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Legal Protection for Persons with Disabilities Who Become Victims of Sexual Violence

Zahra Alsabilah¹, Dr. Hery Firmansyah, S.H., M.Hum., MPA².

¹Tarumanagara University, Jakarta, Indonesia, zahra.205210101@stu.untar.ac.id.

²Tarumanagara University, Jakarta, Indonesia, heryf@fh.untar.ac.id.

Corresponding Author: zahra.205210101@stu.untar.ac.id¹

Abstract: As a human rights violation, sexual violence against persons with disabilities requires special attention from the Indonesian legal system. People with disabilities are more vulnerable to sexual violence, yet they are often overlooked in legal proceedings. This article discusses legal protection for persons with disabilities who become victims of sexual violence and the difficulties faced in enforcing their rights. This research analyzes Law No. 8 of 2016 on Persons with Disabilities and Law No. 12 of 2022 on Sexual Violence Crimes through a normative juridical approach. The results show that there are weaknesses in the legal protection process that affect victims' ability to obtain justice. Consequently, to ensure the rights of persons with disabilities are fully met, strengthening regulations and the role of law enforcement institutions in protecting persons with disabilities from sexual violence is necessary.

Keyword: Legal Protection, Persons with Disabilities, Sexual Violence, Access to Justice, Human Rights.

INTRODUCTION

Sexual violence is a type of crime that adversely impacts victims psychologically, physically, or socially. When victims come from vulnerable groups such as persons with disabilities or individuals with physical, mental, or intellectual limitations, this condition worsens. Discrimination and marginalization against persons with disabilities often occur in daily life, including in legal processes related to sexual violence. Although Law No. 8 of 2016 on Persons with Disabilities and Law No. 12 of 2022 on Sexual Violence Crimes have provided a legal basis to protect their rights, many obstacles hinder the implementation of these laws.

Persons with disabilities or people with special needs and limitations, often referred to as differently abled, now known as persons with disabilities, are issues that rarely receive attention from government and society (Harahap, 2015). Compared to the general public, persons with disabilities are more vulnerable to becoming victims of sexual violence, according to data collected by the National Commission on Violence Against Women and several NGOs focusing on disability issues. Various factors cause these difficulties, such as physical

limitations, dependence on others, lack of legal understanding, and limited access to legal aid and rehabilitation services. Ironically, victims of sexual violence are often ignored and do not receive proper legal protection. Due to communication barriers, social stigma, and lack of space for persons with disabilities in law enforcement institutions, many face difficulties in following legal channels.

One concrete example of this inefficiency is that persons with disabilities do not have legal assistants or interpreters during court proceedings and examinations. However, Law No. 8 of 2016 explicitly stipulates that such services are necessary to facilitate the full involvement of persons with disabilities in legal proceedings. Victims cannot provide clear statements due to the absence of companion services. To achieve its objectives, the law is responsible for dividing people's rights and obligations in society, dividing authority, and establishing methods for problem resolution (Mertokusumo, 2003). Ultimately, this disadvantages their position in legal proceedings. Additionally, one of the biggest barriers to obtaining justice is social stigma against persons with disabilities. Persons with disabilities are often considered weak, helpless, or even unaware of what they experience, so their reports of sexual violence are not taken seriously. This view is highly discriminatory and detrimental to the rights of persons with disabilities as citizens entitled to equal protection and justice.

Protection of persons with disabilities who become victims of sexual violence needs to receive more serious attention in Indonesia's legal system. Although current laws provide protection for persons with disabilities, there are still differences between ideal legal practice and what occurs. Furthermore, persons with disabilities often do not receive care appropriate to their special needs, such as adequate psychological support or interpreter services for the deaf.

The purpose of this research is to determine how effective legal protection is for persons with disabilities who become victims of sexual violence in Indonesia, with special emphasis on policies, laws, and functions of law enforcement institutions. This study also emphasizes problems faced in ensuring access to justice for persons with disabilities and offers suggestions for improving their legal protection. It is hoped that with this study, society and law enforcement will become more aware of the importance of comprehensive protection for persons with disabilities, especially in cases of sexual violence.

