinations and statements from doctors, psychologists, and/or psychiatrists [2]. The Court explicitly acknowledged that persons with episodic mental disabilities retain the freedom to make choices when they are in a state of capacity, including choosing between guardianship, support, or other schemes recognized outside of civil law. This decision marks a significant milestone because, for the first time, the Constitutional Court explicitly harmonizes colonial law with the modern human rights paradigm embodied in Law No. 8 of 2016 concerning Persons with Disabilities and the CRPD.

Although Constitutional Court Decision No. 93/PUU-XX/2022 has opened new ground for recognizing the legal capacity of persons with disabilities, its implementation in civil law practice, particularly in contract formation, still leaves a number of fundamental issues that require in-depth study. First, what are the clear legal parameters for determining when a person with a mental disability has "capacity" and is able to enter into an agreement independently, and when they require support or even guardianship as a *last resort*? The Court has mandated the involvement of experts, but there are no established standards governing the integration of medical-psychiatric diagnoses with legal assessments of capacity to act in a contractual context. Second, how is the legal construction of agreements involving persons with mental disabilities post-ruling? Are agreements made without a guardian automatically valid as long as it can be proven that the person concerned was in a state of capacity at the time of the agreement? The absence of technical guidelines has the potential to create legal uncertainty and even open up new opportunities for exploitation of persons with disabilities. Third, how can the concept of *supported decision-making* mandated by the CRPD be operationalized in the Indonesian civil law system which is still heavily influenced by the doctrine of substitutive guardianship, considering that the stigma against people with mental disabilities is still very strong among law enforcement officers and the public [3].

Based on the complexity of the issues above, this research is highly urgent and strategic for several fundamental reasons. From an academic perspective, this research will fill the gap in discourse on how contract law in Indonesia has transformed following the Constitutional Court's decision that fundamentally changed the concept of capacity to act (*handelingsbekwaamheid*), considering that so far, studies on disability have focused more on aspects of criminal law, political rights, or family law while aspects of

contract law have rarely been touched upon. From a practical perspective, this research is expected to provide guidance for judges, notaries, advocates, and other legal practitioners in implementing the Constitutional Court's decision in concrete cases of contract making by formulating much-needed practical parameters and guidelines in the field. From a policy perspective, this research can provide valuable input for national legal reformers, particularly in the context of revising the Civil Code or drafting a Bill on Contract Law that is more inclusive and human rights-based. Thus, this study will comprehensively examine the transformation of the position of persons with disabilities in making agreements following the Constitutional Court Decision Number 93/PUU-XX/2022, with a focus on the harmonization between classical civil law doctrine, constitutional mandate, and the human rights paradigm in the CRPD, as well as its implications for civil law practice in Indonesia.

## 2. Literature Review

The discourse surrounding the legal capacity of persons with disabilities (PWDs) in Indonesia is situated at the intersection of classical civil law doctrine, modern constitutional jurisprudence, and international human rights law. A significant body of literature has critiqued the foundational theories of *handelingsbekwaamheid* (capacity to act) within the Burgerlijk Wetboek (KUHPperdata). Satrio (2021) provides a comprehensive doctrinal analysis of the guardian-ward relationship under Article 433, arguing that its rigid categorization of disability created a status-based, rather than functional, approach to legal capacity. This view is echoed by HARIANI (2025), who posits that the colonial code's framework is inherently exclusionary, treating disability as a monolithic condition that permanently negates legal subjectivity. These analyses establish that the substituted decision-making model embedded in the Civil Code, where a guardian supplants the will of the individual, is rooted in a medical model of disability that views impairments as deficits to be managed by the state or family, rather than as aspects of human diversity to be accommodated.

The ratification of the CRPD through Law No. 19 of 2011 and the subsequent enactment of Law No. 8 of 2016 concerning Persons with Disabilities introduced a seismic theoretical shift that has been the focus of more recent scholarship. The core of this shift, as articulated by scholars like Humaira & Karimah (2024), is the move from substituted to supported decision-making. They analyze Constitutional Court Decision No. 93/PUU-XX/2022 as a pivotal moment where this international human rights norm began to penetrate Indonesia's positivist legal structure. Their work highlights the Court's innovative interpretation, which deconstructs the automaticity of guardianship by mandating a case-by-case, evidence-based assessment. This aligns with the CRPD Committee's general comment on Article 12, which emphasizes that legal capacity is universal and that support must be provided to exercise it, not as a justification for its removal (UN Committee on the CRPD, 2014). However, much of the existing literature, such as the study by Lestari (2025), focuses on the socio-legal stigma and the attitudinal barriers among law enforcers, documenting the gap between the new legal norms and the persistent reality of discrimination. While these studies effectively map the normative conflict and the persistence of stigma, they often stop short of delving into the practical mechanics of contract law.

