

OVERCOMING LEGAL BARRIERS: ENSURING JUSTICE FOR PERSONS WITH DISABILITIES VICTIMIZED BY SEXUAL VIOLENCE

SUPERANDO BARREIRAS LEGAIS: GARANTINDO JUSTIÇA PARA PESSOAS COM DEFICIÊNCIA VITIMIZADAS POR VIOLÊNCIA SEXUAL

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ABSTRACT: There are several cases of sexual violence experienced by Persons with Disabilities, unfair and discriminatory justice that afflicts Persons with Disabilities. In the judicial process, often, Persons with Disabilities are blamed by law enforcement for their identity Persons with Disabilities. Based on the above problems, the purpose of this study is to know, find, and analyse the obstacles faced by escorts and Persons with Disabilities during access to legal aid when Persons with Disabilities experience sexual violence and to know, find, and analyse the model of access to fair legal aid for Persons with Disabilities as victims of sexual violence. The research uses empirical juridical approach methods. The results showed that the obstacles faced by escorts and Persons with Disabilities in accessing fair legal aid at a time when disability is a problem that occurs in service institutions, constraints on Persons with Disabilities, and constraints on law enforcement officials. From these constraints, it can be created a model of access to fair legal aid for Persons with Disabilities victims of sexual violence, such as legal assistance services in the form of complaints at the police level to the courts following the conditions of victim disabilities. Therefore, it takes a discussion room with law enforcement officials, criminal law experts who understand gender justice, and legal escorts to equate perceptions of law enforcement for Persons with Disabilities victims of sexual violence, especially with various mental and intellectual disabilities.

KEYWORDS: Access Legal Aid, Persons with Disabilities, Sexual Violence.

RESUMO: Existem vários casos de violência sexual vivenciada por Pessoas com Deficiência, uma justiça injusta e discriminatória que aflige Pessoas com Deficiência. No processo judicial, frequentemente, as Pessoas com Deficiência são culpadas

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pela aplicação da lei por sua identidade como Pessoas com Deficiência. Com base nos problemas acima, o objetivo deste estudo é conhecer, encontrar e analisar os obstáculos enfrentados por acompanhantes e Pessoas com Deficiência durante o acesso à assistência jurídica quando as Pessoas com Deficiência sofrem violência sexual e conhecer, encontrar e analisar o modelo de acesso à assistência jurídica justa para Pessoas com Deficiência como vítimas de violência sexual. A pesquisa utiliza métodos de abordagem jurídica empírica. Os resultados mostraram que os obstáculos enfrentados por acompanhantes e Pessoas com Deficiência no acesso à assistência jurídica justa ocorrem quando a deficiência é um problema que ocorre nas instituições de serviço, restrições às Pessoas com Deficiência e restrições aos agentes da lei. A partir dessas restrições, pode ser criado um modelo de acesso à assistência jurídica justa para Pessoas com Deficiência vítimas de violência sexual, como serviços de assistência jurídica na forma de reclamações no nível policial para os tribunais seguindo as condições das deficiências das vítimas. Portanto, é necessário um espaço de discussão com agentes da lei, especialistas em direito criminal que entendam a justiça de gênero e acompanhantes legais para equalizar as percepções dos agentes da lei para Pessoas com Deficiência vítimas de violência sexual, especialmente com várias deficiências mentais e intelectuais.

PALAVRAS-CHAVE: Acesso à Assistência Jurídica, Pessoas com Deficiência, Violência Sexual.

1 INTRODUCTION

The establishment of the Unitary State of The Republic of Indonesia aims to protect all the country's colours in the Preamble to the 1945 Constitution and described in the body (Kholifah, 2020). The state guarantees no less than 40 constitutional rights in the 1945 Constitution. The National Commission of Violence Against Women groups these constitutional rights into 14 sections, namely; the right to citizenship; the right to life; the right to develop themselves; the right to freedom of thought and freedom of choice; the right to information; the right to proper employment and livelihood; the right to ownership and housing; the right to health and healthy environment; family rights; the right to legal certainty and justice; the right to be free from threats, discrimination, and violence; the right to protection; the right to fight for rights; and the right to govern.

Article 28D of the 1945 Constitution states that everyone is entitled to recognise guarantees of protection and fair legal certainty, and equal treatment before the law. To realise this goal, the state must protect vulnerable groups (Latupono, 2011).

Persons with Disabilities as part of a vulnerable group are not as fortunate as other majority groups in enjoying their rights and opportunities as citizens. The rights and opportunities for education, health, employment, decent livelihoods, and access to justice and law (Lestari et al., 2017). The birth of Law Number 8 of 2016 on Persons with Disabilities shows that Persons with Disabilities are recognised as dignified human beings who have the same rights as other citizens. So that Persons with Disabilities also have the right to get more specific legal protections (Widjaja et al., 2020).

Technically the principle of formal legality is formulated in Article 1 paragraph (1) of the Penal Code. This principle is considered as a handle in enforcing criminal law ranging from the investigation, prosecution to criminalisation. In this sense, it appears that justice is a procedural and very formal matter. Access to justice includes the availability of legal principles, material and formal legal norms that are technically accompanied by the judiciary's policy to provide facilities for justice seekers (Tabiu & Hiariej, 2015).

Persons with Disabilities often encounter obstacles when trying to gain access to the judiciary. There is discriminatory behaviour shown by law enforcement, which relates to the officer's perspective both in the police, prosecutors, and courts. This "who is normal and who is not normal" perspective is certainly detrimental to Persons with Disabilities. Simultaneously, there is a principle of equality before the law mandates that everyone is treated equally before the law (Prabowo, 2018).