METHOD

This research uses a normative juridical approach, which means it examines applicable legal policies in Indonesia, particularly those relating to protecting the rights of persons with disabilities who become victims of sexual violence. The normative juridical approach focuses on legislation, legal documents, and legal principles related to protecting the rights of persons with disabilities. This research is normative legal research. Legal behavior products, such as case study decisions, legislative analysis, principles, theories, expert doctrines, and legal principles, are the basis of legal research methodology (Muhaimin, 2020).

The purpose of this research is to discover, study, and analyze regulations and legal doctrines related to the rights of persons with disabilities and sexual violence crimes. This research concentrates on current regulations, law enforcement procedures, and the role of institutions involved in protecting sexual violence victims from disability groups.

This research is descriptive-analytical, aiming to provide a comprehensive and detailed picture of legal protection for persons with disabilities who become victims of sexual violence in Indonesia. Descriptive studies are conducted to find and explain laws, regulations, and the role of law enforcement institutions in handling sexual violence cases involving persons with disabilities. Research with this descriptive approach tends to describe situations and events to be studied further to explain relationships, hypotheses, and predictions related to the topics discussed here (Sukmadinara & Syaodih, 2006). This research not only provides a picture of current conditions but also reviews differences between legal theory (what is regulated by law)

and actual practice. Thus, this research can provide clear and data-based recommendations about legal protection for persons with disabilities who become victims of sexual violence. Normative legal research uses secondary data types. Secondary data types are obtained through collection and examination of various existing sources, such as legal books, scientific journals, legislation, previous research results, and court decisions relevant to the research topic. Among the types of secondary data used are:

- **Legislation:** Law Number 8 of 2016 on Persons with Disabilities and Law Number 12 of 2022 on Sexual Violence Crimes, along with other related implementing regulations concerning legal protection for persons with disabilities.
- **Legal Literature:** Articles, books, and scientific journals discussing legal protection of persons with disabilities and sexual violence against vulnerable groups.
- **Legal Documents and Court Decisions:** Analysis of court decisions regarding sexual violence cases involving persons with disabilities.

This research focuses on secondary data to assess and analyze how applicable laws are implemented in practice, especially in protecting the rights of persons with disabilities who become victims of sexual violence. It is expected that this research will identify possible gaps between regulations and implementation in the field and make recommendations for better legal policies.

RESULTS AND DISCUSSION

Legal Protection for Victims with Disabilities Based on Law No. 8 of 2016

As a state governed by law, Indonesia imposes sanctions on individuals who commit criminal acts. According to Franz Mgnis Suseno, there are four interrelated requirements for a state of law: first, the Principle of Legality meaning the government acts solely based on applicable law; second, freedom and independence of judicial power especially in its function and duties to enforce law fairly; third, guaranteed protection of human rights; and fourth, government based on a constitutional system or basic law (Alfian, 2015). According to Setiono, legal protection is an action or effort to protect society from arbitrary actions by authorities that contradict the law in efforts to create order and tranquility so humans can enjoy their dignity as humans (Setiono, 2004). According to Satjipto Raharjo, legal protection is an effort to ensure people can enjoy all rights given by law (Raharjo, 2000).

Criminal law sanctions are preventive, meaning that criminal provisions in legislation aim to prevent someone from taking actions that have been prohibited or contrary to existing regulations. Furthermore, criminal law sanctions can be in the form of social control, meaning that criminal provisions in legislation function as additional control. One difference between criminal law and other laws is that criminal sanctions can be considered as *Ultimum Remedium* if used in legislation as a last resort, after civil or administrative sanctions. While *Primum Remedium* means that criminal sanctions are deliberate actions to cause suffering to maintain norms recognized in law (Raharjo, 2000).

Article 25 paragraph (1) of the 1945 Constitution, which states that "Citizens and residents of Indonesia have the right to life and the right to maintain life and living," has a strong correlation with legal protection for victims with disabilities, especially in the context of violence and human rights violations (Thohari, 2014). This affirmation is very important because to ensure the implementation of the rule of law, human rights is one of the important elements that must be fulfilled (Sanit, 1985).

Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS)

Law No. 12 of 2022 on Sexual Violence Crimes (TPKS Law) serves as a legal framework to provide better protection for victims of sexual violence in Indonesia, including those with disabilities. Various types of sexual violence are included in this law, including physical or

non-physical sexual harassment, contraceptive coercion, sexual exploitation, and forced marriage. One of the main focuses of this law is victim protection, including those with disabilities. The TPKS Law gives special attention to victims with disabilities through various provisions that ensure equal access and comprehensive protection.