The research gap, therefore, lies in the operationalization of these new principles within the specific domain of contract formation. Doctrinal works, like those of Satrio (2021), thoroughly explain the old regime but do not account for the constitutional reinterpretation. Human rights-based analyses, such as those by Humaira & Karimah (2024), successfully critique the old system and celebrate the new constitutional mandate but leave unanswered the granular legal questions of contract validity, evidentiary standards for "capacity," and the mechanics of "support" in transactional settings. Furthermore, there is a notable absence of studies that bridge medical-psychiatric assessments with legal determinations of capacity to act in a contractual

context, a void explicitly created by the Constitutional Court's mandate for expert involvement. The existing literature thus establishes a clear theoretical conflict and identifies a socio-legal problem, but it fails to provide a coherent legal framework for how a notary, judge, or bank officer should determine, in practice, whether an agreement involving a person with an episodic mental disability is valid, voidable, or null.

### 3. Problem Statement

Based on the two dimensions of discussion above, this research identifies a fundamental disjuncture between the progressive constitutional mandate of Constitutional Court Decision Number 93/PUU-XX/2022 and its practical implementation in Indonesian contract law. First, regarding the transformation of legal competency norms, although the Constitutional Court has fundamentally altered Article 433 of the Civil Code by changing the imperative "must" to the facultative "can," removing stigmatizing terminology, and recognizing the episodic nature of mental disability, there remains no established legal framework for determining when a person with mental disability possesses the requisite capacity to act (*handelingsbekwaamheid*) in contractual contexts. The shift from a status-based approach to a functional approach requires individualized assessment of actual capacity, yet clear parameters for such assessment are absent. How should courts and notaries assess the fluctuating nature of mental capacity? What evidentiary standards govern the determination of "capacity" at the time of contract formation? How should medical-psychiatric diagnoses be integrated with functional legal assessments? The absence of standardized protocols risks inconsistent judicial interpretations and continued discrimination under the guise of individualized assessment.

Second, regarding the operationalization of supported decision-making, there is a critical institutional void regarding how the CRPD-mandated supported decision-making model can be implemented within Indonesia's civil law system, which remains deeply embedded in the substituted decision-making paradigm of the Civil Code. While the Constitutional Court has opened the door for support schemes as alternatives to guardianship, it has provided no guidance on how such schemes should be structured in contractual practice. What legal forms can supported decision-making take? Can support be informal or requires formal recognition? What are the responsibilities and liabilities of supporters? How should notaries ensure the validity of authentic deeds while respecting the autonomy of persons with disabilities? Although informal support practices exist within Indonesian communities, these have not been integrated into the formal legal framework, creating legal uncertainty and potential for exploitation.

Based on these problems, this research seeks to answer:

1. What are the clear legal parameters for determining the capacity to act (*handelingsbekwaamheid*) of persons with mental disabilities in contract formation post-Constitutional Court Decision Number 93/PUU-XX/2022, particularly regarding individualized assessment integrating medical and legal perspectives?
2. What is the appropriate legal framework for operationalizing supported decision-making in Indonesian contract law, including mechanisms for appointment of supporters, the role of notaries, and safeguards against exploitation?

### 4. Method

This research is a normative legal research with a statute approach, a conceptual approach, and a case approach (Nivarica, 2025). Law Number 8 of 2016 concerning Persons with Disabilities, and the ratified Convention on the Rights of Persons with Disabilities (CRPD). The conceptual approach is used to analyze the doctrine of legal capacity, substituted *decision-making*, and *supported decision-making* from a comparative perspective. The case approach is applied by analyzing the legal considerations of the

Constitutional Court in the a quo decision. Primary legal materials include laws and court decisions, while secondary legal materials consist of textbooks, scientific journals, and previous research results. The technique for collecting legal materials uses library research *which* is analyzed qualitatively using grammatical, systematic and teleological interpretation methods to find the ideal legal construction regarding the position of people with disabilities in making agreements after the Constitutional Court's decision.