Many cases where Persons with Disabilities have not received proper treatment in court. Not only related to physical facilities built without considering the interests of Persons with Disabilities to move, but also law enforcement officers who behave in unfriendly (Degener & Begg, 2017). This condition is not in line with Law Number 19 of 2011 concerning ratification of the Convention on the Rights of Persons with

Disabilities. The fundamental purpose of drafting this convention is to advance, protect, guarantee the full and equal enjoyment of all human rights and fundamental freedoms by all disabilities and to enhance respect for the dignity inherent in them (Rajer, 2013).

Based on data from the Center for Advocacy of Women with Disabilities and Children Special Region of Yogyakarta, in 2015 recorded 29 women with disabilities became victims of violence in the form of sexual violence, physical violence, and economic violence. A total of 33 cases occurred in 2016 and increased to 35 cases in 2017. The Annual Record of the National Commission of Violence Against Women released in March 2020 recorded 87 cases of violence against women with disabilities, a figure that is down although insignificant compared to the 2018 National Commission of Violence Against Women's Annual record of 89 cases. However, in 2019 the number of sexual violence increased to 79% compared to last year, which reached 69% of all cases. Of the overall violence cases against women with disabilities, women with intellectual disabilities were the most vulnerable group, with a percentage of 47%. Based on data from the Legal Resources Center for Gender and Human Rights Studies in the period 2017-2019, there were 3 cases of sexual violence against women with disabilities. Of the 3 cases of sexual violence experienced by Persons with Disabilities, only one succeeded until the court's decision (Farasonalia, 2020).

One of the unfair and discriminatory portraits of the Judiciary that afflicts Persons with Disabilities is that during the judicial process, Persons with Disabilities are often blamed by law enforcement for their identity as Persons with Disabilities. In criminal cases, Persons with deaf and speech impaired Disabilities who are victims of rape are often cornered by law enforcement for not shouting when raped (Stein & Waterstone, 2006). Visually impaired persons are not processed by law enforcement because the victim cannot see the perpetrator of the rape, then the Persons with deaf and speech impaired Disabilities when the judicial process often does not work because it submits the question-and-answer process of the investigation to the translators (Tobroni, 2015).

Legal protection is not limited to the process of reporting criminal acts but instead up to the court process until the verdict of legal force remains (Brants & Franken, 2009). The decision that has a deterrent effect and rehabilitation for victims will have a good impact on legal certainty in the future, and there will be no more similar incidents in cases of immorality involving Persons with Disabilities as victims, or at least incidents of immorality involving Persons with Disabilities as victims become reduced.

Research conducted by Rizky Ayu in 2019. The study entitled “Legal Protection against Persons with Disabilities Victims of Rape Crimes (Study in the Office of Women Empowerment, Child Protection and Community Binjai City)”, the results of the study obtained legal protection for Persons with Disabilities as rape victims, namely the existence of mentoring, psychological recovery counselling and medical aid to victims. As well as the efforts made by the office of Women Empowerment, Child Protection and Community (P3AM) Binjai City, namely in collaboration with the Police and the community, by improving the performance and supervision of the surrounding situation and giving attention to someone with physical and non-physical disabilities.

Based on previous writings, there are differences in the focus of research conducted by the writing team with existing research. Although both take the theme of legal protection, the writing team emphasises more efforts to build a new policy for Persons with Disabilities, so discussing this theme is always essential and actual for development, assessment, and further research.

Based on the above problems, the purpose of this study is to know, find and analyse the obstacles faced by escorts and Persons with Disabilities during access to legal aid when Persons with Disabilities experience sexual violence and to know, find, and analyse the model of access to fair legal aid for Persons with Disabilities as victims of sexual violence.

The results of this study are expected to be helpful for both theoretical and practical purposes. The theoretical benefit of this research is that the results of this

study are expected to contribute to constructive thinking and discourse for the development of jurisprudence. This study's results can be used as a reference for researchers or authors in the future, especially related to the research and development of legal science related to the implementation of fair legal aid for Persons with Disabilities victims of sexual violence.

The practical benefit of this research is that the results of this study can be a reference and input for the government to create, seek, or reconstruct a policy to create a policy of legal aid for Persons with Disabilities victims of sexual violence. The community can add insight into legal aid justice for Persons with Disabilities. Researchers can be used as an additional discourse in developing legal theories and legal fundamentals in deciding the issue of legal aid justice for Persons with Disabilities victims of sexual violence.

2 RESEARCH METHODS

Based on the purpose of this study, the approach method used is the empirical juridical approach method. This approach is made to understand the law in context, namely interacting with the community. The existence of different legal mechanisms in society will affect the type and content of the law that adapts to the conditions; for example, in groups of Persons with Disabilities, the law must represent its needs different from other community groups (Salam, 2015).

The primary source of data related to equitable legal aid access for Persons with Disabilities victims of sexual violence in Indonesia, obtained from several escorts of victims of sexual violence. Secondary data sources used to consist of primary legal materials and secondary legal materials. This study's primary legal materials include the 1945 Constitution, Law Number 16 of 2011 on Legal Aid, and Law Number 8 of 2016 on Persons with Disabilities. Secondary legal materials used in this study consist

of the results of research, journals, proceedings, books, and materials related to the subject matter that supports primary legal materials (Fitriyaningrum & Arifin, 2019).

To support the data collection process, the author used the data collection techniques by using Library Research and Field Research in the form of observations and interviews. All data collected, both secondary data and primary data, are broadly analysed using descriptive methods. By the method of approach used, then in this study, the analysis used is as follows: The first stage, basing on the doctrinal approach. Researchers mainly inventory all the principles or rules related to the problem, then be organised into a comprehensive doctrine after the previous collection of all principles and rules that have been collected—the second stage, based on non-doctrinal research. The analysis is carried out using descriptive analysis methods.