According to Article 25 of the TPKS Law, victims, including those with disabilities, have the right to receive legal care and psychosocial assistance throughout the reporting process until recovery. For disability victims who face difficulties in understanding legal processes or providing statements, this legal assistance is crucial. According to the TPKS Law, law enforcement handling sexual violence cases are required to provide special facilities and companions who understand the needs of victims with disabilities. This article emphasizes that sexual violence victims with disabilities must be protected throughout the legal process, including when they testify in court. Law enforcement must consider the unique conditions of victims to ensure they can testify without pressure.

Rights of Victims with Disabilities under the TPKS Law broadly include special rights for persons with disabilities who become victims of sexual violence, including:

1. Right to special protection during legal proceedings
2. Right to legal and psychological assistance appropriate to disability needs
3. Right to accessibility facilities in legal proceedings, such as communication aids or adequate physical access
4. Right to recovery services tailored to victims' physical, mental, and psychosocial conditions
5. Right to rehabilitation services covering medical, psychological, social, and legal services

Law No. 12 of 2022 on Sexual Violence Crimes provides broader protection for victims of sexual violence, especially for persons with disabilities, who often face difficulties in obtaining justice. This law aims to ensure that victims with special conditions have equal and proper access to legal and rehabilitation services through articles that specifically regulate protection, accessibility, and rights of disability victims. However, there are obstacles in implementation. To ensure that all victims, including those with disabilities, are protected and receive the justice they need, the government and society must continue to improve understanding and implementation of current laws.

Challenges in Legal Implementation for Persons with Disabilities Who Become Victims of Sexual Violence

Despite clear regulations in Indonesia governing protection for persons with disabilities and victims of sexual violence, many victims still do not receive proper legal protection. Several main factors contributing to this situation are as follows:

1. **Weak Law Implementation** Law enforcement weaknesses still occur in various cases of sexual violence, especially against persons with disabilities. Despite legal protections, law enforcement in Indonesia is often inconsistent. Law enforcement officers such as police, prosecutors, and judges sometimes do not understand the rights of sexual violence victims, especially those with disabilities. Consequently, many cases are not seriously investigated or are completely terminated. The lack of training for law enforcement officers, who are often not given sufficient training to handle sexual violence cases carefully and responsively, is an issue. In some situations, they are even unaware of the special rights of persons with disabilities regulated by Law No. 8 of 2016 on Persons with Disabilities and Law No. 12 of 2022 on Sexual Violence Crimes (TPKS Law). This results in weak implementation of legal protection, causing many victims to not receive proper justice.
2. **Limited Legal Accessibility for Persons with Disabilities** Many legal venues, such as courts, police stations, and victim assistance institutions, are not disability-friendly. This

includes inadequate physical infrastructure and lack of communication support such as sign language interpreters. Persons with disabilities often cannot report the violence they experience or properly follow legal proceedings without good accessibility. The lack of adequate legal aid is evident from the many persons with disabilities who become victims of violence not receiving adequate legal assistance. Besides legal support, assistance is also needed for translation, clear communication, and psychological support. The victim's right to receive legal assistance services is regulated in the TPKS Law, but in reality, these services are often unavailable or limited.

3. **Complex and Slow Bureaucratic Process** The criminal justice system in Indonesia often runs slowly and is convoluted. The investigation and trial process of sexual violence cases can take years. This results in many victims, especially those with disabilities, feeling intimidated and unable to follow the long and exhausting legal process. High costs cause many victims to be unable to finance the legal process, including costs for legal assistance, lawyers, or rehabilitation services. Although the law stipulates that victims are entitled to legal aid, in practice, access to these services is often limited or unknown to victims.

4. **Lack of Awareness and Understanding of Victims' Rights Limited Legal Socialization:** Laws such as Law No. 12 of 2022 (TPKS Law) and Law No. 8 of 2016 on Persons with Disabilities are still largely unknown. Many victims are unaware of their rights, such as receiving medical care, legal protection, and rehabilitation. Additionally, law enforcement in the field often occurs because law enforcement officers do not fully understand these rules. **Lack of Information for Persons with Disabilities:** Persons with disabilities are often socially isolated and have limited access to information. They are unaware that they are entitled to the same legal protection as other victims of sexual violence. They also do not receive the support services they should receive if they become victims of sexual violence.