## 5. Results and Discussion

### Transformation of Legal Competency Norms for Persons with Disabilities Following Constitutional Court Decision Number 93/PUU-XX/2022

Constitutional Court Decision Number 93/PUU-XX/2022 has brought about a fundamental transformation in the legal construction of capacity to act (*handelingsbekwaamheid*) for people with mental and intellectual disabilities in Indonesia. Prior to this ruling, Article 433 of the Civil Code imperatively stated that any adult who is consistently imbecile, mentally ill, or blind *must* be placed under guardianship [4]. This normative construction is coercive and automatic, with the legal consequence that once a person is diagnosed with a mental disorder, they automatically lose their legal capacity to act independently, including entering into agreements and various other civil actions. This provision does not allow for individual assessment of a person's actual capacity at a given time, but instead directly equates disability status with permanent and absolute legal incapacity. In practice, this approach has given rise to systemic discrimination, where people with mental disabilities are treated as second-class citizens who lack the autonomy to determine their own destiny in civil law.

The Constitutional Court then made a legal breakthrough by changing the phrase "*must*" to "*can*," a wording change that carries fundamental legal significance. This change shifts the nature of the norm from imperative to facultative, meaning that guardianship is no longer automatic but requires careful consideration and court decision. In its legal reasoning, the Court emphasized that with this change, individuals who are legally categorized as persons with mental and/or intellectual disabilities "*can*" be placed under guardianship, meaning that not all persons with mental and/or intellectual disabilities must necessarily be placed under guardianship. This new construction opens up broad discretion for judges to comprehensively consider whether a person with mental disabilities truly requires guardianship, or whether it is still possible for them to act independently with or without support. Judges are now required to make individualized assessments based on the specific facts revealed in court, rather than simply applying disability status mechanically [5].

More fundamentally, the Constitutional Court also transformed the language and removed the stigma in Article 433 of the Civil Code, which is more than a century and a half old. The phrase "*dumb, brain sick or dark-eyed*" which is considered highly discriminatory, degrading human dignity, and inconsistent with scientific developments is declared conditionally contrary to the 1945 Constitution, so it must be interpreted as "*person with mental and/or intellectual disabilities*". The elimination of this stigmatizing terminology is a significant step forward in realizing respect for the human rights of persons with disabilities, as mandated in Article 32 of Law Number 8 of 2016 concerning Persons with Disabilities which guarantees the right to be free from stigma, negative labeling, and all forms of discrimination [6]. In its legal considerations, the Court emphasized that the use of the term "*dumb, brain sick or dark-eyed*" is a term that is very outdated, inhumane, and tends to degrade human dignity, and is inconsistent with scientific developments, especially in the field of mental health.

This linguistic transformation is not merely a cosmetic or editorial change, but rather reflects a fundamental paradigm shift in the legal perspective on persons with disabilities. Previously, the medical model dominated legal construction, where disability was viewed as a disease or abnormality inherent in a person and resulting in incapacity. Following this ruling, the paradigm adopted is the socio-human rights model, adopted from the Convention on the Rights of Persons with Disabilities (CRPD). The socio-human rights model views disability not solely as an individual problem, but as the result of interactions between individuals and social barriers, including legal barriers and discriminatory policies. In this paradigm, persons with disabilities are recognized as full legal subjects with all their rights and dignity, not objects that need to be excessively "protected" to the point of diminishing their autonomy. This recognition aligns with the fundamental principle of the CRPD, which affirms that persons with disabilities have equal legal capacity in all aspects of life, and the state is obligated to provide access to the support necessary to exercise that legal capacity. [7].

Another important implication of this ruling is the explicit recognition of the episodic nature of mental disability, a clinical reality often overlooked in rigid legal constructions. The Constitutional Court firmly acknowledged that not all persons with mental disabilities have permanent mental disorders. As a concrete example, the Court defined schizophrenia as an episodic, rather than a permanent, mental disorder, meaning that persons with mental disabilities are not always in a state of what is considered an inability to think or act rationally. This recognition has crucial legal implications in the context of contracting and various other legal actions. It opens up the possibility that persons with mental disabilities who are in good health, that is, not in an episode of disorder, have full legal capacity to enter into agreements independently, without the need for intervention from a guardian or other party. In other words, capacity to act is no longer determined absolutely and permanently based on disability status, but must be assessed casuistically based on the factual conditions at the time the legal act is committed.