This data analysis is done by the author based on the type and purpose of the writing done. Data analysis will be described regularly and systematically in articles to conclude inductively, namely the withdrawal of conclusions from special things to general matters.

3 LEGAL AID

The legal aid program has been in place since Roman times. In every era, the meaning and purpose of providing legal aid are closely related to moral values, political views, and prevailing legal philosophies. In Roman times, the granting of legal aid was driven by the motivation to influence society. In medieval times, legal aid got a new motivation, namely the desire to donate in the form of helping the poor, and together with it grew the values of glory and knighthood that people greatly glorified. Since the French and American Revolution reached modern times, the motivation of providing legal aid is not only a sense of humanity to the poor, but there has been an aspect of “political rights” or the rights of citizens based on the modern constitution. The latest developments, the concept of legal aid, are now linked to the welfare state's ideals so

that almost every government helps legal aid programs as a chart of welfare facilities and social justice (Rubaie et al., 2014).

The right to obtain legal aid is only one of access to justice. Access to justice means being “treated fairly under the law, and if not treated fairly then a person will not get the “redress” they deserve. Concept of access to justice not only means access to advocates or courts but also means access to the Ombudsman and other “justice” institutions. Addressing access to justice must be done thoroughly to achieve social justice and not just limit yourself to access to the courts alone (Raharjo et al., 2016).

The concept of access to justice in Indonesia, focusing on the two fundamental objectives of the existence of the legal system, namely the legal system should be accessible to everyone from various circles; and the legal system should be able to produce fair provisions or decisions for all people (Raharusun, 2019), both individually and in groups (Sihombing, 2013). The basic idea to take precedence in this concept is to achieve social justice for citizens of all walks of life, including Persons with Disabilities. In the context of Indonesia, access to justice is defined as a state and process in which the state guarantees the fulfilment of fundamental rights under the 1945 Constitution and universal principles of human rights, and guarantees access for every citizen in order to have the ability to know, understand, realise and use those fundamental rights through formal and informal institutions, supported by an excellent and responsive public complaint mechanism, in order to obtain optimal benefits and improve the quality of life itself (Raharjo et al., 2016; Andaryuni, 2018)

According to Yahya Harahap, in the western world, the definition of legal aid has different characteristics and terms. There are 3 (three) types of legal aid, namely (Rubaie et al., 2014; Dessi, 2018):

1. Legal aid, which means providing services in the field of law to a person involved in a case or cause of providing legal aid services free of charge. Legal aid services in legal aid are more reserved for the poor in the poor community. Thus, the primary motivation in the concept of

legal aid is to enforce the law by defending the week's interests and human rights and blind people to the law.

2. Legal assistance, which contains a broader understanding of legal aid, because in addition to legal assistance it contains the meaning and purpose of providing legal aid services, closer to the understanding that we know the profession of advocates, who provide aid both to those who can afford achievements, as well as the provision of aid to the poor people for free.

3. Legal service, in general, people are more likely to give a broader understanding to the concept and meaning of legal service than to the concept and purpose of legal aid or legal assistance because the concept and idea of legal service contained meaning and purpose: Providing aid to members of the community whose operations aim to eliminate discriminatory realities in the enforcement and provision of legal aid services between the poor and the rich who control the source of funds and positions of power; Legal services provided to members of the community in need, can be realised the truth of the law itself by law enforcement officials by respecting every justified right of law for every member of society without distinguishing the rich and poor; and in addition to upholding the law and respecting the rights afforded by the law to each person, the legal service in its operation is more likely to resolve any dispute using peace.

Here the understanding of legal services has many aspects and is much broader than legal aid. Many people can provide this legal service, not only by legal experts but also by community mobilisers, police, informal and formal leaders. This service not only concerns the resolution of a case but also includes the restoration of the rights of those who have experienced sexual violence or demanding a specific right. On the other hand, it can also be an attempt to exercise the local authorities' policies about vulnerable groups' interests (Saraswati, 2019).

4 PERSONS WITH DISABILITIES

The term for Persons with Disabilities is a substitute term for Persons with Invalid that used to be used (Strand, 2014). The term has been officially used in Indonesia since the United Nations Convention on the Rights of Persons with Disabilities or The UN Convention on the Rights of Persons with Disabilities (CRPD)

in November 2011(Harahap & Bustanuddin, 2015). Ratified through Law Number 19 of 2011 on Ratification of the Convention on the Rights of Persons with Disabilities, The Convention defines “person with disabilities” as “Those with long-term physical, mental, intellectual, or sensory impairments who in their interactions with various barriers can hinder their participation in a full and effective society based on the principle of equality”. This definition places Persons with Disabilities due to interactions between (Wiarti, 2020) limited physical and mental functions and environmental factors, social responses, and broader factors that support disability barriers.

In Article 1 of Law Number 8 of 2016, referred to as Persons with Disabilities, every person who has physical, intellectual, mental, and sensory limitations for an extended period who interacts with the environment can experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights. Article 4 of Law Number 8 of 2016 mentions a variety of Persons with Disabilities, including Persons with physical disabilities are impaired function of motion, among others amputation, paralysis or stiff, paraplegia, cerebral palsy (CP), due to stroke, due to leprosy, and small people; Persons with intellectual disabilities are impaired in thinking function due to below-average intelligence levels, including slow learning, disability and down syndrome; Persons with mental disabilities are impaired thinking, emotional, and behavioural functions, among others: psychosocial among others schizophrenia, bipolar, depression, anxiety, and personality disorders and developmental disabilities that affect the ability of social interactions including autism and hyperactivity; and Persons with sensory disabilities are impaired one of the functions of the five senses, including visual disabilities, visual disabilities, or speech disabilities (Gintings, 2019).