5. **Absence of Holistic and Comprehensive Services Limited Rehabilitation Services:** The TPKS Law regulates victims' rights to receive medical, psychological, and social rehabilitation services. However, these services are often not widely available, especially in rural or remote areas. These services are crucial for persons with disabilities in post-violence recovery. Many victims cannot recover well and return to normal life due to inadequate rehabilitation services. **Lack of Specialized Legal Assistance Services for Victims with Disabilities:** Legal assistance services specifically designed for victims with disabilities are very limited. This assistance is crucial to ensure victims understand the legal process and their rights during legal proceedings. However, many legal organizations or non-governmental institutions lack the capability to provide these services in a specific manner. To protect victims of sexual violence, Indonesia already has comprehensive TPKS Law and Disability Law. However, many victims do not receive proper legal protection due to weak law enforcement, social stigma, limited accessibility, poor understanding of victims' rights, and patriarchal culture. To improve this situation, there needs to be enhancement in law implementation, wider socialization, and comprehensive service support for victims, especially for vulnerable groups such as persons with disabilities.

CONCLUSION

Various laws in Indonesia, including Law Number 8 of 2016 concerning Persons with Disabilities and Law Number 12 of 2022 concerning Sexual Violence Crimes (UU TPKS), regulate legal protection for persons with disabilities who become victims of sexual violence. The state guarantees the rights of persons with disabilities to obtain justice, legal assistance, and physical and psychological rehabilitation within this legal framework. However, despite adequate legal protection, many disabled victims still do not receive proper legal protection. This is due to several problems, such as corruption in the justice system, lack of professionalism

and capacity of law enforcement, patriarchal culture that discriminates against victims of sexual violence, and lack of access to support services for disabled victims.

Another contributing factor as an obstacle is the complex legal process and lack of socialization about the legal rights of persons with disabilities. As a result, many victims do not report the crimes they experience or do not receive the justice they should receive. Consequently, various components of Indonesia's law enforcement system require profound improvements. It is crucial to enhance the capacity and integrity of law enforcement, improve access for persons with disabilities to legal services, and address social stigma against victims of sexual violence. Therefore, the law can provide effective protection to all citizens, especially those in vulnerable situations such as persons with disabilities.

REFERENCE

- Alfian, A. (2015). Legal protection for disabled people who are victims of rape. *Fiat Justisia Journal of Law Science*, 9.
- Alam, A. S., & Ilyas, A. (2018). Introduction to criminology. Prenadamedia Group.
- Andriani, N. S. (2016). Responsive disability policy: Mainstreaming policy management at regional, national and international levels. *Palastren Journal*, 9(1).
- Dewi, A. A. I. A. A. (2018). Juridical aspects of legal protection and fulfillment of rights for persons with disabilities. *Pandecta*, 13.
- Efritadewi, A. (2016). Criminal law module (1st ed.). UMRAH Press.
- Harahap, R. R. (n.d.). Legal protection for persons with disabilities according to the Convention on the Rights of Persons with Disabilities.
- Nursyamsi, F., Dyah, E., Muhammad, A., Aziz, F., Bilqish, P., & Marutama, A. (2015). Legal framework for disability in Indonesia: Towards disability-friendly Indonesia (1st ed.). Indonesian Center for Law and Policy Studies.
- Prameswari, Z. W. A. W. (2017). Ratification of the Convention on the Rights of the Child in the Indonesian legislative system. *Yuridika*, 32.
- Thohari, S. (2014). Disability perspectives and accessibility of public facilities for persons with disabilities in Malang City. *Indonesian Journal of Disability Studies*, 1(1).
- Waliden, A. S., Maulida, F., Rachmatulloh, A., & Siddiq Jember, H. A. (2022). Review of the principle of equality before the law on law enforcement in Indonesia. *Verfassung: Journal of Constitutional Law*, 1(2), 123-142. <https://doi.org/10.30762/VJHTN.V1I2.186>