This recognition of the episodic nature of mental disability aligns with the principle of *legal capacity* in Article 12 of the CRPD, which clearly distinguishes between legal capacity *and* mental capacity. Legal capacity is the ability to have rights and obligations, as well as the ability to act to exercise those rights and obligations, inherent in every person without exception. Mental capacity, on the other hand, refers to a person's cognitive ability to make decisions at a given time, which can fluctuate depending on health conditions. A fundamental principle of the CRPD is that legal capacity should not be denied or reduced solely on the basis of a disability or impaired mental capacity. A person may experience impaired mental capacity due to an episode of impairment, yet they retain intact legal capacity [8] *supported decision-making* model mandated by the CRPD.

The Constitutional Court also noted that although guardianship remains necessary in certain circumstances to protect the civil rights of persons with disabilities, its implementation must be carried out with great care and precision. As the authorized institution to issue guardianship orders, the district court must base its decision on the legal facts revealed in court, particularly the results of examinations by authorized experts and testimony from doctors, psychologists, and/or psychiatrists. This means that guardianship orders can no longer be made merely ceremonially or administratively, but must undergo a rigorous evidentiary process that truly reflects the actual condition of the person with disabilities. Judges are required to carefully examine whether the person in question is truly experiencing such a condition that they are unable to manage their own interests, and whether there are no other, less burdensome alternatives to guardianship. In this context, medical-psychological evidence is crucial, but it should not be the sole basis for consideration. Judges must also consider social aspects, the individual's wishes and preferences, and the availability of alternative support mechanisms.

With all these transformations, this ruling has decisively shifted the guardianship regime from a *status-based approach* to a *functional approach*. The status-based approach previously adopted in the Civil Code determined legal capacity based on a specific status or category, in this case, the status of a person with a mental disability, without considering the individual's actual capacity. This approach is highly discriminatory because it applies excessive generalizations and ignores the reality that each individual has different conditions and needs. In contrast, the functional approach introduced after this ruling emphasizes an assessment of an individual's actual function and capacity at a given time, taking into account various factors comprehensively. This approach better respects the autonomy and right of each individual to self-determination and is more in line with the principles of non-discrimination and respect for human dignity that are the foundations of the Pancasila state. However, this normative transformation is only the first step, as its implementation in practice still requires a change in mindset, the development of technical guidelines, and adjustments to various implementing regulations so that the spirit of the Constitutional Court ruling can be realized in the protection and fulfillment of the rights of persons with disabilities in Indonesia.

### **The Supported Decision-Making Paradigm and Its Operationalization in Contract Law in Indonesia**

The transformation of norms in Article 433 of the Civil Code following Constitutional Court Decision Number 93/PUU-XX/2022 cannot be understood separately from the ongoing global paradigm shift in international disability law, namely the shift from a *substituted decision-making model* to a *supported decision-making model* as explicitly mandated by the Convention on the Rights of Persons with Disabilities (CRPD). From a comparative legal perspective, these two models have fundamental philosophical and operational differences in viewing the legal capacity of persons with disabilities. The *substituted decision-making model*, which for more than a century and a half has been adopted in the Civil Code through guardianship institutions, positions another person, usually a family member or a court-appointed party, as a substitute *who* takes over all legal authority for the person with disabilities [9]. In this model, the person with disabilities loses the capacity to act independently and all legal decisions are made by the guardian on their behalf. This model is based on the paternalistic assumption that people with mental and intellectual disabilities are unable to make rational decisions, so they need another, more competent party to make decisions on their behalf based on considerations of the guardian's "best interests," *which* may not necessarily be in line with the wishes and preferences of the individual concerned.