A variety of Persons with Disabilities can be experienced single, double, or multi who have two or more disabilities, including visual disabilities and blind-deaf disabilities. This disability status is experienced within at least 6 (six) months or

permanently determined by medical personnel following the laws and regulations' provisions (Suhartoyo, 2014).

5 SEXUAL VIOLENCE

As a form of violence against women, sexual violence against women is a violation of human rights. As stated in the 1993 United Nations International Declaration on the Elimination of Violence against Women (Widiastuti, 2008): Affirms that violence against women is a violation of women's fundamental rights and freedoms and undermines or negates their enjoyment of those rights and freedoms, and worries about the longstanding failure to protect and advance those rights and freedoms in terms of violence against women.

Referring to national criminal law, the concept or definition of sexual violence will be found in different formulations. For example in the Criminal Code only know the concept of rape in conventionally assessed behaviour that is penetration with the genitals and or if there is an element of coercion. Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Article 8 states that sexual violence is (Supanto, 2004): coercion, sexual intercourse committed against a person who resides within the scope of the household and coercion of sexual relations with one within the scope of their household with another person for commercial purposes or specific purposes (Arief, 2018).

The concept of sexual violence used refers to the Inter-Agency Standing Committee (IASC) concept published in 2005, then the Rome Statute of 1993, and the forms of sexual violence that the National Commission of Violence has identified Against Women. According to the IASC, sexual violence is an act of sexual, attempted sexual acts, sexual comments, unwanted, seduction, or acts of trafficking, or directing one's sexuality by force, by a person regardless of relation to his or her victim, in various situations not only in the home or at work (Rehatta, 2014).

The 2010 National Commission of Violence Against Women documentation states that sexual violence is: sexual acts or attempts to obtain sexual acts or sexually targeted speech, or acts to trade or acts targeting one's sexuality committed by coercion, intimidation, threats, detention, psychological distress or abuse of power, or by taking advantage of coercive environments, or on someone unable to give genuine consent.

Sexual acts are not limited to physical attacks on a person's body and include actions that do not involve penetration or physical contact. Nevertheless, it can also be verbally attacking sexuality by exploiting the gaps of the environment and one's helplessness(Ivo Noviana, 2015).

Based on the National Commission of Violence Against Women monitoring findings until 2012, 15 (fifteen) forms of sexual violence against women were identified. The fifteen forms of sexual violence are as follows (Purwanti & Hardiyanti, 2018): Rape, Sexual Intimidation including Threats or Attempted Rape, Sexual Harassment, Sexual Exploitation, Trafficking of Women for Sexual Purposes, Forced Prostitution, Sexual Slavery, Forced Marriage, including hanging divorce, Forced Pregnancy, Forced Abortion, Coercion of Contraception and Sterilisation, Sexual Torture, Inhuman and sexually nuanced Punishment, Traditional and sexually nuanced practices that harm or discriminate against women, and Sexual Control, including through discriminatory rules on morality and religion.

6 RESPONSIVE LAW

The type of responsive law, based on responsive nature, can be interpreted as serving the needs and social interests experienced and found not by officials but by the people. Responsive legal types do not discard the idea of fairness but expand it to include substantive asses, two defining traits of responsive legal types (Arianto, 2010),

namely: Shifting emphasis from rules to principles and objectives and the importance of (populist) character both as a legal goal and a way to achieve it (Halmai, 2019).

In this type of responsive law, legal pluralism is recognised and disapproved of positivity to turn any form of social arrangement into an exercise of state authority. One of the impacts of legal pluralism is to expand opportunities in a legal process to participate in lawmaking. In this way, the legal arena becomes a form of a political forum, and legal participation involves a political dimension. In other words, legal action becomes a vehicle for a group of people or organisations to participate in setting public policy (Dayanto & Karim, 2015).

Nonet and Selznick explain the relationship between law and oppression that the government's entry into a pattern of oppressive power through the law is closely related to resource poverty in the government elite. The user of power is oppressive; there is a society that is still forming a particular political order. The law is closely related to power because the status quo permanently binds the legal system (Nonet & Selznick, 2016). The rule of law cannot exist if it is not bound by a particular system that causes the law to effectively power; if so, then the authorities, in the clothes of authority, have the right authority to require citizens to obey the power of the throne. The user of that power can give birth to oppressive laws and the character of autonomous law, depending on the stage of the formation of the political system of the society concerned (Antasari, 2019).

Responsive law requires Persons with Disabilities to have a political capacity to solve their problems, set priorities, and make necessary commitments such as the need for access to fair legal aid when victims of sexual violence. The achievement of a policy to a fair extent for Persons with Disabilities depends on the political community's will and resources. In the study of Responsive Legal Theory, each policy must have a distinctive contribution, namely facilitating public goals and building a spirit to correct itself into the process of government (Rizhan, 2020).

7 OBSTACLES FACED BY ESCORTS AND PERSONS WITH DISABILITIES AS VICTIMS OF SEXUAL VIOLENCE IN ACCESSING LEGAL AID

Based on cases that occur in Persons with Disabilities, many cases are stopped in handling. From the experience of legal aid assistance to victims of criminal acts whose victims are Persons with Disabilities, there are some obstacles experienced both constraints on legal aid agencies, constraints on victims, and obstacles to law enforcement officials (Kasiyati Siti et al., 2018), among others as follows: First, constraints on service institutions. The obstacle is the absence of a companion psychologist, psychiatrist, or translator specifically for Persons with Disabilities, especially in victims with intellectual and mental disabilities (Iudici et al., 2019). Other obstacles experienced by institutions that deal with victims with disabilities, such as the absence of witnesses who see the incident of violence experienced by victims and the lack of evidence tools, are also obstacles in processing into the realm of law (Srikantiah, 2007). Due to the lack of witnesses and evidence available, the service institutions cannot continue the process to the next stage, namely the report to the police.

Second, obstacles for victims with disabilities include:

1. The victim is considered inconsistent in telling the chronology of the incident. Victims with intellectual disabilities are often unable to express the incident of sexual violence they experience clearly and consistently. This causes the police to often struggle with the victim's testimony. As a result, inconsistent victim testimony is often concluded that the victim has lied³;

³ lis Amalia, case of women with intellectual disabilities. Private interview in March 2021.

2. Age of the victim (incompatible between calendar age and intellectual, mental age). According to the calendar, the victim's age falls into the adult category, but not the intellectual mentality. Mentally, the victim is immature, so law enforcement officials often rule out testimony expressed by the victim. The court proceedings should have made this distinction;

3. Constraints of the individual Victim. At the time of violence against victims with disabilities can not fight and unable to defend themselves because of the limitations that he/she has, both limited movement, speech limitations, and intellectual borders. This causes victims with disabilities to be unable to fight. Besides, victims with mental disabilities do not understand the situation of violence experienced. Most of the victims consider the treatment of sexual violence or rape against them to be a form of the perpetrator's affection towards them⁴;

4. Victims do not understand the physical, social, and psychological consequences. Usually, the victim is unable to understand the consequences of violence and rape. The victim cannot anticipate the perpetrator's actions because the victim does not know what the perpetrator has done is a form of violence. In the victim, there is no emotional response in general; only the victim feels physically sick. Even when subjected to violent treatment, victims do not describe emotional facial expressions, and even just positive emotional expressions (laughing or smiling) as a result of their cognitive inability to understand the incident of violence experienced;

5. The victim cannot understand the rights they have. Persons with Disabilities have limited knowledge and information relating to their rights. This makes Persons with Disabilities do not understand what their rights are when sexual violence occurs; and

6. Inaccessible system of judicial administration. The administrative system in the police force is so convoluted that it causes difficulties in reporting cases. It took me a while to get the victim's report received by the police. This is because of the apparatus perspective of law enforcement who do not yet understand the specificity of the condition of Persons with Disabilities.

Third, the constraints on law enforcement officials. The reality that occurs in aid and legal services for Persons with Disabilities during this time is the unpreparedness

⁴ Nihayatul Mukharomah, case of women with physical disabilities. Private interview in March.

of law enforcement officials in handling cases whose victims are disabled and often stopped even reject cases and justify criminal cases against Persons with Disabilities (Henry, 1995). This is because law enforcement officials do not yet understand the form of disabilities and each victim's needs and do not have specific skills to handle women with disabilities. Also, law enforcement officials have not considered Persons with Disabilities as citizens who have equal rights before the law; in other words, they do not uphold the principle of equality before the law (Harpur, 2012).

Furthermore, significant weaknesses persist in the pursuit of justice for Persons with Disabilities, particularly concerning the investigative procedures carried out by law enforcement agencies, notably the police. Firstly, a notable challenge arises from the rejection of case reports by the police, often stemming from difficulties encountered during the examination process. Victims with disabilities may face obstacles in effectively communicating their experiences to law enforcement officers, compounded by a lack of specialized tools and resources to gather evidence. Secondly, there exists a pervasive lack of understanding among law enforcement officers and police regarding disability-related issues, resulting in a lack of sensitivity towards victims with disabilities. Addressing this gap necessitates comprehensive training programs aimed at enhancing the awareness and competency of police officers, judicial authorities, and other legal aid entities in understanding the unique challenges faced by Persons with Disabilities, particularly in accessing justice. Thirdly, the absence of supporting facilities such as psychologists and disability-specific escorts exacerbates the challenges faced by law enforcement personnel when interacting with Persons with Disabilities, particularly during the examination and investigative processes. The dearth of such resources further underscores the urgent need for improvements in the infrastructure and support systems available to facilitate the equitable treatment and effective handling of cases involving Persons with Disabilities within the criminal justice system. Efforts to address these deficiencies are crucial to ensuring that Persons with

Disabilities are afforded equal access to justice and receive the necessary support and accommodations to navigate the legal process effectively.

8 ACCESS FAIR LEGAL AID FOR PERSONS WITH DISABILITIES AS VICTIMS OF SEXUAL VIOLENCE

Many conventions are Human Rights instruments such as CEDAW, CRPD, and others. CRPD is a convention that ensures all Persons with Disabilities can enjoy all basic human rights and fundamental freedoms. CRPD is an international and national Human Rights instrument in the efforts to Respect, fulfil, and protect Disability Rights in Indonesia (Development tool and Human Rights Instrument)(Widinarsih, 2018).

The purpose of this convention is to advance, protect, and ensure equal rights and fundamental freedoms for all Persons with Disabilities and respect for the dignity of Persons with Disabilities as an integral part (inherent dignity). One of the differentiators of CRPD with international conventions related to the protection of Human Rights is the breadth of purpose, meaning, and scope of protection for disabilities(Verdugo et al., 2012).

Based on its purpose, this convention is not only to advance, protect and guarantee full enjoyment, without discrimination and equally to enjoy the fundamental Human Rights and freedoms of Persons with Disabilities and also to be enjoyed by Non-Persons with Disabilities. Besides, the convention also aims to increase respect for the dignity and prestige inherent in every human being indiscriminate. From both objectives, it appears that this convention wants to reaffirm that Persons with Disabilities have Human Rights and dignity that must be fully observed and without discrimination based on disability (Watson & Vehmas, 2020).