In contrast, *the supported decision-making model* introduced by the CRPD emphasizes a completely different paradigm, where persons with disabilities remain recognized as primary decision *-makers*, while other parties, whether family, friends, professional advocates, or peer groups, play a role in providing support as needed without diminishing their legal capacity. This model is based on the recognition that every human being, including persons with disabilities, has the inherent right to self-determination and the right to make choices in their lives, including the right to make mistakes [10]. In this construction, support should not shift decision-making authority from the person with disabilities to the advocate, but rather strengthen the individual's capacity to make their own decisions. Respect for individual autonomy, desires, and preferences is a core principle that cannot be negotiated, in contrast to the substitutive model, which places greater emphasis on objective protection based on external assessments. This paradigm shift aligns with the spirit of the Constitutional Court Decision, which changed the nature of guardianship from imperative to facultative, and recognizes that persons with mental disabilities can have full capacity at certain times outside of episodes of impairment.

The implementation of *supported decision-making* in the context of contract formation, which is the core of civil law, requires significant and systematic legal breakthroughs. A decision-making support system, referred to in the terminology of the Community Legal Aid Institute as the Decision-Making Support System (SDPK), positions individuals as the subjects who determine decisions, even though others assist them in

the process. In practice, this support can take various forms and levels, depending on the specific needs of each individual. This support can be very informal, such as assistance from a trusted family member or close friend, who helps explain the legal consequences of an agreement in easy-to-understand language. It can also take the form of structured support through *peer-support groups*, where fellow people with disabilities share experiences and information in decision-making. Other forms include *peer counseling* or counseling by trained peers, to professional assistance by an advocate, psychologist, or special counselor who deeply understands the needs and rights of people with disabilities. The most important thing in all forms of support is that the decision-making authority remains entirely with the person with disabilities, and the companion is not permitted to take over decisions or impose his will [11].

Empirical research conducted by LBH Masyarakat (Lembaga Hukum Masyarakat), an Indonesian legal aid organization, has found that practices based on the principle of *supported decision-making* have been taking place informally in various communities in Indonesia, although they have not yet received formal recognition within the legal system. For example, in schizophrenia care communities, peer mentoring practices exist where more experienced community members help other members in recovery understand their rights, including accessing healthcare services and conducting simple transactions. Similarly, in support groups for people with intellectual disabilities, parents or siblings accompany family members in decision-making, while still allowing them to express their wishes and preferences. These positive practices demonstrate that the social roots of *supported decision-making* already exist within the local wisdom of Indonesian society, but have not yet been integrated and legitimized within the formal legal framework. The task of legal reformers going forward is to elevate these informal practices into a more systematic legal structure and provide guaranteed protection for all parties involved [12].

However, the operationalization of *supported decision-making* in Indonesian contract law faces a number of serious challenges that require careful legal consideration and solutions. First and foremost, there are no clear legal parameters for determining the appropriate form and level of support for persons with disabilities in entering into agreements [13]. Is informal support sufficient without court intervention, or is a professionally issued "capacity certificate" or even a court order formally recognizing a specific support scheme necessary? This lack of clarity creates legal uncertainty for all parties involved in civil transactions. Second, it concerns the validity of agreements entered into by persons with disabilities with support. How can an agreement be determined to be valid and binding, especially if a dispute arises over whether the support provided truly reflects the wishes and preferences of the parties concerned, or is it a form of disguised manipulation? Third, what is the role of a notary, as a public official authorized to draw up authentic deeds, in ensuring that persons with disabilities who appear before them truly understand and agree to the deed? Notaries find themselves in a dilemma: on the one hand, they must ensure legal certainty and protection for all parties, while on the other, they must avoid the trap of paternalism, which would reinstate a substitutive paradigm. The absence of clear technical guidelines to address these questions has the potential to create serious legal uncertainty and even open up new opportunities for exploitation, where support mechanisms become a cover for controlling and manipulating the decisions of people with disabilities by irresponsible parties.

To address these challenges, a legal framework is needed that systematically integrates the principle of *supported decision-making* into Indonesian treaty law, while still taking into account local characteristics and needs [14]. The experiences of several countries that have already adopted the CRPD can be a valuable source of inspiration. Canada, for example, developed a *representation agreement model* that allows persons with disabilities to voluntarily appoint one or more companions with specific and limited authority in accordance with mutual agreement. In this model, the companion does not have the authority to make decisions in their place, but only helps understand complex information, communicates available options,

and ensures that decisions taken truly reflect the free will of the person with disabilities. Sweden developed a slightly different model with a *god man* (companion) appointed based on the consent of the individual concerned, with authority flexibly designed to suit needs. Ireland through the Assisted Decision-Making (Capacity) Act 2015 developed three different levels of support, ranging from *decision-making assistant*, *co-decision-maker*, to *decision-making representative*, with increasing levels of intervention but still maintaining the principle that the individual is the primary decision maker as far as possible [15].