The Republic of Indonesia signed the CRPD on March 30, 2007, in New York. As a signatory country to the convention, Indonesia is committed to ratifying the CRPD. Therefore, on November 10, 2011, President Dr. H. Susilo Bambang Yudhoyono

signed the Law of the Republic of Indonesia Number 19 of 2011 on the Ratification of the CRPD (Wijaya & Nurhajati, 2018).

Law of the Republic of Indonesia Number 19 of 2011 concerning the Ratification of the CRPD was promulgated by the Minister of Law and Human Rights of the Republic of Indonesia on 10 November 2011 into the State Gazette of the Republic of Indonesia Year 2011 Number 107 and Explanation of Law Number 19 of 2011 on Ratification of CRPD in addition to State Gazette of the Republic of Indonesia Number 5251 in Jakarta.

The Convention on the Rights of Persons with Disabilities articulates several fundamental principles that serve as the cornerstone of its framework. Firstly, it emphasizes the utmost importance of respecting inherent dignity, individual autonomy, and independence, thereby affirming the freedom of individuals to make choices regarding their own lives. Secondly, it advocates for nondiscrimination, underscoring the imperative of treating individuals with disabilities on an equal basis with others, devoid of any prejudice or bias. Thirdly, it underscores the necessity of enabling full and effective participation in society, ensuring that persons with disabilities are not marginalized but rather actively engaged members of their communities. Fourthly, it promotes respect for differences and acknowledges disability as an integral aspect of human diversity, fostering acceptance and inclusivity. Fifthly, it champions equality of opportunity, striving to eliminate barriers that hinder the equal participation of persons with disabilities in various spheres of life. Sixthly, it underscores the importance of accessibility, advocating for environments, products, and services that are universally accessible to all, regardless of disability. Seventhly, it highlights the principle of gender equality, emphasizing the need to address the intersecting forms of discrimination faced by women and girls with disabilities. Lastly, it emphasizes the recognition of the evolving capacities of children with disabilities and the importance of preserving their identities, ensuring that their rights are upheld and their voices heard in decisions that affect their lives. These principles collectively embody a vision of a society that values

diversity, promotes inclusion, and upholds the rights and dignity of all individuals, regardless of disability (Bristo et al., 2014).

The CRPD delineates specific provisions aimed at ensuring equality and recognition before the law for individuals with disabilities, particularly when they encounter legal processes. Firstly, state parties reiterate the fundamental right of Persons with Disabilities to be acknowledged as human beings before the law, regardless of their disability status or location. Secondly, there is a binding obligation for state parties to acknowledge that disability does not diminish an individual's legal capacity and that Persons with Disabilities possess legal rights on an equal footing with others in all facets of life. Thirdly, states are mandated to take appropriate measures to facilitate disability access to necessary assistance required for exercising their legal capacity effectively. Fourthly, it is incumbent upon state parties to enact measures that ensure robust safeguards are in place to prevent the abuse of legal capacity, aligning with international human rights standards. These safeguards must guarantee that decisions concerning the implementation of legal capacity respect the rights, preferences, and autonomy of the individual with a disability, free from any undue influence or conflicts of interest. Moreover, these measures should be proportionate to the specific circumstances of the disability in question, subject to regular review by competent, impartial judicial authorities or bodies. Fifthly, states are obligated to undertake practical steps to uphold equal rights for Persons with Disabilities in property ownership and inheritance, financial management, and access to financial services, including bank loans and housing loans. Furthermore, states must ensure that disability status does not arbitrarily impede an individual's right to ownership. By enshrining these principles into law, the CRPD endeavors to guarantee the equitable treatment and empowerment of Persons with Disabilities within legal frameworks, fostering a society where their rights and dignity are upheld and protected.

Article 13 paragraph (1) and paragraph (2) of this convention confirms: First, States parties are obliged to effectively guarantee disability access to justice based on

similarities with others, including through regulatory communion relating to procedures and age appropriateness, in order to facilitate the influential role of disability as a direct or indirect role, including as a witness in all trials, including in investigations and other early stages. Second, in order to help ensure adequate access to justice for Persons with Disabilities, states must improve proper training for those working in the field of law enforcement, including police and prison wardens.

In general, this convention is very comprehensive in regulating and guaranteeing the rights of disabilities dealing with the law; the responsibility for improvement lies on the shoulders of the government to ensure against facilities, infrastructure facilities, legal procedures, non-discrimination arrangements, legal aid, disabilities that must be recognised in legal subjects and treated humanely when dealing with the law. This convention provides answers to discrimination issues that still often arise in the world of justice and the process of pre-trial that is not yet friendly to disabilities.

The implementation of legal aid in Indonesia is currently stipulated in the Republic of Indonesia Number 16 of 2011 concerning Legal Aid. Furthermore, recipients of legal aid under the law are limited to people or groups of poor people, not explicitly mentioning people with disabilities.

Article 9 of Law Number 8 of 2016 stipulates the rights to justice and legal protection for Persons with Disabilities, which include: Firstly, equal treatment before the law; secondly, recognition as legal subjects; thirdly, the right to own and inherit movable or immovable property; fourthly, the authority to control financial matters or appoint representatives to handle their financial affairs; fifthly, access to banking and non-banking services; sixthly, the provision of accessibility in judicial services; seventhly, protection from pressure, violence, persecution, discrimination, or deprivation of property; eighthly, the selection and appointment of representatives to safeguard their interests in civil matters both in and out of court; and ninthly, protection of intellectual property rights.

The assistance and law enforcement services, as mentioned in Article 12, paragraph (1) letter d of Regulation Number 2 of 2021 concerning the Implementation of Women's Protection, are conducted comprehensively with relevant stakeholders through various activities, including: legal consultation, legal empowerment, mediation, restorative justice, legal aid, expert support, restitution, security protection, and other forms of assistance and law enforcement required by victims. In implementing these aspects, efforts are made to ensure that the rights of individuals, particularly the vulnerable, are respected and protected in accordance with the principles of law and justice. Thus, equality before the law and fair protection form the foundation for the development of an inclusive and just legal system for all citizens.

Legal aid becomes an absolute necessity for Persons with Disabilities who are victims of violence to explain their interests and rights from police complaints to the court level. On this side, legal escorts also have the power to fight for Persons' rights with Disabilities when dealing with the law. In the case of persons with physical disabilities, legal applicants can apply for additional examinations at the police to gather additional evidence to ensnare the offender. This legal assistance can be done by networking with service providers to strengthen support during the judicial process. Related information during the process of providing legal aid is always informed to the victim and the victim's family to understand the dynamics of the judicial process⁵.

To obtain this legal assistance service previously, the victim complained to the service agency and followed up following the services required by the victim. Legal services procedures are informed to victims and families actively involved during the judicial process. This legal assistance is free of charge and facilitates transportation facilities provided by the government. If there is financing that the service providers cannot cover, then it can apply to the government through the relevant agencies⁶.

⁵ Nihatul Mukharomah, case of women with physical disabilities. Private interview in March.

⁶ Iis Amalia, case of women with intellectual disabilities. Private interview in March 2021.

During legal assistance, the services required by victims are not only litigation services but also other demands fought by legal escorts to fulfil the rights of victims as a result of sexual violence. In addition to the demands to be given appropriate punishment, demands outside the court such as guarantees of survival to the guarantee of children's education due to sexual violence, in this case, rape can be met by the perpetrator. To fight for this claim, the legal companion coordinates with the Integrated Service Center for Women and Children Empowerment, directed to the police and prosecutors⁷.

Although Law Number 16 of 2011 on Legal Aid has been regulated, the reality that occurs in the field many of them do not get legal aid. This is evidenced by the case that occurred with the victim with intellectual disabilities victims of sexual violence, but the case is long enough to be processed because of the police's lack of sensitivity to people with disabilities. In the case that occurred in Semarang, the victim was an intellectually disabled person who was 15 (fifteen) years old. A stepfather raped the victim. The victim reported to the police, but the case stopped at the police because the victim had obstacles to the orientation of time and place, so the police had difficulty digging for information⁸.

In the case of a 22-year-old Persons with Mentally Disabilities where sexual violence occurs when the situation in the victim's home is quiet, and the parents are in the rice fields. At that time, the perpetrator will use the victim's parents' massage services to do the deed until the victim is pregnant. The case went viral in the media, causing the local district government to resolve it immediately. Services received by the victim Visum et repertum examination, counselling, and recovery. During the proceedings, the companion assists the victim's family. During the repatriation of

⁷ Nuryadin, case of women with mental disabilities. Private interview in March 2021.

⁸ Iis Amalia, case of women with intellectual disabilities. Private interview in March 2021.

escorts, provide education to local stakeholders and the community to provide social support.⁹

In the case of 15-year-old Persons with Disabilities Intellectual (PDI), stepfather and step-uncle commit sexual violence. At that time, the victim was invited by the victim's mother to meet the perpetrator at the perpetrator's workplace. The perpetrator promised to take the victim home but was taken around the city. The violence took place in a car during a trip around the city. The perpetrator invited the victim to the midwife.

Furthermore, the next day was reunited with her mother at the offender's workplace. This legal complaint service is done by picking up the ball because of the victim's condition who does not allow to attend independently at the service institution. Visum et repertum with medical costs of Rp 400,000 (four hundred thousand rupiahs) is charged by the relevant service, while the service institution covers the cost of emergency contraception. From a psychological examination by the service institution, the results obtained that the victim's IQ is below average. The case was reported to the police and only received reported evidence. One month later, the report's evidence received confirmation of a complaint from the police. During counselling and extracting information by investigators, the victim was placed in a safe house, besides as a place of protection also as a media healing for victims, digging deeper information and education of parents related to the disability of victims¹⁰.

In a 17-year-old with Physical Disability Scoliosis (PDS), the victim's acquaintances commit sexual violence on social media. The victim met the offender for dinner and was rushed to the inn. Inside the inn, the victim was sexually assaulted. Visum et repertum is done independently by the victim's parents. Meanwhile, a

⁹ Nuryadin, case of women with mental disabilities. Private interview in March 2021.

¹⁰ Iis Amalia, case of women with intellectual disabilities. Private interview in March 2021.

psychological examination is conducted in synergy with universities that have trauma centre services¹¹.

Article 6 paragraph (1) of CRPD reads: “States recognise that women and girls with disabilities are vulnerable to multiple discrimination and in this regard must take steps to ensure the complete and equal fulfillment of all Human Rights and fundamental freedoms”.

Article 6 paragraph (2) CRPD reads: “States parties shall take all appropriate measures to ensure the development, promotion, and empowerment of women as a whole with the aim of providing them with assurances for the implementation and fulfillment of Human Rights and fundamental freedoms as set forth in this convention”.

Article 5 paragraph (2) of Law Number 8 of 2016 concerning Persons with Disabilities states: “In addition to the rights of Persons with Disabilities as referred to in paragraph (1), women with disabilities have the right (1) to reproductive health, (2) accept or reject the use of contraceptives, (3) get more protection from multi-layered discrimination treatment, and (4) to obtain more protection from violence, including violence and sexual exploitation”.