Indonesia can adopt and adapt these models by adapting them to the prevailing legal system and socio-cultural values of the community. One alternative that can be considered is introducing the institution of "voluntary assistance" in the drafting of agreements, specifically regulated by law, for example through a revision of the Civil Code or the creation of a special law on inclusive contract law. In this model, persons with disabilities who feel they need support can voluntarily appoint one or more companions by creating a written agreement witnessed or even notarized. The assistance agreement must clearly stipulate the scope of the companion's authority, which is limited and must not include substitutive decision-making. A notary can be involved to ensure that the support process is conducted in accordance with sound principles, for example by requiring the companion to make a written statement that they only provide support and do not replace decision-making, and that the final decision rests entirely with the person with a disability. In the event of a future dispute, the notarial statement and deed can serve as strong initial evidence of the validity of the decision-making process [16].

In addition to institutional and regulatory reform, a fundamental mindset shift is also needed among law enforcement officials, notaries, and the wider public. The Constitutional Court's highly progressive ruling will stagnate at the normative level and have no real impact if it is not accompanied by a shift in understanding and attitudes toward persons with disabilities. The stigma that persons with mental and intellectual disabilities are fundamentally incapable of making rational decisions remains deeply rooted in the collective consciousness of society, including among legal professionals. This stigma has the potential to erode the implementation of *supported decision-making* in practice, as parties tend to revert to old, legally "safe" yet discriminatory mindsets. Therefore, ongoing socialization and education programs about this new paradigm are needed, targeting not only cognitive aspects but also affective and behavioral aspects. Education on the rights of persons with disabilities needs to be integrated into higher legal education curricula, ongoing training for judges and notaries, and a massive public campaign. District courts also need to develop best practices in processing applications for guardianship, actively considering and prioritizing support schemes as a less demanding alternative before issuing substitutive guardianship. A judge may, for example, order a psychological examination that is not only intended to prove incompetence, but also to identify what forms of support are necessary and possible for the individual concerned [17].

With all these efforts, it is hoped that the spirit of the Constitutional Court's decision recognizing the legal capacity of persons with disabilities can be truly realized in everyday life. Persons with disabilities, including those with mental and intellectual disabilities, will ultimately be able to participate fully and equally in civil law, including in making legally binding agreements. They will no longer be viewed as second-class citizens who must be represented by others in their legal affairs, but rather as autonomous legal subjects who have the right to determine their own destiny with appropriate support from their surroundings. This is the essence of respect for human dignity, the foundation of the Pancasila state, and a concrete implementation of Indonesia's commitment to human rights as outlined in ratified international conventions.

## 6. Conclusion

Constitutional Court Decision Number 93/PUU-XX/2022 has fundamentally transformed Indonesia's legal framework regarding the capacity of persons with disabilities by shifting guardianship from an imperative

to a facultative nature, eliminating stigmatizing terminology, and recognizing the episodic character of mental disabilities that enables case-by-case capacity assessments. This normative transformation aligns with the global paradigm shift from substituted to supported decision-making mandated by the CRPD, where persons with disabilities remain primary decision-makers with appropriate support. However, implementing this new paradigm in contract law faces significant challenges, including the absence of clear legal parameters for determining capacity, uncertainty regarding the validity of agreements involving persons with disabilities, and the undefined role of notaries in ensuring proper support processes. This study acknowledges several limitations that warrant future research. Being primarily doctrinal, this research requires complementary empirical studies examining how courts and notaries implement the ruling in practice. The limited comparative scope, drawing mainly from Canada and Sweden, suggests the need for broader comparative analysis with civil law countries like the Netherlands or Germany. Furthermore, future research should incorporate participatory methods engaging persons with disabilities directly, develop detailed legislative proposals for voluntary assistance mechanisms, and examine sector-specific implementation challenges in banking, insurance, and property transactions to ensure the Constitutional Court's progressive spirit translates into meaningful access to civil law for persons with disabilities as equal and dignified legal subjects.

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