The Government of Indonesia must fulfil the rights and protect Persons in various aspects of life as the mandate of the constitution in Law Number 8 of 2016 on Persons with Disabilities. Efforts to influence the management of disability-responsive policies must be carried out from the most basic level with mainstreaming/understanding disabilities, policy drafting, and supervising policy implementation. In addition to regulatory issues, disability-responsive policies at the regional, national and global levels are influenced by social systems and social values. The challenge of changing the paradigm of exclusion towards social inclusion for Persons with Disabilities. Persons with Disabilities to perform their active role as citizens need physical and psychological support. Persons with Disabilities through the

¹¹ Nihayatul Mukharomah, case of women with physical disabilities. Private interview in March.

development of a positive social system and an accessible physical environment, and the opportunities provided, will make Persons with Disabilities live independently.

Public services and a social environment that is not inclusive, limited data on the existence and condition of Persons with Disabilities, is at least a significant challenge in the fulfilment of rights and is often the cause of the neglect of the rights of Persons with Disabilities. Thus, homework for the fulfilment of Persons' rights with Disabilities is seen in providing access and services for Persons with Disabilities that are inclusive, including in health services, educational services, banking services, population administration services, and legal services in the examination process and court. Equal opportunities for Persons with Disabilities, loss of stigmatic and discriminatory measures, and accessibility in public services will allow Persons with Disabilities to live a whole and decent life. They can contribute to social, cultural, political, and economic life like any other citizen.

Responsive legal aid is accessible and comprehensive legal aid provided to Persons with Disabilities covering all areas of law and human rights to achieve justice and a framework for realising equality before the law for everyone. The concept of responsive legal aid refers to all types of legal and Human Rights fields without prioritising specific areas of law and types of Human Rights and without distinguishing the defence of both individual and collective cases. Responsive legal aid is in the form of legal counselling on Human Rights and legal process, the right to be defended by legal aid organisations or advocates; defence in addressing concrete legal issues; defence in a competent court in order to produce a more assertive, precise, clear and correct jurisprudence; and support the renewal of the law through court rulings that favour the truth and the establishment of laws by the value and cultural system that exists in society. To make legal aid a success, legal aid must be a national movement supported by the state and society. Furthermore, the legal culture is closely related to the law's effectiveness and the expectations of the entire community on what the law

has to do. Inevitably the legal culture in society determines the success of legal aid programs in Indonesia.

In the concept of responsive legal aid, the need for legal aid in each region in Indonesia varies depending on each region's priorities. For example, in areas where Persons with Disabilities need defence in the field of criminal law, especially when Persons with Disabilities face abuse of their rights, for example, Persons with Disabilities as sexual violence, the defence by local legal aid organisations are prioritised in defence of the field of law and human rights violated in the form of the right to obtain the protection of their rights (Perlin, 2012).

The next aspect that is also important in legal aid is the funding aspect. While legal aid issues are natural, financial issues are critical in determining the development of legal aid. So far, financial support for the Indonesian Legal Aid Foundation has been obtained from overseas donations, such as the United States, Sweden, Belgium, the Netherlands, Australia, and Canada. The widespread misconception is that it is as if all legal aid matters, including financial support, can be handed over to the legal aid organisation, assuming the legal aid organisation is willing to help because a person is categorised as a Persons with a Disabilities. In contrast, legal aid is the responsibility of the state. Therefore, the state has neglected its constitutional duty to finance the legal aid movement and not allocate specific budgets through the State Budget. This is contrary to the state's obligation to protect Persons with Disabilities, as the state is responsible for the fate of Persons with Disabilities.

Legal aid laws will later be relied upon to engineer Persons with Disabilities to know and understand their rights and know-how to obtain legal aid as their constitutional right. This right is a right that no one can ignore in order to obtain justice (Abel, 2013). Without the Law on legal aid, it is difficult to expect a legal order on the concept of legal aid, the acquisition of legal aid, and the management of clutter about the provision of legal aid. In the future, Persons with Disabilities can obtain legal aid provided by advocates or public defenders of legal aid organisations so that it will

indirectly increase prosperity and live decently as a dignified human being(Cantrell, 2004).

9 CONCLUSION

Based on the results of the research that has been presented, the obstacles faced by escorts and Persons with Disabilities in accessing legal assistance that is fair at a time when disability is a problem that occurs in service institutions, constraints on Persons with Disabilities, and constraints on law enforcement apparatus. From these constraints, it can be created a model of access to legal aid that is fair for victims of disabilities victims of violence, that: Legal assistance services in the form of complaints at the police level to the court following the conditions of disability of victims; Service agencies provide legal aid following the specificity of victims in synergy with relevant agencies; During the sidelining of the victim is given information related to the development of the case; Health and accommodation costs incurred during legal assistance services may be charged to the relevant parties in charge of women and children's affairs, and Active participation of Persons with Disabilities of victims of sexual violence in each legal assistance process is required to provide sufficient information and evidence.

Based on the study results, the researchers advised service agencies, law enforcement officials, and disability advocates to increase the capacity of resources related to how to interact with Persons with Disabilities. Regular training is required for law enforcement officers, criminal experts, and legal escorts related to disability knowledge and followed up with a Joint discussion room to align perceptions of the handling of Persons with Disabilities victims of sexual violence. A particular legal system or policy is required that governs Persons with Disabilities who are dealing with the law. Therefore, it takes a discussion room with law enforcement officials, criminal law experts who understand gender justice, and legal escorts to equate the perception

of law enforcement for disabled victims of sexual violence, especially with various mental and intellectual disabilities.

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